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

*NYC Administrative Code 12-206*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 2 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*1

§ 12-206 Eligible List Reporting.

a. Definitions. For the purposes of this section only:

1. "Eligible list" shall mean any list established by the department of citywide administrative services after the administration of either an open-competitive or a promotional examination containing the names of persons eligible to be considered for appointment or promotion by an appointing authority in the city of New York pursuant to article four of the New York state civil service law.

2. "Promotion list" shall mean the agency-specific list established by the department of citywide administrative services after the administration of a promotional examination containing the names of persons eligible to be considered for promotion by an appointing authority in the city of New York pursuant to article four of the New York state civil service law.

b. The commissioner of the department of citywide administrative services shall submit a report on an annual basis beginning in two thousand five to the mayor, comptroller, public advocate and speaker of the council of the city of New York, by the first day of June, for the previous calendar year, regarding eligible lists. Such report shall include, but not be limited to, the following:

1. each eligible list established during the reporting year by the department of citywide administrative services;

2. the dates such eligible lists were established;

3. the number of persons appointed or promoted from each eligible list and the agencies to which such appointments or promotions were made;

4. the number of persons appointed or promoted on a provisional basis during the reporting year and the agencies to which such appointments or promotions were made;

5. the number of persons who, during the reporting year, were considered and not selected three times from promotion lists;

6. the number of persons removed from eligible lists and the number of persons removed from promotion lists and the reason reported to the department of citywide administrative services by the agency for such removal; and

7. the number of persons restored to eligible lists and the number of persons restored to promotion lists after having been removed.

**HISTORICAL NOTE**

Section added L.L. 50/2004 § 2, eff. Nov. 9, 2004. [See Note 1]

**NOTE**

1. Provisions of 50/2004:

Section 1. Legislative findings and intent. Article five, section six of the New York state constitution mandates that appointments and promotions in the civil service be made according to merit and fitness to be ascertained as far as practicable, by examination, which, as far as practicable, shall be competitive. In the city of New York, the department of citywide administrative services is responsible for administering such examinations and creating eligible lists, pursuant to article four of the New York state civil service law, which consist of candidates who passed a civil service examination. In addition, after the administration of a promotional examination, the department of citywide administrative services establishes lists known as promotion lists, which are agency-specific and a type of eligible list. Eligible lists are available to each city agency with open positions in corresponding titles and are usually active for four years, pursuant to section fifty-six of the civil service law.

Appointments or promotions from an eligible list to a position in the competitive class are made by the selection of one of the three persons certified as standing highest on such list, a procedure commonly known as the one-in-three rule, which is carried out pursuant to subdivision one of section sixty-one of the civil service law. When an eligible list contains fewer than three names, a provisional appointment in the competitive class may be made by an agency, pending the establishment of a new eligible list.

The Council finds that a number of candidates for employment by the city who are on an eligible list are considered and not selected by agencies. After a candidate is considered but not selected three times by an agency, that candidate is not certified to that agency again, although such candidate retains the right to request of that agency that his or her name be certified to that agency again. Furthermore, the Council finds that some agencies hire provisional employees who have never taken or passed a civil service examination.

**FOOTNOTES**

1

[Footnote 1]: * Chapter heading amended L.L. 59/1996 § 62, eff. Aug. 8, 1996.

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*NYC Administrative Code 12-206*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 2 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*1

§ 12-206 Health history of job applicants; prohibition. [Repealed]

**HISTORICAL NOTE**

Section repealed L.L. 59/1996 § 67, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 817-6.0 added LL 27/1976 § 1

**FOOTNOTES**

1

[Footnote 1]: * Chapter heading amended L.L. 59/1996 § 62, eff. Aug. 8, 1996.

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

*NYC Administrative Code 12-301*

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Title 12 Personnel and Labor

CHAPTER 3 COLLECTIVE BARGAINING

§ 12-301 Short title.

This chapter may be cited as the "New York city collective bargaining law."

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 1173-1.0 added LL 53/1967 § 2



Administrative Code of the City of New York



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

*NYC Administrative Code 12-302*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 3 COLLECTIVE BARGAINING

§ 12-302 Statement of policy.

It is hereby declared to be the policy of the city to favor and encourage the right of municipal employees to organize and be represented, written collective bargaining agreements on matters within the scope of collective bargaining, the use of impartial and independent tribunals to assist in resolving impasses in contract negotiations, and final, impartial arbitration of grievances between municipal agencies and certified employee organizations.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 1173-2.0 added LL 53/1967 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. The provisions of the New York City Collective Bargaining Law were no defense to a motion by defendants who were the president and two other members of the executive board of the Uniformed Firefighters Association to dismiss an indictment for reckless endangerment and related crimes arising from their participation in calling a strike of New York City Firemen.-People v. Vizzini, 78 Misc. 2d 1040, 359 N.Y.S. 2d 143 [1974].

**CASE NOTES**

¶ 1. City Board of Collective Bargaining (BCB) is empowered by statute to determine if a dispute is proper subject for grievance and is arbitrable and its decision is entitled to deference. Administrative Code §12-302 expresses policy favoring arbitration of grievances. In this case petitioner contends employee's transfer was proper exercise of its managerial power to deploy personnel, BCB's determination that grievance alleged was within scope of arbitration provision was rational. NYC Dep't of Sanit. v. MacDonald, 215 AD2d 324 [1996].

¶ 2. The Board of Collective Bargaining applies a two-part test to determine whether a particular grievance is arbitrable. Initially, the Board ascertains whether the collective bargaining agreement contains a provision for arbitration of disputes. If so, the Board determines whether the dispute falls within the scope of the arbitration provision. City of New York v. Board of Collective Bargaining, N.Y.L.J., Jan. 30, 2001, page 26, col. 3 (Sup.Ct. New York Co.).



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

*NYC Administrative Code 12-303*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 3 COLLECTIVE BARGAINING

§ 12-303 Definitions.

As used in this chapter, unless the context clearly indicates otherwise, and subject to the limitations of section 12-304:

a. The term "director" shall mean the director of the office created by section eleven hundred seventy of the charter.

b. The term "board of collective bargaining" shall mean the board created by section eleven hundred seventy-one of the charter.

c. The term "board of certification" shall mean the board created by section eleven hundred seventy-two of the charter.

d. The term "municipal agency" shall mean an administration, department, division, bureau, office, board, or commission, or other agency of the city established under the charter or any other law, the head of which has appointive powers, and whose employees are paid in whole or in part from the city treasury, other than the agencies specified in paragraph two of subdivision g of this section.

e. The term "municipal employees" shall mean persons employed by municipal agencies whose salary is paid in whole or in part from the city treasury.

f. The term "mayoral agency" shall mean any municipal agency whose head is appointed by the mayor.

g. The term "public employer" shall mean (1) any municipal agency; (2) the board of education, the New York city health and hospitals corporation, the New York city off-track betting corporation, the New York city board of elections and the public administrator and the district attorney of any county within the city of New York; (3) any public authority other than a state public authority as defined in subdivision eight of section two hundred one of the civil service law, whose activities are conducted in whole or in substantial part within the city; and (4) any public benefit corporation, or any museum, library, zoological garden or similar cultural institution, which is a public employer or government within the meaning of article fourteen of the civil service law, employing personnel whose salary is paid in whole or in part from the city treasury.

h. The term "public employees" shall mean municipal employees and employees of other public employers.

i. The term "municipal employee organization" shall mean any organization or association of municipal employees, a primary purpose of which is to represent them concerning wages, hours, and working conditions.

j. The term "public employee organization" shall mean any municipal employee organization and any other organization or association of public employees, a primary purpose of which is to represent public employees concerning wages, hours, and working conditions.

k. The term "municipal labor committee" shall mean an association known by that name created pursuant to a memorandum dated March thirty-first, nineteen hundred sixty-six, as amended, signed by representatives of the city and certain employee organizations.

l. The term "certified employee organization" shall mean any public employee organization: (1) certified by the board of certification as the exclusive bargaining representative of a bargaining unit determined to be appropriate for such purpose; (2) recognized as such exclusive bargaining representative by a public employer in conformity with the rules set forth in the office of collective bargaining rules of practice and procedure; or (3) recognized by a municipal agency, or certified by the department of labor, as such exclusive bargaining representative prior to the effective date of this chapter, unless such recognition has been or is revoked or such certificate has been or is terminated.

m. The term "matters within the scope of collective bargaining" shall mean matters specified in section 12-307 of this chapter.

n. The term "executive order" shall mean, in the case of a mayoral agency, an executive order, memorandum or directive of the mayor and in the case of any other municipal agency or public employer, a written order, directive or resolution of such agency or employer or the head thereof, which provides for the application of the provisions of this chapter or otherwise implements the provisions of this chapter.

o. The term "grievance" shall mean: (1) A dispute concerning the application or interpretation of the terms of a written collective bargaining agreement or a personnel order of the mayor, or a determination under section two hundred twenty of the labor law affecting terms and conditions of employment; (2) A claimed violation, misinterpretation, or misapplication of the rules or regulations of a municipal agency or other public employer affecting the terms and conditions of employment; (3) A claimed assignment of employees to duties substantially different from those stated in their job classifications; or (4) A claimed improper holding of an open-competitive rather than a promotional examination. Notwithstanding the provisions of this subdivision, the term grievance shall include a dispute defined as a grievance by executive order of the mayor, by a collective bargaining agreement, or as may be otherwise expressly agreed to in writing by a public employee organization and the applicable public employer.

p. The terms "labor member," "city member," and "impartial member" shall refer to those members of the board of collective bargaining described in section eleven hundred seventy-one of the charter.

q. The terms "designated representative" and "designated employee organization" shall mean a certified employee organization, council or group of certified employee organizations designated for the purposes specified in

paragraph two, three or five of subdivision a of section 12-307.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. l amended L.L. 26/1998 § 1, eff. July 7, 1998.

**DERIVATION**

Formerly § 1173-3.0 added LL 53/1967 § 2

Sub d amended LL 1/1972 § 3

Sub g amended LL 1/1972 § 4

Sub l amended LL 1/1972 § 5

Sub m amended LL 1/1972 § 6

Sub n amended LL 1/1972 § 7

Sub q added LL 1/1972 § 8

Sub g amended LL 51/1980 § 2



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

*NYC Administrative Code 12-304*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 3 COLLECTIVE BARGAINING

§ 12-304 Application of chapter.

This chapter shall be applicable to:

a. All municipal agencies and to the public employees and public employee organizations thereof;

b. any agency or public employer, and the public employees and public employee organizations thereof, which have been made subject to this chapter by state law;

c. any other public employer, and to the public employees and public employee organizations thereof, upon the election by the public employer or the head thereof by executive order of the chief executive officer to make this chapter applicable, subject to approval by the mayor, provided, however, that any such election by the New York city board of education shall not include any teacher as defined in section 13-501 of the administrative code or any employee who works in that capacity or any paraprofessional employees with teaching functions; and

d. any public employer, and the public employees and public employee organizations thereof, to whom the provisions of this chapter are made applicable pursuant to paragraph four of subdivision c of section 12-309 of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. c amended L.L. 26/1998 § 2, eff. July 7, 1998.

**DERIVATION**

Formerly § 1173-4.0 added LL 53/1967 § 2

Amended LL 1/1972 § 9

Sub c amended LL 51/1980 § 3



Administrative Code of the City of New York



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

*NYC Administrative Code 12-305*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 3 COLLECTIVE BARGAINING

§ 12-305 Rights of public employees and certified employee organizations.

Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities. However, neither managerial nor confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively; provided, however, that public employees shall be presumed eligible for the rights set forth in this section, and no employee shall be deprived of these rights unless, as to such employee, a determination of managerial or confidential status has been rendered by the board of certification; and provided further, that nothing in this chapter shall be construed to: (i) deny to any managerial or confidential employee his or her rights under section fifteen of the civil rights law or any other rights; or (ii) prohibit any appropriate official or officials of a public employer as defined in this chapter to hear and consider grievances and complaints of managerial and confidential employees concerning the terms and conditions of their employment and to make recommendations thereon to the chief executive officer of the public employer for such action as such chief executive officer shall deem appropriate. A certified or designated employee organization shall be recognized as the exclusive bargaining representative of the public employees in the appropriate bargaining unit.

**HISTORICAL NOTE**

Section amended L.L. 26/1998 § 3, eff. July 7, 1998.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 1173-4.1 added LL 1/1972 § 10

Amended LL 71/1972 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. The Board of Certification of the Office of Collective Bargaining acted in excess of its authority by adopting standards different from and in addition to those provided by Civil Service Law § 201 in determining managerial and confidential status and by utilizing a rebuttal presumption of managerality.-Civil Service Technical Guild. Local 375, etc. v. Anderson, 79 A.D. 2d 541 [1980].

¶ 2. Institution of disciplinary action by public employees union against petitioner without notice of the specific charges against him constitutes an interference with rights guaranteed by this section.-Reale v. Patrolmen's Benevolent Association, 109 Misc. 2d 876 [1981].

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

*NYC Administrative Code 12-306*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 3 COLLECTIVE BARGAINING

§ 12-306 Improper practices; good faith bargaining.

a. Improper public employer practices. It shall be an improper practice for a public employer or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;

(2) to dominate or interfere with the formation or administration of any public employee organization;

(3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;

(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees;

(5) to unilaterally make any change as to any mandatory subject of collective bargaining or as to any term and condition of employment established in the prior contract, during a period of negotiations with a public employee organization as defined in subdivision d of section 12-311 of this chapter.

b. Improper public employee organization practices. It shall be an improper practice for a public employee organization or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of rights granted in section 12-305 of this chapter, or to cause, or attempt to cause, a public employer to do so;

(2) to refuse to bargain collectively in good faith with a public employer or*1 on matters within the scope of collective bargaining provided the public employee organization is a certified or designated representative of public employees of such employer;

(3) to breach its duty of fair representation to public employees under this chapter.

c. Good faith bargaining. The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:

(1) to approach the negotiations with a sincere resolve to reach an agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on all matters within the scope of collective bargaining;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining;

(5) if an agreement is reached, to execute upon request a written document embodying the agreed terms, and to take such steps as are necessary to implement the agreement.

d. Joinder of parties in duty of fair representation cases. The public employer shall be made a party to any charge filed under paragraph three of subdivision b of this section which alleges that the duly certified employee organization breached its duty of fair representation in the processing of or failure to process a claim that the public employer has breached its agreement with such employee organization.

e. A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of this section may be filed with the board of collective bargaining within four months of the occurrence of the acts alleged to constitute the improper practice or of the date the petitioner knew or should have known of said occurrence. Such petition may be filed by one or more public employees or any public employee organization acting on their behalf, or by a public employer, together with a request to the board for a final determination of the matter and for an appropriate remedial order.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par (4) amended L.L. 26/1998 § 4, eff. July 7, 1998.

Subd. a par (5) added L.L. 26/1998 § 4, eff. July 7, 1998.

Subd. b par (2) amended L.L. 26/1998 § 5, eff. July 7, 1998.

Subd. b par (3) added L.L. 26/1998 § 5, eff. July 7, 1998.

Subds. d, e added L.L. 26/1998 § 6, eff. July 7, 1998.

**DERIVATION**

Formerly § 1173-4.2 added LL 1/1972 § 10

Sub d repealed LL 51/1980 § 4

**FOOTNOTES**

1

[Footnote 1]: * So in original. (or inadvertently added).

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*NYC Administrative Code 12-307*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 3 COLLECTIVE BARGAINING

§ 12-307 Scope of collective bargaining; management rights.

a. Subject to the provisions of subdivision b of this section and subdivision c of section 12-304 of this chapter, public employers and certified or designated employee organizations shall have the duty to bargain in good faith on wages (including but not limited to wage rates, pensions, health and welfare benefits, uniform allowances and shift premiums), hours (including but not limited to overtime and time and leave benefits), working conditions and provisions for the deduction from the wages or salaries of employees in the appropriate bargaining unit who are not members of the certified or designated employee organization of an agency shop fee to the extent permitted by law, but in no event exceeding sums equal to the periodic dues uniformly required of its members by such certified or designated employee organization and for the payment of the sums so deducted to the certified or designated employee organization, subject to applicable state law, except that:

(1) with respect to those employees whose wages are determined under section two hundred twenty of the labor law, the duty to bargain in good faith over wages and supplements shall be governed by said section;

(2) matters which must be uniform for all employees subject to the career and salary plan, such as overtime and time and leave rules, shall be negotiated only with a certified employee organization, council or group of certified employee organizations designated by the board of certification as being the certified representative or representatives of bargaining units which include more than fifty percent of all such employees, but nothing contained herein shall be construed to deny to a public employer or certified employee organization the right to bargain for a variation or a particular application of any city-wide policy or any term of any agreement executed pursuant to this paragraph where considerations special and unique to a particular department, class of employees, or collective bargaining unit are involved;

(3) matters which must be uniform for all employees in a particular department shall be negotiated only with a certified employee organization, council or group of certified employees organizations designated by the board of certification as being the certified representative or representatives of bargaining units which include more than fifty percent of all employees in the depart- ment;

(4) all matters, including but not limited to pensions, overtime and time and leave rules which affect employees in the uniformed police, fire, sanitation and correction services, or any other police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law who is also defined as a police officer in this code, shall be negotiated with the certified employee organizations representing the employees involved. For purposes of this paragraph only:

(i) employees of the uniformed fire service shall also include persons employed at any level of position or service by the fire department of the city of New York as fire alarm dispatchers and supervisors of fire alarm dispatchers, fire protection inspectors and supervisors of fire protection inspectors, emergency medical technicians and advanced emergency medical technicians, as those terms are defined in section three thousand one of the public health law, and supervisors of emergency medical technicians or advanced emergency medical technicians;

(ii) employees of the uniformed police service shall also include persons employed at any level of position or service by the police department of the city of New York as traffic enforcement agents and supervisors of traffic enforcement agents, and school safety agents and supervisors of school safety agents; and

(iii) employees of the uniformed sanitation service shall also include persons employed at any level of position or service by the sanitation department of the city of New York as sanitation enforcement agents and supervisors of sanitation enforcement agents;

(5) all matters, including but not limited to pensions, overtime and time and leave rules which affect the following employees at any level of position or service in the following agencies shall be negotiated with the certified employee organizations representing the employees involved:

(i) persons employed by the department of homeless services of the city of New York as special officers, senior special officers, supervising special officers and principal special officers;

(ii) persons employed by the department of health and mental hygiene of the city of New York as special officers, senior special officers, supervising special officers and principal special officers;

(iii) persons employed by the department of juvenile justice of the city of New York as special officers, senior special officers, supervising special officers and principal special officers;

(iv) persons employed by the human resources administration of the city of New York as special officers, senior special officers, supervising special officers and principal special officers;

(v) persons employed by the administration for children's services of the city of New York as special officers, senior special officers, supervising special officers and principal special officers;

(vi) persons employed by the taxi and limousine commission of the city of New York as taxi and limousine inspectors, supervising taxi and limousine inspectors, senior taxi and limousine inspectors and associate taxi and limousine inspectors;

(vii) persons employed by the department of transportation of the city of New York as parking control specialists and associate parking control specialists;

(viii) persons employed by the department of parks and recreation of the city of New York as urban park rangers

and associate urban park rangers; and

(ix) persons employed by the department of finance of the city of New York as deputy sheriffs, supervising deputy sheriffs and administrative sheriffs.

(6) matters involving pensions for employees other than those in the uniformed forces referred to in paragraph four hereof, shall be negotiated only with a certified employee organization, council or group of certified employee organizations designated by the board of certification as representing bargaining units which include more than fifty percent of all employees included in the pension system involved.

b. It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. Decisions of the city or any other public employer on those matters are not within the scope of collective bargaining, but, notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on terms and conditions of employment, including, but not limited to, questions of workload, staffing and employee safety, are within the scope of collective bargaining.

c. It shall be the policy of the city of New York that, to the extent not inconsistent with law, the city shall make benefits available to the domestic partners of city employees on the same basis as the city makes benefits available to the spouses of city employees.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a open par amended L.L. 26/1998 § 7, eff. July 7, 1998

Subd. a par (1) amended L.L. 26/1998 § 7, eff. July 7, 1998

Subd. a par (4) amended L.L. 56/2005 § 2, eff. May 25, 2005. [See Note 2]

Subd. a par (4) separately amended L.L. 18/2001 § 2 and L.L. 19/2001 § 2, both eff. Apr. 25, 2001. [See Note 1]

Subd. a par (4) amended ch. 776/1989 § 1

Subd. a par (5) added L.L. 56/2005 § 3, eff. May 25, 2005. [See Note 2]

Subd. a par (6) renumbered (former par (5)) L.L. 56/2005 § 3, eff. May 25, 2005. [See Note 2]

Subd. b amended L.L. 26/1998 § 8, eff. July 7, 1998

Subd. c added L.L. 27/1998 § 16, eff. Sept. 5, 1998

**DERIVATION**

Formerly § 1173-4.3 added LL 1/1972 § 10

Sub a amended LL 51/1980 § 5

**NOTE**

1. Provisions of L.L. 18/2001:

Section 1. Declaration of Legislative Intent and Findings. The Council finds that employees working for the fire department of the city of New York ("FDNY") as fire alarm dispatchers and supervisors of fire alarm dispatchers have certain terms and conditions of employment similar to those of the uniformed services of the city of New York, including police, fire, sanitation and correction services. These terms and conditions of employment raise issues, which are materially different than the issues affecting non-uniformed city employees. Furthermore, the Council recognizes that uniformed forces in the police, fire, sanitation and correction departments have certain unique bargaining rights under the New York City Collective Bargaining Law. The Council intends by this amendment to the administrative code that those individuals employed by the FDNY as fire alarm dispatchers and supervisors of fire alarm dispatchers be accorded the same unique bargaining rights as the uniformed forces of the City.

1. Provisions of L.L. 19/2001:

Section 1. Declaration of Legislative Intent and Findings. The Council finds that employees working for the fire department of the city of New York ("FDNY") as emergency medical technicians ("EMT's"), advanced emergency medical technicians ("paramedics") and the supervisors of EMT's or paramedics have certain terms and conditions of employment similar to those, of the uniformed services of the city of New York, including police, fire, sanitation and correction services. These terms and conditions of employment raise issues, which are materially different than the issues affecting non-uniformed city employees. Furthermore, the Council recognizes that uniformed forces in the police, fire, sanitation and correction departments have certain unique bargaining rights under the New York City Collective Bargaining Law. The Council intends by this amendment to the administrative code that those individuals employed by the FDNY as EMT's, paramedics and supervisors of EMT's or paramedics be accorded the same unique bargaining rights as the uniformed forces of the City.

**2. Provisions of L.L. 56/2005:**

Section 1. Declaration of legislative findings and intent. The Council finds that employees working in various departments and agencies in the City of New York have certain job characteristics similar to those of employees working in the City's uniformed services, such as police, fire, sanitation and correction services. Furthermore, the Council recognizes that certain employees working in the City's uniformed services have unique bargaining rights under the New York City Collective Bargaining Law (New York City Administrative Code § 12-301, et seq.). The Council finds that individuals with job characteristics similar to those employees working in the City's uniformed services should be afforded the same unique bargaining rights as those afforded to individuals working in such services. The Council further finds that such changes are consistent with the New York State Taylor Law, in that they are designed to "promote harmonious and cooperative relationships between government and its employees. . ." New York State Civil Service Law (CVS) § 200. Furthermore, the Council finds that these changes are procedural in nature, affecting the manner in which bargaining is conducted on behalf of the affected employees, and will not provide a particular benefit to such employees, nor prescribe a certain result from collective bargaining. The Council finds that such procedural changes are permitted by and in accordance with the Taylor Law. CVS § 212.

. . . . . .

§ 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of

this law, which remaining portions shall continue in full force and effect.

**CASE NOTES FROM FORMER SECTION**

¶ 1. In a suit by the Sanitationmen's Association for a declaration of their rights under a collective bargaining agreement with the city and for injunctive relief in connection with plans to lay off approximately 3,000 sanitationmen it was held that this section removes from collective bargaining considerations the right of the public employer to retire its employees from duty because "of lack of work or for other legitimate reasons" and the financial crisis in the city constituted such other reason.-DeLury v. City of N.Y., 51 A.D. 2d 288 [1976].

¶ 2. Award of arbitrator which enjoined assignment of civilians to the performance of inspectional and fire prevention duties as violative of collective bargaining agreement could only be overturned if contrary to law or if public policy precluded its enforcement, and where arbitrator ruled that city waived public policy his ruling was binding on city.-City of New York v. Uniformed Firefighters Asso., Local 94, 58 N.Y. 2d 957 [1983], reversing, 87 App. Div. 2d 255 [1982].

**CASE NOTES**

¶ 1. Board of Collective Bargaining held that the police department did not violate § 12-306(a) of the NYC Collective Bargaining Law (Administrative Code Title 12 Chapter 3) by issuing interim order No. 60 establishing a "career program" to promote and assign experienced officers. City has exclusive power to establish promotion qualifications and the police department should not have to bargain over the value of experience. Matter of Phil Caruso v. Arvid Anderson, 138 Misc. 2d 719 [1987].

¶ 2. Certain fundamental management decision-management prerogatives- such as the methods by which an operation will be performed, are excluded from the scope of collective bargaining. Although these decisions are excluded from bargaining, their practical impact on employees may be bargainable. Once the Board of Collective Bargaining determines that the employer is exercising in good faith a management prerogative that does not affect the terms and conditions of employment, the Board's inquiry ends and the employer is entitled to broad deference in implementing its action. Here, however, the Board held that the City's could not implement a policy of denying employment or promotion to persons having outstanding unpaid debts to the City, without bargaining on the issue. The court here upheld the Board's determination. Levitt v. Board of Collective Bargaining, 79 N.Y.2d 120, 580 N.Y.S.2d 917 (1992).

¶ 3. Review by the State Public Employment Review Board of determinations made by the New York City Board of Collective Bargaining extends only to proceedings alleging improper practices and not to proceedings involving the scope of collective bargaining. Uniform Firefighters Association of Greater New York v. New York City OFfice of Collective Bargaining, Board of Collective Bargaining, 163 A.D.2d 251, 558 N.Y.S.2d 72 (1st Dept. 1990).

¶ 4. Uniformed employees, under the New York City Collective Bargaining Law, are permitted to have their own certified employee organization negotiate with the City on employment matters such as pensions, overtime and time and leave rules. This contrasts with non-uniformed employees, where matters such as overtime or time and leave are negotiated on a City-wide basis with the union representing more than 50 percent of the non-uniformed employees in the City workforce. In other words, in the case of non-uniformed employees, the union for any particular unit of non-uniformed employees may not have a seat at the negotiating table on these matters. The City Council enacted Local Law 18, which classifies fire alarm dispatchers and the supervisors of fire alarm dispatchers (collectively FADs) as members of the uniformed fire services for the purpose of collective bargaining. Moreover, the City Council enacted Local Law 19, which makes an identical provision in the case of persons employed by the Fire Department as emergency medical technicians, advanced emergency medical technicians and their supervisors (collectively EMTs). Local Laws 18 and 19 are now contained in Administrative Code § 12-307(a)(4). Local Laws 18 and 19 in effect curtail the Mayor's authority under the Collective Bargaining Law to negotiate and enter into collective bargaining agreements

without the participation of their respective unions. Put another way, Local Laws 18 and 19 exempt EMTs and FADs from the Citywide agreement and confer on them the same authority enjoyed by uniformed personnel to negotiate with the Mayor all terms and conditions of employment. The court held that Local Laws 18 and 19 are valid in that they do not conflict with the Taylor Law. Taylor Law does not authorize the Mayor or any local government not to negotiate with a union representing a group of municipal employees and thereby impose upon them terms and conditions of employment to which they have not agreed. Therefore, the City Council had the authority to enact legislation that gave FADs and EMTs the power to negotiate through their own union. Mayor of City of New York v. Council of City of New York, 825 N.Y.S.2d 201 (App.Div. 1st Dept. 2006), aff'd, 9 N.Y.3d 23, 842 N.Y.S.2d 742 (2007).

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

*NYC Administrative Code 12-308*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 3 COLLECTIVE BARGAINING

§ 12-308 Judicial review and enforcement of a final order of the board of collective bargaining or the board of certification.

a. Any order of the board of collective bargaining or the board of certification shall be (1) reviewable under article seventy-eight of the civil practice law and rules upon petition filed by an aggrieved party within thirty days after service by registered or certified mail of a copy of such order upon such party, and (2) enforceable by the supreme court in a special proceeding, upon petition of the board of collective bargaining, board of certification or any aggrieved party.

b. If a proceeding by the board for enforcement of its order is instituted prior to the expiration of the period within which a party may seek judicial review of such order, the respondent may raise in his or her answer the questions authorized to be raised by section seven thousand eight hundred three of the civil practice law and rules and thereafter the proceedings shall be governed by the provisions of article seventy-eight of the civil practice law and rules that are not inconsistent herewith, except that if an issue specified in question four of section seven thousand eight hundred three of the civil practice law and rules is raised, the proceeding shall be transferred for disposition to the appellate division of the supreme court. Where an issue specified in question four of section seven thousand eight hundred three of the civil practice law and rules is raised, either in a proceeding to enforce or review an order of the board, the appellate division of the supreme court, upon completion of proceedings before it, shall remit a copy of its judgment or order to the court in which the proceeding was commenced, which court shall have the power to compel compliance with such judgment or order.

c. In a proceeding to enforce or review an order of the board, the court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a judgment or decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Section heading amended L.L. 26/1998 § 9, eff. July 7, 1998.

Subd. a amended L.L. 26/1998 § 9, eff. July 7, 1998.

**DERIVATION**

Formerly § 1173-4.4 added LL 1/1972 § 10

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

*NYC Administrative Code 12-309*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 3 COLLECTIVE BARGAINING

§ 12-309 Powers and duties of board of collective bargaining; board of certification; director.

a. Board of collective bargaining. The board of collective bargaining, in addition to such other powers and duties as it has under this chapter and as may be conferred upon it from time to time by law, shall have the power and duty:

(1) on the request of a public employer or public employee organization which is a party to a disagreement concerning the interpretation or application of the provisions of this chapter, to consider such disagreement and report its conclusion to the parties and the public;

(2) on the request of a public employer or certified or designated employee organization to make a final determination as to whether a matter is within the scope of collective bargaining;

(3) on the request of a public employer or a certified or designated employee organization which is party to a grievance, to make a final determination as to whether a dispute is a proper subject for grievance and arbitration procedure established pursuant to section 12-312 of this chapter;

(4) to prevent and remedy improper public employer and public employee organization practices, as such practices are listed in section 12-306 of this chapter. For such purposes, the board of collective bargaining is empowered to establish procedures, make final determinations, and issue appropriate remedial orders;

(5) to recommend any needed changes in the provisions of this chapter or of an executive order;

(6) to hold hearings and compel the attendance of witnesses and the production of documents;

(7) to adopt rules and regulations for the conduct of its business and the carrying out of its powers and duties including rules and regulations governing the procedures to be followed by mediation and impasse panels constituted pursuant to subdivision b or c of section 12-311 of this chapter;

(8) where either party to collective bargaining negotiations has rejected in whole or in part the recommendations of an impasse panel, to review such recommendations as provided in paragraph four of subdivision c of section 12-311 of this chapter.

b. Board of certification. The board of certification, in addition to such other powers and duties as it has under this chapter and as may be conferred upon it from time to time by law, shall have the power and duty:

(1) to make final determinations of the units appropriate for purposes of collective bargaining between public employers and public employee organizations, which units shall be such as shall assure to public employees the fullest freedom of exercising the rights granted hereunder and under executive orders, consistent with the efficient operation of the public service, and sound labor relations, provided that in any case involving a petition for certification where supervisory or professional employees petition to be represented for purposes of collective bargaining separate and apart from non-supervisory or non-professional employees, or where a petition for certification has been filed requesting a unit of supervisory and non-supervisory or a unit of professional and non-professional employees and the public employer objects thereto, the board of certification shall not include such supervisory or professional employees in a bargaining unit which includes non-supervisory or non-professional employees respectively unless a majority of the supervisory or professional employees voting in an election vote in favor thereof;

(2) to determine the majority representative of the public employees in an appropriate collective bargaining unit by conducting secret-ballot elections or by utilizing any other appropriate and suitable method designed to ascertain the free choice of a majority of such employees, to certify the same as the exclusive bargaining representative thereof; to designate representatives; and to determine the length of time during which such certification or designation shall remain in effect and free from challenge or attack;

(3) to decertify as exclusive bargaining representative an employee organization which has been found by secret-ballot election no longer to be the majority representative, or which shall otherwise become ineligible for certification under the provisions of this chapter, and to terminate or vacate designations of representatives;

(4) to determine whether specified public employees are managerial or confidential within the meaning of subdivision seven of section two hundred one of the civil service law and thus are excluded from collective bargaining;

(5) to hold hearings and compel the attendance of witnesses and the production of documents; and

(6) to adopt rules and regulations for the conduct of its business and the carrying out of its powers and duties, including rules relating to the standards for determination of bargaining units.

c. Director. The director in addition to such other powers and duties as he or she has under this chapter and as may be conferred upon such director from time to time by law, shall have the power and duty:

(1) To oversee adherence to the provisions of this chapter and to administer the provisions of section 12-311 of this chapter and the rules and regulations adopted by the board of collective bargaining, subject to the direction of such board;

(2) To administer the provisions of subdivision b of this section and the rules and regulations adopted by the board of certification, subject to the direction of such board;

(3) To maintain communication with public employers and public employee organizations engaged in collective bargaining negotiations, to facilitate such negotiations by furnishing at the request of both parties, such data or

information as may aid them therein, and, if such director determines that either party is remiss in its obligations, to communicate this information as he or she deems appropriate;

(4) On the request of the mayor, to make available the mediation, impasse, and arbitration services of the office of collective bargaining to public employers and public employee organizations not otherwise entitled to make use thereof at a cost to them to be determined by the board; and

(5) To direct the operations of the staff of the office of collective bargaining.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par 6 amended L.L. 26/1998 § 10, eff. July 7, 1998.

Subd. b par (4) added L.L. 26/1998 § 11, eff. July 7, 1998.

Subd. b pars (5), (6) renumbered (formerly pars (4), (5)) L.L. 26/1998

§ 11, eff. July 7, 1998.

**DERIVATION**

Formerly § 1173-5.0 added LL 53/1967 § 2

Sub a amended LL 1/1972 § 11

Sub b amended LL 1/1972 § 12

Sub a par 8 added LL 2/1972 § 1

**CASE NOTES**

¶ 1. The NYC Board of Collective Bargaining properly exercised its authority pursuant to Ad Cd §12-309(a)(3) and rationally interpreted the scope of the grievance procedure in Mayoral Executive Order No. 83 §5 (adding Executive Order No. 52 §5(b)), in finding that the Plumbers Local Union No. 1 grievance herein, which alleged violations by the Sanitation Department of Personnel Department rules and regulations, was an arbitrable grievance pursuant to Mayoral Executive Order No. 83. Matter of City of New York v. Plumbers Local Union No. 1, 204 AD2d 183 [1994].



Administrative Code of the City of New York



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

*NYC Administrative Code 12-310*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 3 COLLECTIVE BARGAINING

§ 12-310 Meetings; quorum; vote required; public hearings prior to adoption of rules.

a. Meetings of board of collective bargaining. (1) The board of collective bargaining shall hold special meetings upon the call of the director or the request of any two members. Written notice of all regular and special meetings, including agendas and amendments to agendas shall be given to each board member, including alternate members, not more than ten days nor less than one day prior to any such meeting. A quorum shall consist of one city member, one labor member and one impartial member or of any four members.

(2) The board of collective bargaining, or such members thereof as it may designate, shall conduct meetings between representatives of the city responsible for labor relations and representatives of the municipal labor committee at least twice a year, and at such other times as the director determines. These meetings shall not take up grievances or negotiate changes in wages, hours, or working conditions, but shall deal with problems of general application, including those arising out of the administration of the procedures set forth in this chapter. The director shall also from time to time convene similar meetings between representatives of particular employers and certified employee organizations.

b. Meetings of board of certification. The board of certification shall hold regular and special meetings upon the call of the chairperson or of the other two members, but shall meet at least ten times a year. Two members shall constitute a quorum.

c. Vote required. Except as otherwise specifically provided, all actions, determinations, findings, and recommendations of the board of collective bargaining and the board of certification shall be by majority vote of members present and voting. In the absence of a city or labor member, or in the event of a vacancy, an alternate member of the board of collective bargaining may vote in the place and stead of the member for whom he or she is the alternate,

or on account of whom the vacancy exists.

d. Promulgation of rules. Rules and amendments to rules promulgated by the board of collective bargaining or the board of certification shall be in conformity with the requirements of chapter forty-five of the city charter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. d amended L.L. 26/1998 § 12, eff. July 7, 1998.

**DERIVATION**

Formerly § 1173-6.0 added LL 53/1967 § 2

Sub b amended LL 1/1972 § 13

Sub c amended LL 1/1972 § 14

Amended LL 51/1980 § 6

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

*NYC Administrative Code 12-311*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 3 COLLECTIVE BARGAINING

§ 12-311 Bargaining notice; mediation; impasse panels.

a. Bargaining notices. (1) At such time prior to the expiration of a collective bargaining agreement as may be specified therein (or, if no such time is specified, at least ninety but not more than one hundred fifty days prior to expiration of the agreement) a public employer, or a certified or designated employee organization, which desires to negotiate on matters within the scope of bargaining shall send the other party (with a copy to the director) a notice of the desire to negotiate a new collective bargaining agreement on such matters. The parties shall commence negotiations within ten days after receipt of such a bargaining notice, unless such time is extended by agreement of the parties, or by the director or the board of collective bargaining.

(2) At any time after a public employee organization has been newly certified or designated to represent the public employees in a designated bargaining unit, the public employer or the newly certified or designated employee organization, if it desires to negotiate on matters within the scope of collective bargaining, may send the other party (with a copy to the director) a bargaining notice for the terms of a collective bargaining agreement on such matters. The parties shall commence negotiations within ten days after receipt of such a bargaining notice, unless such time is extended by agreement of the parties, or by the director or the board of collective bargaining.

(3) Nothing herein shall authorize or require collective bargaining between parties to a collective bargaining agreement during the term thereof, except that such parties may engage in collective bargaining during such term on a matter within the scope of collective bargaining where (a) the matter was not specifically covered by the agreement or raised as an issue during the negotiations out of which such agreements arose and (b) there shall have arisen a significant change in circumstances with respect to such matter, which could not reasonably have been anticipated by both parties at the time of the execution of such agreement.

b. Mediation panels. (1) The office of collective bargaining shall maintain a register of mediators who have been approved for listing thereon by the board of collective bargaining.

(2) If the director, upon the request of a party or upon his or her own initiative determines that collective bargaining negotiations between a public employer and a certified or designated employee organization would be aided by mediation, he or she shall appoint a mediation panel from such register to assist the parties in arriving at an agreement. A mediation panel shall not be appointed less than thirty days after the commencement of negotiations, unless requested by both parties. It shall be the duty of the parties to cooperate with the mediation panel to arrive at an agreement.

(3) The mediation panel shall perform its duties under the general direction and guidance of the director, to whom it shall report.

c. Impasse panels. (1) The office of collective bargaining shall maintain a register of impasse panel members who have been approved for listing thereon by a majority of the entire board of collective bargaining, including at least one city member and one labor member.

(2) If the board of collective bargaining, upon recommendation of the director, determines that collective bargaining negotiations (with or without mediation) between a public employer and a certified or designated employee organization have been exhausted, and that the conditions are appropriate for the creation of an impasse panel, it shall promptly instruct the director to appoint such a panel. The director may also appoint an impasse panel upon request of both parties. In appointing a panel, the director shall submit to the parties a single list of seven persons from the register of impasse panel members, and each party shall inform the director of its preferences. To the extent the preferences disclose agreement, the person or persons agreed upon shall be appointed to the impasse panel; to the extent the preferences are not in agreement, the director shall proceed to designate the members of such panel from the register. Each party may at its own expense designate a consultant to an impasse panel, who shall be available to the panel for assistance.

(3) (a) An impasse panel shall have power to mediate, hold hearings, compel the attendance of witnesses and the production of documents, review data, and take whatever action it considers necessary to resolve the impasse. If an impasse panel is unable to resolve an impasse within a reasonable period of time, as determined by the director, it shall, within such period of time as the director prescribes, render a written report containing findings of fact, conclusions, and recommendations for terms of settlement.

(b) An impasse panel appointed pursuant to paragraph two of this subdivision c shall consider wherever relevant the following standards in making its recommendations for terms of settlement:

(i) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York city or comparable communities;

(ii) the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all other benefits received;

(iii) changes in the average consumer prices for goods and services, commonly known as the cost of living;

(iv) the interest and welfare of the public;

(v) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings.

(c) The report of an impasse panel shall be confined to matters within the scope of collective bargaining. Unless the mayor agrees otherwise, an impasse panel shall make no report concerning the basic salary and increment structure and pay plan rules of the city's career and salary plan. If an impasse panel makes a recommendation on a matter which requires implementation by a body, agency or official which is not a party to the negotiations: (i) it shall address such recommendation solely to such other body, agency or official; (ii) it shall not recommend or direct that the municipal agency or other public employer which is party to the negotiations shall support such recommendation; and (iii) it may recommend whether a collective bargaining agreement should be concluded prior to such implementation. Any alternative recommendations proposed by an impasse panel in the event such implementation does not occur shall not exceed the total cost of the original recommendations.

(d) The report of an impasse panel shall be submitted to the parties to the negotiations, to any other body, agency or official whose action is required to implement the panel's recommendations, and to the director. The director shall, with the advice and guidance of the board of collective bargaining, determine the time at which such report shall be released to the public, which shall not be later than seven days after its submission or, upon agreement of the parties and approval of the director, not later than thirty days after its submission, provided that if the parties conclude a collective bargaining agreement prior to the date on which the report is to be released, the report shall not be released except upon consent of the parties.

(e) Acceptance or rejection. Within ten days after submission of the panel's report and recommendations, or such additional time not exceeding thirty days as the director may permit, each party shall notify the other party and the director, in writing, of its acceptance or rejection of the panel's recommendations. Failure to so notify shall be deemed acceptance of the recommendations. The director may release the acceptance or rejections to the public at such time as the director, in his or her discretion, may deem advisable. Upon acceptance by all parties or ten days after the latest rejection by any party, unless an appeal is earlier filed with the board pursuant to subparagraph (a) of paragraph four of this subdivision, the recommendation shall become final and binding and shall constitute an award within the meaning of article seventy-five of the civil practice law and rules, provided, however, that any provisions of such award the implementation of which requires the enactment of a law shall not become binding until the appropriate legislative body enacts such law.

(4) Review of impasse panel recommendations:

(a) A party who rejects in whole or in part the recommendation of an impasse panel as provided in subparagraph (e) of paragraph three of this subdivision may appeal to the board of collective bargaining for review of the recommendations of the impasse panel by filing a notice of appeal with said board within ten days of such rejection. The notice of appeal shall also be served upon the other parties within said time. Upon failure to appeal within the time provided herein, the recommendations shall be final and binding upon the party failing to so appeal, as provided in subparagraph (e) of paragraph three of this subdivision, except that the board, upon its own initiative, may review recommendations which have been rejected. Panel recommendations which, pursuant to the provisions of this subparagraph, become final and binding on both parties shall constitute an award within the meaning of article seventy-five of the civil practice law and rules, provided, however, that any provision of such award the implementation of which requires the enactment of a law shall not become binding until the appropriate legislative body enacts such law.

(b) The notice of appeal shall specify the grounds upon which the appeal is taken, the alleged errors of the panel, and the modifications requested. The board shall afford the parties a reasonable opportunity to argue orally before it or to submit briefs, or may permit both argument and briefs. Review of the recommendations shall be based upon the record and evidence made and produced before the impasse panel and the standards set forth in subparagraph (b) of paragraph three of this subdivision and shall include consideration of issues, if any, of conformity of the recommendations with any law or regulation properly governing the conduct of collective bargaining between the city of New York and its employees, provided, however, that when an appeal is taken to the board on any of the grounds of prejudice set forth in subparagraph (i), (ii) or (iii) of paragraph one of subdivision (b) of section seventy-five hundred

eleven of the civil practice law and rules, review shall also be based upon the record made in any hearing which the board may direct on such issues, provided, however, that the board orders such hearing within thirty days of the filing of the notice of appeal.

(c) Upon such review, the board may affirm or modify the panel recommendations in whole or in part. A modification of the recommendations shall be by the vote of a majority of the board. The board may also set aside the recommendations of an impasse panel in whole or in part if it finds that the rights of a party have been prejudiced on any of the grounds set forth in subparagraph (i), (ii) or (iii) of paragraph one of subdivision b of section seventy-five hundred eleven of the civil practice law and rules. An order setting aside a recommendation of such grounds shall be based on a written decision and shall be made upon a vote of a majority of the board. A member of the board who has acted as a member of an impasse panel shall not be disqualified from subsequently participating in a decision or determination of the board in the same dispute.

(d) The recommendations of the impasse panel shall be deemed to have been adopted by the board if the board fails to issue a final determination within thirty days of filing of the notice of appeal, or within forty days of a notification of rejection to the director of the board where the board, upon its own initiative, reviews the panel's recommendations, provided, however, that when a hearing is ordered pursuant to subparagraph (b) of this paragraph four relating to allegations of prejudice, the impasse panel's recommendations shall be deemed to have been adopted by the board only if the board fails to issue a determination thereon within thirty days after the close of such hearing, and provided further, that the director may extend the thirty day or forty day periods mentioned in this subparagraph for an additional period not to exceed thirty days.

(e) Notwithstanding the provisions of this paragraph four, and except for purposes of judicial review, any provision of a determination of the board of collective bargaining the implementation of which requires the enactment of a law shall not become binding until the appropriate legislative body enacts such law.

(f) A final determination of the board pursuant either to subparagraph (c) or (d) of this paragraph four shall be binding upon the parties. Such a final determination shall constitute an award within the meaning of article seventy-five of the civil practice law and rules.

d. Preservation of status quo. During the period of negotiations between a public employer and a public employee organization concerning a collective bargaining agreement, and, if an impasse panel is appointed during the period commencing on the date on which such panel is appointed and ending sixty days thereafter or thirty days after the panel submits its report, whichever is sooner, provided, however, that upon motion of the panel, and for good cause shown, the board of collective bargaining may allow a maximum of two sixty-day extensions of time for the completion of impasse panel proceedings, provided further, that additional extensions of time for the completion of impasse panel proceedings may be granted by the panel upon the joint request of the parties, and during the pendency of any appeal to the board of collective bargaining pursuant to subdivision c of this section, the public employee organization party to the negotiations, and the public employees it represents, shall not induce or engage in any strikes, slowdowns, work stoppages, or mass absenteeism, nor shall such public employee organization induce any mass resignations, and the public employer shall refrain from unilateral changes in wages, hours, or working conditions. This subdivision shall not be construed to limit the rights of public employers other than their right to make such unilateral changes, or the rights and duties of public employees and employee organizations under state law. For the purpose of this subdivision the term "period of negotiations" shall mean the period commencing on the date on which a bargaining notice is filed and ending on the date on which a collective bargaining agreement is concluded or an impasse panel is appointed.

e. Number of members on panels; vote required. (1) Mediation and impasse panels shall consist of such odd number of persons (one or more) as may be agreed upon by the parties to the negotiations, or, in the absence of such agreement, as shall be deemed appropriate by the director. (2) All actions, determinations, findings and recommendations of an impasse panel shall be by majority vote.

f. Anything in this chapter notwithstanding, public employers and certified or designated employee organizations hereby are empowered to enter into written agreements setting forth procedures to be invoked in the event of an impasse in collective bargaining negotiations, and such agreements may include the undertaking by each party to submit unresolved issues to impartial arbitration, provided that (1) if the agreement between the parties fails to provide procedures which result in a final determination of all issues, then all unresolved issues between the parties shall be subject to the provisions of subdivision c of this section or so much thereof as may be applicable under the circumstances, and

(2) questions, issues or disputes as to arbitrability or the scope of collective bargaining shall be determined by the board of collective bargaining only.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. c par (2) amended L.L. 26/1998 § 13, eff. July 7, 1998.

**DERIVATION**

Formerly § 1173-7.0 added LL 53/1967 § 2

Amended LL 1/1972 § 15

Sub c par 3 subpar e added LL 2/1972 § 2

Sub c par 4 added LL 2/1972 § 3

Sub f added LL 2/1972 § 4

Sub c par 2 amended LL 51/1980 § 7

Sub c par 3 subpar e amended LL 51/1980 § 8

Sub c par 4 subpars a, b amended LL 51/1980 § 9

Sub d amended LL 51/1980 § 10

Sub e amended LL 51/1980 § 11

**CASE NOTES FROM FORMER SECTION**

¶ 1. Recommendations of impasse panel cannot be reviewed by Board of Collective Bargaining and dissenting members of the employees' association have no standing to seek review by the Board. Levy v. Anderson, 65 Misc. 2d 763, 318 N.Y.S. 2d 86 [1971].

¶ 2. Section 23 of Chapter 201 of Laws of 1978 which amended the State Financial Emergency Act for the City of New York which imposed a new limitation on the bargaining and arbitration provisions of this section based upon the city's ability to pay wage increases and other benefits without having to increase taxes is not unconstitutional since it does not preclude city from increasing the level of taxation within the constitutional limit.-DeMilia v. State of N.Y., 96 Misc. 2d 77, 412 N.Y.S. 2d 953 [1978].

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

*NYC Administrative Code 12-312*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 3 COLLECTIVE BARGAINING

§ 12-312 Grievance procedure and impartial arbitration.

a. The board of collective bargaining shall maintain a register of arbitrators who have been approved for listing thereon by a majority of the entire board of collective bargaining including at least one city member and one labor member. The board of collective bargaining shall establish procedures for impartial arbitration which may be incorporated into executive orders and collective bargaining agreements between public employers and public employee organizations.

b. Executive orders, and collective bargaining agreements between public employers and public employee organizations, may contain provisions for grievance procedures, in steps terminating with impartial arbitration of unresolved grievances. Such provisions may provide that the arbitrator's award shall be final and binding and enforceable in any appropriate tribunal in accordance with the applicable law governing arbitration, except that awards as to grievances concerning assignment of employees to duties substantially different from those stated in their job classifications, or the use of open-competitive rather than promotional examinations, shall be final and binding and enforceable only to the extent permitted by law.

c. Arbitrators appointed under arbitration provisions relating to municipal agencies shall be persons on the register of the board of collective bargaining. The costs of such arbitration shall be determined and allocated pursuant to section eleven hundred seventy-four of the charter. The board of collective bargaining, in its discretion, may publish arbitration awards.

d. As a condition to the right of a municipal employee organization to invoke impartial arbitration under such provisions, the grievant or grievants and such organization shall be required to file with the director a written waiver of

the right, if any, of said grievant or grievants and said organization to submit the underlying dispute to any other administrative or judicial tribunal except for the purpose of enforcing the arbitrator's award.

e. Public employees and public employee organizations shall not induce or engage in any strikes, slowdowns, work stoppages, or mass absenteeism nor shall public employee organizations induce any mass resignations during the term of a collective bargaining agreement. A provision to that effect shall be inserted in all written collective bargaining agreements between public employers and public employee organizations. This subdivision shall not be construed to limit the rights of public employers or the duties of public employees and employee organizations under state law.

f. It is hereby declared to be the policy of the city that written collective bargaining agreements with certified or designated employee organizations should contain provisions for grievance procedures and impartial binding arbitration, which may be invoked by a public employer or by a certified or designated employee organization.

g. An employee may present his or her own grievance either personally or through an appropriate representative, provided that:

(1) a grievance relating to a matter referred to in paragraph two, three or five of subdivision a of section 12-307 of this chapter may be presented and processed only by the employee or by the appropriate designated representative or its designee, but only the appropriate designated representative or its designee shall have the right to invoke and utilize the arbitration procedure provided by executive order or in the collective agreement to which the designated representative is a party; and provided further that

(2) any other grievance of an employee in a unit for which an employee organization is the certified collective bargaining representative may be presented and processed only by, the employee or by the certified employee organization, but only the certified employee organization shall have the right to invoke and utilize the arbitration procedure provided by executive order or in the collective agreement to which the certified representative is a party.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 1173-8.0 added LL 53/1967 § 2

Sub a amended LL 1/1972 § 16

Sub c amended LL 1/1972 § 17

Sub f amended LL 1/1972 § 18

Sub g added LL 1/1972 § 19

**CASE NOTES FROM FORMER SECTION**

¶ 1. Complaint of a number of sergeants and lieutenants in the city police department who brought action for back pay and prospective salary relief on ground that as persons designated commanders and supervisors of detective squads the law requires that they receive appropriate compensation would not be dismissed on theory that they were relegated to the grievance procedures set forth in the collective bargaining agreements between the city and the Lieutenants and Sergeants Benevolent Association and they could bring an action at law.-Campbell v. Lindsay, 171 (122) N.Y.L.J. (6-26-74) 14, Col. 1 T.

¶ 2. Petition in article 78 proceeding by officers of association which was the exclusive bargaining representative

of the members of the detective division of the police department seeking to prohibit the police commissioner from making mass transfers of members of the detective division to the patrol force was dismissed, and petitioners directed to follow the grievance and arbitration procedure provided for in the collective bargaining agreement, for although the terms of the agreement had technically expired it continued in force during the period of negotiations for new agreement.-In re Crowley (Cawley), 170 (120) N.Y.L.J. (12-26-73) 2, Col. 4 F.

¶ 3. Where petitioners had used first four steps of grievance procedure but failed to proceed to arbitration their article 78 proceeding for order requiring respondents to accept leave forms pertaining to their absence from work for religious reasons was properly dismissed.-In re Brecker (Collins), 171 (39) N.Y.L.J. (2-27-74) 17, Col. 6 M.

¶ 4. Where plaintiffs brought action for back pay and prospective salary relief as persons designated as commanders and supervisors of detective squads in the New York City police department under provisions of the Admin. Code, they were not deprived of their rights to a court action since arbitration is not the sole remedy where a statutory dispute is involved.-Campbell v. Lindsay, 78 Misc. 2d 841, 358 N.Y.S. 2d 833 [1974].



Administrative Code of the City of New York



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

*NYC Administrative Code 12-313*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 3 COLLECTIVE BARGAINING

§ 12-313 Membership and rules of municipal labor committee.

Membership in the municipal labor committee shall be open to any certified employee organization as defined in this chapter and which is otherwise eligible for membership under the rules of such committee. The board of collective bargaining may, upon the request of any certified employee organization, abrogate any rule of such committee relating to voting or eligibility for membership which it determines to be arbitrary or discriminatory, provided that prior to any such abrogation such committee shall be given an opportunity on at least ten days' notice to be heard thereon.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 1173-9.0 added LL 53/1967 § 2

Amended LL 1/1972 § 20

Amended LL 51/1980 § 12

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Administrative Code of the City of New York



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

*NYC Administrative Code 12-314*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 3 COLLECTIVE BARGAINING

§ 12-314 Special provisions relating to initial certification.

a. Any employee organization which (1) discriminates with regard to the terms and conditions of membership because of race, color, creed, religion, disability, gender, sexual orientation, age, or national origin, or (2) is engaged in or advocates the violent overthrow of the government of the United States or of any state or any political subdivision thereof shall be ineligible for certification as an exclusive bargaining representative. For purposes of this section, the finding of a court or an administrative tribunal of competent jurisdiction that an employee organization has engaged in discrimination upon one of the above bases in a particular case shall not be dispositive of the question of that employee organization's eligibility for certification unless it is also found that the employee organization has engaged in a pattern or practice of such discrimination generally.

b. No organization seeking or claiming to represent members of the police force of the police department shall be certified if such organization (i) admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than members of the police force of the police department, or (ii) advocates the right to strike.

c. Certificates or designations issued by the department of labor prior to the effective date of this chapter and in effect on such date shall remain in effect until terminated by the board of certification pursuant to its rules. Nothing contained in this subdivision shall limit the power of the board of certification to determine bargaining units differing from those determined by the department of labor.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Section heading amended L.L. 26/1998 § 14, eff. July 7, 1998.

Subd. a amended L.L. 26/1998 § 14, eff. July 7, 1998.

**DERIVATION**

Formerly § 1173-10.0 added LL 53/1967 § 2

Sub c amended LL 1/1972 § 21

Sub d repealed LL 1/1972 § 22

Sub e repealed LL 51/1980 § 13

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Administrative Code of the City of New York



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

*NYC Administrative Code 12-315*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 3 COLLECTIVE BARGAINING

§ 12-315 Delegation of powers.

The director, with the approval of at least five other members of the board of collective bargaining, may delegate to independent and impartial private institutions those functions of the office of collective bargaining relating to (a) the maintenance of registers of mediators, arbitrators, and members of impasse panels, (b) the submission of the names of persons on the impasse panel and arbitration registers for selection by parties to negotiations or to a grievance, and (c) the conduct of representation and decertification elections.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 1173-11.0 added LL 53/1967 § 2

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Administrative Code of the City of New York



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

*NYC Administrative Code 12-316*

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 3 COLLECTIVE BARGAINING

§ 12-316 Emergency suspension of salary and wages.

a. It is hereby found and declared that a fiscal emergency exists for the city of New York by reason of the following: As a result of the severe economic and social dislocations of recent years, there has been a great increase in the need and demand for public services at a time when financing such services has become increasingly difficult. Due to a general decline in investor acceptance of local government securities and almost unprecedented high interest rates, the city of New York, despite the financial soundness of its obligations, recently has faced increased difficulty in selling a sufficient amount of its securities to enable it to refund its outstanding obligations or to meet its cash requirements. For the immediate future, this increased difficulty has caused concern that it may be unable to provide, without interruption, many services essential to its inhabitants while also meeting obligations to the holders of its outstanding securities as they come due. It is in the public interest and it is the policy of the city of New York to provide, without interruption, services essential to its inhabitants while meeting its obligations to the holders of its outstanding securities. The state of New York, in an attempt to assist the city of New York and other municipalities faced by a similar or analogous problem has enacted chapter one hundred sixty-eight and one hundred sixty-nine of the laws of nineteen hundred seventy-five, which among other provisions create a municipal assistance corporation for the city of New York, empowering it to issue bonds and notes and to use the proceeds from their sale primarily to provide the city of New York with amounts to pay the short-term obligations of the city as they mature. Despite statutory provisions which, in effect, secure the bonds and notes issued by the municipal assistance corporation for the city of New York with all the proceeds of the state stock transfer tax and of the state municipal assistance sales and compensating use taxes to the extent needed for that purpose, despite the agreement of the city of New York to make and observe such changes in its record keeping, accounting, budgeting and financial management practices as the municipal assistance corporation for the city of New York requires pursuant to such legislation and despite numerous economy measures taken by the city of

New York, including a substantial reduction in the number of its employees, the municipal assistance corporation for the city of New York has been experiencing difficulty in selling the bonds it has issued and has expressed grave concern with regard to its ability to sell bonds which it plans to issue in the near future. The city of New York, as a result, is faced by a fiscal emergency which could seriously impair its ability to carry on orderly and uninterrupted operations and functions of government. Imposing certain additional nuisance taxes which the state in the past had given it power to impose is not a feasible solution since to do so may further impair the city's credit standing because the burden of present taxes has contributed to flight from the city of middleclass taxpaying residents and of a number of business firms. In view of this situation, it is necessary for the city to exercise its sovereign police power to suspend salary increases in the manner provided in subdivision b of this section.

b. The mayor shall have the power to direct by executive order that all or any part of increases in salary or wages of public employees which have taken effect since June thirtieth, nineteen hundred seventy-five or which will take effect after that date pursuant to collective bargaining agreements or other analogous contracts requiring such salary increases as of July first, nineteen hundred seventy-five or as of any date thereafter shall be suspended. All or any part of increased payments for holiday and vacation differentials, shift differentials, salary adjustments according to plan and step-ups or increments which have taken effect since June thirtieth, nineteen hundred seventy-five or which will take effect after that date pursuant to collective bargaining agreements or other analogous contracts requiring such increased payment, as of July first, nineteen hundred seventy-five or as of any date thereafter may, in the same manner, be suspended. For the purposes of computing the pension base of retirement allowances, the suspended salary or wage increases and the suspended other payment shall not be considered as part of compensation or final compensation or of annual salary earned or earnable. The suspensions provided herein shall be effective for the first pay period ending on or subsequent to September first, nineteen hundred seventy-five and shall continue until one year thereafter.

c. This section shall not be applicable to public employees covered by a collective bargaining agreement or a public employee not covered by a collective bargaining agreement where the collective bargaining representative or such unrepresented employee, by an instrument in writing, has agreed to a deferment of salary or wage increase which has been certified by the mayor as being an acceptable and appropriate contribution toward alleviating the city's fiscal crisis. The mayor may, if he or she finds that the fiscal crisis has been alleviated or for any other appropriate reason, direct by executive order that the suspensions of salary or wage increases or suspension of other increased payments shall, in whole or in part, be terminated.

d. Notwithstanding the provisions of section 12-304 of this chapter, this section shall be applicable to all public employees, including public employees of any public employer as defined in this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 1173-12.0 added LL 43/1975 § 1

Sub c amended LL 44/1975 § 1

Sub e relettered LL 44/1975 § 2

(formerly sub d)

Sub d added LL 44/1975 § 2

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-101*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-101 Definitions.

The following words and phrases as used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

1. "Retirement system" shall mean the "New York City Employees' Retirement System" provided for in section 13-102 of this chapter.

2. "Medical board" shall mean the board of physicians provided for in section 13-123 of this chapter.

3. a. "City-service" shall mean service, whether appointive or elective, as an officer or employee of the city or state of New York, of any agency thereof and of any court, so far as such service is paid for by the city, or service, by any person, in any county office, paid for in whole or in part by the city, except service on or after the first day of October, nineteen hundred twenty, on account of which any person is, or may be, entitled to share in the police pension fund, or in the fire department relief fund, or in the teachers' retirement system, or in the Hunter College retirement system, or in the board of education retirement system, or in the department of street cleaning relief and pension fund (but including service as provided for in section 13-614 of this title).

b. Service as a paid employee of the triborough bridge authority, the Henry Hudson parkway authority, the Marine parkway authority, the New York city tunnel authority, the New York city parkway authority, the New York city housing authority, the triborough bridge and tunnel authority, the New York city transit authority, the New York city housing development corporation, the New York city health and hospitals corporation, the New York city off-track betting corporation, the New York city school construction authority, the New York city municipal water finance

authority, the New York city water board, the transit construction fund, the New York city transitional finance authority, the New York city sports authority and the New York city rehabilitation mortgage insurance corporation shall constitute city-service as herein defined.

4. "Prior-service" shall mean the service of a member rendered before the first day of October, nineteen hundred twenty, certified on a prior-service certificate and allowable as provided in sections 13-107, 13-108, 13-113 and 13-114 of this chapter.

5. "Total-service" shall mean all service of a member allowable as provided in section 13-107 of this chapter.

6. "Member" shall mean any person included in the membership of the retirement system as provided in section 13-104 of this chapter.

7. "Group" shall mean any group provided for under the provisions of section 13-106 of this chapter.

8. "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance, a death benefit or any other benefit provided by this chapter.

9. Except as otherwise provided in paragraph five of subdivision e of section 13-638.4 of this title, "final compensation" shall mean the average annual compensation earnable by a member for city-service during his or her last five years of city-service, or during any other five consecutive years of member or restored member service which such member shall designate, except that regular per annum employees may designate any two periods totalling five calendar years.

10. "Service-fraction" shall mean the part of final compensation derived as provided by section 13-172 of this chapter, allowable as a service pension for each year of service as a member; provided, however, that in the case of a fifty-five-year-increased-service-fraction member, such term shall mean each applicable part of the salary or compensation earnable by such member for city-service in the year prior to his or her retirement for service or the applicable part of such member's three-year average compensation, as the case may be, which part is derived as provided for in paragraph seven of subdivision a of such section 13-172 of this chapter and is allowable as a component of a service pension for each year of allowable service of such member as provided for in such paragraph seven.

11. "Accumulated deductions" shall mean the sum of all the amounts, if any, deducted from the compensation of a member or contributed by him or her, standing to the credit of his or her individual account in the annuity savings fund together with regular interest and special interest, if any, thereon.

12. (a) Except as otherwise provided in paragraphs (b), (c), (d), (e) and (g) of this subdivision, "regular interest," in the cases of persons who are members on the thirtieth day of June, nineteen hundred forty-seven, shall mean interest at four per centum per annum, compounded annually, and in the cases of persons becoming members thereafter, shall mean, interest at three per centum per annum, compounded annually to and including the thirtieth day of June, nineteen hundred sixty-five, and interest at four per centum per annum, compounded annually, from and after the first day of July, nineteen hundred sixty-five, except that (i) as to the annuity savings fund and reserve-for-increased-take-home-pay of persons becoming members after June thirtieth, nineteen hundred forty-seven, the term "regular interest", for the period from July first, nineteen hundred sixty-five through December thirty-first, nineteen hundred sixty-six, shall mean three per centum per annum compounded annually, (ii) in the cases of persons becoming members after June thirtieth, nineteen hundred forty-seven, whose city-service has been or shall be terminated by death, retirement, resignation, dismissal, or otherwise on or before June thirtieth, nineteen hundred sixty-seven, the term "regular interest" shall mean interest at three per centum per annum, compounded annually, to and including the date of such termination, and (iii) in the cases of persons becoming members after June thirtieth, nineteen hundred forty-seven, who are transit police members, as defined in subdivision thirty-two of this section, housing police members, as defined in subdivision thirty-six of this section, correction members, as defined in subdivision forty of this section, or who are such members of the uniformed force of the department of sanitation, as defined in subdivision a of

section 13-154 of this chapter as have elected to comply with the provisions of section 13-154 of this chapter, the term "regular interest" shall mean interest at three per centum per annum, compounded annually, to and including December thirty-first, nineteen hundred sixty-seven, and four per centum per annum, compounded annually, from and after January first, nineteen hundred sixty-eight.

(b) The provisions of paragraph (a) of this subdivision shall not apply to any actuarial valuation, determination or appraisal which is made pursuant to this title and which is used to determine the amount of any contribution required to be paid by the city or other public employer into the contingent reserve fund of the retirement system in the nineteen hundred seventy-seven-nineteen hundred seventy-eight fiscal year of the city or any subsequent fiscal year thereof.

(c) (i) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this title and which is used to determine the amount of any contribution required to be paid by the city (or other obligors required to pay public employer contributions on account of members) into the contingent reserve fund of the retirement system in the nineteen hundred seventy-seven-nineteen hundred seventy-eight fiscal year of the city and in each succeeding fiscal year thereof to and including the nineteen hundred seventy-nine-nineteen hundred eighty fiscal year thereof, "regular interest" shall mean interest at five and one-half per centum per annum, compounded annually.

(ii) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, and except as otherwise provided in paragraphs one and four of subdivision b of section 13-127 of this chapter with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this chapter and which is used to determine the amount of any contribution required to be paid by the city (or other obligors required to pay public employer contributions on account of members) into the contingent reserve fund of the retirement system in the nineteen hundred eighty-nineteen hundred eighty-one fiscal year of the city and in each succeeding fiscal year thereof to and including the nineteen hundred eighty-one-nineteen hundred eighty-two fiscal year thereof, "regular interest" shall mean interest at the rate of seven and one-half per centum per annum, compounded annually.

(iii) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, and except as otherwise provided in paragraphs one and four of subdivision b of section 13-127 of this chapter with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this chapter and which is used to determine the amount of any contribution required to be paid by the city (or other obligors required to pay public employer contributions on account of members) into the contingent reserve fund of the retirement system in the nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year of the city and in each succeeding fiscal year thereof to and including the nineteen hundred eighty-seven-nineteen hundred eighty-eight fiscal year thereof, "regular interest" shall mean interest at the rate of eight per centum per annum, compounded annually.

(iv) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, and except as otherwise provided in paragraphs one and four of subdivision b of section 13-127 of this chapter with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this chapter and which is used to determine the amount of any contribution required to be paid by the city (or other obligors required to pay public employer contributions on account of members) into the contingent reserve fund of the retirement system in the nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year of the city and the nineteen hundred eighty-nine-nineteen hundred ninety fiscal year thereof, "regular interest" shall mean interest at the rate of eight and one-quarter per centum per annum, compounded annually.

(d) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, and except as otherwise provided in paragraphs one and four of subdivision b of section 13-127 of this chapter with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability

contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this chapter and which is used to determine the amount of any contribution required to be paid by the city (for other obligors required to pay public employer contributions on account of members) into the contingent reserve fund of the retirement system in the city's nineteen hundred ninety-nineteen hundred ninety-one fiscal year and in any subsequent fiscal year thereof, "regular interest" shall mean interest at such rate per annum, compounded annually, as shall be prescribed by the legislature in section 13-638.2 of this title.

(e) On or after May first, nineteen hundred eighty-nine and not later than October thirty-first of such year the board shall submit to the governor, the temporary president and minority leader of the senate, the speaker of the assembly, the majority and minority leaders of the assembly, the state superintendent of insurance, the chairman of the permanent commission on public employee pension and retirement systems, the mayor of the city and the members of the board of estimate and city council thereof, the written recommendations of the board as to the rate of interest and effective period thereof which should be established by law as "regular interest" for the purpose specified in paragraph (d) of this subdivision.

(f) (i) Subject to the provisions of subparagraph (c) of paragraph two of subdivision b of section 13-127 of this chapter, nothing contained in paragraphs (b), (c), (d) and (e) of this subdivision shall be construed as prescribing, for the purpose of crediting interest to individual accounts in the annuity savings fund or to reserves-for-increased-take-home-pay or for any other purpose besides that specified in such paragraphs, a rate of regular interest other than as prescribed by the applicable provisions of paragraph (a) or paragraph (g) of this subdivision.

(ii) Subject to the provisions of section 13-638.2 of this title, nothing contained in paragraphs (c) and (d) of this subdivision shall be construed as requiring the original unfunded accrued liability contribution, as defined in subparagraph (a) of paragraph three of subdivision (b) of section 13-127 of this chapter, and the revised unfunded accrued liability contribution, as defined in subparagraph (b) of such paragraph three, and the nineteen hundred eighty unfunded accrued liability adjustment, as defined in subparagraph (c) of such paragraph three, nineteen hundred eighty-two unfunded accrued liability adjustment, as defined in subparagraph (d) of such paragraph three to be determined in any manner other than as prescribed by applicable provisions of such subparagraphs. Subject to the provisions of section 13-638.2 of this title, nothing contained in paragraphs (c) and (d) of this subdivision shall be construed as requiring any balance sheet liability or balance sheet liability contribution computed pursuant to the provisions of paragraph four of subdivision b of such section 13-127 of this chapter to be determined in any manner other than as prescribed in such paragraph four.

(g) (i) Commencing on August first, nineteen hundred eighty-three, and continuing thereafter, "regular interest," in the cases of persons who were members on July thirty-first, nineteen hundred eighty-three or who thereafter became or become members, shall mean, subject to the provisions of subparagraphs (ii) to (xi), inclusive, of this paragraph (g), interest at seven per centum per annum, compounded annually.

(ii) (A) (1) Subject to the provisions of sub-items (2) and (3) of this item (A), regular interest at the rate of seven per centum per annum, compounded annually, shall be used as the actuarial interest assumption for determining any actuarial equivalent benefit payable to or on account of any seven percent member for actuarial equivalent benefit purposes.

(2) Where an actuarial equivalent benefit is required by board resolution to be determined for any seven percent member for actuarial equivalent benefit purposes through the use of the modified Option 1 pension computation formula (as defined in subdivision seventy-seven of this section), the actuarial interest assumptions used in making such determination shall be as prescribed in such formula.

(3) Where it is provided by board resolution that a portion of an actuarial equivalent benefit shall be determined for any such seven percent member on the basis of gender-neutral mortality tables, and that the remainder of such

benefit shall be determined on the basis of mortality tables which are not gender-neutral, regular interest at the rate of seven per centum per annum, compounded annually, shall be used as the actuarial interest assumption for determining the portion of such benefit required by such resolution to be determined on the basis of genderneutral mortality tables and such rate of regular interest shall not apply to the determination of the remainder of such benefit.

(B) Notwithstanding that the process of determining whether a member is a seven percent member for actuarial equivalent benefit purposes may include, for the purpose of ascertaining the highest applicable benefit, alternative hypothetical benefit calculations utilizing a rate of regular interest other than such rate of seven per centum, nothing contained in subparagraph (i) of this paragraph (g) or in item (A) of this subparagraph (ii) shall be construed as requiring that in the determination of any actuarial equivalent benefit payable to or on account of any member who is not a seven percent member for actuarial equivalent benefit purposes, any rate of interest be used as the actuarial interest assumption other than regular interest, compounded annually, as prescribed by the applicable provisions of paragraph (a) of this subdivision.

(iii) The provisions of item (A) of subparagraph (ii) of this paragraph (g) shall not apply to any person who, prior to August first, nineteen hundred eighty-three, retired as a member of the retirement system for service or superannuation or for ordinary or accident disability or pursuant to section 13-150 of the code and was such a retiree immediately prior to such August first; provided, however, that if any such retiree returned or returns to city-service and on or after July thirty-first, nineteen hundred eighty-three, was or is restored to membership in the retirement system as required or permitted by law, the provisions of such item (A), from and after such date of restoration to membership, shall apply to such restored member with respect to determination of any actuarial equivalent benefit which is both (A) a benefit to which he or she became or becomes entitled upon his or her subsequent retirement or subsequent discontinuance of service so as to qualify for benefits, and (B) a benefit which is not a continuation, without change, of a benefit which had previously became payable to him or her by reason of his or her prior retirement; provided further that nothing contained in the preceding provisions of this subparagraph (iii) shall be construed as applicable to any such restored member who was not or is not a seven percent member for actuarial equivalent benefit purposes at the time of such subsequent retirement or subsequent discontinuance of service.

(iv) (A) Subject to the provisions of items (B) and (C) of this subparagraph (iv), the provisions of item (A) of subparagraph (ii) of this paragraph (g) shall not apply to any Tier I or Tier II member who, (1) prior to August first, nineteen hundred eighty-three, discontinued service under such circumstances that such member became a discontinued member and acquired a vested right to receive a retirement allowance pursuant to the applicable provisions of section 13-173 or paragraph two of subdivision i of sections 13-155 and 13-156 or paragraph two of subdivision j of section 13-157 and section 13-256 of the code (and, in the case of a Tier II member, article eleven of the retirement and social security law), and (2) was such a discontinued member immediately prior to such August first.

(B) If such a discontinued member returned or returns to city-service and on or after July thirty-first, nineteen hundred eighty-three and before payability of his or her retirement allowance as such member began or begins, again became or becomes an active member pursuant to the applicable provisions of such section 13-173 of the code, or the applicable provisions of paragraph two of subdivision i of sections 13-155 and 13-156 or paragraph two of subdivision j of section 13-157 and section 13-256 of the code, the provisions of item (A) of such subparagraph (ii) shall apply to him or her on and after the date of such resumption of active membership, provided that nothing contained in the preceding provisions of this item (B) shall be construed as making the provisions of item (A) of such subparagraph (ii) applicable to any such member who was not or is not a seven percent member for actuarial equivalent benefit purposes at the time of subsequent retirement or subsequent discontinuance of service so as to qualify for benefits.

(C) If such a discontinued member returned or returns to city-service and on or after July thirty-first, nineteen hundred eighty-three and on or after the date on which payability of his or her retirement allowance as such member began or begins, again became or becomes an active member pursuant to the applicable provisions of such sections 13-173 and 13-178 of the code or the applicable provisions of subdivision i of sections 13-155 and 13-156 and section 13-256 of the code, the provisions of item (A) of such subparagraph (ii), on and after the date of such resumption of

active membership, shall apply to him or her with respect to determination of any actuarial equivalent benefit which is both (1) a benefit to which he or she became or becomes entitled upon his or her subsequent retirement or subsequent discontinuance of service so as to qualify for benefits, and (2) a benefit which is not a continuation, without change, of a benefit which had previously became*2 payable to him or her by reason of his or her prior discontinuance of service; provided that nothing contained in the preceding provisions of this item (C) shall be construed as applicable to any such member who was not or is not a seven percent member for actuarial equivalent benefit purposes at the time of such subsequent retirement or subsequent discontinuance of service.

(v) (A) Subject to the provisions of items (B) and (C) of this subparagraph (v), the provisions of item (A) of such subparagraph (ii) shall not apply to any Tier III member or Tier IV member who, (1) prior to August first, nineteen hundred eighty-three, terminated employment under such circumstances that such member became a Tier III member entitled to a vested benefit or a Tier IV member entitled to a vested benefit, as the case may be, and had such status immediately prior to such August first.

(B) If a member who became entitled to a vested benefit as described in item (A) of this subparagraph (v) returned or returns to city-service and on or after July thirty-first, nineteen hundred eighty-three and before payability of his or her vested benefit began or begins, resumed or resumes status as an active member, the provisions of item (A) of such subparagraph (ii) shall apply to him or her on and after the date of such resumption of membership, provided that nothing contained in the preceding provisions of this item (B) shall be construed as applicable to any such member who was not or is not a seven percent member for actuarial benefit purposes at the time of subsequent retirement or subsequent discontinuance of service so as to qualify for benefits.

(C) If a member who became entitled to a vested benefit as described in item (A) of this subparagraph (v) returned or returns to city-service and, on or after July thirty-first, nineteen hundred eighty-three and on or after the date on which payability of his or her vested benefit began or begins, resumed or resumes status as an active member, the provisions of item (A) of such subparagraph (ii), on and after the date of such resumption of active membership, shall apply to him or her with respect to determination of any actuarial equivalent benefit which is both (1) a benefit to which he or she became or becomes entitled upon his or her subsequent retirement or subsequent discontinuance of service so as to qualify for benefits, and (2) a benefit which is not a continuation, without change, of a benefit which had previously become payable to him or her by reason of his or her prior discontinuance of service; provided that nothing contained in the preceding provisions of this item (C) shall be construed as applicable to any such member who was not or is not a seven percent member for actuarial equivalent benefit purposes at the time of such subsequent retirement or subsequent discontinuance of service.

(vi) (A) Subject to the provisions of item (B) of this subparagraph (vi) and to the provisions of subparagraph (ix) of this paragraph (g), the selection of mode of benefit (as defined in subdivision seventy-eight of this section) made prior to the date of enactment (as such date is certified pursuant to section forty-one of the legislative law) of this paragraph (g) by a person entitled to a recomputation of benefits pursuant to the best-of-three-computations method (as defined in subdivision eighty of this section) in relation to the retirement allowance (or any component thereof) which became payable to him or her prior to such date of enactment shall be the selection of mode of benefit applicable to the recomputed retirement allowance (or any corresponding component thereof) to which he or she is entitled under the best-of-three-computations method (as defined in subdivision seventy-nine of this section), and any such person entitled to a recomputation of benefits pursuant to the best-of-three-computations method shall not be entitled to make any change in such selection of mode of benefit.

(B) (1) Notwithstanding the provisions of item (A) of this subparagraph (vi), a person entitled to a recomputation of benefits pursuant to the best-of-three-computations method shall be entitled, to the extent and in the manner prescribed in the succeeding sub-items of this item (B), to change the original selection of mode of benefit applicable to the retirement allowance (or any component thereof) which became payable to him or her prior to the date of enactment of this paragraph (g).

(2) In any case where the original selection of mode of benefit of a person entitled to a recomputation of benefits pursuant to the best-of-three-computations method was a selection of a joint and survivor option (as defined in subdivision eighty-one of this section), no change from such original selection of a joint and survivor option may be made under this item (B) to any other selection of mode of benefit if the designated beneficiary selected with respect to such joint and survivor option by such person entitled to a recomputation is not alive at the time of filing of the form whereby such person entitled to a recomputation seeks to change, pursuant to this item (B), his or her original selection of such joint and survivor option.

(3) Except for a change of selection of mode of benefit prohibited by sub-item two of this item (B), any original selection of mode of benefit may be changed pursuant to this item (B) to another selection of mode of benefit, provided all of the conditions set forth in sub-items four, six and eight of this item (B) are met.

(4) Subject to the provisions of sub-items seven and eight of this item (B), a person entitled to a recomputation of benefits pursuant to the best-of-three-computations method may, pursuant to this item (B), effect any such permissible change of his or her original selection of mode of benefit by executing, acknowledging and filing with the retirement system, within the applicable period of time prescribed by sub-item six of this item, a new selection of mode of benefit. If the original selection of mode of benefit of the person filing such new selection was a selection of a joint and survivor option, such new selection shall be void and of no effect unless (a) the designated beneficiary named in such original selection of a joint and survivor option signs and acknowledges, in the form for such new selection of mode of benefit, a consent to such changed selection of mode of benefit, and (b) such original designated beneficiary is alive on the date of filing of such new selection.

(5) The retirement system shall mail to each person entitled to a recomputation of benefits pursuant to the best-of-three-computations method a letter (having the usual content provided by the retirement system with respect to furnishing option figures to retirees) showing amounts of benefits, as recomputed for such person under the best-of-three-computations method.

(6) The period of time within which any such person entitled to a recomputation may file a new selection of mode of benefit as provided for in sub-items three and four of this item (B) shall be sixty days after the date of issuance set forth in such statement mailed to such person pursuant to sub-item five of this item; provided, however, that if, pursuant to the request of such person, a later letter setting forth benefits information in relation to new selection of a mode of benefit is mailed to such person by the retirement system, such period of time for filing a new selection of mode of benefit shall be thirty days after the date of issuance set forth in such later letter.

(7) Upon the filing of a new selection of mode of benefit pursuant to this item (B) by any such person entitled to a recomputation, such new selection shall be irrevocable and such person shall not be entitled to file any other selection of mode of benefit with respect to such retirement allowance (or any component thereof) which became payable to him or her prior to the date of enactment of this paragraph (g).

(8) No new selection of mode of benefit filed pursuant to the preceding sub-items of this item (B) shall be valid or effective as a change of mode of benefit or for any other purpose unless the person entitled to a recomputation of benefits pursuant to the best-of-three-computations method who files such new selection is alive on the date (hereinafter referred to as the "validating date") three hundred sixty-five days after the date of filing of such new selection of mode of benefit. If such person filing such new selection of mode of benefit is alive on the validating date with respect to such new selection, such new selection shall become valid and effective on such validating date; provided, however, that from and after the effective date of retirement of such person making such valid and effective new selection of mode of benefit (if he or she retired for service or superannuation or for ordinary or accident disability or pursuant to section 13-150 of the code) or from and after the date on which payability of the original benefits of such person began (if he or she was a discontinued member or discontinued sanitation member or Tier III member entitled to a vested benefit or Tier IV member entitled to a vested benefit), such new selection of mode of benefit shall supersede such original selection of mode of benefit and shall apply to and govern the amount of benefits payable to such person or to his or her

designated beneficiary or estate.

(vii) Subject to the provisions of subparagraph (ix) of this paragraph (g), in any case where a member who retired before August first, nineteen hundred eighty-three for service or for superannuation or for ordinary or accident disability or pursuant to section 13-150 of the code returned or returns to city-service and, on or after July thirty-first, nineteen hundred eighty-three, re-entered or re-enters membership in the retirement system, nothing contained in paragraphs (i) to (v), inclusive, of this paragraph (g) shall be construed as authorizing or permitting him or her to change any selection of mode of benefit (as defined in subdivision seventy-eight of this section) made by him or her with respect to any benefit which, upon his or her subsequent retirement or discontinuance of city-service so as to qualify for benefits, is payable to him or her as a continuation, without change, of a benefit which had previously become payable to him or her by reason of his or her prior retirement.

(viii) Subject to the provisions of subparagraph (ix) of this paragraph (g), in any case where a discontinued member referred to in item (A) of subparagraph (iv) of this paragraph or a Tier III member entitled to a vested benefit or a Tier IV member entitled to a vested benefit who became entitled to such vested benefit under the circumstances set forth in item (A) of subparagraph (v) of this paragraph returned or returns to city-service and on or after July thirty-first, nineteen hundred eighty-three, again became or becomes an active member pursuant to applicable provisions of law, nothing contained in subparagraphs (i) to (v), inclusive, of this paragraph (g) shall be construed (A) as authorizing or permitting him or her to change any selection of mode of benefit (as defined in subdivision seventy-eight of this section) made by him or her with respect to any benefit which, upon his or her subsequent retirement or discontinuance of city-service so as to qualify for benefits, is payable to him or her as a continuation, without change, of a benefit which had previously become payable to him or her by reason of his or her prior discontinuance of city-service.

(ix) (A) Nothing contained in subparagraphs (vi), (vii) and (viii) of this paragraph (g) shall be construed as preventing:

(1) any person subject to such subparagraph (vi) who, on or after July thirty-first, nineteen hundred eighty-three, re-entered or re- enters city-service and again became or becomes an active member; or

(2) any re-entered member referred to in such subparagraph (vii) or subparagraph (viii); upon his or her subsequent retirement, from exercising any right which any other applicable law grants to him or her under such circumstances to make a selection of mode of benefit (as defined in subdivision seventy-eight of this section).

(B) Nothing contained in subparagraphs (vi), (vii) and (viii) of this paragraph (g) shall be construed as preventing a change to the maximum benefit where such change is authorized pursuant to section 12-125 of the code.

(x) Notwithstanding the provisions of subparagraph (i) of this paragraph (g) prescribing a rate of regular interest of seven per centum per annum, compounded annually, for specified members described in such subparagraph (i), the rate of regular interest which shall be applied to fix the rate of interest on any loan to any such member eligible to borrow shall be four per centum per annum, compounded annually.

(xi) The rate of regular interest applicable to determination of the rate of member contribution of any member whose last membership began prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this paragraph (g) shall be the rate of regular interest which was applicable, under the provisions of law in effect prior to such date of enactment, to the determination of the rate of member contribution of such member, and nothing contained in the preceding subparagraphs of this paragraph (g) shall be construed as applicable to the determination of the rate of member contribution of any such member whose last membership so began or as changing or affecting the rate of member contribution of any such member.

13. "Pension" shall mean payments for life derived from appropriations made by the city as provided in this chapter.

14. "Annuity" shall mean payments for life derived from contributions made by a member as provided in this chapter.

15. "Retirement allowance" shall mean the pension plus the annuity, if any, and the pension-providing-for-increased-take-home-pay, if any.

16. "Pension reserve" shall mean the present value of all payments to be made on account of any pension, or benefit in lieu of any pension, granted under the provisions of this chapter, computed upon the basis of such mortality tables as shall be adopted by the board of estimate with regular interest.

17. "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity, or benefit in lieu of any annuity, granted under the provisions of this chapter, computed upon the basis of such mortality tables as shall be adopted by the board of estimate with regular interest.

18. "Fiscal year" shall mean any year commencing with the first day of July and ending with the thirtieth day of June next following.

19. "Pension-providing-for-increased-take-home-pay." The annual allowance for life payable in monthly installments derived from contributions made to the contingent reserve fund, or to the pension fund, as the case may be, pursuant to section 13-152 of this chapter.

20. "Reserve-for-increased-take-home-pay." An amount which, at the time of death or retirement, shall be equal to the sum obtained by adding together:

(i) A sum representing two and one-half per centum of the member's compensation paid to him or her during the period with respect to which the contributing agency contributes, pursuant to subdivision c and subdivisions h and i of section 13-152 of this chapter, toward a pension-providing-for-increased-take-home-pay with respect to such member, plus regular interest on such sum, and

(ii) a sum representing the product obtained by multiplying the applicable reduced-rate-of-contribution factor by the member's compensation during the period while the contributing agency contributes, pursuant to subdivision f and subdivisions h and i of section 13-152 of this chapter, toward a pension-providing-for-increased-take-home-pay with respect to such member, plus regular interest on such sum, and

(iii) a sum consisting of the product or the total of all products obtained by multiplying the compensation of such member by the applicable reduced-rate-of-contribution factor or factors, as prescribed by subparagraph (iv) of paragraph fourteen of subdivision j of section 13-152 of this chapter or by a provision analogous to subparagraph (iv) of paragraph fourteen of subdivision j of section 13-152 of this chapter made applicable to such member pursuant to subdivision m of section 13-152 of this chapter, plus regular interest on such sum.

21. "Other-than-authority-or-public-benefit-corporation member." A member of the retirement system who is not any of the following: (a) an officer or employee of the triborough bridge and tunnel authority, the New York city housing authority, the New York city transit authority, the New York city health and hospitals corporation, the New York city off-track betting corporation or the New York city housing development corporation, or (b) a correction member (as defined in subdivision forty of this section).

22. "Authority member." A member of the retirement system who is an officer or employee of the triborough bridge and tunnel authority, the New York city housing authority or the New York city transit authority.

23. "Member originally entitled to a reduced rate for the first year." A member of the retirement system to whom and for whose benefit the provisions of paragraph one of subdivision c and the provisions of subdivisions g, h and i of section 13-152 of this chapter are applicable as a result of the adoption of a resolution or resolutions as authorized by

the provisions of paragraphs one, two and four of subdivision a of such section and paragraphs one, two and four of subdivision b of such section, and to whom and for whose benefit such paragraph one of subdivision c and subdivisions g, h and i of such section become applicable on the date on which the provisions of such paragraph one of subdivision c of such section become operative.

24. "Member subsequently entitled to a reduced rate for the first year." A member of the retirement system to whom and for whose benefit the provisions of paragraph two of subdivision c and the provisions of subdivisions g, h and i of section 13-152 of this chapter are applicable as a result of the adoption of a resolution or resolutions as authorized by the provisions of paragraph four of subdivision a and paragraph four of subdivision b of such section, and to whom and for whose benefit such paragraph two of subdivision c and subdivisions g, h and i of such section become applicable after the date on which the provisions of paragraph one of subdivision c of such section become operative.

25. "Member originally entitled to a reduced rate for the second year." A member of the retirement system to whom and for whose benefit the provisions of paragraph one of subdivision f and the provisions of subdivisions g, h and i of section 13-152 of this chapter are applicable as a result of the adoption of a resolution or resolutions as authorized by the provisions of paragraphs one, two and four of subdivision d of such section and paragraphs one, two and four of subdivision e of such section and to whom and for whose benefit such paragraph one of subdivision f and subdivisions g, h and i of such section become applicable on the date on which the provisions of such paragraph one of subdivision f of such section become operative.

26. "Member subsequently entitled to a reduced rate for the second year." A member of the retirement system to whom and for whose benefit the provisions of paragraph two of subdivision f and the provisions of subdivisions g, h and i of section 13-152 of this chapter are applicable as a result of the adoption of a resolution or resolutions as authorized by the provisions of paragraph four of subdivision d and paragraph four of subdivision e of such section, and to whom and for whose benefit such paragraph two and subdivisions g, h and i of such section become applicable after the date on which the provisions of paragraph one of subdivision f of such section become operative.

27. "Reduced-rate-of-contribution factor." (a) Where used in any of the provisions of section 13-152 of this chapter other than subdivision j thereof, and other than a provision analogous to subdivision j therefor set forth in an executive order or resolution pursuant to the provisions of subdivision m of section 13-152 of this chapter, such term shall mean the percentage designated pursuant to the provisions of paragraph five of subdivision d or paragraph five of subdivision e of section 13-152 of this chapter, as the multiplier to be used in computing the reduction in members' contributions to be made pursuant to the provisions of subdivision f of such section.

(b) Where used in subdivision j of section 13-152 of this chapter, or in a provision analogous to subdivision j of section 13-152 of this chapter set forth in an executive order or resolution adopted pursuant to subdivision m of section 13-152 of this chapter, such term shall mean the applicable percentage designated pursuant to the provisions of paragraph six, twelve or thirteen of such subdivision j or pursuant to provisions analogous to such paragraph six, twelve or thirteen of such subdivision j set forth in an executive order or resolution adopted pursuant to subdivision m of section 13-152 of this chapter as the multiplier to be used in computing the reduction in any member's contribution pursuant to the provisions of paragraph fourteen of such subdivision j or pursuant to provisions analogous to the provisions of paragraph fourteen of such subdivision j set forth in an executive order or resolution adopted pursuant to the provisions of subdivision l of section 13-152 of this chapter.

28. "Contributing agency". The obligor or employing authority or public benefit corporation, as the case may be, required by the provisions of subdivisions h and i of section 13-152 of this chapter to make contributions to the contingent reserve fund or pension fund, as the case may be, for the benefit of any member mentioned in paragraph one of subdivision h of such section.

29. "Special interest". A distribution to the annuity savings fund, in addition to regular interest, which distribution, (a) for each of the periods as to which the provisions of section 13-135 of this chapter or section 13-638.2

of this title grant special interest, consists of the amount prescribed by such provisions for such period and (b) for each such period, is credited in such applicable amount to the accounts in the annuity savings fund of members who are eligible under such provisions for crediting of such amount for such period.

30. "Additional interest". A distribution to the reserve-for-increased-take-home-pay, in addition to regular interest, which distribution, (a) for each of the periods as to which the provisions of section 13-135 of this chapter or section 13-638.2 of this title grant additional interest, consists of the amount prescribed by such provisions for such period and (b) for each such period, is included in such applicable amount in the reserve-for-increased-take-home-pay of each member who is eligible under such provisions for inclusion of such amount for such period.

31. "Uniformed transit police force" shall mean the uniformed transit police force maintained by the New York city transit authority and by its predecessor, the board of transportation.

32. "Transit police member" shall mean a member of the retirement system who is a member of the uniformed transit police force and who has elected optional retirement pursuant to section 13-157 of this chapter.

33. "Prior transit police member" shall mean a transit police member who was in the uniformed transit police force immediately prior to July first, nineteen hundred sixty-four.

34. "New transit police member" shall mean a transit police member who is appointed a member of the uniformed transit police force on or after July first, nineteen hundred sixty-four.

35. "Housing police service" shall mean any or all of the positions in the New York city housing authority which are included in the housing police service of the classification of the city civil service commission.

36. "Housing police member" shall mean a member of the retirement system who holds a position in the housing police service and who has elected optional retirement pursuant to section 13-156 of this chapter.

37. "Prior housing police member" shall mean a housing police member who held a position in the housing police service immediately prior to July first, nineteen hundred sixty-five.

38. "New housing police member" shall mean a housing police member who is appointed to a position in the housing police service on or after July first, nineteen hundred sixty-five.

39. "Uniformed correction force" shall comprise those members included within the correction service of the classification of the city civil service commission.

40. "Correction member" shall mean a member of the retirement system who is a member of the uniform correction force and who has elected optional retirement pursuant to section 13-155 of this chapter.

41. "Prior correction member" shall mean a correction member who was in the uniformed correction force immediately prior to July first, nineteen hundred sixty-five.

42. "New correction member" shall mean a correction member who is appointed a member of the uniformed correction force on or after July first, nineteen hundred sixty-five.

43. "Board of certification" shall mean the board of certification established by section eleven hundred seventy-two of the charter.

44. "Board of collective bargaining" shall mean the board of collective bargaining established by section eleven hundred seventy-one of the charter.

45. "Career pension plan" shall mean the rights, benefits and privileges granted by the provisions of section

13-162 of this chapter, relating to the career pension plan, to a career pension plan member.

46. "Career pension plan member" shall mean a member who has elected or is deemed to have elected the benefits of section 13-162 of this chapter, relating to the career pension plan, pursuant to its terms and to whom the provisions of such section are applicable.

47. "Career pension plan position" shall mean any position whether held heretofore or hereafter, the holding of which constituted or constitutes city-service, except:

(a) any transit operating position with the transit authority; and

(b) any position included in:

(1) the uniformed force of the department of sanitation, as defined in subdivision a of section 13-154 of this chapter; or

(2) the uniformed transit police force; or

(3) the housing police service; or

(4) the uniformed correction force.

48. "Career pension plan qualifying service". Any allowable service rendered:

(a) in a career pension plan position at any time heretofore or hereafter; or

(b) in any position in city-service prior to July first, nineteen hundred sixty-eight, by a member who held a career pension plan position on such July first; or

(c) on or after July first, nineteen hundred sixty-eight, by a member in any position mentioned in paragraphs (a) and (b) of subdivision forty-seven of this section; provided that such member, at the time of termination of service in such position to enter upon service in a career pension plan position, was a transit twenty-year plan member or was a transit police member, correction member, housing police member or member of the uniformed force of the department of sanitation (as defined in subdivision a of section 13-160 of this chapter) whose minimum period for service retirement at such time of termination was twenty years.

49. (a) "Certified employee organization acting as list representative" shall mean the public employee organization, if any recognized or certified as hereinafter provided in this subdivision as authorized to act with respect to all members of the retirement system who are in city-service in career pension plan positions, as their exclusive bargaining representative solely for the purpose of making objections with regard to the list of physically taxing positions pursuant to subdivision l of section 13-162 of this chapter, relating to the career pension plan.

(b) Any public employee organization recognized or certified by the department of labor of the city, immediately prior to September first, nineteen hundred sixty-seven, as the exclusive bargaining representative, with respect to pensions, of all members of the retirement system in city-service in career pension plan positions, shall be the public employee organization recognized as authorized to act pursuant to paragraph (a) of this subdivision, unless such recognition has been or is revoked by the board of certification on the grounds specified in paragraph (c) of this subdivision.

(c) The board of certification shall have power:

(1) to terminate the recognition of any public employee organization recognized as provided in paragraph (b) of this subdivision; or

(2) to decertify as exclusive bargaining representative for the purpose specified in paragraph (a) of this subdivision, any public employee organization certified pursuant to paragraph (d) of this subdivision; in any case where such board finds by secret-ballot election that such organization is no longer the majority representative of such members of the retirement system in career pension plan positions or that such organization discriminates with regard to the terms or conditions of membership because of race, color, creed or national origin.

(d) In the event that the recognition of a public employee organization recognized pursuant to paragraph (b) of this subdivision is terminated pursuant to paragraph (c) of this subdivision, or if there is no public employee organization so recognized, the board of certification shall have power:

(1) to determine with respect to all members of the retirement system who are in city-service in career pension plan positions, their exclusive bargaining representative solely for the purpose of making objections pursuant to subdivision 1 of section 13-162 of this chapter, by conducting secret-ballot elections or by utilizing any other appropriate and suitable method designed to ascertain the free choice of a majority of such members; and

(2) to certify such organization as the exclusive bargaining representative of such members, solely for such purpose; and

(3) to determine the length of time during which such certification shall remain in effect and free from challenge or attack.

(e) The board of certification, for the purpose of effectuating its powers under this subdivision, shall have power to hold hearings, to compel the attendance and testimony of witnesses and the production of documents and to adopt rules and regulations.

50. "Discontinued member" shall mean a fifty-five-year-increased-service-fraction member who has discontinued city-service and has a vested right to a deferred retirement allowance under the provisions of section 13-173 of this chapter.

*3 50-a. "Discontinued sanitation member." A sanitation member (as defined in subdivision sixty-four of this section) who has discontinued city-service as such a member and has a vested right to a deferred retirement allowance under section 13-173.1 of the code.

51. "Fifty-five-year-increased-service-fraction member" shall mean a member of the retirement system (a) whose minimum age for service retirement is fifty-five years and (b) whose service-fractions are as set forth in paragraph seven of subdivision a of section 13-172 of this chapter and (c) who, upon retirement for service, is entitled to a pension as provided for in such paragraph.

52. "Fifty-five-year-one-per-centum member" shall mean a member of the retirement system (a) whose minimum age for service retirement is fifty-five years and (b) whose service-fraction is set forth in paragraph six of subdivision a of section 13-172 of this chapter and (c) who, upon retirement for service, is entitled to a pension as provided for in such paragraph.

53. "Initial date of retirement allowance payability", except as otherwise provided in this chapter with respect to a transit twenty-year plan member, shall mean the earliest date as of which a member's retirement allowance may be caused by such member to commence under the provisions of section 13-162 of this chapter, relating to the career pension plan.

54. "List administrator" shall mean an officer or employee of the city designated by the mayor by executive order, pursuant to paragraph one of subdivision l of section 13-162 of this chapter, to perform the functions prescribed by such subdivision with respect to promulgation and maintenance of the official list of physically taxing positions.

55. "Official list of physically taxing positions" shall mean the list of positions promulgated and maintained by the list administrator pursuant to subdivision 1 of section 13-162 of this chapter, relating to the career pension plan.

56. "Physically taxing position" shall mean any position the title of which is included in the official list of physically taxing positions promulgated and maintained pursuant to subdivision l of section 13-162 of this chapter, relating to the career pension plan.

57. "Public employee organization" shall mean any organization or association of public employees, a primary purpose of which is to represent public employees concerning wages, hours and working conditions.

58. (a) Except as otherwise provided in paragraph six of subdivision e of section 13-638.4 of this title, "three-year-average compensation" shall mean the average annual compensation earnable by a career pension plan member or by a fifty-five-year-increased-service-fraction member or by a discontinued member for city-service during any three years of the city-service of such member designated in a written application duly executed and filed with the board by such member (1) prior to the effective date of his or her retirement in the case of a career pension plan member or a fifty-five-year-increased-service-fraction member, or (2) at the time when he or she files an application for payment of his or her retirement allowance pursuant to subdivision b of section 13-173 of this chapter, in the case of a discontinued member.

(b) Subject to the provisions of paragraph (1) of subdivision four of section 13-151 of this chapter, the filing of such application pursuant to this subdivision shall constitute an election by any such member entitled to a pension under subparagraph (b) of paragraph three of subdivision e of section 13-162 of this chapter, relating to the career pension plan, or under subparagraph (b) of paragraph three of subdivision g of section 13-162 of this chapter or under subparagraph (b) of paragraph four of such subdivision g of such section, or under paragraph seven of subdivision a of section 13-172 of this chapter or under section 13-173 of this chapter, or under subdivision c of section 13-174 of this chapter, as the case may be, that such pension shall be computed on the basis of such average annual compensation pursuant to the applicable terms of such provisions.

59. "Transit authority" shall mean the New York city transit authority.

59-a. "Transit authority member" shall mean any member of the New York city employees retirement system employed by the New York city transit authority, excluding members of the New York city transit authority uniformed police force.

60. "Transit operating position" shall mean any position in the rapid transit railroad service, as classified by the city civil service commission, and any of the positions bearing the following titles: General Superintendent, General Superintendent (Surface), Assistant General Superintendent (Buses and Shops), Assistant General Superintendent (Cars and Shops), Assistant General Superintendent (Maintenance of Way), Assistant General Superintendent (Power), Assistant General Superintendent (Rapid Transit Operations), Assistant General Superintendent (Surface Transportation), Superintendent (Buses and Shops), Superintendent (Cars and Shops), Superintendent (Maintenance of Way), Superintendent (Power), Superintendent (Signals), Superintendent (Stations), Superintendent (Surface Transportation), Superintendent (Track and Structures), Superintendent (Transportation), Senior Superintendent (Stations), Special Inspector, Director of Special Inspections.

61. "Transit twenty-year plan member" shall mean a member who has elected the benefits of section 13-161 of this chapter, relating to an optional plan of retirement for certain employees of the transit authority, pursuant to the terms of such section and to whom the provisions of such section are applicable.

62. "Uniformed force of the department of sanitation". The body of positions in the department of sanitation of the city bearing the titles of sanitation worker, assistant foreman, foreman, district superintendent, senior superintendent, supervising superintendent, principal superintendent, city superintendent, director of operations and general superintendent.

63. "Board" shall mean the board of trustees provided for in section 13-103 of this chapter.

64. "Sanitation member". A member who holds a position in the uniformed force of the department of sanitation.

65. "Sanitation worker". A person holding the position of sanitation worker in the sanitation service of the classification of the commissioner of citywide administrative services.

66. "Member subject to certain police pension fund, subchapter two, provisions." A transit police member, as defined in subdivision thirty-two of this section, or a correction member, as defined in subdivision forty of this section or a housing police member, as defined in subdivision thirty-six of this section who, pursuant to the provisions of paragraph two of subdivision j of section 13-157 of this chapter in the case of a transit police member, or the provisions of paragraph two of subdivision i of section 13-155 of this chapter in the case of a correction member, or the provisions of paragraph two of subdivision i of section 13-156 of this chapter in the case of a housing police member, is entitled and subject to the same rights, benefits, privileges and obligations as a member of the police pension fund maintained pursuant to subchapter two of chapter two of this title, with respect to the matters provided for in the sections of such subchapter two specified in paragraph two of subdivision j or i of such sections, as the case may be.

67. "Authorized representative". The husband or wife of an incompetent member or incompetent beneficiary, or if there be no husband or wife of such an incompetent, the committee of his or her estate.

68. "Supplementary interest". An annual allowance, in addition to regular interest, of interest on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this chapter (excluding, however, the annuity savings fund and the amount of reserve-for-increased-take-home-pay in the contingent reserve fund), which allowance, (a) for each of the periods as to which the provisions of section 13-135 of this chapter or section 13-638.2 of this title grant supplementary interest, consists of the amount prescribed by such provisions for such period and (b) for each such period, is credited in such applicable amount to such funds at the time, in the manner, to the extent and subject to the exclusions prescribed by the provisions of such section.

*4 69. "Actuarial equivalent benefit." Any benefit which by law is required to be an actuarial equivalent or by law is required to be determined on the basis of an actuarial equivalent.

*70. "Seven percent member for actuarial equivalent benefit purposes." (a) A member who meets all of the conditions stated below in this paragraph (a):

(i) subparagraph (i) of paragraph (g) of subdivision twelve of this section (relating to the definition of members as to whom regular interest at seven per centum per annum, compounded annually, applies) applies to such member; and

(ii) an actuarial equivalent benefit has become payable to or on account of such member; and

(iii) it is provided by a resolution adopted by the board (A) that a mortality table which does not differentiate on the basis of sex shall be used to calculate such actuarial equivalent benefit or a portion of such benefit, or (B) that the modified Option 1 pension computation formula (as defined in subdivision seventy-seven of this section) shall be used to calculate such actuarial equivalent benefit.

(b) Except in cases to which the modified Option 1 pension computation formula applies pursuant to a resolution adopted by the board, nothing contained in subparagraph (iii) of paragraph (a) of this subdivision shall be construed as referring to or including any calculation of an actuarial equivalent benefit (or portion of such benefit) payable to any person where such calculation is required by board resolution to be made through the use of a sex-differentiated mortality table.

*71. "Tier I member." A member whose benefits (other than a supplemental retirement allowance) are prescribed by this chapter and who is not subject to the provisions of article eleven, article fourteen or article fifteen of the retirement and social security law.

*72. "Tier II member." A member who is subject to the provisions of article eleven of the retirement and social security law.

*73. "Tier III member." A member who is subject to the provisions of article fourteen of the retirement and social security law.

*74. "Tier IV member." A member who is subject to the provisions of article fifteen of the retirement and social security law.

*75. "Tier III member entitled to a vested benefit." A Tier III member who is entitled to a deferred vested benefit under the provisions of section five hundred sixteen of the retirement and social security law.

*76. "Tier IV member entitled to a vested benefit." A Tier IV member who is entitled to a deferred vested benefit under the provisions of section six hundred twelve of the retirement and social security law.

*5 77. "Modified Option 1 pension computation formula." (a) The method of computing the Option 1 pension component of a retirement allowance payable to a Tier I member, and the amount of the Option 1 benefit payable to the beneficiary or estate of such member who selected or selects (or is deemed to have selected) Option 1 as to such pension component, which method of computation is as prescribed by the succeeding paragraphs of this subdivision.

(b) The initial reserve for such pension component shall be computed through use of mortality tables which do not differentiate on the basis of sex (hereinafter referred to as "gender-neutral mortality tables") and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually.

(c) Solely for the purpose of use as the minuend from which the payments of such pension component to such member are subtracted in order to determine the amount of the Option 1 benefit payable, upon such member's death, to such member's beneficiary or estate by reason of such Option 1 selection in relation to such pension component, the present value of such member's maximum pension, as it was at the time of such member's retirement, shall be deemed to be the greatest of:

(i) such present value determined on the basis of gender-neutral mortality tables and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually; or

(ii) such present value determined on the basis of the female mortality tables and the regular interest applicable to such member in effect immediately prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this subdivision; or

(iii) such present value determined on the basis of the male mortality tables and the regular interest applicable to such member in effect immediately prior to the date of enactment of this subdivision.

(d) The pension component payable to such member shall be computed on the basis of gender-neutral mortality tables and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually, so that:

(i) the present value, as it was at the time of such member's retirement, of such component; plus

(ii) the present value, as it was at the time of such member's retirement, of the amount payable to such member's Option 1 beneficiary or estate upon the death of the member as provided for by the applicable provisions of paragraph (e) of this subdivision;

shall be equal to the Option 1 initial reserve determined for such pension component with respect to such member pursuant to the provisions of paragraph (b) of this subdivision.

(e) (i) Where such member dies before he or she has received payments on account of such pension component equal to the present value of such member's maximum pension as computed pur- suant to paragraph (c) of this subdivision, the Option 1 benefit payable to the beneficiary or estate of such deceased member, by reason of such Option 1 selection in relation to such pension component, shall be the remainder obtained by subtracting from such present value determined pursuant to such paragraph (c) in relation to such pension component, the total of such Option 1 payments on account of such pension component received by or payable to such member for the period prior to his or her death.

(ii) In any case where any Option 1 beneficiary's benefit referred to in subparagraph (i) of this paragraph (e) is payable to such beneficiary in the form of an annuity payable in installments, such annuity shall be computed to be the greatest of the following three annuities calculated for such beneficiary:

(A) such annuity calculated on the basis of gender-neutral mortality tables and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually; or

(B) such annuity calculated on the basis of the female mortality tables applicable to such annuities and the regular interest applicable to such member in effect immediately prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this subdivision; or

(C) such annuity calculated on the basis of the male mortality tables applicable to such annuities and the regular interest applicable to such member in effect immediately prior to the date of enactment of this subdivision.

(f) In relation to the Option 1 benefits determined pursuant to the method of computation set forth in this subdivision by reason of discontinuance of city-service by a discontinued member or discontinued sanitation member, the phrase "time of such member's retirement", as set forth in paragraphs (c) and (d) of this subdivision, shall be deemed, for the purposes of this subdivision, to mean the date of commencement of the retirement allowance of such discontinued member or discontinued sanitation member.

*10 78. "Selection of mode of benefit." The choice made by a member (as permitted by and pursuant to the requirements of law governing such choice by such member) as to whether the maximum amount of his or her retirement allowance or a component thereof shall be payable or such retirement allowance or a component thereof shall be payable under an option selected by the member. The term "selection of mode of benefit" shall include a case where the maximum retirement allowance or a maximum component thereof becomes payable because of a member's omission, within the time permitted by law, to select the maximum benefit or an option.

*6 79. "Best-of-three-computations method." (a) A method (as prescribed by a resolution of the board) under which a retirement allowance (or portion thereof) payable to a member is required to be determined for such member so as to be the greatest of:

(i) such retirement allowance (or portion thereof) determined on the basis of gender-neutral mortality tables and regular interest at the rate of seven per centum per annum; or

(ii) such retirement allowance (or portion thereof) determined on the basis of female mortality tables and the regular interest applicable to such member as of a time prescribed in such resolution; or

(iii) such retirement allowance (or portion thereof) determined on the basis of male mortality tables and the regular interest applicable to such member as of a time prescribed in such resolution.

(b) Where, under the provisions of any such resolution of the board, the modified Option 1 pension computation

formula (as defined in subdivision seventy-seven of this section) applies to any member, the term, "best-of-three-computations method," where used in relation to such member, shall be deemed to include such modified Option 1 pension computation formula, to the extent that such formula governs the determination of the pension component (or portion thereof) of such member's retirement allowance.

*80. "Person entitled to a recomputation of benefits pursuant to the best-of-three-computations method". Any person who meets all of the conditions stated below in this subdivision:

(a) such person, during the period beginning on August first, nineteen hundred eighty-three and ending on the date next preceding the date of enactment (as such date is certified pursuant to section forty-one of the legislative law) of this subdivision, (i) retired for service or superannuation or for ordinary or accident disability or pursuant to section 13-150 of the code, or (ii) discontinued city-service so as to become a discontinued member or a discontinued sanitation member, or (iii) terminated employment so as to become a Tier III member entitled to a vested benefit or a Tier IV member entitled to a vested benefit; and

(b) such person's retirement allowance (or portion thereof), by reason of such retirement or discontinuance of city-service or termination of employment, is required by a resolution adopted by the board to be redetermined pursuant to the best-of-three-computations method (as defined in subdivision seventy-nine of this section); and

(c) a first payment (if such person, at the time of retirement, discontinuance of city-service or termination of employment, was a Tier I member, Tier II member or Tier III member) on account of his or her retirement allowance (as such retirement allowance was determined prior to the date of enactment of this subdivision) was made prior to such date of enactment; or (if such person, at the time of retirement, or termination of employment, was a Tier IV member), his or her effective date of retirement occurred prior to the date of enactment of this subdivision.

*7 81. "Joint and survivor option." (a) Any option under which, at the time when such option is selected, a choice is made which includes both:

(i) a benefit payable for the lifetime of the retired or vested member by whom or in whose behalf such option is selected; and

(ii) a benefit (A) which consists of an amount equal to or constituting a percentage of such retired or vested member's benefit and (B) which is payable for the lifetime of a designated beneficiary selected at the time when such option is selected.

(b) In any case where an option described in paragraph (a) of this subdivision includes a provision prescribing that if the designated beneficiary predeceases such retired or vested member, a maximum benefit shall become payable to such member, such option shall nevertheless be deemed to be a joint and survivor option.

82. "Transit police officer's variable supplements fund". The transit police officer's variable supplements fund established by section 13-191 of this chapter.

83. "Transit police superior officers' variable supplements fund". The transit police superior officers' variable supplements fund established by section 13-192 of this chapter.

84. "Transit police superior officer". Any member of the uniformed transit police force who (a) holds the position of sergeant or any position of higher rank in such force, or (b) is a detective.

82. "Housing police officer's variable supplements fund". The housing police officer's variable supplements fund established by section 13-191 of this chapter.

83. "Housing police superior officers' variable supplements fund". The housing police superior officers' variable

supplements fund established by section 13-192 of this chapter.

84. "Housing police superior officer". Any member of the uniformed housing police force who (a) holds the position of sergeant or any position of higher rank in such force, or (b) is a detective.

85. "Uniformed force member." A member of the retirement system who:

(a) is a member of the uniformed transit police force (as defined in subdivision thirty-one of this section); or

(b) is a member of the uniformed correction force (as defined in subdivision thirty-nine of this section); or

(c) holds a position in the housing police service (as defined in subdivision thirty-five of this section); or

(d) is a member of the uniformed force of the department of sanitation (as defined in subdivision sixty-two of this section).

86. "Normal rate of contribution as a uniformed force member." (a) In the case of a uniformed force member (as defined in subdivision eighty-five of this section) (1) who is a member of the uniformed transit police force or (2) who is a member of the uniformed correction force and is not a Tier III member (as defined in subdivision seventy-three of this section) or (3) who holds a position in the housing police service, the term "normal rate of contribution as a uniformed force member" shall mean the proportion of such member's earnable compensation required to be deducted from his or her compensation by the applicable provisions of sections 13-155, 13-156 and 13-157 of this chapter and section 13-225 of the code, as his or her member contributions, exclusive of any increase in such contributions resulting from an election by such member pursuant to law to effect such an increase, or any decrease in such contributions on account of any program for increased-take-home-pay or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law (relating to election to decrease member contributions by contributions due on account of social security coverage).

(b) In the case of a uniformed force member who is a member of the uniformed force of the department of sanitation and is not a Tier IV member (as defined in subdivision seventy-six of this section), the term "normal rate of contribution as a uniformed force member" shall mean the proportion of such member's earnable compensation required to be deducted from his or her compensation by the applicable provisions of sections 13-125, 13-154, 13-159 and 13-160 of this chapter as his or her member contributions, exclusive of any increase in such contributions pursuant to subdivision d, e, or f of section 13-125 of this chapter, or any decrease in such contributions on account of any program for increased-take-home-pay or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law (relating to election to decrease member contributions by contributions due on account of social security coverage).

(c) In the case of any uniformed force member who is both a member of the uniformed correction force and a Tier III member, the term "normal rate of contribution as a uniformed force member" shall mean the percentage of the annual wages of such member required to be deducted from such member's wages by subdivision a of section five hundred seventeen of the retirement and social security law, as his or her member contributions.

(d) In the case of any uniformed force member who is both a member of the uniformed force of the department of sanitation and a Tier IV member, the term "normal rate of contribution as a uniformed force member" shall mean the percentage of the annual wages of such member required to be deducted from such member's wages by subdivision a of section six hundred thirteen of the retirement and social security law, as his or her member contributions.

87. "Contributing uniformed force member". With respect to any payroll period as to which the status of a uniformed force member as to required member contributions is to be determined, the term "contributing uniformed force member" shall mean any uniformed force member other than:

(a) a uniformed force member who, not being a Tier III member (as defined in subdivision seventy-three of this section) or a Tier IV member (as defined in subdivision seventy-six of this section), is not required to contribute during such payroll period because of his or her currently effective election to discontinue member contributions (i) pursuant to subdivision b of section 13-225 of the code and paragraph two of subdivision i of section 13-155 of this chapter or paragraph two of subdivision i of section 13-156 of this chapter or paragraph two of subdivision j of section 13-157 of this chapter or (ii) pursuant to subdivision c of section 13-125 of this chapter; and

(b) a uniformed force member who is not required to contribute during such payroll period because he or she is a Tier III member who, having contributed for thirty years, has discontinued member contributions pursuant to subdivision a of section five hundred seventeen of the retirement and social security law.

88. "Uniformed force employer." (a) Where used in relation to a uniformed force member (as defined in subdivision eighty-five of this section) who is a member of the uniformed correction force (as defined in subdivision thirty-nine of this section) or a member of the uniformed force of the department of sanitation (as defined in subdivision sixty-two of this section), the term "uniformed force employer" shall mean the city.

(b) Where used in relation to a uniformed force member who is a member of the uniformed transit police force (as defined in subdivision thirty-one of this section), the term "uniformed force employer" shall mean the New York city transit authority.

(c) Where used in relation to a uniformed force member who holds a position in the housing police service (as defined in subdivision thirty-five of this section), the term "uniformed force employer" shall mean the New York city housing authority.

89. "Uniformed force member contributions eligible for pick up by the employer." (a) With respect to any payroll period for a contributing uniformed force member (as defined in subdivision eighty-seven of this section) the term "uniformed force member contributions eligible for pick up by the employer" shall have the meanings set forth in the applicable provisions of the succeeding paragraphs of this subdivision eighty-nine.

(b) In the case of any contributing uniformed force member, other than any such member who is a Tier III member (as defined in subdivision seventy-three of this section) or a Tier IV member (as defined in subdivision seventy-six of this section), the term "uniformed force member contributions eligible for pick up by the employer" shall mean the amount of member contributions which, in the absence of a pick up program applicable to such member pursuant to section 13-125.1 of this chapter (providing for pick up of required member contributions of certain contributing uniformed force members) would be required by law to be deducted, on account of such member's normal rate of contribution as a uniformed force member (as defined in subdivision eighty-six of this section), from the compensation of such member for such payroll period, after (1) giving effect to any reduction in such contributions required under any program for increased-take-home-pay or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law and (2) excluding any deductions from such compensation (or redeposits, restorations or payments) on account of (i) loans or withdrawal of excess contributions or (ii) any election by any such member, pursuant to any applicable provision of law, to increase his or her member contributions above the level prescribed by his or her normal rate of contribution as a uniformed force member or (iii) any other cause not attributable to the member's normal rate of contribution as a uniformed force member after reduction in such rate, if any, as described in subparagraph one of this paragraph (b).

(c) In the case of any contributing uniformed force member who is both (1) a member of the uniformed correction force (as defined in subdivision thirty-nine of this section) and (2) a Tier III member (as defined in subdivision seventy-three of this section), the term "uniformed force member contributions eligible for pick up by the employer" shall mean the amount which, in the absence of a pick up program applicable to such member pursuant to section 13-125.1 of this chapter, would be required to be deducted from the wages of such member for such payroll period pursuant to subdivision a of section five hundred seventeen of the retirement and social security law as his or her

required member contributions for such payroll period.

(d) In the case of any contributing uniformed force member who is both (1) a member of the uniformed force of the department of sanitation (as defined in subdivision sixty-two of this section) and (2) a Tier IV member (as defined in subdivision seventy-six of this section), the term "uniformed force member contributions eligible for pick up by the employer" shall mean the amount which, in the absence of a pick up program applicable to such member pursuant to section 13-125.1 of this chapter, would be required to be deducted from the wages of such member for such payroll period pursuant to subdivision a of section six hundred thirteen of the retirement and social security law as his or her required member contributions for such payroll period.

(e) If no deductions on account of any uniformed force member's normal rate of contribution as a uniformed force member are required by law to be made from the compensation of such member for any payroll period, such member shall not have, for such payroll period, any uniformed force member contributions eligible for pick up by the employer. The amount of uniformed force member contributions eligible for pick up by the employer of any uniformed force member for any payroll period shall be determined solely on the basis of compensation paid to such member for such payroll period by his or her public employer. A uniformed force member shall not have any uniformed force member contributions eligible for pick up by the employer with respect to any payroll period for which he or she is not paid compensation by his or her public employer.

90. "Starting date for pick up." (a) With respect to uniformed force members, such term shall mean the first day of the first whole payroll period commencing after the date which is three months after the internal revenue service shall have issued a ruling that member contributions picked up pursuant to section 13-125.1 of this chapter are not includible as gross income for federal income tax purposes until distributed or made available.

(b) With respect to Tier I and Tier II non-uniformed-force members, such term shall mean the first day of the first whole payroll period commencing after the date which is sixty days after the internal revenue service shall have issued a ruling that member contributions picked up pursuant to section 13-125.2 of this chapter are not includible as gross income for federal income tax purposes until distributed or made available.

91. "Tier I or Tier II non-uniformed-force member." Any member of the retirement system who both (a) is a Tier I member or a Tier II member and (b) is not a uniformed force member (as defined in subdivision eighty-five of this section).

92. "Basic rate of contribution as a Tier I or Tier II non-uniformed-force member." (a) Subject to the provisions of paragraph (b) of this subdivision, the term "basic rate of contribution as a Tier I or Tier II non-uniformed-force member" shall mean the proportion of the earnable compensation of each Tier I or Tier II non-uniformed-force member required by the applicable provisions of section 13-125 of this chapter and any other applicable provisions thereof to be deducted from the compensation of such member as his or her required member contributions, exclusive of any increase in such contributions resulting from any election by such member pursuant to law to effect such an increase or any decrease in such contributions on account of any program for increased-take-home-pay or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law (relating to election to decrease member contributions by contributions due on account of social security coverage).

(b) In any case where a Tier I or Tier II non-uniformed-force member who is a fifty-five-year-increased-service-fraction member (as defined in subdivision fifty-one of this section) has elected or elects pursuant to subdivision i of section 13-125 of this chapter to contribute to the retirement system at a rate one per centum less than such member's normal rate of contribution, such member's basic rate of contribution as a Tier I or Tier II non-uniformed-force member, during any period wherein such election is in effect, shall be one per centum less than such member's normal rate of contribution as a fifty-five-year-increased-service-fraction member. In any case where any such member elects pursuant to such subdivision i to discontinue such reduction, such election to discontinue shall not be deemed, for the purposes of subdivision ninety-five of this section, to be an election to increase member

contributions above the level prescribed by the member's basic rate of contribution as a Tier I or Tier II non-uniformed-force member and upon such discontinuance, such member's basic rate of contribution as a Tier I or Tier II non-uniformed-force member shall be such member's normal rate of contribution as a fifty-five-year-increased-service-fraction member.

93. "Contributing Tier I or Tier II non-uniformed-force member." With respect to any payroll peeriod as to which the status of a Tier I or Tier II non-uniformed-force member as to required member contributions is to be determined, the term "contributing Tier I or Tier II non-uniformed-force member" shall mean any Tier I or Tier II non-uniformed-force member other than:

(a) a Tier I or Tier II non-uniformed-force member who is not required to contribute during such payroll period because of his or her then currently effective election, pursuant to subdivision c of section 13-125 of this chapter or subdivision c-1 or subdivision c-2 of such section, not to contribute; and

(b) a Tier I or Tier II non-uniformed-force member who is not required to contribute during such payroll period because such member has been relieved of making member contributions pursuant to the provisions of subdivision 1 of section 13-161 of this chapter.

94. "Employer responsible for pick up." The public employer by whom a Tier I or Tier II non-uniformed-force member is employed.

95. "Tier I or Tier II non-uniformed-force member contributions eligible for pick up by the employer." (a) With respect to any payroll period for a contributing Tier I or Tier II non-uniformed-force member (as defined in subdivision ninety-three of this section), the term "Tier I or Tier II non-uniformed-force member contributions eligible for pick up by the employer" shall mean the amount of member contributions which, in the absence of a pick up program applicable to such member pursuant to section 13-125.2 of this chapter (providing for pick up of required member contributions of certain contributing Tier I or Tier II non-uniformed-force members) would be required by law to be deducted, on account of such member's basic rate of contribution as a Tier I or Tier II non-uniformed-force member (as defined in subdivision ninety-two of this section), from the compensation of such member for such payroll period, after (1) giving effect to any reduction in such contributions required under any program for increased-take-home-pay or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law and (2) excluding any deductions from such compensation (or redeposits, restorations or payments) on account of (i) loans or withdrawal of excess contributions or (ii) any election by any such member, pursuant to any applicable provision of law, to increase his or her member contributions above the level prescribed by his or her basic rate of contributions as a non-uniformed-force member or (iii) any election by any such member who is a transit twenty-year plan member to purchase additional annuity pursuant to paragraph ten of subdivision 1 of section 13-161 of this chapter or (iv) any other cause not attributable to the member's basic rate of contribution as a Tier I or Tier II non-uniformed-force member after reduction in such rate, if any, as described in subparagraph one of this paragraph. The term "Tier I or Tier II member contributions eligible for pick up by the employer" shall also mean the contributions made by a member pursuant to the terms of an irrevocable payroll deduction agreement for the purchase of credit for prior service or military service pursuant to subdivision one-a of section 13-108 of this title or subdivision b-1 of section four hundred forty-six of the retirement and social security law, provided, however, that contributions picked up for the purchase of credit for military service shall be deposited in the employer contribution account in accordance with the provisions of subdivision four of section one thousand of the retirement and social security law.

(b) In any case where during any payroll peeriod for a Tier I or Tier II non-uniformed-force meember, there is in effect an election by such member pursuant to subdivision 1 of section 13-125 of this chapter to contribute at a rate one per centum less than such member's normal rate of contribution, then for the purposes of this subdivision and of section 13-125.2 of this chapter, such reduced rate of contribution, notwithstanding any provision of law to the contrary, shall, with respect to such payroll period, be deemed to be and treated as such member's basic rate of contribution as a Tier I or Tier II non-uniformed-force member.

(c) If no deductions on account of the basic rate of contribution as a Tier I or Tier II non-uniformed-force member are required by law to be made from the compensation of such member for any payroll period, such member shall not have, for such payroll period, any such Tier I or Tier II non-uniformed-force member contributions eligible for pick up by the employer; provided, however, that member contributions required pursuant to an irrevocable payroll deduction agreement for the purchase of prior service credit or military service credit for such payroll period shall be eligible for pick up by the employer. Except as otherwise provided pursuant to the terms of an irrevocable payroll deduction agreement for the purchase of prior service credit or military service credit, provided, however, that contributions picked up for the purchase of credit for military service shall be deposited in the employer contribution account in accordance with the provisions of subdivision four of section one thousand of the retirement and social security law, the terms of an irrevocable payroll deduction agreement for the purchase of prior service credit or military service credit, the amount of Tier I or Tier II non-uniformed-force member contributions eligible for pick up by the employer of any Tier I or Tier II non-uniformed-force member for any payroll period shall be determined solely on the basis of the compensation which would have been paid to such member for such payroll period by his or her public employer in the absence of a pick up program applicable to such member pursuant to section 13-125.2 of this chapter. A Tier I or Tier II non-uniformed-force member shall not have any Tier I or Tier II non-uniformed-force member contributions eligible for pick up by the employer with respect to any payroll period for which he or she is not paid compensation by his or her public employer.

96. "Correction officers variable supplements fund." The correction officers' variable supplements fund established by section 13-194 of this chapter.

97. Repealed.

98. Repealed.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. 3 par b amended chap 16/1997 § 5, eff. Mar. 5, 1997

Subd. 3 par b amended chap 609/1995 § 2, eff. Aug. 8, 1995

Subd. 3 par b amended chap 738/1988 § 2

Subd. 9 amended chap 749/1992 § 1 eff. July 31, 1992

Subd. 12 par (c) subpar (iii) amended chap 581/1989 § 1 subpar (iv) added chap 581/1989 § 2

Subd. 12 par (d) amended chap 878/1990 § 1 eff. July 25, 1990 retroactive to July 1, 1990

Subd. 12 par (f) subpar (ii) amended chap 878/1990 § 2 eff. July 25, 1990 retroactive to July 1, 1989

Subds. 29, 30 amended chap 878/1990 § 3 eff. July 25, 1990

retroactive to July 1, 1989.

Subd. 46 amended chap 374/1993 § 1 eff. July 21, 1993

Subd. 58 par (a) amended chap 749/1992 § 2 eff. July 31, 1992

Subd. 59-a added chap 529/1994 § 3, eff. July 26, 1994

Subd. 65 amended L.L. 59/1996 § 68, eff. Aug. 8, 1996

Subd. 68 amended chap 878/1990 § 3 eff. July 25, 1990

retroactive to July 1, 1989.

Subds. 82, 83, 84 added chap 844/1987 § 1 (laid out first)

Subds. 82, 83, 84 added chap 846/1987 § 1 (laid out second)

Subds. 85-89 added chap 114/1989 § 5

Subd. 90 amended chap 681/1992 § 1 eff. July 31, 1992 added ch. 114/1989 § 5

Subds. 91-95 added chap 681/1992 § 2 eff. July 31, 1992

Subd. 95 par (a) amended chap 627/2007 § 11, approved Aug. 28, 2007

eff. upon compliance with chap 627/2007 § 22. [See Note 1]

Subd. 95 par (c) amended chap 627/2007 § 11, approved Aug. 28, 2007

eff. upon compliance with chap 627/2007 § 22. [See Note 1]

Subd. 96 added chap 657/1999 § 1, eff. Dec. 29, 1999.

Subd. 97 repealed chap 255/2000 § 1, eff. Aug. 16, 2000 and deemed in

force and effect on and after Dec. 29, 1999.

Subd. 97 added chap 657/1999 § 1, eff. Dec. 29, 1999.

Subd. 98 repealed chap 255/2000 § 1, eff. Aug. 16, 2000 and deemed in

force and effect on and after Dec. 29, 1999.

Subd. 98 added chap 657/1999 § 1, eff. Dec. 29, 1999.

**DERIVATION**

Formerly § B3-1.0 added chap 929/1937 § 1

Sub 3 par b amended chap 919/1939 § 1

Sub 9 amended chap 707/1945 § 1

Sub 12 amended chap 626/1947 § 1

Sub 3 par a amended chap 462/1951 § 2

Sub 9 amended chap 675/1955 § 1

Subs 19-27 added chap 509/1960 § 2

Sub 15 amended chap 509/1960 § 3

Subs 19, 20 amended chap 787/1962 § 4

Sub 21-a added chap 787/1962 § 5

Subs 26, 27 amended chap 787/1962 § 6

Sub 3 par a amended chap 100/1963 § 32

Sub 3 par b amended chap 100/1963 § 33

Sub 20 amended chap 518/1963 § 4

Sub 26 amended chap 518/1963 § 5

Sub 11 amended chap 720/1964 § 1

Sub 20 amended chap 720/1964 § 2

Subs 28, 29 added chap 720/1964 §§ 3, 4

Subs 28-31 added chap 954/1964 § 1

Subs 28-31 added chap 969/1964 § 1

Subs 28-31 added chap 971/1964 § 1

Sub 12 amended chap 575/1967 § 1

Subs 32, 32-a, 33-43, 43-a, 44-47 added chap 821/1968 § 1

Sub 10 amended chap 821/1968 § 2

Subs 48, 49, 50 added chap 331/1969 § 1

Sub 35 amended chap 817/1969 § 1

Sub 35-a added chap 817/1969 § 1-a

Sub 44 par b amended chap 817/1969 § 2

Sub 48 added chap 866/1969 § 3

Subs 48, 49 added chap 986/1969 § 1

Subs 11, 15 amended chap 870/1970 § 1

Subs 51, 52, 53, 54 added chap 977/1970 § 1

Sub 3 par b amended chap 551/1971 § 7

Subs 21, 27 amended chap 615/1971 § 19

Subs 51, 52 repealed chap 903/1971 § 1

Sub 3 par b amended chap 1013/1971 § 3

Sub 3 par b amended chap 576/1972 § 5

Sub 21 amended chap 921/1972 § 1

Sub 48 amended chap 511/1973 § 2

Sub 3 par b amended chap 816/1973 § 2

Sub 3 par b amended chap 924/1973 § 11

Sub 3 par b amended chap 925/1973 § 3

Sub 12 amended chap 976/1977 § 1

Sub 28 amended chap 977/1977 § 1

Sub 12 pars c, d, e, f amended chap 957/1981 § 34

Sub 29 amended chap 957/1981 § 42

Sub 55 added chap 957/1981 § 43

Sub 12 pars c, d, f amended chap 914/1982 § 1

Sub 12 par a amended chap 910/1985 § 1

Sub 12 par f subpar i amended chap 910/1985 § 2

Subs 37-a, 56-68 added chap 910/1985 § 3

Sub 12 par g added chap 910/1985 § 4

Sub 12 par c subpar iii amended chap 911/1985 § 1

Sub 12 par d amended chap 911/1985 § 2

Sub 12 par e amended chap 911/1985 § 3

**NOTE**

1. Provisions of chap 627/2007:

§ 21. Nothing contained in this act shall be construed to create any contractual right with respect to members and employees to which it applies. The provisions of this act are intended to afford members and employees the advantages of certain benefits contained in the Internal Revenue Code, and the effectiveness and existence of this act and the benefits it confers are completely contingent thereon.

§ 22. This act shall take effect at the beginning of the first payroll period following sixty days after at least one of the retirement systems covered by this act shall receive an Internal Revenue Service ruling stating that the employee contributions covered by this act are not includible in the gross income of the employee until distributed or made available to the employee and shall remain in full force and effect only as long as such treatment of such employee contributions is authorized pursuant to the provisions of the Internal Revenue Code; provided that the chief executive officer of one such public retirement system covered by this act shall notify the legislative bill drafting commission upon the occurrence of such ruling and upon any change in the provisions of the Internal Revenue Code affecting the

provisions of this act in order that the commission may maintain an accurate and timely effective database of the official text of the laws of the state of New York in furtherance of effecting the provisions of section 44 of the legislative law and section 70-b of the public officers law; provided, further that the amendments made to subdivision f of section 517 of the retirement and social security law by section five of this act and subdivision d of section 613 of the retirement and social security law by section seven of this act shall not affect the expiration of such subdivisions as provided in chapter 782 of the laws of 1988, as amended; provided further, however, that the amendments to sections 513, 517, 609 and 613 of the retirement and social security law made by sections four, five, six and seven of this act shall expire on the same date as such sections expire pursuant to section 615 of such law; and the amendments to subdivision 19 of section 2575 of the education law made by sections nine and ten of this act and the amendments to paragraphs (a) and (c) of subdivision 95 of section 13-101 of the administrative code of the city of New York made by section eleven of this act and the amendments to subdivision a of section 13-125.2 of the administrative code of the city of New York made by section thirteen of this act and the amendments to subdivision 68 of section 13-501 of the administrative code of the city of New York made by section fourteen of this act shall not affect the expiration of such subdivisions as provided by chapter 681 of the laws of 1992, as amended; and the amendments to subdivision b-1 of section 446 and subdivision b-1 of section 609 of the retirement and social security law made by sections three and six of this act and the amendments to subdivision g of section 13-505 of the administrative code of the city of New York made by section fifteen of this act and the amendments to subdivision a of section 13-521.1 of the administrative code of the city of New York made by section sixteen of this act shall not affect the expiration of such subdivisions, as provided by chapter 691 of the laws of 2004, as amended; and the amendments made to subdivision a of section 13-521.1 of the administrative code of the city of New York shall take effect on the same date as chapter 691 of the laws of 2004, as amended; and the amendments to section 13-327.1 of the administrative code of the city of New York made by sections seventeen and eighteen of this act and the amendments to section 13-225.1 of the administrative code of the city of New York made by sections nineteen and twenty of this act shall not affect the expiration of such sections as provided by chapter 114 of the laws of 1989. Nothing herein shall require a retirement system to permit such elections without first receiving a ruling from the Internal Revenue Service addressed to that system.

**CASE NOTES FROM FORMER SECTION**

¶ 1. Cardinal purpose of a pension system is to encourage continuity of service and thereby to promote public efficiency, and consequently the retirement statute should be liberally construed to encourage such purpose.-Rosenberg v. Bd. of Estimate, 170 Misc. 800, 10 N.Y.S. 2d 124 [1938], rev'd on other grounds, 257 App. Div. 839, 12 N.Y.S. 2d 215 [1939], aff'd 281 N.Y. 835, 24 N.E. 2d 493 [1939].

¶ 2. Fact that City received reimbursement from the state to extent of 40 per cent of salaries paid by the City to social investigator whose qualifications conformed to those fixed by State Board of Social Welfare and whose employment was adjudged necessary by the State Department, did not have effect of making the investigator's City-paid salary, for purposes of the pension provisions of Admin. Code § B3-1.0, subd. 3a, only 60 per cent of the amount actually paid to him by the City in the first instance, since City did not act as agent for the state in paying investigator's remaining 40 per cent, nor did the city employee thereby cease to be a City-paid employee to extent that the city received reimbursement from the state.-Solomon v. La Guardia, 103 (21) N.Y.L.J. (1-25-40) 393, Col. 1 M.

¶ 3. The service performed by interveners as motor vehicle inspectors with the Transit Commission, engaged in duties concerned with transportation wholly within the City of New York, constituted state and not city service and hence might be added to state service for purpose of computing senority rights. Determinative of this were the factors that the interveners were appointed by the Transit Commission, with approval of a state officer, the head of the Department of Public Service, and subject to applicable constitutional and statutory provisions could be discharged by like authority. That they were always regarded by the state Civil Service Commission as being in the state service, or that they were members of the City Retirement System, was not determinative.-Bacon v. Conway, 294 N.Y. 245, 62 N.E. 2d 55 [1945].

¶ 4. Subdivision 12 of this section regarding interest applies to members of the Retirement System and not to

beneficiaries hence since decedent and his heirs were not "members" of the Retirement System at the date of his death they were not entitled to interest of 4% provided to members of the fund but rather to interest of 3% as provided by Gen. Municipal Law § 3-a.-Turnock v. City of N.Y., 179 (119) N.Y.L.J. (6-21-78) 15, Col. 4 B.

**CASE NOTES**

¶ 1. Former sec. B3-1.0[3][a], renumbered subsection [3][a] of this section, which contains a definition of "city service", has lways been interpreted by the New York City Employees' Reirement System (NYCERS) as being equivalent to full-time service. This could have been, but never was, modified by the City. Thus petitioner doctors cannot now claim that the subsection means other then full-time service. Doctors Council v. NYC Retirement System, 127 AD2d 380, [1987].

¶ 2. A hearing officer at the New York City Parking Violations Bureau is not deemed a City employee and is therefore not eligible for membership in the New York City Employees Retirement System. Moreover, the City was not estopped from denying membership even though it accepted his contributions for a period of time; estoppel cannot be invoked against a governmental agency to prevent it from discharging its statutory duties, except in unusual situations. Thus, the hearing officer's only remedy is a refund of previously paid pension contributions. Scheurer v. New York City Employees Retirement System, 636 N.Y.S.2d 291 (App.Div. 1st Dept. 1996).

¶ 3. An employee will not receive retirement system credit for time prior to his or her appointment to City service. Eastman v. City Dept. of Administrative Services, 266 A.D.2d 53, 698 N.Y.S.2d 456 (1st Dept. 1999).

**FOOTNOTES**

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[Footnote 2]: * So in original.

3

[Footnote 3]: * NB Added Ch. 910/1985 § 3, language juxtaposed per Ch. 907/1985 § 14. NB Number supplied by the Legislative Bill Drafting Commission.

4

[Footnote 4]: * NB Added Ch. 910/1985 § 3, language juxtaposed per Ch. 907/1985 § 14. NB Number supplied by the Legislative Bill Drafting Commission.

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[Footnote 5]: * NB Added Ch. 910/1985 § 3, language juxtaposed per Ch. 907/1985 § 14. NB Number supplied by the Legislative Bill Drafting Commission.

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[Footnote 10]: * NB Added Ch. 910/1985 § 3, language juxtaposed per Ch. 907/1985 § 14. NB Number supplied by the Legislative Bill Drafting Commission.

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[Footnote 6]: * NB Added Ch. 910/1985 § 3, language juxtaposed per Ch. 907/1985 § 14. NB Number supplied by the Legislative Bill Drafting Commission.

7

[Footnote 7]: * NB Added Ch. 910/1985 § 3, language juxtaposed per Ch. 907/1985 § 14. NB Number

supplied by the Legislative Bill Drafting Commission.

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-102*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-102 Date of establishment.

The New York City Employees' Retirement System as established on the first day of October, nineteen hundred twenty, shall be continued.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-2.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-103*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-103 Board of trustees of retirement system.

a. (1) The retirement system shall be administered by a board of trustees which shall, subject to the provisions of law, from time to time establish rules and regulations for the administration and transaction of the business of such system and to carry out the provisions of law in relation thereto. The provisions of sections one thousand forty-two, one thousand forty-three, one thousand forty-four and one thousand forty-five of the charter shall not be construed to apply to the adoption of such rules and regulations.

(2) An executive director of the retirement system shall be appointed by the board. The executive director shall perform such duties as may be conferred upon him or her by the board or by law and shall have the powers of the head of a department in respect to the retirement system and the officers and employees thereof.

b. Such board of trustees shall consist of:

1. A representative of the mayor who shall be appointed by the mayor and who shall be entitled to cast one vote. The mayor, by a written authorization filed with the board, may designate one or more members of his or her office to act in the place of such representative, in the event of his or her absence. Such representative or designee acting in his or her place shall be chairperson of the board.

2. The public advocate, who shall be entitled to cast one vote. The public advocate may, by written authorization filed with the board, designate one or more officers or employees appointed by him or her to act in his or her place as a member of such board, in the event of the absence of such public advocate.

3. The comptroller of the city, who shall be entitled to cast one vote.

4. The president of each borough. Each such president shall be entitled to cast a one-fifth vote. Each such president may, by written authorization filed with the board, designate his or her deputy borough president, or executive assistant to the borough president, or counsel to the borough president to act in his or her place as a member of such board.

5. (a) Three employee representatives, who shall each be entitled to cast one vote. The chief executive officer of each of the three employee organizations designated as herein provided shall be one of such representatives.

(b) On or before July first of the year in which this subparagraph shall take effect, the director of labor relations of the city (or other officer performing the same or similar functions under another title) shall, by instrument in writing filed in his or her office and with the board, designate the three employee organizations which represent, for the purposes of collective bargaining on pension matters, the largest number of employees who are members of the retirement system. Such designation shall be reviewed annually by such director or other officer, and if such review discloses a change in the standing of the employee organizations concerned, such designation shall thereupon be revised by him or her to specify the three such organizations having the leading representational status as hereinabove prescribed.

(c) Any such employee representative may, by written authorization filed with the board, designate one or more persons to act in the place of such member on such board in the event of the absence of such member, provided, however, that the by-laws or constitution of the organization of which he or she is chief executive officer authorize such designation.

(d) Each act of such board shall be by a resolution adopted by at least three and three-fifths votes. The concurrence of one employee representative and one non-employee representative member or members entitled to one vote shall be necessary for an act of such board. A quorum of such board shall consist of members entitled to cast at least three and three-fifths votes.

c. (1) In addition to the powers conferred upon it by any other provision of law, the board of trustees shall, on or before April first of each year, establish a budget, subject to the provisions of paragraphs two, three, four and five of this subdivision and subdivisions d, e, f and g of this section, sufficient to fulfill the powers, duties and responsibilities set forth in this chapter and any other provision of law which sets forth the benefits of members of the retirement system and may draw upon the assets of the retirement system to fund such budget. The provisions of this section shall not be applicable to the payment of investment expenses pursuant to section 13-705 of the code and nothing contained herein shall be construed as amending, modifying or affecting any power of the board of trustees to provide for the payment of investment expenses pursuant to section 13-705 of the code.

(2) If a budget has not been adopted by the commencement of the new fiscal year, the budget for the preceding fiscal year shall be deemed to have been extended for the new fiscal year until such time as a new budget is adopted.

(3) Any budget in effect pursuant to paragraphs one or two of this subdivision c shall be modifiable during such succeeding fiscal year.

(4) Notwithstanding any other provision of law, the board of trustees shall have the power either directly or by delegation to the executive director, to obtain by employment or by contract the goods, property and services necessary to fulfill its powers, duties and responsibilities within the appropriation authorized by the board of trustees pursuant to paragraph one of this subdivision.

(5) The provisions of chapter seventeen of the charter shall continue to apply to the retirement system and the retirement system shall constitute an agency for the purposes of such chapter seventeen. The board of trustees shall not obtain any legal services by the retention of employees or by contract unless the corporation counsel shall consent

thereto.

(6) All contracts for goods or services entered into by the retirement system shall be procured as prescribed in chapter thirteen of the charter; provided, however, that where the provisions of such chapter thirteen require action by the mayor in regard to a particular procurement (except for mayoral action pursuant to subdivision c of section three hundred thirty-four of the charter) such action shall not be taken by the mayor or such appointee of the mayor but shall be taken by the board of trustees or the executive director pursuant to a resolution adopted by the board of trustees delegating such authority to the executive director.

d. Notwithstanding any other provisions of this section, any resolution of the board of trustees which establishes a budget or modifies a budget pursuant to the provisions of paragraphs one or three of subdivision c of this section shall require the concurrence of the representative of the mayor or the comptroller. No assets of the retirement system shall be drawn upon pursuant to the provisions of paragraph one of subdivision c unless authorized by a budget or budget modification established by a resolution of the board of trustees.

e. Employment by the retirement system shall constitute city-service for the purposes of this chapter; provided, however, that nothing continued herein shall be construed as granting membership rights in the retirement system to a contractor of the retirement system or such contractor's employees. Employees of the retirement system shall be deemed to be employees of the city of New York for the purposes of chapter thirty-five of the charter and title twelve of the code.

f. Whenever the assets of the retirement system are drawn upon pursuant to the provisions of paragraph one of subdivision c of this section, all monies so withdrawn shall be made a charge to be paid by each participating employer otherwise required to make contributions to the retirement system no later than the end of the fiscal year next succeeding the time period during which such assets were drawn upon, provided, however, that where such charge is for assets so withdrawn in fiscal year two thousand four-two thousand five or in any fiscal year thereafter, such charge shall be paid by each such participating employer no later than the end of the second fiscal year succeeding the time period during which such assets were drawn upon. The actuary shall calculate and allocate to each such participating employer its share of such charge by multiplying such charge by a fraction, the numerator of which shall consist of the total salaries of the employees of each participating employer as of the June thirtieth succeeding the withdrawal of assets and the denominator of which shall consist of the total salaries of members of the retirement system as of such June thirtieth. All charges to be paid pursuant to this subdivision shall be paid at the regular rate of interest utilized by the actuary in determining employer contributions to the retirement system pursuant to the provisions of paragraph two of subdivision b of section 13-638.2 of the code.

g. All expenditures of the retirement system shall be subject to audit by the comptroller, who may make recommendations, including but not limited to, procedures designed to improve accounting and expenditure control. All expenditures of the retirement system shall be reported to the mayor's office of management and budget and the budgetary office of all participating employers.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a pars (1), (2) amended chap 593/1996 § 1, eff. Aug. 8, 1996 and

budgets referred to shall be deemed to be established on Apr. 1, 1996.

Subd. b par 2 amended L.L. 68/1993 § 30, eff. Jan. 1, 1994.

Subds. c-e added chap 593/1996 § 2, eff. Aug. 8, 1996 and budgets

referred to shall be deemed to be established on Apr. 1, 1996.

Subd. f amended chap 152/2006 § 1, eff. July 7, 2006 and deemed to have been in full force and effect on and after July 1, 2005. [See Note 1]

Subd. f added chap 593/1996 § 2, eff. Aug. 8, 1996 and budgets referred to shall be deemed to be established on Apr. 1, 1996.

Subd. g added chap 593/1996 § 2, eff. Aug. 8, 1996 and budgets referred to shall be deemed to be established on Apr. 1, 1996.

**DERIVATION**

Formerly § B3-2.1 added chap 866/1969 § 4

(Special provisions chap 866/1969 §§ 17-21)

Sub a par 2 amended chap 888/1973 § 1

Sub b par 4 amended chap 189/1981 § 1

Sub b par 5 subpar d amended chap 899/1982 § 1

**NOTE**

1. Provisions of chap 152/2006:

§ 22. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after July 1, 2005. Notwithstanding any other provision of law, for the purposes of calculating an actuarial reserve pursuant to the provisions of § 13-557 of the administrative code of the city of New York, the valuation rate of interest and mortality tables in effect on June 30, 1988 shall be utilized by the actuary.

**CASE NOTES FROM FORMER SECTION**

¶ 1. The Board of Trustees of the New York City Employees' Retirement System has authority to establish its own routine office procedures and thus could require an application for transfer of credits to be verified.-Randolph v. N.Y.C. Employees' Retirement System, 86 App. Div. 2d 536 [1982].

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-104*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-104 Membership; composition and eligibility.

Except as otherwise provided in section 13-179 of this chapter, the membership of the retirement system shall consist of:

1. All persons in city-service, as defined in this title, in positions in the competitive or labor class of the civil service, who en- tered or reentered such service after the first day of October, nineteen hundred twenty, whose compensation is at a rate not less than eight hundred forty dollars per annum, and who completed or shall complete six months of city-service after such entrance or re-entrance.

2. All persons in city-service, as defined in this chapter, who file with the board a statement duly executed and acknowledged waiving and renouncing all present and prospective benefits provided wholly or partly by the city through any other retirement system or pension fund and consenting and agreeing to membership and to the deductions for annuity purposes prescribed in this chapter.

3. Notwithstanding any inconsistent provision of section 13-184 of this chapter, or any other provision of this chapter, or the code, or any other law, all persons in city-service, as defined in this chapter, who file with the board a statement duly executed and acknowledged consenting for the period of their active membership in this retirement system to the suspension of all present benefits provided wholly or partly by the city through any other retirement system or pension fund and consenting and agreeing to membership and to the deductions for annuity purposes prescribed in this chapter. Upon the subsequent retirement of such person from this retirement system, they shall receive benefits based on city-service not included in the service upon which their retirement or pension from such other retirement system or pension fund is or would be based, and, upon such subsequent retirement, payment of the benefits

provided through such other retirement system or pension fund, which had been suspended, shall be resumed.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-3.0 added chap 929/1937 § 1

Sub 1 amended chap 426/1941 § 1

Sub 3 added chap 837/1964 § 1

Subs 2, 3 amended chap 866/1969 § 5

**CASE NOTES FROM FORMER SECTION**

¶ 1. The City Retirement System was created to provide a retirement system for officers and employees whose compensation in whole or in part is payable out of the City treasury, and is not for officers and employees of the City exclusively.-Bacon v. Conway, 294 N.Y. 245, 62 N.E. 2d 55 [1945].

¶ 2. The petitioners were employed in 1929 as extra drivers or sweepers but at that time they were not regarded as eligible for membership in the Department of Street Cleaning Relief and Pension Fund and no deductions were made from their salaries for that fund. On December 1, 1929, the Department of Street Cleaning was reorganized but the Street Cleaning Relief and Pension Fund was continued for those persons who were members at that time. After 1929 petitioners were appointed as regular drivers or sweepers and were required to join the N.Y.C. Employees' Retirement System and to waive all rights of membership in any other City pension plan. The Court held that the petitioners had been members of the Relief and Pension Fund from the time of their employment as extra drivers and sweepers and that inasmuch as they were not aware of their rights they could not waive them.-Matter of Barbarita, 301 N.Y. 529, 93 N.E. 2d 79 [1950].

¶ 3. Although an employee of the New York City Housing Authority filed a membership application for the New York City Employees Retirement System with his supervisor's secretary in the Housing Authority on the date of his permanent employment in July 1967, he did not become a member until his membership application was filed at the offices of the Retirement Board.-Grabher v. N.Y.C. Employees Retirement System, 162 (86) N.Y.L.J. (10-31-69) 17, Col. 4 F.

¶ 4. Where petitioners were employed by both the Department of Parks and the Board of Education and each joined the New York City Employees' Retirement System and later also joined the Teachers' Retirement System they were required to withdraw from the retirement system last joined.-Zimet v. Teachers' Retirement Board, 41 A.D. 2d 919, 343 N.Y.S. 2d 617 [1973], affirmed, 34 N.Y. 2d 870, 316 N.E. 2d 713, 359 N.Y.S. 2d 276 [1974].

**CASE NOTES**

¶ 1. Appellant was dismissed from employment as Dept. of Social Services caseworker but continued employment as teacher in evening sessions for Board of Education on per diem basis. NYC Admin. Code § 13-104(1), § 13-101(3)(a) excludes from city-service any employee not "per annum". This is supported by rule 11(h) of Board of Estimate rules for administering NYCERS. Matter of Kaufman v. Dept. of Social Services, 131 AD2d 576, 516 N.Y.S.2d 291 (2nd Dept. 1987).

¶ 2. Part-time doctors employed by the city or the NYC Health and Hospitals corporation are eligible to be members of the retirement system. They meet the requirements for "city service" in § 13-101(3)(a)(b). NYCERS

trustees cannot create retirement eligibility or disentitle persons the Legislature has entitled. Doctors Council v. NYC Employees Retirement System, 71 NY2d, 669 [1988].

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-105*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-105 Membership; eligibility in certain cases.

Notwithstanding any inconsistent provision of this chapter, the code, or any other law, an officer or employee in city-service who is otherwise eligible for membership in this retirement system but who is entitled to receive benefits from any other pension fund or retirement system maintained by the city may become a member of this retirement system provided such benefits are suspended during his or her active membership in this retirement system. Such member shall contribute to this retirement system as a new entrant.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-3.1 added chap 837/1964 § 2

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-106*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-106 Membership classification.

a. It shall be the duty of the head of each agency to submit to such board a statement showing the name, title, compensation, duties, date of birth and length of city-service of each member and such other information as such board may require. If such member be principally engaged upon duties differing from those specified by the appropriate civil service commission, state or municipal, for the title held by such member, such head of agency shall certify the reasons therefor and the probable duration of duties by such member differing from those specified by such civil service commission for the title held by such member. Such board shall then classify the member in one of the following groups:

1. Group one: Laborers and unskilled workers engaged upon duties requiring principally physical exertion;

2. Group two: Mechanics and skilled workers engaged upon duties requiring principally physical exertion;

3. Group three: Clerical, administrative, professional and technical workers engaged upon duties requiring principally mental exertion, including heads of departments;

4. Group four: In any other group of not less than twenty-five hundred members which, on the basis of mortality or service experience, may be recommended by the actuary and established by such board.

b. Such board shall certify to such member the group in which he or she has been placed and the date of his or her admission to membership therein. When the duties of a member so require, such board may classify him or her in another group and transfer such member thereto and shall thereupon certify to him or her the group to which he or she

has been transferred and the date of his or her transfer thereto.

c. Each member shall be subject, until retirement, to all the provisions of this chapter and to all the rules and regulations adopted by such board applying to his or her group.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-4.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-107*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-107 Credit for service and service certificates.

a. Subject to the following and to all other provisions of this chapter, including such rules and regulations as such board shall adopt in pursuance thereof, such board shall determine and may modify allowances for service and shall issue service certificates.

b. Such board shall fix and determine how much service rendered in any year shall be the equivalent of a year of service and of parts thereof in accordance with the provisions of subdivision c of section 13-638.4 of this title, but shall credit not more than one year for all service in any calendar year.

c. Time during which a member was absent on leave without pay shall not be allowed in computing prior-service nor in computing service as a member except as to time subsequent to approval of such allowance for retirement purposes granted by the head of the agency in which the member is employed and approved by such board. Time during which a member was on a preferred civil service list, or on world war military duty duly excused therefor in accordance with law, shall not be construed to form part of the period within which membership must begin or after which credit may not be allowed for prior-service. Time during which a member is on sabbatical leave shall be allowed in computing service as a member and the member shall make contribution to his or her annuity savings fund based on his or her scheduled salary during such leave.

d. Each person, upon becoming a member, shall file with such board a detailed statement of all his or her city-service. If he or she became a member on the first day of October, nineteen hundred twenty, or if he or she became or becomes a member during his or her first three years of city-service thereafter and within eight years after rendering city service prior to the first day of October, nineteen hundred twenty, such member shall itemize separately on such

statement all service prior to such date for which he or she claims a prior-service certificate should be issued, but no service shall be counted for which a pension or retirement benefit has been awarded payable wholly or partly at the expense of the state or city of New York.

e. A prior-service certificate shall be issued by the board to each such member, and to no others, and shall certify all such service which he or she rendered before the first day of October, nineteen hundred twenty, as follows:

1. City-service; and

2. Service, other than city-service, whether appointive or elective, as a paid official, clerk or employee of the state of New York and of any municipality, county or part thereof and of any court thereof; and service in the civil service of the United States government, provided, however, that such member contribute to the retirement system an amount he or she would have been required to have contributed if such United States service was rendered to the city while a member; and

3. Service while teaching in any university, college, academy or common school; and

4. Service for any public utility the ownership and operation of which has been taken over by the city; and

5. Service as a city marshal; and

6. Service in any branch of the armed forces of the United States, provided, however, that such member contribute to the retirement system an amount he or she would have been required to contribute had such service been rendered to the city while a member, and provided further, that during the period between the termination of such military service and the retirement of such member, he or she shall have been credited with not less than fifteen years of member or restored member service. Duly executed applications for such service credit shall be filed with the retirement system before the first day of July, nineteen hundred fifty-seven.

f. Total service shall include all city-service of a member since he or she last became a member of the group of which he or she is a member, and in addition, if his or her service certificate is in full force and effect as herein provided, all the service certified on such certificate, and no other service.

g. Upon transfer of a member from one group to another, his or her total-service and the liability of the city therefor on the basis of membership in the first group shall be computed by the actuary, together with the amount of prior-service and total-service allowance which would impose a similar liability on the city on the basis of membership in the group to which he or she is transferred. Such board shall thereupon issue to such transferred member a total-service certificate showing the date of his or her transfer and the prior-service and total-service allowance with which he or she will be credited in the group to which he or she is transferred, which latter allowance shall be equal to the corresponding allowance computed by the actuary.

h. A total-service certificate issued to a transferred member shall supersede any service certificate theretofore issued to him or her. Such board, upon application by a member within one year, or upon its own initiative within one year from the date of issuance of a certificate or modified certificate to such member, may modify such certificate.

i. Service certified on a prior-service certificate, a total-service certificate or a modified certificate shall be the basis for a pension or benefit as provided by this chapter only if membership continues until retirement on a pension or until the granting of such other benefit and only so far as service other than city-service certified therein is succeeded before the minimum retirement age of his or her group by an equal amount of city-service, except that this subdivision shall not apply to any member who has served in the Congress of the United States prior to October first, nineteen hundred twenty. Such certificate shall become void if membership is discontinued except by retirement on a pension, and not renewable except as to service which would be allowed to a person who had not previously been a member.

j. None of the foregoing shall be construed to disallow credit for prior service which at the time of service retirement, shall have been succeeded by an equal amount of paid for city service while a member of such retirement system.

k. Notwithstanding the provisions of subdivision c of this section, any correction member who is absent without pay for child care leave of absence pursuant to regulations of the New York city department of correction shall be eligible for credit for such period of child care leave provided such member files a claim for such service credit with the retirement system by December thirty-first, two thousand four or within ninety days following termination of the child care leave, whichever is later, and contributes to the retirement system an amount which such member would have contributed during the period of such child care leave, together with interest thereon. Service credit provided pursuant to this subdivision shall not exceed one year of credit for each period of authorized child care leave. In the event there is a conflict between the provisions of this subdivision and the provisions of any other law or code to the contrary, the provisions of this subdivision shall govern.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Sub b amended chap 749/1992 § 3 eff. July 31, 1992

Subd. k added chap 581/2004 § 1, eff. Oct. 5, 2004

**DERIVATION**

Formerly § B3-5.0 added chap 929/1937 § 1

Sub i amended chap 946/1941 § 1

Sub j added chap 604/1950 § 1

Sub e par 6 added chap 799/1953 § 1

Sub e par 6 amended chap 961/1957 § 1

Sub c amended chap 822/1966 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-108*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-108 Allowance of service preceding renewal membership.

1. Any member in city-service who shall file with the retirement system a duly executed application for service credit and consent to deductions herein described, and from whose compensation deductions shall be made at double his or her normal rate per centum of contribution and paid to his or her credit in the annuity savings fund, shall be credited, in addition to any other service creditable to such member, with a period of city-service previous to the beginning of his or her present membership equal to the period throughout which such double deductions shall be made but not in excess of city-service rendered by him or her between his or her first day of eligibility to membership in the retirement system and the day he or she last became a member. A member may, at any time, by single payment of the sum of the remaining payments purchase the remaining unpurchased service credit. Credit for service acquired under this section shall be used only in determining the amount of any benefit. Eligibility for benefit shall in each case be based upon credited member-service rendered after membership last began and shall be exclusive of service credit purchased under this section. The provisions of this section shall not apply to service for which the privilege of membership in a retirement system with transfer to this retirement system under section forty-three of the retirement and social security law is or has been available to the member except that it shall apply to service as a member of the legislature of the state of New York while representing a senate or assembly district situated within the city of New York claimed under this section before the first day of January, nineteen hundred fifty-nine and excepting that a member who was a veteran of world war I who had New York state service within the ten years succeeding nineteen hundred twenty-five, succeeded by a greater amount of allowable city-service, may be credited with such state service upon such filing and consent before the first day of July, nineteen hundred forty-nine and on the completion of contribution as required herein for the crediting of a like amount of pre-member city-service.

1-a. Notwithstanding any other provision of law, any member of the New York city employees' retirement system eligible to purchase credit for prior service with a public employer pursuant to this section or to purchase credit for military service pursuant to article twenty of the retirement and social security law, may elect to purchase any or all of such service by executing a periodic payroll deduction agreement where and to the extent such elections are permitted by the retirement system by rule or regulation. Such agreement shall set forth the amount of prior service or military service being purchased, the estimated total cost of such service credit, and the number of payroll periods in which such periodic payments shall be made. Such agreement shall be irrevocable, shall not be subject to amendment or modification in any manner, and shall expire only upon completion of payroll deductions specified therein. Notwithstanding the foregoing, any member who has entered into such a payroll deduction agreement and who terminates employment prior to completion of the payments required therein shall be credited with any service as to which such member shall have paid the contributions required under the terms of such agreement.

2. Any right to service and benefit heretofore validated shall be unaffected by the amendments effectuated by this section.

3. (a) Notwithstanding any provision of subdivision one of this section or any other provision of law to the contrary, in any case where an application for service credit and consent to deductions is filed pursuant to subdivision one of this section by a transit twenty-year plan member (as defined in subdivision sixty-one of section 13-101 of this chapter) and at the time of the filing of such application and consent, such member is relieved pursuant to subdivision l of section 13-161 of this chapter from making contributions, the purchase of service credit by such member under such application shall be governed, while he or she remains a transit twenty-year plan member, by the provisions of subdivision one of this section, except that in relation to such purchase by such member, such provisions shall be read and construed as they would be if the word "double" were omitted therefrom.

(b) In any case where a purchase of service credit pursuant to subdivision one of this section is begun by a member who is not then relieved, pursuant to such subdivision l, from making contributions, and while such purchase is in process, such member becomes so relieved, the rights and obligations of such member with respect to completion of such purchase, shall, on and after the date as of which he or she is first so relieved, be governed by the provisions of paragraph (a) of this subdivision.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. 1 amended chap 671/1996 § 1, eff. Sept. 25, 1996.

Subd. 1-a added chap 627/2007 § 12, approved Aug. 28, 2007 eff. upon

compliance with chap 627/2007 § 22. [See § 13-101 Note 1]

**DERIVATION**

Formerly § B3-6.0 added chap 929/1937 § 1

Amended chap 515/1939 § 1

Amended chap 555/1940 § 1

Amended chap 765/1940 § 1

Amended chap 699/1942 § 1

Repealed and added chap 662/1943 § 1

Amended chap 863/1946 § 1

Amended chap 730/1948 § 1

Amended chap 741/1949 § 1

Amended chap 604/1950 § 2

Amended chap 546/1951 § 1

Amended chap 242/1955 § 1

Amended chap 901/1957 § 1

Amended chap 775/1958 § 1

Amended chap 657/1960 § 1

Amended chap 864/1963 § 1

Sub 1 amended chap 451/1966 § 1

Sub 3 added chap 870/1970 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. Policewoman who had entered the City's service in 1918 and had joined the retirement system in 1934, having at that time applied for and received "prior service" and "additional city service" credit for the period from 1918 to 1934, and having paid into the annuity fund a sum equivalent to the amount which she would have been required to pay had she been a member since 1918, **held** thereby to have become vested with all rights of membership, including the right to apply for accident disability retirement even though her injury was received in 1924 (Admin. Code §§ B3-6.0, B3-40.0).-Rosenberg v. Bd. of Estimate, 170 Misc. 800, 10 N.Y.S. 2d 124 [1938], rev'd on other grounds, 257 App. Div. 839, 12 N.Y.S. 2d 215 [1939], aff'd, 281 N.Y. 835, 24 N.E. 2d 493 [1939].

¶ 2. This section contemplates that an applicant for premembership service must be a member of the New York City Employees' Retirement System at the time the lump-sum payment is made for the premembership service to be credited.-Matter of Tom v. Herkimer, 101 A.D. 2d 733 [1984].

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

*NYC Administrative Code 13-109*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-109 Purchase of credit for past service as internes.

In the same manner as hereinbefore provided under section 13-108 of this chapter for the purchase of city-service preceding membership, on or before January first, nineteen hundred fifty-three, or within one year after first beginning membership, credit may be purchased for service preceding membership not exceeding a total of three years as an interne, duly appointed by and removable by the city of New York, of any hospital owned and operated by such city, provided that for any such period maintenance, consisting of room and board, was received without accompanying cash payment.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-6.1 added chap 626/1950 § 1

Amended chap 707/1952 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-110*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-110 Purchase of credit for past teaching service in the city university of New York.

In the same manner as hereinbefore provided under section 13-108 of this chapter for the purchase of city-service preceding membership, on or before January first, nineteen hundred sixty-five, or within one year after first beginning membership, credit may be purchased for teaching service in the city university of New York preceding membership and if the teaching service was on an hourly basis, credit of one year of city service for retirement purposes shall be allowed for a minimum of thirty weeks per year with an average service of fifteen hours of teaching per week (four hundred fifty hours per year), provided that no such member shall receive more than one year of credit for service rendered during one calendar year.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-6.2 added chap 825/1964 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-111*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-111 Purchase of credit for past youth board program service in the bureau of community education of the board of education.

a. For the purposes of this section, the term "prior youth board program service" shall mean service by a member, prior to the commencement of his or her membership in the retirement system, rendered on a per annum salary basis in the bureau of community education-youth board recreation program of the board of education of the city in the position of group worker, supervisor of group workers, registrar assistant, teacher of recreation, center director, or supervisor of recreation and community activities (youth board).

b. Any member in city-service who:

(1) rendered prior youth board program service during the period of six months prior to August twelfth, nineteen hundred sixty-nine; and

(2) is employed on a per annum salary basis during the period wherein double contributions are required to be made pursuant to this section for the purpose of purchasing credit for service; may purchase credit in the manner prescribed in subdivision c of this section for prior youth board program service.

c. Any member in city-service who is eligible, under the provisions of subdivision b of this section, to purchase service credit pursuant to this section and who, within six months after May twelfth, nineteen hundred seventy, files with the board a duly executed application for purchase of credit for prior youth board program service and a consent to the deductions herein prescribed, and from whose compensation deductions shall be made at double his or her normal rate per centum of contribution and paid to his or her credit in the annuity savings fund, shall be credited, in addition to

any other service creditable to him or her, with a period of prior youth board program service previous to the beginning of his or her present membership equal to the period throughout which such double deductions shall be made. After such double contributions for all of the first two years claimed or, if the total time purchasable exceeds eight years, after double contributions for one-quarter of such time, unpurchased credit for prior youth board program service then remaining may be purchased, and thereupon shall be credited, by single payment of the sum of the remaining payments.

d. Credit for prior youth board program service purchased pursuant to this section shall be used in determining eligibility for benefit and the amount of benefit.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-6.3 added chap 762/1970 § 1

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

*NYC Administrative Code 13-112*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-112 Purchase of credit for past service as a member or employee of the legislature.

Notwithstanding any contrary provision of this chapter, in the same manner as hereinbefore provided under section 13-108 of this chapter for the purchase of city-service preceding membership, on or before January first, nineteen hundred seventy-one, or within one year after first beginning or re-entering membership, a member of this retirement system may purchase credit for service preceding membership in this system as a member or employee of the legislature of the state of New York if such member of this system shall have had at least twenty years of city-service in this retirement system and at least ten years of service as a member or employee of the legislature.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-6.3 added chap 1040/1970 § 1

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

*NYC Administrative Code 13-113*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-113 Credit after being member of other retirement system.

a. Notwithstanding the provisions of sections 13-107 and 13-108 of this chapter, any person who from the thirtieth day of June, nineteen hundred twenty-eight, was or shall have been continuously in service paid for by the city which was not a basis for membership in this retirement system but which was a basis for participation in one or more retirement systems or pension funds supported wholly or partly by the city and who, within one year after discontinuing such service, became or becomes a member of this retirement system, shall be credited:

1. With all city-service rendered by such member before the first day of October, nineteen hundred twenty, and

2. With all service on or after such date and prior to the beginning of membership paid for by the city, which was the basis for participation by such member in one or more retirement systems or pension funds supported wholly or partly by the city but which was not a basis for participation in this retirement system, provided, that the crediting of any service on or after such date shall be only upon payment to the annuity savings fund in approximately equal installments within one year after membership begins, or at the beginning of membership in a lump sum, as he or she shall elect, of an amount equal to the amount that would have been in the annuity savings fund to his or her credit had such member been a contributing member during the period covered by such payment; provided, further, that such contributions shall be reduced by the amount of any and all contributions by him or her to such other retirement system or pension fund for the period covered by such payment which have not been and cannot be lawfully refunded to such member by such retirement system or pension fund.

b. (1) Notwithstanding any provision of sections 13-107 and 13-108 of this chapter or any provision or law to the contrary, any person who (a) began service as an employee of the city prior to July first, nineteen hundred

thirty-eight and since such entry into service has served continuously as an employee of the city and/or the New York city transit authority and (b) is still in the employ of such authority, and (c) by reason of such service was eligible to receive benefits from the police pension fund, subchapter one, maintained by the city, and (d) because of eligibility for and receipt of such benefits was unable to become a member of this retirement system until the enactment of section 13-105 of this chapter, and (e) pursuant to such section , is now a member of this retirement system, his benefits under such police pension fund having been suspended pursuant to such section, may elect to obtain credit in this retirement system for all such service rendered from the time when his or her membership in such police pension fund began and prior to his or her attaining membership in this retirement system, by complying with the requirements set forth in paragraphs two and four of this subdivision.

(2) To obtain such service credit such member shall:

(a) Not later than December thirty-first, nineteen hundred sixty-eight (i) refund to such police pension fund the amount of all benefits received by him or her from such fund, together with interest thereon at the rate of four per centum per annum; and (ii) file with such police pension fund a request in writing that his or her contributions to such pension fund, including interest thereon at the rate of four per centum per annum be transferred by such pension fund to his or her credit in the annuity savings fund of this retirement system; and

(b) Pay into the annuity savings fund of this retirement system in the manner provided in paragraph four of this subdivision, an amount equal to the difference between:

(i) the amount obtained:

(1) by computing the sum which would have been accumulated in such annuity savings fund to his or her credit as of June thirtieth, nineteen hundred sixty-eight, if he or she had joined this retirement system on the date on which he or she became a member of such police pension fund and had then elected to contribute to this retirement system on the basis of a minimum retirement age of fifty-five years and a service-fraction of one one-hundredth, and had so contributed without election to cease contributing; and

(2) by subtracting from such amount computed pursuant to sub-item one of this item, the portion, if any, of such amount, which portion would constitute excess contributions subject to his withdrawal under any provision of this chapter which governs the right to withdraw excess contributions and which is or becomes applicable to such member at any time during the period herein allowed him or her for making such payment; and

(ii) the sum of (1) the amount of his or her contributions, plus interest thereon, transferred from such police pension fund to this retirement system pursuant to subparagraph (b) of paragraph three of this subdivision, and (2) the amount of the accumulated deductions to his or her credit in this retirement system as of June thirtieth, nineteen hundred sixty-eight.

(3) (a) Upon tender by such member to such police pension fund of the amount required to be refunded to such pension fund under the provisions of item (i) of subparagraph (a) of paragraph two of this subdivision, such pension fund shall accept such amount.

(b) Upon refund of benefits to such police pension fund and upon the filing of such request for transfer of such member's contributions to such pension fund, with interest at the rate of four per centum per annum thereon, pursuant to subparagraph (a) of paragraph two of this subdivision, such pension fund shall transfer such contributions and interest to this retirement system, which shall deposit such sum to such member's credit in the annuity savings fund.

(c) Upon request of such member, he or she shall be permitted to pay into the annuity savings fund of this retirement system, to his or her credit, the sums required to be so paid under the provisions of subparagraph (b) of paragraph two of this subdivision and paragraph four of this subdivision.

(4) Such member may effect the payment required in subparagraph (b) of paragraph two of this subdivision:

(a) in installments pursuant to an application duly executed by such member and filed with the retirement system, consenting that deductions be made from his or her compensation at double his or her normal rate per centum of contributions and paid to his or her credit into the annuity savings fund, until such payment is thereby completed; provided that such member may at any time during the period of such double deductions pay in a lump sum the total of the remaining sums to be so paid through deductions.

(b) by making such payment in a lump sum not later than December thirty-first, nineteen hundred sixty-eight.

(5) Upon completion of compliance by such member with the requirements of item (i) of subparagraph (a) of paragraph two of this subdivision, and upon transfer of such member's contributions, with interest thereon, from such police pension fund to this retirement system pursuant to subparagraph (b) of paragraph three of this subdivision, such police pension fund shall be discharged of all further obligations to such member.

(6) (a) Upon completion of compliance by such member with the requirements of paragraphs two and four of this subdivision, the period of service set forth in paragraph one of this subdivision, for which such member has thereby elected to obtain credit under this section, shall be credited as allowable city-service of such member, in addition to any other service creditable to him or her.

(b) Credit for such service obtained pursuant to this subdivision, including credit for service obtained pursuant to paragraph seven of this subdivision, shall be used in determining eligibility for benefits as well as amount of benefits.

(7) Notwithstanding any provision of the preceding paragraphs of this subdivision to the contrary, if such member shall pay a part of but not the entire sum required to be paid under subparagraph (b) of paragraph two of this subdivision and paragraph four of this subdivision, such member shall be credited, in addition to any other service creditable to him or her, with a portion of the total period of the allowable city-service to which he or she would be entitled under this subdivision upon full payment of such sum, which portion bears the same ratio to such total period as the total sum so paid by such member bears to the entire sum required to be paid under subparagraph (b) of paragraph two and paragraph four of this subdivision.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-7.0 added chap 929/1937 § 1

Amended chap 290/1968 § 6

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-114*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-114 Credit for service with the port authority of New York and New Jersey.

Notwithstanding any provisions of section 13-107 of this chapter to the contrary, any person in city-service on the seventh day of April, nineteen hundred thirty who is or becomes a member of the New York city employees' retirement system shall be entitled to credit for all service by reason of his transfer to or service with the port of New York authority as a paid official, clerk or employee thereof, and shall be entitled to all the rights granted by this chapter; provided, however, that such member contribute to the retirement system the amount he or she would have been required to contribute if such service with the port authority of New York and New Jersey was rendered to the city while a member.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-8.0 added chap 929/1937 § 1

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

*NYC Administrative Code 13-115*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-115 Credit for service of certain members.

Notwithstanding any provisions of section 13-107 of this chapter to the contrary, at the time that any legally constituted public or quasi-public agency assumes the functions and duties of any city department, bureau, board or city agency, and the employees of such city department, bureau, board or city agency are transferred thereto, subsequent to January first, nineteen hundred forty-eight, and such employees are members of the New York city employees' retirement system, such employees shall be continued as members so long as they continue in such service and shall continue to enjoy all the benefits of the said retirement system, provided, however, that such employees contribute to the retirement system the amounts that they would have been required to contribute if such service to such public or quasi-public agency was rendered to the city as a member and, provided further, that the public or quasi-public agency shall pay the cost of all benefits provided herein that would normally be paid by the city of New York.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-8.1 added chap 704/1948 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-116*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-116 Credit for service of certain members.

Notwithstanding any provisions of section 13-107 of this chapter to the contrary, any member of the New York city employees' retirement system, who upon abolition of his or her position receives employment and compensation from the government of the United States in connection with construction projects of the city of New York financed by loans and grants allocated to the municipality, and, who subsequently receives re-employment with the city of New York and has restored his or her membership in the New York city employees' retirement system, shall be allowed to contribute to such retirement or pension system the amount he or she would have contributed had such service been city service, and upon making such contribution, such time and compensation shall be credited as though it were city service, providing the member has had at least five years of city employment both prior and subsequent to federal employment.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-8.2 added chap 628/1950 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-117*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-117 Credit for service of certain members.

Notwithstanding any provisions of section 13-107 of this chapter to the contrary any member whose name was or is placed on a preferred eligible list by reason of the abolition of his or her position in the New York city transit authority due to the sale of city owned transit power plants who has continued to be employed by the purchaser of such power plants until reemployed as hereinafter provided and who within the period that such preferred list remains in effect, accepts employment from said preferred list with the city of New York, the New York city transit authority, the New York city housing authority or the triborough bridge and tunnel authority, shall be allowed to contribute to the retirement system, the amount with interest he or she would have contributed had such service with the purchaser been city service and upon making such contribution such service shall be credited as though it were city service for all purposes.

The New York city transit authority shall pay the employer cost of the benefits provided herein only with respect to such persons as are reemployed by the authority. For persons employed from such preferred eligible lists by the city of New York, the New York city housing authority or the triborough bridge and tunnel authority the employer costs of the benefits provided herein shall be paid by the city of New York.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-8.3 added chap 308/1960 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-118*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-118 Allowance of service with respect to involuntary separations of certain members.

Notwithstanding any provision of law to the contrary, any member:

a. who is in city-service in a career pension plan position; and

b. whose name was included in a preferred eligible list during any period occurring after December thirty-first, nineteen hundred thirty-one, and prior to January first, nineteen hundred thirty-eight, by reason of the abolition of a position held by him in city-service; and

c. was a member or former member at the time when his or her name was placed on such list; shall be permitted to contribute to the retirement system, the amount which he or she would have contributed to such system during such period of inclusion of his or her name on such list, together with regular interest on such amount, if during such period he or she had continued in city-service in such abolished position. Upon the payment of such amount to the retirement system, such service shall be credited to such member as though it were city-service for all purposes, including eligibility for benefit.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-8.4 added chap 821/1968 § 4

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-119*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-119 Re-entry into membership after withdrawal of contributions.

If a member has received benefits under section 13-141 of this chapter, such member's prior-service credit and member-service credit at the time of leaving service shall be restored in full provided such member return to service within five years after leaving service and redeposits the total amount so withdrawn. Subsequent contributions will be at the rate applicable to his or her age on re-entry to service.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-9.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. In a proceeding by petitioner, who held position of chief clerk for County Court of Kings County, for an order requiring the City Comptroller to audit a supplemental payroll and pay him his salary for the period from July 21 through July 31, 1939, defense setting forth that petitioner had attained the age of 70 years on August 7, 1939, that his application for a continuance in service for an additional 2-year period was denied and on June 15, 1938, a resolution was adopted retiring him as of September 1, 1939, that petitioner then resigned as chief clerk on July 15, and on July 17, filed an application with the Retirement System for his accumulated salary deductions, that on July 19, the Retirement

System paid him $8,317.17 subject to approval by the Board of Estimate, that the approval had not yet been given, that the County Clerk then purported to appoint petitioner to the same position on October 21, 1939, and that the resignation and withdrawal of accumulated deductions and the purported re-appointment was a subterfuge and a violation of Admin. Code § B3-38.0, and that on information and belief the petitioner could avail himself of the benefits of § B3-9.0 with reference to re-entry into membership in the Retirement System after withdrawal of contributions and thus perpetrate a fraud upon the city, was held sufficient as a matter of law by Special Term in both the App. Div. and the Court of Appeals affirmed without opinion.-Tuomey v. McGoldrick, 258 App. Div. 873, 16 N.Y.S. 2d 1018 [1939] aff'd 282 N.Y. 762, 27 N.E. 2d 46 [1940].

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

*NYC Administrative Code 13-120*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-120 New York city employees' retirement system; a corporation.

The retirement system shall have the powers and privileges of a corporation and by its name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property held.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-10.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-121*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-121 Retirement system; adoption of tables and certification of rates.

The actuary appointed by the board shall be the technical advisor on all matters regarding the operation of the funds provided for by this chapter and shall perform such other duties as are required of him or her. The actuary shall keep in convenient form such data as shall be necessary for the actuarial valuation of such funds. Every five years, he or she shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries as defined by this chapter and he or she shall make a valuation, as of June thirtieth of each year, of the assets and liabilities of the various funds provided for by this chapter. Upon the basis of such investigation such board shall:

1. Adopt for the retirement system such mortality, service and other tables as shall be deemed necessary; and

2. Certify the rates of deduction from compensation computed to be necessary to pay the annuities authorized under the provisions of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-11.0 added chap 929/1937 § 1

Open par amended chap 100/1963 § 34

Amended chap 876/1968 § 1

Amended chap 866/1969 § 6

Amended chap 957/1981 § 35

**CASE NOTES FROM FORMER SECTION**

¶ 1. A judgment which based an award to plaintiff of arrears on his retirement allowance from the defendant New York City Employees Retirement System on actuarial tables used by the state retirement system rather than on those used by the defendant was not sustainable.-McLaughlin v. N.Y.C. Employees' Retirement System, 96 Misc. 2d 56 [1977].

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

*NYC Administrative Code 13-122*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-122 Retirement system; reports.

Such board shall publish annually in the City Record a report for the preceding year showing a valuation of the assets and liabilities of the funds provided for by this chapter as certified by the actuary, and a statement as to the accumulated cash and securities of the funds as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as may be of value in the advancement of knowledge concerning employees' pensions and annuities.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-12.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-123*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-123 Medical board.

a. (1) There shall be a medical board of three physicians. One of such physicians shall be appointed by the board and shall hold office at the pleasure of such board, one shall be appointed by the commissioner of health and shall hold office at the pleasure of such commissioner, and the third shall be appointed by the commissioner of citywide administrative services and shall hold office at the pleasure of such commissioner.

(2) The board, the commissioner of health and the commissioner of citywide administrative services shall each have power to appoint one or more but not exceeding four alternate physicians, who shall hold office at the pleasure of such appointing board or official. Whenever the board of trustees of the retirement system shall so direct, the functions, powers and duties of the medical board, in addition to being performed and exercised by the three physicians appointed pursuant to paragraph one of this subdivision, shall be performed and exercised by one or more groups of three physicians as hereinafter prescribed. Each such group of three physicians shall function separately as the medical board and each such group may consist partly of a physician or physicians appointed pursuant to paragraph one of this subdivision and partly of one or more alternate physicians or may consist entirely of alternate physicians; provided, however, that one of the physicians or alternate physicians in each such group shall be appointed by the board, one by the commissioner of health and one by the commissioner of citywide administrative services.

b. The medical board shall arrange for and shall pass upon all medical examinations required under the provisions of this title, shall investigate all essential statements and certifications by or on behalf of a member in connection with an application for disability retirement, and shall report to the board its conclusions and recommendations thereon.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a pars (1), (2) amended L.L. 59/1996 § 69, eff. Aug. 8, 1996

**DERIVATION**

Formerly § B3-13.0 added chap 929/1937 § 1

Sub a amended chap 100/1963 § 35

Amended chap 866/1969 § 7

(Amendment omits section number and heading)

Sub a amended chap 272/1977 § 2

(Legislative findings, essential functions of board, capacity, chap 272/1977 § 1)

**CASE NOTES FROM FORMER SECTION**

¶ 1. A member of the Employees Retirement System was not obliged to await a confirmation by the Board of Estimate of the determination of the Medical Board denying her application for accidental disability retirement before suing for an order annulling the Medical Board's determination and declaring her entitled to accident disability retirement.-Rosenberg v. Board of Estimate, 170 Misc. 800, 10 N.Y.S. 2d 124 [1938]; reversed on other grounds, 257 App. Div. 839, 12 N.Y.S. 2d 215 [1939], affirmed 281 N.Y. 835, 24 N.E. 2d 493 [1939].

¶ 2. The statutory provisions governing accidental disability retirements are radically different from the provisions controlling an application for accidental death benefits, and decisions of the Admin. Code § B3-40.0 relative to disability retirement applications may not be regarded as prescribing the effect to be given to a certification made by the Medical Board as to a death benefit claim.-Daley v. Board of Estimate, 267 App. Div. 592, 49 N.Y.S. 2d 139 [1944].

¶ 3. Under § 71 of the Charter, providing that the Board of Estimate shall from time to time establish rules and regulations for the administration and transaction of the business of the retirement system, it may be that the Board had sufficient authority to promulgate Rule 8, requiring the Medical Board to pass upon all medical examinations needed in the operation of the Retirement System, including the review and report upon the medical aspects of all claims at death as a result of an accident sustained by a member, with the reservation that the Board should have the power to determine whether the accident was sustained in the performance of duty and whether death was the result of wilful negligence.-Daley v. Board of Estimate, 267 App. Div. 592, 49 N.Y.S. 2d 139 [1944].

¶ 4. Where the conclusion of the Medical Board that a member of the Employees' Retirement System was not disabled as a result of an accidental injury received in the City's Service, was amply supported by competent evidence adduced before that Board, the determination of the Board of Estimate based upon the Medical Board's report could not be disturbed by the Court. There was no proof of fraud, bad faith, accident or mistake and in such case the Board of Estimate was bound by the determination of its own Medical Board. A mere difference in medical opinion of physicians produced by petitioner and physicians of the Medical Board did not justify a conclusion that the decision made by the Board of Estimate acting on the advice of its own Medical Board was arbitrary or unreasonable.-Nilsson v. La Guardia, 259 App. Div. 145, 18 N.Y.S. 2d 502 [1940].



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

*NYC Administrative Code 13-124*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-124 The funds; component funds.

The funds provided for herein are the annuity savings fund, the annuity reserve fund, the contingent reserve fund, the pension reserve fund and the pension fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-14.0 added chap 929/1937 § 1

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

*NYC Administrative Code 13-125*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-125 Contributions of members and their use; annuity savings fund.

a. 1. (a) Subject to the provisions of subparagraph (b) of this paragraph, the annuity savings fund shall be the fund in which shall be accumulated deductions from the compensation of members to provide for their annuities and their withdrawal allowances.

(b) Nothing contained in subparagraph (a) of this paragraph shall be construed to require the making or accumulation of deductions from compensation with respect to any period in relation to which it is provided or directed, by or pursuant to subdivision l of section 13-161 of this chapter, that deductions from compensation need not be made.

(c) Except as otherwise provided in paragraphs two and two-a of this subdivision a or in any other applicable portion of this chapter prescribing a different normal rate of contribution, upon the basis of the tables herein authorized, and regular interest, the actuary of such board shall determine for each member the proportion of compensation which, when deducted from each payment of his or her prospective earnable compensation prior to his or her eligibility for service retirement and accumulated at regular interest until his or her attainment of the minimum age of service retirement from his or her group, shall be computed to provide, at that time, an annuity equal to the pension then allowable for service as a member after the first day of October, nineteen hundred twenty.

2. (a) Upon the basis of the tables herein authorized, and regular interest, the actuary of such board shall determine for each member who is appointed a member of the uniformed force of the department of sanitation (as defined in subdivision a of section 13-154 of this chapter) on or after July third, nineteen hundred sixty-five, the proportion of compensation which, when deducted from each payment of his or her prospective earnable compensation prior to his or her eligibility for service retirement and accumulated at regular interest until the attainment of the

minimum period of service retirement applicable to him or her, shall be computed to provide, at that time, an annuity equal to twenty-five seventy-fifths of the pension then allowable to him or her for service as a member of such force.

(b) (1) Except as otherwise provided in item two of this subparagraph, the rate of contribution required to be paid on and after July third, nineteen hundred sixty-five by any member who is a member of such force and was a member of such force prior to such date shall be fifty per cent of the rate of contribution required to be paid by such member on July second, nineteen hundred sixty-five, exclusive of any increase in rate of contribution pursuant to subdivision d, e, f or g of this section or pursuant to section 13-108 of this chapter, and exclusive of any reduction of contribution pursuant to section 13-152 of this chapter or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law.

(2) Notwithstanding the provisions of item one of this subparagraph, no member mentioned in such item one shall be required to pay, on and after July third, nineteen hundred sixty-five, a rate of contribution fixed pursuant to such item one which, together with any increase in such rate of contribution pursuant to subdivision d, e, f or g of this section, is in excess of seven and one-half per cent of his or her compensation, unless such member so elects. Where any such member is required to pay additional contributions pursuant to section 13-108 of this chapter, nothing contained in this item shall affect the obligation of any such member to pay such additional contributions pursuant to such section, notwithstanding that such member's rate of contribution may thereby exceed seven and one-half per cent of his or her compensation.

(c) During any period wherein the provisions of section 13-159 of this chapter are applicable to a sanitation worker in the department of sanitation who has elected the benefits of such section, the provisions of subparagraphs (a) and (b) of this paragraph shall be inapplicable to such sanitation worker. The normal rate of contribution of any such sanitation worker who has made such election shall be as prescribed by the applicable terms of section 13-159 of this chapter, during any period wherein the provisions of such section are applicable to such member.

(d) During any period wherein the provisions of section 13-160 of this chapter are applicable to a member of the uniformed force of the department of sanitation who has elected the benefits of such section, the provisions of subparagraphs (a) and (b) of this paragraph shall be inapplicable to such member. The normal rate of contribution of any such member who has made such election shall be as prescribed by the applicable terms of section 13-160 of this chapter, during any period wherein the provisions of such section are applicable to such member.

(e) (i) Subject to the provisions of subdivision c of section 13-165 of this chapter, the normal rate of contribution of each fifty-five-year-increased-service-fraction member who, immediately prior to becoming such a member, was a member of the retirement system, shall be that which would have been fixed for such member pursuant to paragraph one of this subdivision on the basis of the tables herein authorized with respect to group three mentioned in subdivision b of section 13-172 of this chapter, if such member, at the time his or her last membership in the retirement system began, were instead a fifty-five-year-one-percentum member.

(ii) The normal rate of contribution of each fifty-five-year-increased-service-fraction member who becomes such a member at the commencement of his or her last membership in the retirement system, shall be that which would be fixed for such member pursuant to paragraph one of this subdivision on the basis of the tables herein authorized with respect to group three mentioned in subdivision b of section 13-172 of this chapter, if such member, at such commencement of his or her membership, were instead a fifty-five-year-one-percentum member.

(f) Subject to the provisions of paragraph two of subdivision a of section 13-162 of this chapter, relating to the career pension plan, during any period wherein a member is a career pension plan member under the provisions of such section, the normal rate of contribution of such member shall be as prescribed by the applicable terms of such section.

2-a. The normal rate of contribution of a transit twenty-year plan member (as defined in subdivision sixty-one of section 13-101 of this chapter) shall be as prescribed by the applicable terms of section 13-161 of this chapter, during

any period wherein the provisions of such section are applicable to such member, subject, however to the applicable provisions of subdivision l of such section relating to relief from member contributions.

3. The proportion of compensation fixed pursuant to this subdivision a shall be computed to remain constant.

4. (a) The rate of contribution required to be paid on and after the first day of the first payroll period following January first, nineteen hundred sixty-eight, by any member who became a member after June thirtieth, nineteen hundred forty-seven and prior to June thirtieth, nineteen hundred sixty-seven, shall be:

(1) such member's rate as of June twenty-ninth, nineteen hundred sixty-seven computed pursuant to paragraph one or two of subdivision a of this section, including any increase thereof pursuant to subdivision d, e, f, or g of this section or pursuant to section 13-108 of this chapter, and including any decrease thereof pursuant to section 13-152 of this chapter or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, hereinafter referred to as his or her "computed prior rate", less the difference between the rate which was computed for such member on the date he or she last became a member, pursuant to paragraph one or subparagraph (a) of paragraph two of this subdivision, exclusive of any increase thereof pursuant to subdivision d, e, f, or g of this section or section 13-108 of this chapter, and exclusive of any decrease thereof pursuant to subparagraph (b) of paragraph two of this subdivision or section 13-152 of this chapter, or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law and the rate which would have been computed for such member on the date he or she last became a member, pursuant to paragraph one or subparagraph (a) of paragraph two of this subdivision had he or she been entitled on that date to regular interest at four per cent; or

(2) if such member made an election pursuant to section 13-164 or paragraph six of subdivision a of section 13-172 of this chapter subsequent to the certification of his or her rate of contribution, his or her "computed prior rate", less the difference between the rate which would have been computed for such member on the date he or she last became a member pursuant to paragraph one of subdivision a of this section if the later election he or she made had been made on that date, and the rate which would have been computed for such member on the date he or she last became a member pursuant to paragraph one of subdivision a of this section if the later election he or she made had been made on that date, and if, on that date, he or she had been entitled to regular interest at four per cent; provided that the adjusted rate of contribution computed pursuant to this paragraph shall be subject to change as authorized by item two of subparagraph (b) of paragraph two of this subdivision, subdivision d, e, f, or g of this section, section 13-108 or 13-152 of this chapter, or subdivision one of section one hundred thirty-eight-b of the retirement and social security law.

(b) For any member to whom subparagraph (a) of this paragraph applies, and beginning with the first day of the first payroll period commencing after June thirtieth, nineteen hundred sixty-seven and ending with the last day of the last payroll period before the first day of the first payroll period following January first, nineteen hundred sixty-eight, the amount of contributions paid by such member which represents the difference between the "computed prior rate" of such member and his or her adjusted rate of contributions computed pursuant to subparagraph (a) of this paragraph shall be refunded upon the member's election, or, otherwise, shall be deemed additional contributions made for the purpose of purchasing additional annuity, but such additional contributions shall not enter into the computation for allowance on ordinary disability retirement as described in section 13-174 of this chapter.

b. The proportion so computed for a member one year younger than the minimum retirement age for service retirement from his or her group shall be applied to any member who has attained a greater age before entrance into the retirement system.

c. 1. Such board shall certify to the head of each agency who shall deduct from the compensation of each member on each and every payroll of such member for each and every payroll period, the proportion of his or her earnable compensation so computed.

2. Such board shall not certify nor shall the head of any agency make any deduction for annuity purposes from

the compensation of a member who elects not to contribute if his or her age and total-service are such as would entitle a new-entrant in his or her group to retire for service on a pension not less than one-fourth of his or her final compensation; provided, however, that such board shall not certify nor shall the head of the agency make any deductions for annuity purposes from the compensation of any member:

(a) who is a member of the uniformed force of the department of sanitation (as defined in subdivision a of section 13-154 of this chapter and who elects not to contribute, if he or she has completed twenty-five years of service as a member of such force, with a service fraction of one one-hundredth during such period of service; or

(b) who is a sanitation worker in such force and elects not to contribute, if he or she elected the benefits of section 13-159 of this chapter and has completed twenty years of allowable service as a sanitation worker in such department and the provisions of such section are applicable to him or her at the time of such election to cease contributing, except, however, that such right to cease contributing under this subparagraph shall continue only so long as the provisions of section 13-159 of this chapter continue to be applicable to such member.

(c) who is a member in such force and elects not to contribute, if he or she elected the benefits of section 13-160 of this chapter and has completed twenty years of allowable service as a member of such force and the provisions of such section are applicable to him or her at the time of such election to cease contributing, except, however, that such right to cease contributing under this subparagraph shall continue only so long as the provisions of section 13-160 of this chapter continue to be applicable to such member.

3. In determining the amount earnable by a member in a payroll period, such board may consider the rate of compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period and it may omit deductions from compensation for any period less than a full payroll period if an employee was not a member on the first day of the payroll period. To facilitate the making of deductions, it may modify the deduction required of any member by such an amount as shall not exceed one-tenth of one per cent of the compensation upon the basis of which such deduction is to be made.

4. The deductions provided herein shall be made notwithstanding that the minimum compensation provided by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt in full for his or her salary or compensation, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except such member's claim to the benefits to which he or she may be entitled under the provisions of this chapter. Such head of each agency shall certify to the comptroller on each and every payroll the amounts to be deducted. Each of such amounts shall be deducted and when deducted shall be paid into the annuity savings fund, and shall be credited, together with regular interest, to an individual account of the member from whose compensation such deduction was made.

5. The method of computation and deductions prescribed by this subdivision and by subdivisions a and b of this section shall be appropriately modified in the case of a member for whom a rate is otherwise fixed pursuant to section 13-152 of this chapter.

c-1. (1) Such board shall not certify nor shall the head of any agency make any deduction for annuity purposes from the compensation of a member who is a transit twenty-year plan member (as defined in subdivision sixty-one of section 13-101 of this chapter) and elects not to contribute, if such member is eligible to retire under section 13-161 of this chapter, except, however, that such right to cease contributing under this subdivision shall continue only so long as the provisions of section 13-161 of this chapter continue to be applicable to such member.

(2) Nothing contained in paragraph one of this subdivision shall be construed to affect or impair any right conferred by or pursuant to subdivision l of section 13-161 of this chapter upon any transit twenty-year plan member to be relieved of making member contributions.

c-2. Such board shall not certify nor shall the head of the agency make any deductions for annuity purposes from the compensation of any member:

(1) who is a fifty-five-year-increased-service-fraction member and elects not to contribute, if such member, were he or she a fifty-five-year-one-per-centum member of the same age and having a like amount of total-service, would be entitled to elect not to contribute; or

(2) who is a career pension plan member and elects not to contribute, if he or she is eligible to retire under section 13-162 of this chapter, relating to the career pension plan, by reason of having completed twenty-five years of allowable service in one or more career pension plan positions, except, however, that such right to cease contributing under this paragraph two shall continue only so long as such member continues to be a career pension plan member.

d. (1) Subject to the provisions of paragraph four of this subdivision d, in addition to the computed deductions, any member may elect to contribute at a rate fifty per centum in excess of that heretofore provided, for the purpose of purchasing additional annuity. In computing the amount of such additional rate, any modification of the normal rate pursuant to section 13-152 of this chapter shall be disregarded.

(2) Such additional contributions shall be credited to the annuity fund with regular interest. Such additional contributions shall not enter into the computation for allowance on ordinary disability retirement as described in section 13-174 of this chapter.

(3) A member may elect to discontinue his or her additional contributions at any time.

(4) The provisions of paragraph one of this subdivision shall be inapplicable to any transit twenty-year plan member (as defined in subdivision sixty-one of section 13-101 of this chapter) during any period wherein, under any right conferred by or pursuant to subdivision l of section 13-161 of this chapter, such member is not required to make contributions. In the event that a member, while making additional contributions pursuant to paragraph one of this subdivision d, acquires such right under subdivision l of such section to be relieved of making contributions, such additional contributions shall cease as of the date next preceding the date on which such right becomes effective.

e. (1) In addition to the deductions from compensation hereinbefore provided, any member may redeposit in the annuity savings fund by a single payment an amount equal to the total amount which he or she withdrew previously therefrom as provided in this chapter, or any member may deposit therein by a single payment, or in equal installments over a period to be designated by such member, but not exceeding five years, immediately prior to his or her retirement, an amount computed to be sufficient to purchase an additional annuity, which, together with such member's prospective retirement allowance, will provide for him or her a total retirement allowance of one-half of his or her final compensation at the minimum age of retirement for his or her group. Such additional amounts so deposited shall become a part of his or her accumulated deductions.

(2) The accumulated deductions of a member withdrawn as provided in this title shall be paid out of the annuity savings fund.

(3) Upon retirement of a member, his or her accumulated deductions, if any, shall be transferred from such fund to the annuity reserve fund.

f. In addition to any other deductions a member may elect to contribute to the annuity savings fund an amount not exceeding the cost of providing two service fractions of final compensation at minimum retirement age for each year of service as a civil employee of the United States government rendered on or after the first day of October, nineteen hundred twenty.

g. In addition to any other deductions a member may elect to contribute to the annuity savings fund a lump sum equivalent to the additional amount which would be in such fund if deductions had been made on the basis of such

member's total earnable compensation, including cost-of-living bonus, for the period during which he or she received such bonus, in so far as such period is within the period of final compensation. The pension part of the retirement allowance of a member making such payment shall be computed on a like basis.

h. Where a member's rate of contribution is reduced because the contributing agency contributes towards pensions-providing-for-increased-take-home-pay pursuant to section 13-152 of this chapter, such member may by written notice duly acknowledged and filed with the retirement system within one year after such reduction or within one year after he or she last became a member, whichever is later, elect to waive such reduction. One year or more after the filing thereof, a member may withdraw any such waiver by written notice duly acknowledged and filed with the retirement system. Where a member makes an election to waive such reduction, he or she shall contribute to the retirement system as otherwise provided in this chapter.

i. Notwithstanding any other provision of this chapter to the contrary, any fifty-five-year-increased-service-fraction member may elect at any time, by a written application duly executed and filed with the board, to contribute to the retirement system at a rate one per centum less than such member's normal rate of contribution. Such election by such a member and the making of contributions at such reduced rate shall not change his or her normal rate of contribution. At any time after the filing of such an application, such member may, by written application duly executed and filed with the board, elect to discontinue such reduction. Such member may thereafter at any time, by a like application so filed, elect such reduction or discontinue same.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-15.0 added chap 929/1937 § 1

Sub c par added chap 549/1938 § 1

Sub d amended chap 559/1938 § 1

Sub e added chap 740/1949 § 1

Sub f added chap 486/1951 § 1

Amended chap 509/1960 § 4

Sub a amended chap 387/1965 § 1

Sub c amended chap 387/1965 § 2

Sub a par 2 subpar c added chap 171/1967 § 2

Sub c amended chap 171/1967 § 3

Sub a par 4 added chap 575/1967 § 2

Sub a par 2 subpar c added chap 584/1967 § 2

Sub c amended chap 584/1967 § 3

Sub a par 2-a added chap 290/1968 § 2

Sub c-1 added chap 290/1968 § 3

Sub a par 2 subpars d, e added chap 821/1968 § 5

Subs c-1, i added chap 821/1968 § 6

Sub c-1 par 2 amended chap 817/1969 § 13

Sub a par 1 amended chap 870/1970 § 3

Sub a par 2-a amended chap 870/1970 § 4

Sub c-2 renumbered chap 870/1970 § 5

(formerly sub c-1 added chap 821/1968 § 6)

Sub c-1 amended chap 870/1970 § 5

(as added chap 290/1968 § 3)

Sub d amended chap 870/1970 § 6

Sub e amended chap 870/1970 § 7



Administrative Code of the City of New York



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

*NYC Administrative Code 13-125.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-125.1 Pick up of uniformed force member contributions by uniformed force employer.

a. Notwithstanding any other provision of the law to the contrary, on and after the starting date for pick up, the uniformed force employer:

(1) shall pick up and pay into the annuity savings fund the uniformed force member contributions eligible for pick up by the employer which the uniformed force members who are Tier I members (as defined in subdivision seventy-one of section 13-101 of this chapter) or Tier II members (as defined in subdivision seventy-two of such section 13-101) would otherwise be required to make on and after such starting date; and

(2) shall pick up and pay into the special fund maintained by the retirement system pursuant to subdivision a of section five hundred seventeen of the retirement and social security law, the uniformed force member contributions eligible for pick up by the employer which the uniformed force members who are Tier III members (as defined in subdivision seventy-three of such section 13-101) would otherwise be required to make on and after such starting date; and

(3) shall pick up and pay into the special fund maintained by the retirement system pursuant to subdivision a of section six hundred thirteen of the retirement and social security law, the uniformed force member contributions eligible for pick up by the employer which the uniformed force members who are Tier IV members (as defined in subdivision seventy-six of such section 13-101) would otherwise be required to make on and after such starting date.

a-1. Notwithstanding any other provision of law to the contrary, the uniformed force employer:

(1) shall, in the case of a correction member (as defined in subdivision forty of section 13-101 of this chapter) who is a participant in the twenty-year improved benefit retirement program (as defined in paragraph six of subdivision a of section four hundred forty-five-a of the retirement and social security law), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to paragraph two of subdivision d of such section four hundred forty-five-a (not including any additional member contributions due for any period prior to the first full payroll period referred to in such paragraph two of such subdivision d), and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such paragraph two would otherwise require such deductions; and

(2) shall, in the case of a member of the uniformed correction force (as defined in subdivision thirty-nine of section 13-101 of this chapter) who is a participant in the twenty-year retirement program (as defined in paragraph five of subdivision a of section five hundred four-a of the retirement and social security law), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to paragraph two of subdivision e of such section five hundred four-a (not including any additional member contributions due for any period prior to the first full payroll period referred to in such paragraph two of such subdivision e), and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such paragraph two would otherwise require such deductions; and

(3) shall, in the case of a sanitation member (as defined in subdivision sixty-four of section 13-101 of this chapter) who is a participant in the twenty-year improved benefit retirement program (as defined in paragraph six of subdivision a of section four hundred forty-five-b of the retirement and social security law), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to paragraph two of subdivision d of such section four hundred forty-five-b, and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such paragraph two would otherwise require such deductions; and

(4) shall, in the case of a sanitation member (as defined in subdivision sixty-four of section 13-101 of this chapter) who is a participant in the twenty-year retirement program (as defined in paragraph five of subdivision a of section six hundred four-a of the retirement and social security law), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to paragraph two of subdivision e of such section six hundred four-a, and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such paragraph two would otherwise require such deductions; and

(5) shall, in the case of a correction member (as defined in subdivision forty of section 13-101 of this chapter) who is a participant in the twenty-year improved benefit retirement program for captains and above (as defined in paragraph six of subdivision a of section four hundred forty-five-c of the retirement and social security law), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to paragraph three of subdivision d of such section four hundred forty-five-c (not including any additional member contributions due for any period prior to the first full payroll period referred to in such paragraph three), and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such paragraph three would otherwise require such deductions; and

(6) shall, in the case of a member of the uniformed correction force (as defined in subdivision thirty-nine of section 13-101 of this chapter) who is a participant in the twenty-year retirement program for captains and above (as defined in paragraph five of subdivision a of section five hundred four-b of the retirement and social security law), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to paragraph three of subdivision e of such section five hundred four-b (not including any additional member contributions due for any period prior to the first full payroll period referred to in such paragraph three), and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such paragraph three would otherwise require such deductions; and

(7) shall, in the case of a transit authority member (as defined in subdivision fifty-nine-a of section 13-101 of this chapter) who is a participant in the twenty-five-year and age fifty-five retirement program (as defined in paragraph five of subdivision a of section six hundred four-b of the retirement and social security law), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to paragraph two of subdivision e of such section six hundred four-b and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such paragraph two would otherwise require such deduction; and

(8) shall, in the case of a member of the uniformed correction force (as defined in subdivision thirty-nine of section 13-101 of this chapter) who is a participant in the twenty-year retirement program (as defined in paragraph three of subdivision a of section five hundred four-d of the retirement and social security law), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to paragraph three of subdivision e of such section five hundred four-d (not including any additional member contributions due for any period prior to the first full payroll period referred to in such paragraph three), and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such paragraph three would otherwise require such deductions.

b. An amount equal to the amount of such picked up contributions shall be deducted by the uniformed force employer from the compensation of such member (as such compensation would be in the absence of a pick up program applicable to him or her hereunder) and shall not be paid to such member. Such deduction shall be effected by means of subtraction from such member's current compensation (as so defined), or offset against future pay increases, or a combination of such methods.

c. (1) The member contributions and additional member contributions picked up pursuant to this section for any uniformed force member shall be paid by the uniformed force employer in lieu of an equal amount of the member contributions and additional member contributions otherwise required to be paid by such member under the provisions of this chapter or the retirement and social security law and shall be deemed to be and treated as employer contributions pursuant to subsection h of section four hundred fourteen of the United States internal revenue code, as amended, for the purposes, under federal law, for which such subsection h so classifies such picked up contributions. Subject to the provisions of subdivision b of this section, for all other purposes, including but not limited to:

(i) the obligation of such member to pay New York state and New York city income and/or wages or earnings taxes and the withholding of such taxes; and

(ii) the determination of the amount of such member's uniformed force member contributions eligible for pick up by the employer or additional member contributions required to be picked up pursuant to subdivision a-one of this section; and

(iii) the determination of the amount of any retirement allowance or other pension fund benefit payable to or on account of such member or any other pension fund right, benefit or privilege of such member; the amount of the member contributions and additional member contributions picked up pursuant to this section shall be deemed to be a part of the employee compensation of such member and such member's gross compensation (as it would be in the absence of a pick up program applicable to him or her hereunder) shall not be deemed to be changed by such member's participation in such program.

(2) Nothing contained in paragraph one of this subdivision c shall be construed as superseding the provisions of section four hundred thirty-one of the retirement and social security law or any similar provision of law which limits the salary base for computing retirement benefits payable by a public retirement system.

d. (1) For the purpose of determining the retirement system rights, benefits and privileges of any uniformed force member whose uniformed force member contributions eligible for pick up by the employer are picked up pursuant

to this section (including the procurement of loans by any such member who is a Tier I member or Tier II member), such picked up member contributions shall be deemed to be and treated (i) as member contributions made by such member pursuant to law and (ii) as a part of such member's accumulated deductions, if he or she is a Tier I member or a Tier II member and (iii) as a part of such member's accumulated contributions under section five hundred seventeen of the retirement and social security law, if such member is a Tier III member and (iv) as a part of such member's contributions under section six hundred thirteen of such law, if such member is a Tier IV member.

(2) For the purpose of determining the retirement system rights, benefits and privileges of any correction member (as defined in subdivision forty of section 13-101 of this chapter) who is a participant in the twenty-year improved benefit retirement program (as defined in paragraph six of subdivision a of section four hundred forty-five-a of the retirement and social security law), the additional member contributions of such participant picked up pursuant to paragraph one of subdivision a-one of this section shall be deemed to be and treated as a part of such member's additional member contributions under paragraphs one and two of subdivision d of such section four hundred forty-five-a.

(3) For the purpose of determining the retirement system rights, benefits and privileges of any member of the uniformed correction force (as defined in subdivision thirty-nine of section 13-101 of this chapter) who is a participant in the twenty-year retirement program (as defined in paragraph five of subdivision a of section five hundred four-a of the retirement and social security law), the additional member contributions of such participant picked up pursuant to paragraph two of subdivision a-one of this section shall be deemed to be and treated as a part of such member's additional member contributions under paragraphs one and two of subdivision e of such section five hundred four-a.

(4) For the purpose of determining the retirement system rights, benefits and privileges of any sanitation member (as defined in subdivision sixty-four of section 13-101 of this chapter) who is a participant in the twenty-year improved benefit retirement program (as defined in paragraph six of subdivision a of section four hundred forty-five-b of the retirement and social security law), the additional member contributions of such participant picked up pursuant to paragraph three of subdivision a-one of this section shall be deemed to be and treated as a part of such member's additional member contributions under paragraphs one and two of subdivision d of such section four hundred forty-five-b.

(5) For the purpose of determining the retirement system rights, benefits and privileges of any sanitation member (as defined in subdivision sixty-four of section 13-101 of this chapter) who is a participant in the twenty-year retirement program (as defined in paragraph five of subdivision a of section six hundred four-a of the retirement and social security law) the additional member contributions of such participant picked up pursuant to paragraph four of subdivision a-one of this section shall be deemed to be and treated as a part of such member's additional member contributions under paragraphs one and two of subdivision e of such section six hundred four-a.

(6) For the purpose of determining the retirement system rights, benefits and privileges of any correction member (as defined in subdivision forty of section 13-101 of this chapter) who is a participant in the twenty-year improved benefit retirement program for captains and above (as defined in paragraph six of subdivision a of section four hundred forty-five-c of the retirement and social security law), the additional member contributions of such participant picked up pursuant to paragraph five of subdivision a-one of this section shall be deemed to be and treated as a part of such member's additional member contributions under paragraphs one and three of subdivision d of section four hundred forty-five-c of the retirement and social security law.

(7) For the purpose of determining the retirement system rights, benefits and privileges of any member of the uniformed correction force (as defined in subdivision thirty-nine of section 13-101 of this chapter) who is a participant in the twenty-year retirement program for captains and above (as defined in paragraph five of subdivision a of section five hundred four-b of the retirement and social security law), the additional member contributions of such participant picked up pursuant to paragraph six of subdivision a-one of this section shall be deemed to be and treated as a part of such member's additional member contributions under paragraphs one and three of subdivision e of section five hundred

four-b of the retiremnent and social security law.

(8) For the purpose of determining the retirement system rights, benefits and privileges of any transit authority member (as defined in subdivision fifty-nine-a of section 13-101 of this chapter) who is a participant in the twenty-five-year and age fifty-five retirement program (as defined in paragraph five of subdivision a of section six hundred four-b of the retirement and social security law), the additional member contributions of such participant picked up pursuant to paragraph seven of subdivision a-one of this section shall be deemed to be and treated as a part of such member's additional member contributions under paragraphs one and two of subdivision e of such section six hundred four-b.

(9) Interest on contributions picked up for any uniformed force member pursuant to this section (other than additional member contributions picked up pursuant to subdivision a-one of this section) shall accrue in favor of the member and be payable by his or her public employer at the same rate, for the same time periods, in the same manner and under the same circumstances as interest would be required to accrue in favor of the member and be payable by the public employer on such contributions if they were made by such member in the absence of a pick up program applicable to such member under the provisions of this section.

(9-a) For the purpose of determining the retirement system rights, benefits and privileges of any member of the uniformed correction force (as defined in subdivision thirty-nine of section 13-101 of this chapter) who is a participant in a twenty-year retirement program (as defined in paragraph three of subdivision a of section five hundred four-d of the retirement and social security law), the additional member contributions of such participant picked up pursuant to paragraph eight of subdivision a-one of this section shall be deemed to be and treated as a part of such member's additional member contributions under paragraphs one and three of subdivision e of section five hundred four-d of the retirement and social security law.

(10) Where member contributions of any uniformed force member who is a Tier I member or Tier II member are picked up and paid into the annuity savings fund pursuant to this section, such picked up contributions shall be credited to a separate account within the individual account of such member in such fund, so that a separate record of the amount of such picked up contributions is maintained.

(11) Where member contributions of any uniformed force member who is a Tier III member are picked up and paid, pursuant to this section, into the special fund maintained by the retirement system pursuant to subdivision a of section five hundred seventeen of the retirement and social security law, and where member contributions of any uniformed force member who is a Tier IV member are picked up and paid, pursuant to this section, into the special fund maintained by the retirement system pursuant to subdivision a of section six hundred thirteen of such law, such picked up contributions shall be credited to a separate account within the individual account of such member in such fund, so that a separate record of the amount of such picked up contributions is maintained.

(12) Nothing contained in this subdivision d shall be construed as granting member contributions or additional member contributions picked up under this section any status, under federal law, other than as employer contributions, pursuant to subsection h of section four hundred fourteen of the United States internal revenue code, for the federal purposes for which such subsection h so classifies such picked up contributions.

e. No member whose member contributions or additional member contributions are required to be picked up pursuant to this section shall have any right to elect that such pick up, with accompanying deduction from the compensation of such member as prescribed by subdivision b of this section, shall not be effectuated.

f. In any case where it is provided by contract, agreement, law, or regulation (1) that a uniformed force employer shall be reimbursed in whole or in part by another government or another public entity for costs incurred by such employer in maintaining a uniformed force consisting of uniformed force members or (2) that any such cost shall be paid in whole or in part by any such other government or public entity, nothing contained in this section shall be

construed as abrogating, diminishing or impairing any right of such uniformed force employer, pursuant to such contract, agreement, law or regulation, to be reimbursed in whole or in part for such costs or to require that such costs be paid in whole or in part by such other government or public entity.

**HISTORICAL NOTE**

Section added ch. 114/1989 § 6

Subd. a-1 added ch. 936/1990 § 8, eff. Dec. 19, 1990*8

Subd. a-1 par (2) amended ch. 631/1993 § 12, eff. Aug. 4, 1993*

Subd. a-1 par (3) added ch. 547/1992 § 6, eff. July 24, 1992*

Subd. a-1 par (4) amended ch. 631/1993 § 12, eff. Aug. 4, 1993*

Subd. a-1 par (4) added ch. 547/1992 § 6, eff. July 24, 1992*

Subd. a-1 pars (5) added ch. 631/1993 § 13, eff. Aug. 4, 1993*

Subd. a-1 par (6) amended chap 622/2004 § 13, eff. Oct. 19, 2004.

[See Note 1]

Subd. a-1 pars (6) added ch. 631/1993 § 13, eff. Aug. 4, 1993*

Subd. a-1 par (7) amended chap 622/2004 § 13, eff. Oct. 19, 2004.

[See Note 1]

Subd. a-1 par (7) added ch. 529/1994 § 4, eff. July 26, 1994*

Subd. a-1 par (8) added chap 622/2004 § 13, eff. Oct. 19, 2004. [See

Note 1]

Subd. c par 1 amended ch. 936/1990 § 9, eff. Dec. 19, 1990*

Subd. d amended ch. 529/1994 § 5, eff. July 26, 1994*

Subd. d amended ch. 547/1992 § 7, eff. July 24, 1992*

Subd. d amended ch. 936/1990 § 10, eff. Dec. 19, 1990*

Subd. d pars (6), (7) added ch. 631/1993 § 14, eff. Aug. 4, 1993*

Subd. d pars (8)-(11) renumbered ch. 631/1993 § 14, eff. Aug. 4, 1993*

formerly pars (6)-(9))

Subd. d par (9-a) added chap 622/2004 § 14, eff. Oct. 19, 2004. [See

Note 1]

Subd. e amended ch. 936/1990 § 10, eff. Dec. 19, 1990*

**NOTE**

1. Provisions of chap 622/2004:

§ 15. Nothing contained in sections thirteen and fourteen of this act shall be construed to create any contractual right with respect to the members to whom such sections apply. The provisions of such sections are intended to afford members the advantages of certain benefits contained in the federal internal revenue code, and the effectiveness and existence of such sections and the benefits they confer are completely contingent thereon.

§ 16. This act shall take effect immediately, provided, however, that:

. . . . . .

(b) the provisions of sections thirteen and fourteen of this act shall remain in full force and effect only so long as, pursuant to federal law, contributions picked up under such sections are not includible as gross income of a member for federal income tax purposes until distributed or made available to the member.

**FOOTNOTES**

8

[Footnote 8]: * Amendment remains in force and effect only so long as, pursuant to federal law, contributions picked up under such sections are not includible as gross income of a member for federal income tax purposes until distributed or made available to the member.

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-125.2*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-125.2 Pick up of Tier I or Tier II non-uniformed-force member contributions by employer.

a. Notwithstanding any other provision of the law to the contrary, on and after the starting date for pick up, the employer responsible for pick up shall pick up and pay into the annuity savings fund the Tier I or Tier II non-uniformed-force member contributions eligible for pick up by the employer which each Tier I or Tier II non-uniformed-force member would otherwise be required to make on and after such starting date, including (1) any contributions required to be made for the purchase of credit for previous service or credit for military service by its employees pursuant to an irrevocable payroll deduction agreement under subdivision b-1 of section four hundred forty-six of the retirement and social security law on or after the effective date of subdivision one-a of section 13-108 of this chapter, and (2) any contributions required to be made for the purchase of credit for prior service or credit for military service by the employee pursuant to an irrevocable payroll deduction agreement under subdivision one-a of section 13-108 of this chapter on or after the effective date of such subdivision, provided, however, that contributions picked up for the purchase of credit for military service shall be deposited in the employer contribution account in accordance with the provisions of subdivision four of section one thousand of the retirement and social security law.

a-1. Notwithstanding any other provision of law to the contrary, the employer responsible for pick up shall, in the case of a member who is a participant in the age fifty-five improved benefit retirement program (as defined in paragraph ten of subdivision a of section four hundred forty-five-d of the retirement and social security law), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to paragraph three of subdivision d of such section four hundred forty-five-d, and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such paragraph three otherwise would require such deductions.

a-2. Notwithstanding any other provision of law to the contrary, the Triborough bridge and tunnel authority shall, in the case of a bridge and tunnel member (as defined in paragraph two of subdivision a of section four hundred forty-five-d of the retirement and social security law) who is a participant in the twenty-year/age fifty improved benefit retirement program (as defined in paragraph three of such subdivision a), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to paragraph two of subdivision d of such section four hundred forty-five-d (not including any additional member contributions due for any period prior to the first full payroll period referred to in such paragraph two of such subdivision e), and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such paragraph two would otherwise require such deductions.

a-3.* Notwithstanding12 any other provision of law to the contrary, on or after the starting date for pick up, the employer responsible for pick up shall, in the case of a dispatcher member (as defined in paragraph one of subdivision a of section 13-157.2 of this chapter) who is a participant in the twenty-five year improved benefit retirement program (as defined in paragraph two of such subdivision a), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to subdivision e of such section 13-157.2, and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such subdivision e would otherwise require such deductions.

a-3.* Notwithstanding any other provision of law to the contrary, on or after the starting date for pick up, the employer responsible for pick up shall, in the case of an EMT member (as defined in paragraph one of subdivision a of section 13-157.2 of this chapter) who is a participant in the twenty-five year improved benefit retirement program (as defined in paragraph two of such subdivision a), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to subdivision e of such section 13-157.2, and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such subdivision e would otherwise require such deductions.

a-4.** Notwithstanding13 any other provision of law to the contrary, on or after the starting date for pick up, the employer responsible for pick up shall, in the case of a dispatcher member (as defined in paragraph two of subdivision a of section four hundred forty-five-e of the retirement and social security law) who is a participant in the twenty-five year improved benefit retirement program (as defined in paragraph three of such subdivision a), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to subdivision d of such section four hundred forty-five-e, and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such subdivision d would otherwise require such deductions.

a-4.** Notwithstanding any other provision of law to the contrary, on or after the starting date for pick up, the employer responsible for pick up shall, in the case of an EMT member (as defined in paragraph two of subdivision a of section four hundred forty-five-e of the retirement and social security law) who is a participant in the twenty-five year improved benefit retirement program (as defined in paragraph three of such subdivision a), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to subdivision d of such section four hundred forty-five-e, and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such subdivision d would otherwise require such deductions.

a-5.*** Notwithstanding14 any other provision of law to the contrary, on or after the starting date for pick up, the employer responsible for pick up shall, in the case of a deputy Sheriff Member (as defined in paragraph two of subdivision a of section four hundred forty-five-f of the retirement and social security law) who is a participant in the twenty-five year improved benefit retirement program (as defined in paragraph three of such subdivision a), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to subdivision d of such section 445-f, and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such subdivision d would

otherwise require such deductions.

a-5.*** Notwithstanding any other provision of law to the contrary, on or after the starting date for pick up, the employer responsible for pick up shall, in the case of a special officer (including persons employed by the city of New York in the title urban park ranger or associate urban park ranger), parking control specialist, school safety agent, campus peace officer or taxi and limousine inspector member who is a participant in the twenty-five year improved benefit retirement program pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to subdivision e of section 13-157.3 of this chapter, and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such subdivision e would otherwise require such deductions.

a-6. Notwithstanding any other provision of law to the contrary, on or after the starting date for pick up, the employer responsible for pick up shall, in the case of a special officer (including persons employed by the city of New York in the title urban park ranger or associate urban park ranger), parking control specialist, school safety agent, campus peace officer or taxi and limousine inspector member who is a participant in the twenty-five year improved benefit retirement program pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to subdivision d of section four hundred forty-five-f of the retirement and social security law, and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such subdivision d would otherwise require such deductions.

a-7. Notwithstanding any other provision of law to the contrary, on or after the starting date for pick up, the employer responsible for pick up shall, in the case of an automotive member (as defined in paragraph two of subdivision a of section four hundred forty-five-g of the retirement and social security law) who is a participant in the twenty-five year/age fifty improved benefit retirement program (as defined in paragraph three of such subdivision a), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to subdivision d of such section four hundred forty-five-g, and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such subdivision d would otherwise require such deductions.

a-8. Notwithstanding any other provision of law to the contrary, on or after the starting date for pick up, the employer responsible for pick up shall, in the case of a police communications member (as defined in paragraph two of subdivision a of section four hundred forty-five-h of the retirement and social security law) who is a participant in the twenty-five year improved benefit retirement program (as defined in paragraph three of such subdivision a), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to subdivision d of such section four hundred forty-five-h, and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such subdivision d would otherwise require such deductions.

b. An amount equal to the amount of such picked up contributions shall be deducted by the employer responsible for pick up from the compensation of such member (as such compensation would be in the absence of a pick up program applicable to him or her hereunder) and shall not be paid to such member. Such deduction shall be effected by means of subtraction from such member's current compensation (as so defined), or offset against future pay increases, or a combination of such methods.

c. (1) The member contributions and additional member contributions picked up pursuant to this section for any Tier I or Tier II non-uniformed-force member shall be paid by the employer responsible for pick up in lieu of an equal amount of the member contributions and additional member contributions otherwise required to be paid by such member under the provisions of this chapter or the retirement and social security law, and shall be deemed to be and treated as employer contributions pursuant to subsection h of section four hundred fourteen of the United States internal revenue code, as amended, for the purposes, under federal law, for which such subsection h so classifies such picked up

contributions. Subject to the provisions of subdivision b of this section, for all other purposes, including but not limited to:

(i) the obligation of such member to pay New York state and New York city income and/or wages or earnings taxes and the withholding of such taxes; and

(ii) the determination of the amount of such member's Tier I or Tier II nonuniformed-force member contributions eligible for pick up by the employer or additional member contributions required to be picked up pursuant to subdivision a-one, subdivision a-two, subdivision a-three, subdivision a-four, subdivision a-five, subdivision a-six, subdivision a-seven or subdivision a-eight of this section; and

(iii) the determination of the amount of any retirement allowance or other retirement system benefit payable to or on account of such member or any other retirement system right, benefit or privilege of such member;

the amount of the member contributions and additional member contributions picked up pursuant to this section shall be deemed to be a part of the employee compensation of such member and such member's gross compensation (as it would be in the absence of a pick up program applicable to him or her hereunder) shall not be deemed to be changed by such member's participation in such program.

(2) Nothing contained in paragraph one of this subdivision c shall be construed as superseding the provisions of section four hundred thirty-one of the retirement and social security law or any similar provision of law which limits the salary base for computing retirement benefits payable by a public retirement system.

d. (1) For the purpose of determining the retirement system rights, benefits and privileges of any Tier I or Tier II non-uniformed-force member whose contributions eligible for pick up by the employer are picked up pursuant to this section (including the procurement of loans by any such member), such picked up member contributions shall be deemed to be and treated (i) as member contributions made by such member pursuant to law and (ii) as a part of such member's accumulated deductions.

(2) For the purpose of determining the retirement system rights, benefits and privileges of any member who is a participant in the age fifty-five improved benefit retirement program (as defined in paragraph ten of subdivision a of section four hundred forty-five-d of the retirement and social security law), the additional member contributions of such participant picked up pursuant to subdivision a-one of this section shall be deemed to be and treated as a part of such member's additional member contributions under subdivision d of such section four hundred forty-five-d.

(2-a) For the the purpose of determining the retirement system rights, benefits, and privileges of any bridge and tunnel member (as defined in paragraph two of subdivision a of section four hundred forty-five-d of the retirement and social security law) who is a participant in the twenty-year/age fifty improved benefit retirement program (as defined in paragraph three of such subdivision a), the additional member contributions of such participant picked up pursuant to subdivision a-two of this section shall be deemed to be and treated as a part of such member's additional member contributions under subdivision d of such section four hundred forty-five-d.

(2-b) For the purpose of determining the retirement system rights, benefits and privileges of any member who is a participant in the twenty-five year retirement program (as defined in paragraph two of subdivision a of section 13-157.2 of this chapter), the additional member contributions of such participant picked up pursuant to subdivision a-three of this section shall be deemed to be and treated as a part of such member's additional contributions under subdivision e of such section 13-157.2

(2-c) For the purpose of determining the retirement system rights, benefits and privileges of any member who is a participant in the twenty-five year improved benefit retirement program (as defined in paragraph three of subdivision a of section four hundred forty-five-e of the retirement and social security law), the additional member contributions of such participant picked up pursuant to subdivision a-four of this section shall be deemed to be and treated as a part of

such member's additional member contributions under subdivision d of such section four hundred forty-five-e.

(2-d)* For the15 purpose of determining the retirement system rights, benefits and privileges of any member who is a participant in the twenty-five year improved benefit retirement program (as defined in paragraph three of subdivision a of section four hundred forty-five-f of the retirement and social security law), the additional member contributions of such participant picked up pursuant to subdivision a-five of this section shall be deemed to be and treated as a part of such member's additional member contributions under subdivision d of such section four hundred forty-five-f.

(2-d)* For the purpose of determining the retirement system rights, benefits and privileges of any member who is a participant in the twenty-five year retirement program, as defined in paragraph six of subdivision a of section 13-157.3 of this chapter, the additional member contributions of such participant picked up pursuant to subdivision a-three of this section shall be deemed to be and treated as a part of such member's additional contributions under subdivision e of such section 13-157.3.

(2-e) For the purpose of determining the retirement system rights, benefits and privileges of any member who is a participant in the twenty-five year improved benefit retirement program as defined in paragraph seven of subdivision a of section four hundred forty-five-f of the retirement and social security law, the additional member contributions of such participant picked up pursuant to subdivision a-four of this section shall be deemed to be and treated as a part of such member's additional member contributions under subdivision d of such section four hundred forty-five-f.

(2-f) For the purpose of determining the retirement system rights, benefits and privileges of any member who is a participant in the twenty-five year/age fifty improved benefit retirement program (as defined in paragraph three of subdivision a of section four hundred forty-five-g of the retirement and social security law), the additional member contributions of such participant picked up pursuant to subdivision a-seven of this section shall be deemed to be and treated as a part of such member's additional member contributions under subdivision d of such section four hundred forty-five-g.

(2-g) For the purpose of determining the retirement system rights, benefits and privileges of any member who is a participant in the twenty-five year improved benefit retirement program (as defined in paragraph three of subdivision a of section four hundred forty-five-h of the retirement and social security law), the additional member contributions of such participant picked up pursuant to subdivision a-eight of this section shall be deemed to be and treated as a part of such member's additional member contributions under subdivision d of such section four hundred forty-five-h.

(3) Interest on contributions picked up for any Tier I or Tier II non-uniformed-force member pursuant to this section (other than additional member contributions picked up pursuant to subdivision a-one, subdivision a-two, subdivision a-three, subdivision a-four, subdivision a-five, subdivision a-six, subdivision a-seven or subdivision a-eight of this section) shall accrue in favor of the member and be payable to the retirement system at the same rate, for the same time periods, in the same manner and under the same circumstances as interest would be required to accrue in favor of the member and be payable to the retirement system on such contributions if they were made by such member in the absence of a pick up program applicable to such member under the provisions of this section.

(4) Member contributions of any Tier I or Tier II non-uniformed-force member which are picked up and paid into the annuity savings fund pursuant to this section shall be credited to a separate account within the individual account of such member in such fund, so that a separate record of the amount of such picked up contributions is maintained.

(5) Nothing contained in this subdivision d shall be construed as granting member contributions or additional member contributions picked up under this section any status, under federal law, other than as employer contributions, pursuant to subsection h of section four hundred fourteen of the United States internal revenue code, for the federal purposes for which such subsection h so classifies such picked up contributions.

e. No member whose member contributions or additional member contributions are required to be picked up pursuant to this section shall have any right to elect that such pick up, with accompanying deduction from the compensation of such member as prescribed by subdivision b of this section, shall not be effectuated.

**HISTORICAL NOTE**

Section added ch. 681/1992 § 3 eff. July 31, 1992

Subd. a amended chap 627/2007 § 13, approved Aug. 28, 2007 eff. upon compliance with chap 627/2007 § 22. [See § 13-101 Note 1]

Subd. a-1 added chap 96/1995 § 10, eff. June 28, 1995*11

Subd. a-2 added chap 466/1996 § 1, eff. Aug. 8, 1996 and deemed in effect on and after Aug. 2, 1995*

Subd. a-3 (laid out first) added chap 576/2000 § 7, eff. Dec. 8, 2000 and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. a-3 (laid out second) added chap 577/2000 § 7, eff. Dec. 8, 2000 and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. a-4 (laid out first) added chap 576/2000 § 7, eff. Dec. 8, 2000 and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. a-4 (laid out second) added chap 576/2000 § 7, eff. Dec. 8, 2000 and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. a-5 (laid out first) added chap 559/2001 § 7, eff. Dec. 12, 2001 and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. a-5 (laid out second) amended chap 640/2003 § 9, eff. Oct. 7, 2003 and shall not affect the expiration of such provisions as provided for in chap 681/1992, as amended.

Subd. a-5 (laid out second) added chap 582/2001 § 7, eff. Dec. 19, 2001

and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. a-6 amended chap 640/2003 § 10, eff. Oct. 7, 2003 and shall not affect the expiration of such provisions as provided for in chap 681/1992, as amended.

Subd. a-6 added chap 582/2001 § 7, eff. Dec. 19, 2001 and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. a-7 added chap 414/2002 § 6, eff. Aug. 13, 2002 and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. a-8 added chap 682/2003 § 7, eff. Oct. 21, 2003 and shall not affect the expiration of such provisions as provided for in chap 681/1992, as amended.

Subd. c par (1) amended chap 96/1995 § 11, eff. June 28, 1995*

Subd. c par (1) subpar (ii) amended chap 682/2003 § 8, eff. Oct. 21, 2003 and shall not affect the expiration of such provisions as provided for in chap 681/1992, as amended.

Subd. c par (1) subpar (ii) amended chap 414/2002 § 7, eff. Aug. 13, 2002 and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. c par (1) subpar (ii) separately amended chaps 559/2001 § 8, eff. Dec. 12, 2001 and 582/2001 § 8, eff. Dec. 19, 2001 and both amendments shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. c par (1) subpar (ii) separately amended chaps 576/2000 § 8 and 577/2000 § 8, both eff. Dec. 8, 2000 and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. c par 1 subpar (ii) amended chap 466/1996 § 2, eff. Aug. 8, 1996 and deemed in effect on and after Aug. 2, 1995*

Subd. d amended chap 96/1995 § 12, eff. June 28, 1995*

Subd. d par (2-a) added chap 466/1996 § 3, eff. Aug. 8, 1996 and deemed in effect on and after Aug. 2, 1995*

Subd. d pars (2-b), (2-c) separately added chaps 576/2000 § 9 and 577/2000 § 9, both eff. Dec. 8, 2000 and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. d par (2-d) (laid out first) added chap 559/2001 § 9, eff. Dec. 12, 2001 and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. (d) par (2-d) (laid out second) added chap 582/2001 § 9, eff. Dec. 19, 2001 and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. d par (2-e) added chap 582/2001 § 9, eff. Dec. 19, 2001 and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. d par (2-f) added chap 414/2002 § 8, eff. Aug. 13, 2002 and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. d par (2-g) added chap 682/2003 § 9, eff. Oct. 21, 2003 and shall not affect the expiration of such provisions as provided for in chap 681/1992, as amended.

Subd. d par (3) amended chap 682/2003 § 10, eff. Oct. 21, 2003 and shall not affect the expiration of such provisions as provided for in chap 681/1992, as amended.

Subd. d par (3) amended chap 414/2002 § 9, eff. Aug. 13, 2002 and shall not affect the expirations of such provisions as provided for in chap

681/1992, as amended.

Subd. d par (3) separately amended chap 559/2001 § 10, eff. Dec. 12, 2001 and chap 582/2001 § 10, eff. Dec. 19, 2001 and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. d par (3) separately amended chaps 576/2000 § 10 and 577/2000 § 10, both eff. Dec. 8, 2000 and shall not affect the expirations of such provisions as provided for in chap 681/1992, as amended.

Subd. d par (3) amended chap 466/1996 § 4, eff. Aug. 8, 1996 and deemed in effect on and after Aug. 2, 1995*

Subd. e amended chap 96/1995 § 12, eff. June 28, 1995*

**FOOTNOTES**

12

[Footnote 12]: * There are two subdivisions a-3.

13

[Footnote 13]: ** There are two subdivisions a-4.

14

[Footnote 14]: *** There are two subdivisions a-5.

15

[Footnote 15]: * There are two paragraphs (2-d).

11

[Footnote 11]: * Amendment remains in force and effect only so long as, pursuant to federal law, contributions picked up under such sections are not includible as gross income of a member for federal income tax purposes until distributed or made available to the member.

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-126*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-126 Contributions of members and their use; annuity reserve fund.

The annuity reserve fund shall be the fund from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-16.0 added chap 929/1937 § 1

**CASE NOTES**

¶ 1. Where the Board of Trustees meets to determine an application for accidental disability retirement, and there is a tie vote, the employee will obtain ordinary disability rather than accidental disability. However, this is not deemed a determination as to the cause of the disability. Thus, that determination does not have a collateral estoppel effect against the employee in a personal injury suit in which the cause of the disability is in issue. Kenny v. New York City Transit Authority, 275 A.D.2d 639, 713 N.Y.S.2d 173 (1st Dept. 2000).

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-127*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-127 Contributions of the city and their use; contingent reserve fund.

a. The contingent reserve fund shall be the fund in which shall be accumulated the reserve necessary to pay all pensions and the reserve-for-increased-take-home-pay, and all death benefits allowable by the city on account of the city-service of members to whom prior-service is not allowable as provided in this chapter.

b. (1) (a) Subject to the provisions of subparagraph (d) of this paragraph and paragraph five of this subdivision, the city shall contribute to the contingent reserve fund:

(i) annually an amount to be known as the normal contribution; and

(ii) in each city fiscal year during the period beginning with fiscal year nineteen hundred seventy-seven-nineteen hundred seventy-eight and ending on the last day of fiscal year nineteen hundred seventy-nine-nineteen hundred eighty, one annual installment of an additional amount which shall be known as the original unfunded accrued liability contribution, and which shall be determined as provided for in subparagraph (a) of paragraph three of this subdivision; and

(iii) in each city fiscal year during the period beginning with fiscal year nineteen hundred eighty-nineteen hundred eighty-one and ending on the last day of fiscal year two thousand fourteen-two thousand fifteen, the annual installment, applicable to such fiscal year, of an additional amount which shall be known as the revised unfunded accrued liability contribution and which shall be determined as provided for in subparagraph (b) of paragraph three of this subdivision; and

(iv) in each city fiscal year during the period beginning with fiscal year nineteen hundred eighty-one-nineteen hundred eighty-two and ending on the last day of fiscal year two thousand twenty-two thousand twenty-one, the annual installment, applicable to such fiscal year, of an additional amount which shall be known as the balance sheet liability contribution and which shall be determined as provided for in paragraph four of this subdivision; and

(v) in fiscal year nineteen hundred eighty-nineteen hundred eighty-one, the amount of one year's interest, at the rate of seven and one-half per centum per annum, on the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty, as determined pursuant to the provisions of paragraph four of this subdivision; and

(vi) in each city fiscal year, beginning with fiscal year nineteen hundred eighty-nineteen hundred eighty-one and ending on the last day of fiscal year nineteen hundred ninety-four-nineteen hundred ninety-five, the amount required to fulfill the city's obligation, if any, which accrued in such fiscal year, to make contributions on account of increased-take-home-pay; and

(vii) in each city fiscal year, beginning with fiscal year nineteen hundred eighty-nineteen hundred eighty-one and ending on the last day of fiscal year nineteen hundred ninety-four-nineteen hundred ninety-five, the amount required to fulfill the city's obligation, which accrued in such fiscal year under the provisions of subdivision twenty of section two hundred forty-three of the military law, to pay in behalf of members qualifying for such benefit, member contributions with respect to certain periods of the military service of such members.

(b) (i) Subject to the provisions of item (iv) of this subparagraph, if the nineteen hundred eighty unfunded accrued liability adjustment determined pursuant to subparagraph (c) of paragraph three of this subdivision b is a credit, the total of the amounts required to be contributed to the contingent reserve fund in each city fiscal year, commencing with the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and ending with the two thousand nine-two thousand ten fiscal year, pursuant to items (i), (iii), (iv), (v), (vi) and (vii) of subparagraph (a) of this paragraph and otherwise pursuant to law shall be reduced by the amount of one annual installment of such nineteen hundred eighty unfunded accrued liability adjustment.

(ii) Subject to the provisions of subparagraph (d) of this paragraph, if the nineteen hundred eighty unfunded accrued liability adjustment determined pursuant to subparagraph (c) of paragraph three of this subdivision is a charge, the city shall contribute in each city fiscal year, commencing with the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and ending with the two thousand nine-two thousand ten fiscal year, in addition to the amounts required to be contributed under the provisions of subparagraph (a) of this paragraph, one annual installment of such nineteen hundred eighty unfunded accrued liability adjustment.

(iii) Subject to the provisions of item (iv) of this subparagraph, the total of the amounts required to be contributed to the contingent reserve fund in each city fiscal year commencing with the nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year and ending with the two thousand eleven-two thousand twelve fiscal year pursuant to items (i), (iii), (iv), (vi) and (vii) of subparagraph (a) of this paragraph and the applicable provisions of items (i) and (ii) of this subparagraph and otherwise pursuant to law shall be reduced by the amount of one annual installment of the nineteen hundred eighty-two unfunded accrued liability adjustment determined pursuant to item (vi) of subparagraph (c) of paragraph three of this subdivision.

(iii-a) If the nineteen hundred eighty-five unfunded accrued liability adjustment determined with respect to any obligor pursuant to the applicable provisions of sub-items (A) to (G), inclusive, of item (vii) of subparagraph (c) of paragraph three of this subdivision b is a charge, the total of the amounts required to be contributed by such obligor to the contingent reserve fund in each city fiscal year commencing with the nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year and ending with the two thousand fourteen-two thousand fifteen fiscal year pursuant to items (i), (iii), (iv), (vi) and (vii) of subparagraph (a) of this paragraph one and the applicable provisions of items (i) and (ii) of this subparagraph (b) and otherwise pursuant to law shall be increased by the amount of one annual installment of such nineteen hundred eighty-five unfunded accrued liability adjustment determined with respect to such obligor.

(iii-b) If the nineteen hundred eighty-five unfunded accrued liability adjustment determined with respect to any obligor pursuant to the applicable provisions of such sub-items (A) to (G), inclusive, is a credit, the total of the amounts required to be contributed by such obligor to the contingent reserve fund in each city fiscal year commencing with the nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year and ending with the two thousand fourteen-two thousand fifteen fiscal year pursuant to items (i), (iii), (iv), (vi) and (vii) of subparagraph (a) of this paragraph one and the applicable provisions of items (i) and (ii) of this subparagraph (b) and otherwise pursuant to law shall be reduced by the amount of one annual installment of such nineteen hundred eighty-five unfunded accrued liability adjustment with respect to such obligor.

(iv) The installments of the nineteen hundred eighty-two unfunded accrued liability adjustment, and, if the nineteen hundred eighty unfunded accrued liability adjustment is a credit, the installments of such nineteen hundred eighty adjustment credit, shall be allocated among the city and other obligors required to pay public employer contributions on account of members, such allocation to be made in accordance with the shares of such installments attributable to them pursuant to the provisions of law prescribing their obligations to make or assume responsibility for employer con- tributions.

(v) For the purpose of effectuating the nineteen hundred eighty-eight unfunded accrued liability adjustment provided for in section 13-638.1 of the code, contributions to the contingent reserve fund on account of charges shall be made by responsible obligors (as defined in paragraph six of subdivision a of such section) or credits shall be allowed to such obligors against contributions otherwise payable by them, as the case may be, to the extent and in the manner provided for in such section. The annual determination of the normal contribution for fiscal years occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-eight shall appropriately take account of the nineteen hundred eighty-eight unfunded accrued liability adjustment as provided for in such section 13-638.1 and the provisions of subparagraph (b) of paragraph two of this subdivision b shall be deemed to be conformably modified for such purpose.

(c) (i) Any amount required by the provisions of items (iii), (iv), (v), (vi) and (vii) of subparagraph (a) of this paragraph and subparagraph (b) of this paragraph and section 13-704 of this title to be contributed to the contingent reserve fund in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year or any subsequent fiscal year shall be payable with interest on such amount at a rate per centum per annum equal to the rate per centum per annum required to be used for the purpose of any actuarial valuation, determination or appraisal made to determine the amount of the normal contribution payable to the contingent reserve fund in such fiscal year.

(ii) Any amount required to be contributed to the contingent reserve fund in any fiscal year of the city preceding the nineteen hundred eighty-nineteen hundred eighty-one fiscal year shall be deemed to have been required to be paid with interest on such amount at a rate per centum per annum equal to the rate per centum per annum required to be used for the purpose of any actuarial valuation, determination or appraisal made to determine the amount of the normal contribution payable to the contingent reserve fund in such fiscal year.

(iii) It is hereby declared that the provisions of items (i) and (ii) of this subparagraph, insofar as they relate to provisions of this chapter or other laws requiring payment of employer contributions to the retirement system prior to the date of enactment of the act which added this subparagraph, express the intent of such provisions of this title or other laws requiring such payment.

(d) The requirements of subparagraph (a) of this paragraph with respect to contributions to the contingent reserve fund and the requirements, if any, of subparagraph (b) of this paragraph with respect to contributions to such fund, and the requirements of subparagraph (c) of this paragraph with respect to payment of interest on contributions to such fund shall be subject to the provisions of sections 13-130, 13-131 and 13-132 of this chapter.

(2) Normal contribution. (a)(i) Upon the basis of the latest mortality and other tables herein authorized and regular interest, the actuary shall determine as of June thirtieth, nineteen hundred eighty and as of each succeeding June

thirtieth, the amount of the total liability for all benefits provided in this title, in articles eleven and fourteen of the retirement and social security law and in any other law prescribing benefits payable by the retirement system on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions, if any, and the liability for benefits attributable to the annuity savings fund, provided, however, that in determining such total liability as of June thirtieth, nineteen hundred ninety-five and as of each succeeding June thirtieth, the actuary shall include (A) the liability on account of future increased-take-home-pay contributions, if any, (B) the liability on account of future public employer obligations under the provisions of subdivision twenty of section two hundred forty-three of the military law, to pay in behalf of members qualifying for such benefit, member contributions with respect to certain periods of the military service of such members and (C) the liability for benefits attributable to the annuity savings fund.

(ii) For the purposes of subparagraphs (b) and (c) of this paragraph, the actuary shall determine, as of June thirtieth, two thousand and as of each succeeding June thirtieth, the total liability of the retirement system which shall be an amount equal to the sum of (A) the total liability for all benefits as determined pursuant to item (i) of this subparagraph, (B) the amount, as estimated by the actuary, of the total liability of the retirement system on account of all payments which the retirement system may be required to make for base fiscal years beginning on or after July first, nineteen hundred ninety-nine to the correction officers' variable supplements fund and the correction captains' and above variable supplements fund, and (C) the amount, if any, as estimated by the actuary, of the total liability of the retirement system on account of payments which the retirement system may be required to make to any other fund without a corresponding offset in the liabilities of the retirement system.

(a-1) Notwithstanding any other provision of law to the contrary, for the purpose of calculating the amount of the normal contribution due from the city to the contingent reserve fund pursuant to subparagraph (c) of this paragraph in fiscal year two thousand five-two thousand six, and in each fiscal year thereafter, both the total liability of the retirement system, as calculated by the actuary in accordance with subparagraph (a) of this paragraph, and the normal rate of contributions, as calculated by the actuary in accordance with subparagraph (b) of this paragraph, shall be determined as of June thirtieth of the second fiscal year preceding the fiscal year in which the normal contribution is payable, provided, however, that (i) the actuary shall use for such calculations the mortality and other tables that are applicable at the time he or she performs such calculations; (ii) the total funds on hand, as determined by the actuary pursuant to sub-item (E) of item (i) of subparagraph (b) of this paragraph, shall be adjusted by adding to such amount the present value of all employer contributions required to be paid into the contingent reserve fund in the fiscal year next preceding the fiscal year in which the normal contribution is payable, as determined by the actuary; and (iii) the present value of the prospective future salaries of all members, as computed by the actuary for the purposes of item (ii) of subparagraph (b) of this paragraph, shall be reduced by the present value of the salaries expected to be paid to all members in the fiscal year next preceding the fiscal year in which the normal contribution is payable, as determined by the actuary.

(b) The normal rate of contribution shall be the rate per centum obtained:

(i) by deducting from the amount of such total liability the sum of:

(A) (1) the amount obtained by adding together the present value of all required future revised unfunded accrued liability contributions and the present value of all required future payments of the nineteen hundred eighty unfunded accrued liability adjustment, determined pursuant to subparagraph (c) of paragraph three of this subdivision, if such adjustment is a charge; or

(2) the remainder obtained by subtracting from the present value of all required future revised unfunded accrued liability contributions, the present value of all future installments of the nineteen hundred eighty unfunded accrued liability adjustment required to be credited, if such nineteen hundred eighty adjustment is a credit;

(3) minus (whether (1) or (2) of this sub-item (A) is applicable) the present value of all future installments of the nineteen hundred eighty-two unfunded accrued liability adjustment; and

(A-1) the present value of all future installments of the aggregate nineteen hundred eighty-five unfunded accrued liability adjustment determined pursuant to sub-item (K) of item (vii) of subparagraph (c) of paragraph three of this subdivision b; and

(B) the present value of all required future balance sheet liability, contributions, plus, in the case of the determination of the normal contributions payable in fiscal year nineteen hundred eighty-nineteen hundred eighty-one, the present value, as of June thirtieth, nineteen hundred eighty, of the payment of interest on the balance sheet liability as required by item (v) of subparagraph (a) of paragraph one of this subdivision; and

(C) the present value of all required future payments, pursuant to section 13-704 of this title, of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(D) in the case of the determination of the normal contribution payable in each fiscal year commencing with fiscal year nineteen hundred ninety-five-nineteen hundred ninety-six, the present value of future member contributions of all members; and

(E) the total funds on hand, including the amount of any unpaid moneys appropriated pursuant to section 13-133 of this chapter and, in the case of the determination of the normal contribution payable in each fiscal year commencing with fiscal year nineteen hundred ninety-five-nineteen hundred ninety-six, including the amount in the annuity savings fund; and

(F) the present value of all other future installments of accrued liability contributions to the retirement system required by the applicable provisions of section 13-638.2 of this title which are not covered by the preceding subitems of this item (i); and

(ii) by dividing the remainder by one per centum of the present value of the prospective future salaries of all members, as computed by the actuary on the basis of the latest mortality and service tables adopted pursuant to section 13-121 of this subchapter, and on the basis of regular interest. The normal rate of contribution determined by the actuary shall not be less than zero, shall be certified by the actuary after each such valuation and shall continue in force until the next succeeding valuation and certification.

(c) (i) The amount of the normal contribution due from the city to the contingent reserve fund in each city fiscal year, commencing with the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and ending with the two thousand four-two thousand five fiscal year, shall be the amount obtained by multiplying the normal rate of contribution, as determined by the actuary as of June thirtieth next preceding such fiscal year, by the aggregate annual salaries of the members on such next preceding June thirtieth, and shall be payable in such fiscal year next following such June thirtieth, together with such regular interest thereon which may be due, if any, as calculated by the actuary.

(ii) The amount of the normal contribution due from the city to the contingent reserve fund in each city fiscal year, commencing with the two thousand five-two thousand six fiscal year, shall be the amount obtained by multiplying the normal rate of contribution, as determined by the actuary as of the second June thirtieth preceding the fiscal year in which the normal contribution is payable, in accordance with the provisions of subparagraphs (a-1) and (b) of this paragraph, by the aggregate amount of the salaries expected to be paid to the members during the fiscal year in which the normal contribution is payable, as determined by the actuary, and such normal contribution shall be payable in the second fiscal year following the June thirtieth as of which the normal rate of contribution is determined, together with such regular interest thereon which may be due, if any, as calculated by the actuary.

(iii) In the case of the normal contribution payable in the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and in any subsequent fiscal year, the term "regular interest", as used in this subparagraph, shall mean regular interest as defined by the applicable provisions of subparagraph (ii) or subparagraph (iii) of paragraph (c) or paragraph (d) of subdivision twelve of section 13-101 of this chapter.

(3) Unfunded accrued liability contributions. (a) The original unfunded accrued liability contribution shall be an amount which, if paid to the contingent reserve fund in forty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred seventy-seven-nineteen hundred seventy-eight fiscal year, would be the actuarial equivalent, on the basis of five and one-half per centum interest and the actuarial tables in effect as of July first, nineteen hundred seventy-seven, of the difference between the accrued liability excluding the liability for benefits attributable to the annuity savings fund on June thirtieth, nineteen hundred seventy-five and the total funds on hand, excluding the amount in the annuity savings fund, but including the amount of any unpaid moneys appropriated pursuant to section 13-133 of this chapter. The original unfunded accrued liability contributions shall include the payments required by section 13-130 of this chapter.

(b) (i) The revised unfunded accrued liability contribution shall be an amount determined as prescribed in items (ii), (iii), (iv), (v), (vi) and (vii) of this subparagraph (b).

(ii) To the amount of the difference constituting the unfunded accrued liability as of June thirtieth, nineteen hundred seventy-five heretofore determined pursuant to the provisions of this paragraph as in effect on July first, nineteen hundred seventy-seven, there shall be added interest thereon at the rate of five and one-half per centum per annum for the period from July first, nineteen hundred seventy-five to June thirtieth, nineteen hundred eighty.

(iii) (A) There shall be computed, in the manner provided in sub-item (B) of this item, the discounted value of each of the installments of the unfunded accrued liability contribution which, in the absence of the enactment of chapter nine hundred fifty-seven of the laws of nineteen hundred eighty-one, were payable or would have been payable in the city's nineteen hundred seventy-seven-nineteen hundred seventy-eight, nineteen hundred seventy-eight-nineteen hundred seventy-nine, nineteen hundred seventy-nine-nineteen hundred eighty, nineteen hundred eighty-nineteen hundred eighty-one and nineteen hundred eighty-one-nineteen hundred eighty-two fiscal years.

(B) Such discounted value of each such installment shall be computed as of January first of the city's second fiscal year preceding the fiscal year in which such installment was payable or would have been payable and on the basis of five and one-half per centum interest per annum on the amount of such installment.

(C) There shall be computed with respect to such discounted value of each such installment, interest thereon from January first of such second fiscal year preceding the fiscal year in which such installment was or would have been payable to June thirtieth, nineteen hundred eighty at the rate of five and one-half per centum per annum.

(D) The discounted values of all of such installments with respect to such fiscal years, computed as provided for in sub-items (A) and (B) of this item, together with interest on each installment as provided for in sub-item (C) of this item, shall be added together.

(iv) From the sum computed pursuant to item (ii) of this subparagraph, the sum computed pursuant to item (iii) of this subparagraph shall be subtracted.

(v) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty and ending on June thirtieth, nineteen hundred eighty-two, the revised unfunded accrued liability contribution shall be the annual installment, applicable to such fiscal year, of an amount which, if paid to the contingent reserve fund in thirty-five equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year, would be the actuarial equivalent, on the basis of seven and one-half per centum interest per annum, of the remainder computed pursuant to item (iv) of this subparagraph.

(vi) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, the revised unfunded accrued liability contribution shall be the annual installment, applicable to such fiscal year, of an amount which, if paid to the contingent reserve fund in thirty-three equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year, would be the actuarial equivalent, on the basis

of eight per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-two on the basis of seven and one-half per centum interest per annum, of the installments of the unfunded accrued liability contribution computed pursuant to item (v) of this subparagraph, which installments are hypothetically allocated by such item (v) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-two.

(vii) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand fifteen, the revised unfunded accrued liability contribution shall be the annual installment, applicable to such fiscal year, of an amount which, when paid to the contingent reserve fund in twenty-seven equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of the installments of the unfunded accrued liability contribution computed pursuant to item (vi) of this subparagraph, which installments are hypothetically allocated by such item (vi) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(c) (i) The nineteen hundred eighty unfunded accrued liability adustment shall be an amount determined as prescribed in items (ii), (iii), (iv) and (v) of this subparagraph.

(ii) (A) Upon the basis of the actuarial tables in effect as of June thirtieth, nineteen hundred eighty for valuation purposes and interest at the rate of seven and one-half per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty, the amount of the total liability for all benefits provided in this chapter, in articles eleven and fourteen of the retirement and social security law and in any other law prescribing benefits payable by the retirement system on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions, if any, and the liability for benefits attributable to the annuity savings fund.

(B) From such total liability computed pursuant to sub-item (A) of this item , there shall be subtracted the sum of:

(1) the present value, as of June thirtieth, nineteen hundred eighty, of all future normal costs of the retirement system, computed pursuant to the entry age normal cost method of determining such normal costs; and

(2) the present value, as of such June thirtieth, of all future installments of the balance sheet liability contribution (as defined in paragraph four of this subdivision b); and

(3) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this title, of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(4) the present value, as of such June thirtieth, of future member contributions of members subject to article fourteen of the retirement and social security law; and

(5) the total funds on hand as of such June thirtieth, excluding the amount in the annuity savings fund, but including the amount of any unpaid moneys appropriated pursuant to section 13-133 of this chapter.

(iii) (A) If the amount computed pursuant to sub-item (B) of item (ii) of this subparagraph is larger than the amount computed pursuant to item (iv) of subparagraph (b) of this paragraph, the latter amount shall be subtracted from the former amount and the remainder resulting from such subtraction shall constitute a charge.

(B) If the amount computed pursuant to sub-item (B) of item (ii) of this subparagraph is smaller than the amount computed pursuant to item (iv) of subparagraph (b) of this paragraph, the former amount shall be subtracted from the latter amount and the remainder resulting from such subtraction shall constitute a credit.

(iv) (A) If the remainder computed pursuant to item (iii) of this subparagraph is a charge, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, if paid to the contingent reserve fund in thirty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year, would be the actuarial equivalent, on the basis of seven and one-half per centum interest per annum, of such remainder.

(B) If the remainder computed pursuant to item (iii) of this subparagraph is a credit, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, if credited in thirty equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year) in reduction of the amounts which the city (and other obligors required to pay public employer contributions on account of members) would otherwise be required to pay to the contingent reserve fund pursuant to items (i), (iii), (iv), (v), (vi) and (vii) of subparagraph (a) of paragraph one of this subdivision or otherwise pursuant to law, would be the actuarial equivalent, on the basis of seven and one-half per centum interest per annum, of such remainder.

(v) (A) With respect to determination of the amount of contributions payable to the contingent reserve fund in each of the city's nineteen hundred eighty-nineteen hundred eighty-one and nineteen hundred eighty-one-nineteen hundred eighty-two fiscal years, the annual installment of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to item (iv) of this subparagraph, which installment is applicable to such fiscal year, shall be applied as a charge or a credit, as the case may be, in relation to such contributions payable in such fiscal year.

(B) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, if paid (if a charge) or credited (if a credit) in twenty-eight equal annual installments, commencing with a payment or credit, as the case may be, in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-two on the basis of seven and one-half per centum interest per annum, of those installments of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to item (iv) of this subparagraph, which installments are hypothetically allocated by such item (iv) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-two.

(C) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand ten, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, when paid (if a charge) or credited (if a credit) in twenty-two equal annual installments, commencing with a payment or credit, as the case may be, in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to sub-item (B) of this item (v), which installments are hypothetically allocated by such sub-item (B) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(D) With respect to determination of the amount of contributions payable to the contingent reserve fund in each of such city fiscal years referred to in sub-item (B) of sub-item (C) of this item, the annual installment of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to sub-item (B) or sub-item (C) of this item, which installment is applicable to such fiscal year, shall be applied as a charge or credit, as the case may be, in relation to such contributions payable in such fiscal year.

(vi) (A) The nineteen hundred eighty-two unfunded accrued liability adjustment shall be an amount determined as prescribed in sub-items (B), (C), (D) and (E) of this item.

(B) Upon the basis of the actuarial tables in effect as of June thirtieth, nineteen hundred eighty-one for valuation purposes and interest at the rate of seven and one-half per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-two, the amount of the actuarial accrued liability of the retirement system, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(C) Upon the basis of the actuarial tables in effect as of June thirtieth, nineteen hundred eighty-two for valuation purposes and interest at the rate of eight per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-two, the amount of the actuarial accrued liability of the retirement system, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(D) With respect to determination of the amount of contributions payable to the contingent reserve fund in such city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, the nineteen hundred eighty-two unfunded accrued liability adjustment shall be an amount which, if credited in thirty equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year) in reduction of the amounts which the city (and other obligors required to pay public employer contribution on account of members) would otherwise be required to pay to the contingent reserve fund pursuant to items (i), (iii), (iv), (vi) and (vii) of subparagraph (a) of paragraph (1) of this subdivision b or otherwise pursuant to law, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the excess of the amount computed pursuant to sub-item (B) of this item (vi) over the amount computed pursuant to sub-item (C) of this item (vi).

(E) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand twelve, the nineteen hundred eighty-two unfunded accrued liability adjustment shall be an amount which, when credited in twenty-four equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the amounts which the city (and other obligors required to pay public employer contribution on account of members) would otherwise be required to pay to the contingent reserve fund pursuant to items (i), (iii), (iv), (vi) and (vii) of subparagraph (a) of paragraph (1) of this subdivision b or otherwise pursuant to law, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the nineteen hundred eighty-two unfunded accrued liability adjustment computed pursuant to sub-item (D) of this item (vi), which installments are hypothetically allocated by such sub-item (D) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(vii) (A) With respect to any obligor required by law to make contributions to the contingent reserve fund, the nineteen hundred eighty-five unfunded accrued liability adjustment shall be an amount determined for such obligor as prescribed by the applicable provisions of the succeeding sub-items of this item (vii).

(B) Upon the basis of the actuarial tables in effect for valuation purposes with respect to determination of the normal contribution payable to the contingent reserve fund in the city's nineteen hundred eighty-four-nineteen hundred eighty-five fiscal year and interest at the rate of eight per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-five, the amount of the actuarial accrued liability of the retirement system, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(C) Upon the basis of the actuarial tables in effect for valuation purposes with respect to determination of the normal contribution payable to the contingent reserve fund in the city's nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year and interest at the rate of eight per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-five, the amount of the actuarial accrued liability of the retirement system, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(D) The actuary shall determine the portion of the liability (other than liability on account of the senior colleges

of the city university) computed pursuant to sub-item (B) of this item (vii), which portion is attributable to each obligor required by law to make contributions to the contingent reserve fund of the retirement system.

(E) The actuary shall determine the portion of the liability (other than liability on account of such senior colleges) computed pursuant to sub-item (C) of this item (vii), which portion is attributable to each such obligor.

(F) If the portion computed pursuant to sub-item (E) of this item (vii) with respect to any such obligor is greater than the portion computed pursuant to sub-item (D) of this item (vii) with respect to such obligor, the nineteen hundred eighty-five unfunded accrued liability adjustment with respect to such obligor for each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight, shall be the annual installment applicable to such fiscal year of a charge in an amount which, if paid by such obligor to the contingent reserve fund in thirty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the excess of the amount of such portion computed pursuant to sub-item (E) of this item (vii) over the amount of such portion, computed pursuant to sub-item (D) of this item (vii).

(F-1) If the portion computed pursuant to sub-item (E) of this item (vii) with respect to any such obligor is greater than the portion computed pursuant to sub-item (D) of this item (vii) with respect to such obligor, the nineteen hundred eighty-five unfunded accrued liability adjustment with respect to such obligor for each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand fifteen, shall be the annual installment applicable to such fiscal year of a charge in an amount which, when paid by such obligor to the contingent reserve fund in twenty-seven equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of the installments of unfunded accrued liability adjustment computed pursuant to sub-item (F) of this item (vii), which installments are hypothetically allocated by such sub-item (F) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(G) If the portion computed pursuant to sub-item (D) of this item (vii) with respect to any such obligor is greater than the portion computed pursuant to sub-item (E) of this item (vii) with respect to such obligor, the nineteen hundred eighty-five unfunded accrued liability adjustment with respect to such obligor for each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight, shall be the annual installment applicable to such fiscal year of a credit in an amount which, if credited in thirty equal annual installments, (the first of which installments is to be credited in the city's nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year) in reduction of the amounts which such obligor would otherwise be required to pay to the contingent reserve fund pursuant to items (i), (iii), (iv), (v), (vi) and (vii) of subparagraph (a) of paragraph one of this subdivision b or otherwise pursuant to law, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the excess of the amount of such portion computed pursuant to sub-item (D) of this item (vii) over the amount of such portion computed pursuant to sub-item (E) of this item (vii).

(G-1) If the portion computed pursuant to sub-item (D) of this item (vii) with respect to any such obligor is greater than the portion computed pursuant to sub-item (E) of this item (vii) with respect to such obligor, the nineteen hundred eighty-five unfunded accrued liability adjustment with respect to such obligor for each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand fifteen, shall be a credit in an amount which, when credited in twenty-seven equal annual installments, (the first of which installments is to be credited in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the amounts which such obligor would otherwise be required to pay to the contingent reserve fund pursuant to items (i), (iii), (iv), (v), (vi) and (vii) of subparagraph (a) of paragraph one of this subdivision b or otherwise pursuant to law, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest

per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the unfunded accrued liability adjustment computed pursuant to sub-item (G) of this item (vii), which installments are hypothetically allocated by such sub-item (G) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(H) The actuary shall determine the portion of the liability computed pursuant to sub-item (B) of this item (vii), which portion is attributable to the senior colleges of the city university of New York.

(I) The actuary shall determine the portion of the liability computed pursuant to sub-item (C) of this item (vii), which portion is attributable to such senior colleges.

(J) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight, the nineteen hundred eighty-five unfunded accrued liability adjustment attributable to the senior colleges of such university shall be the annual installment applicable to such fiscal year of an amount which, if credited in thirty equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year) in reduction of the amounts which the city and/or the state of New York would otherwise be required to pay to the contingent reserve fund pursuant to items (i), (iii), (iv), (v), (vi) and (vii) of subparagraph (a) of paragraph one of this subdivision b or otherwise pursuant to law, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the excess of the amount of such portion computed pursuant to sub-item (H) of this item (vii) over the amount of such portion computed pursuant to sub-item (I) of this item (vii).

(J-1) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand fifteen, the nineteen hundred eighty-five unfunded accrued liability adjustment attributable to the senior colleges of such university shall be the annual installment applicable to such fiscal year of an amount which, when credited in twenty-seven equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the amounts which the city and/or the state of New York would otherwise be required to pay to the contingent reserve fund pursuant to items (i), (iii), (iv), (v), (vi) and (vii) of subparagraph (a) of paragraph one of this subdivision b or otherwise pursuant to law, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the unfunded accrued liability adjustment computed pursuant to sub-item (J) of this item (vii), which installments are hypothetically allocated by such sub-item (J) to designated city fiscal year succeeding June thirtieth, nineteen hundred eighty-eight.

(K) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight, the aggregate nineteen hundred eighty-five unfunded accrued liability adjustment shall be the annual installment applicable to such fiscal year of an amount, which, if paid to the contingent reserve fund in thirty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the excess of the amount computed pursuant to sub-item (C) of this item (vii) over the amount computed pursuant to sub-item (B) of this item (vii).

(K-1) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending June thirtieth, two thousand fifteen, the aggregate nineteen hundred eighty-five unfunded accrued liability adjustment shall be the annual installment applicable to such fiscal year of an amount, which, when paid to the contingent reserve fund in twenty-seven equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the unfunded accrued liability adjustment computed pursuant to sub-item (K) of this item (vii), which installments are hypothetically

allocated by such sub-item (K) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(4) (a) As used in this section, the following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:

(i) (A) "Normal contribution for balance sheet liability purposes". The hypothetical amount which the normal contribution payable in each city fiscal year occurring during the period beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred eighty would have equalled if such normal contribution had been required by law to be paid to the contingent reserve fund in the city fiscal year in which the obligation to make such normal contribution accrued and such normal contribution had been required by law to be determined in the manner provided for in sub-items (B), (C) and (D) of this item (i).

(B) Upon the basis of the mortality and other tables effective under this chapter as of July first, nineteen hundred seventy-seven and interest at the rate of five and one-half per centum per annum, the actuary shall determine, as of June thirtieth next preceding each such fiscal year for which such normal contribution is being determined (hereinafter referred to as the "subject fiscal year") the amount of the then total liability for all benefits provided in this chapter, in articles eleven and fourteen of the retirement and social security law and in any other law prescribing benefits payable by the retirement system on account of all then members and beneficiaries, excluding the then liability on account of future annual contributions, for balance sheet liability purposes, on account of reserves-for-increased-take-home-pay (as defined in item (iv) of this subparagraph (a), if any, and the then liability for benefits attributable to the annuity savings fund.

(C) The hypothetical normal rate of contribution with respect to the subject fiscal year shall be the rate per centum obtained:

(i) by deducting from the amount of such total liability the sum of:

(A) the present value of all then required future unfunded accrued liability contributions for balance sheet liability purposes (as defined in item (ii) of this subparagraph (a)); and

(B) the present value of all then required future annual contributions, for balance sheet liability purposes, on account of amortization of losses on dispositions of certain securities within the meaning of section 13-704 of this title (as defined in item (iii) of this subparagraph (a)); and

(C) the present value of future member contributions of members subject to article fourteen of the retirement and social security law; and

(D) the amount obtained by adding together the total funds on hand (excluding therefrom the amount in the annuity savings fund) and the balance sheet liability as of such June thirtieth next preceding the subject fiscal year; and

(ii) by dividing the remainder by one per centum of the then present value of the prospective future salaries of all members, as computed on the basis of the mortality and service tables adopted pursuant to section 13-121 of this chapter and in effect on July first, nineteen hundred seventy-seven, and on the basis of interest at the rate of five and one-half per centum per annum.

(D) The amount of the normal contribution for balance sheet liability purposes hypothetically payable in the subject fiscal year shall be the amount obtained (1) by multiplying such hypothetical normal contribution rate computed with respect to the subject fiscal year by the aggregate annual salaries of the members as of June thirtieth of the subject fiscal year and (2) by adding to the product of such multiplication, interest on such product at the rate of five and one-half per centum per annum for a period of six months.

(ii) "Unfunded accrued liability contribution for balance sheet liability purposes". (A) With respect to the city's

nineteen hundred seventy-four-nineteen hundred seventy-five fiscal year, such term shall mean a hypothetical amount which, if paid to the contingent reserve fund in forty equal annual installments, beginning with payment of a first installment in the city's nineteen hundred seventy-four-nineteen hundred seventy-five fiscal year, would be the actuarial equivalent, on the basis of interest at the rate of five and one-half per centum per annum, of the remainder computed in the manner prescribed by sub-items (B) and (C) of this item (ii).

(B) Upon the basis of the actuarial tables in effect as of July first, nineteen hundred seventy-seven for valuation purposes and interest at the rate of five and one-half per centum per annum, there shall be computed, as of June thirtieth, nineteen hundred seventy-four, the amount of the total liability for all benefits provided by this title, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the retirement system on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions and the liability for benefits attributable to the annuity savings fund.

(C) From such total liability computed pursuant to sub-item (B) of this item (ii) there shall be subtracted the sum of:

(1) the present value, as of June thirtieth, nineteen hundred seventy-four, of all future normal costs of the retirement system, computed pursuant to the entry age normal cost method of determining such normal costs; and

(2) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this title (as then in effect), of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(3) the sum obtained by adding together the balance sheet liability as of such June thirtieth, (as such liability is determined pursuant to the provisions of subparagraph (b) of this paragraph four) and the total funds on hand as of such June thirtieth, excluding the amount in the annuity savings fund, but including the amount of any unpaid moneys appropriated pursuant to section 13-133 of this chapter.

(D) With respect to each of the city's fiscal years occurring during the period from July first, nineteen hundred seventy-five to June thirtieth, nineteen hundred eighty, such term shall mean a hypothetical amount which, if paid to the contingent reserve fund in forty equal annual installments, beginning with payment of a first installment in the city's nineteen hundred seventy-five-nineteen hundred seventy-six fiscal year, would be the actuarial equivalent, on the basis of interest at the rate of five and one-half per centum per annum, of the remainder computed pursuant to sub-items (E) and (F) of this item (ii).

(E) Upon the basis of the actuarial tables in effect as of July first, nineteen hundred seventy-seven for valuation purposes and interest at the rate of five and one-half per centum per annum, there shall be computed, as of June thirtieth, nineteen hundred seventy-five, the amount of the total liability for all benefits provided by this chapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the retirement system on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions and the liability for benefits attributable to the annuity savings fund.

(F) From such total liability computed pursuant to sub-item (E) of this item (ii), there shall be subtracted the sum of:

(1) the present value, as of June thirtieth, nineteen hundred seventy-five, of all future normal costs of the retirement system, computed pursuant to the entry age normal cost method of determining such normal costs; and

(2) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this title, (as then in effect) of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(3) the sum obtained by adding together the balance sheet liability as of such June thirtieth (as such liability is determined pursuant to the provisions of subparagraphs (c) to (i), inclusive, of this paragraph four) and the total funds on hand as of such June thirtieth, excluding the amount in the annuity savings fund, but including the amount of any unpaid moneys appropriated pursuant to section 13-133 of this chapter.

(iii) "Annual contribution, for balance sheet liability purposes, on account of amortization of losses on dispositions of certain securities within the meaning of section 13-704 of this title." A hypothetical annual payment to the contingent reserve fund in each of the city's fiscal years occurring during the period beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred eighty, of the amount of the excess of installments (hypothetically payable in such year) of losses on prior dispositions of securities within the meaning of section 13-704 of this title (relating to graduated crediting of gains and amortization of losses on dispositions of certain securities) over installments (hypothetically creditable in such year) of gains on such prior dispositions, which annual amount shall be determined in the manner provided in subdivision h of section 13-704 of this title.

(iv) "Annual contribution, for balance sheet liability purposes, on account of reserves-for-increased-take-home-pay." A hypothetical annual payment to the contingent reserve fund in each of the city's fiscal years occurring during the period from July first, nineteen hundred seventy-four to June thirtieth, nineteen hundred eighty, of the amount required to fulfill the public employer obligation, which accrued in such year, make contributions on account of increased-take-home-pay.

(v) "Annual military law contribution for balance sheet liability purposes." A hypothetical annual payment to the contingent reserve fund in each of the city's fiscal years occurring during the period beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred eighty, of the amount required to fulfill the public employer obligations, which accrued in such year under the provisions of subdivision twenty of section two hundred forty-three of the military law, to pay in behalf of members qualifying for such benefit member contributions with respect to certain periods of military service of such members.

(vi) "Deficiency contribution". The total annual amount which, under the provisions of paragraphs one and three of this subdivision and subdivision e of this section (as added by chapter eight hundred twenty-one of the laws of nineteen hundred sixty-eight and amended by chapter eight hundred seventeen of the laws of nineteen hundred sixty-nine), as such provisions were in effect during the period from July first, nineteen hundred seventy-two to June thirtieth, nineteen hundred seventy-seven, the city and other public employers required to contribute as provided for in section 13-130 of this chapter were required to pay to the contingent reserve fund in each of the city's nineteen hundred seventy-four-nineteen hundred seventy-five, nineteen hundred seventy-five-nineteen hundred seventy-six and nineteen hundred seventy-six-nineteen hundred seventy-seven fiscal years.

(vii) "Contribution on account of amortization, pursuant to section 13-704 of this title, of losses on dispositions of certain securities". The total annual amount by which the sum of the installments of losses, payable pursuant to section 13-704 of this title (as in effect prior to July first, nineteen hundred eighty) in each of the city's fiscal years occurring during the period from July first, nineteen hundred seventy-four to June thirtieth, nineteen hundred eighty in relation to dispositions of securities within the meaning of such section, exceeded the sum of the installments of gains creditable in the same fiscal year in relation to the same dispositions of securities.

(b) The balance sheet liability as of June thirtieth, nineteen hundred seventy-four shall be the sum of six hundred seventy-two million, one hundred eighty-seven thousand, nine hundred seventeen dollars ($672,187,917), consisting of the sum of:

(i) The discounted value, as of June thirtieth, nineteen hundred seventy-four of the sum of two hundred seventy-seven million, six hundred eighty-five thousand, nine hundred forty-two dollars ($277,685,942), which constituted the amount payable to the contingent reserve fund in the city's nineteen hundred seventy-four-nineteen hundred seventy-five fiscal year by the city (and other public employers required to contribute as provided for in section

13-130 of this chapter) in fulfillment of their obligations to make contributions to the retirement system payable in such fiscal year, such discounting being calculated on the basis of interest at the rate of five and one-half per centum per annum and a discount period of six months extending retroactively from January first, nineteen hundred seventy-five to June thirtieth, nineteen hundred seventy-four and such discounted value being the sum of two hundred seventy million, three hundred fifty thousand, eight hundred sixty-eight dollars ($270,350,868); and

(ii) the discounted value, as of June thirtieth, nineteen hundred seventy-four, of the sum of four hundred thirty-five million, four hundred forty thousand, four hundred twenty-two dollars ($435,440,422), which constituted the amount payable into the contingent reserve fund in the city's nineteen hundred seventy-five-nineteen hundred seventy-six fiscal year by the city (and other public employers required to contribute as provided for in section 13-130 of this chapter) in fulfillment of their obligations to make contributions to the retirement system payable in such fiscal year, such discounting being calculated on the basis of interest at the rate of five and one-half per centum per annum and a discount period of eighteen months extending from January first, nineteen hundred seventy-six retroactively to June thirtieth, nineteen hundred seventy-four, and such discounted value being the sum of four hundred one million, eight hundred thirty-seven thousand, forty-nine dollars ($401,837,049).

(c) The balance sheet liability, as of each June thirtieth succeeding June thirtieth, nineteen hundred seventy-four to and including June thirtieth, nineteen hundred eighty, shall be determined as provided for in subparagraphs (d) to (j), inclusive, of this paragraph four.

(d) To the amount of the balance sheet liability as of June thirtieth next preceding the June thirtieth (which last-mentioned June thirtieth is hereinafter referred to as the "subject June thirtieth") as of which the balance sheet liability is being determined as provided for in subparagraph (c) of this paragraph four, there shall be added one year's interest on such amount at the rate of five and one-half per centum per annum.

(e) With respect to the city's fiscal year ending on the subject June thirtieth (hereinafter referred to as the "subject fiscal year") there shall be added together the contribution components hereinafter specified in this subparagraph (e), which components, for the purposes of this paragraph four, are hypothetically deemed to have accrued in the subject fiscal year and to have been payable therein, as follows:

(i) the amount of the normal contribution for balance sheet liability purposes (as defined in item (i) of subparagraph (a) of this paragraph four); and

(ii) the amount of the applicable installment of the unfunded accrued liability contribution for balance sheet liability purposes (as defined in item (ii) of subparagraph (a) of this paragraph); and

(iii) the amount of the annual contribution, for balance sheet liability purposes, on account of amortization of losses on dispositions of certain securities within the meaning of section 13-704 of this title (as defined in item (iii) of subparagraph (a) of this paragraph); and

(iv) the amount of the annual contribution, for balance sheet liability purposes, on account of reserves-for-increased-take-home-pay (as defined in item (iv) of subparagraph (a) of this paragraph); and

(v) the amount of the annual military law contribution for balance sheet liability purposes (as defined in item (v) of subparagraph (a) of this paragraph).

(f) To the amount resulting from the addition prescribed by subparagraph (e) of this paragraph four, there shall be added interest thereon at the rate of five and one-half per centum per annum from January first of the subject fiscal year to June thirtieth of such fiscal year.

(g) The amount computed pursuant to subparagraph (d) of this paragraph four in relation to the balance sheet liability as of June thirtieth next preceding the subject June thirtieth (together with one year's interest on such balance

sheet liability) shall be added to the amount computed pursuant to subparagraph (f) of this paragraph in relation to the subject fiscal year.

(h) From the amount computed pursuant to subparagraph (g) of this paragraph, there shall be subtracted the sum of:

(i) the total amount of the sums paid to the contingent reserve fund during the subject fiscal year by the city (and other obligors required to make public employer contributions to such fund) on account of their obligations which accrued during the city's second fiscal year preceding the subject fiscal year, to provide:

(A) the normal contribution payable in the subject fiscal year under the provisions of paragraphs one and two of this subdivision b as then in effect, and

(B) the installment of the deficiency contribution (as defined in item (vi) of subparagraph (a) of this paragraph four) or the installment of the original unfunded accrued liability contribution (as defined in subparagraph (a) of paragraph three of this subdivision b), as the case may be, payable in the subject fiscal year; and

(C) the amount of the contribution on account of amortization, pursuant to section 13-704 of this title, of losses on dispositions of certain securities (as defined in item (vii) of subparagraph (a) of this paragraph four) payable in the subject fiscal year; and

(D) the amount payable in the subject fiscal year on account of reserves-for-increased-take-home-pay; and

(E) the amount payable in the subject fiscal year in behalf of members pursuant to subdivision twenty of section two hundred forty-three of the military law; plus

(ii) interest on such total amount referred to in item (i) of this subparagraph (h) at the rate of five and one-half per centum per annum from January first of the subject fiscal year to June thirtieth thereof.

(i) The remainder resulting from the subtraction prescribed by subparagraph (h) of this paragraph four shall be the balance sheet liability as of June thirtieth of the subject fiscal year.

(j) The balance sheet liability as of June thirtieth, nineteen hundred eighty shall be the amount resulting from the successive computations of the balance sheet liability as of each June thirtieth succeeding June thirtieth, nineteen hundred seventy-four up to and including June thirtieth, nineteen hundred eighty, as prescribed by subparagraphs (c) to (i), inclusive, of this paragraph four.

(k) (i) The balance sheet liability contribution payable in the city's nineteen hundred eighty-one-nineteen hundred eighty-two fiscal year shall be the first annual installment of an amount which, if paid to the contingent reserve fund in forty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-one-nineteen hundred eighty-two fiscal year, would be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-one, on the basis of seven and one-half per centum interest per annum, of an amount equal to the balance sheet liability as of June thirtieth, nineteen hundred eighty.

(ii) The balance sheet liability contribution payable in each city fiscal year during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight shall be one annual installment of an amount which, if paid to the contingent reserve fund in thirty-nine equal annual installments, commencing with a first payment in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year, would be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-two, on the basis of eight per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-two on the basis of seven and one-half per centum interest per annum, of those installments of the balance sheet liability contribution computed pursuant to item (i) of this subparagraph (k), which installments are hypothetically allocated by such item (i) to

designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-two.

(iii) The balance sheet liability contribution payable in each city fiscal year during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand twenty-one shall be one annual installment of an amount which, when paid to the contingent reserve fund in thirty-three equal annual installments, commencing with a first payment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-eight, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the balance sheet liability contribution computed pursuant to item (ii) of this subparagraph (k), which installments are hypothetically allocated by such item (ii) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(5) Contributions to the contingent reserve fund payable in fiscal years of the city beginning on or after July first, nineteen hundred ninety by the city and other obligors required to make such contributions shall be governed by the provisions of this section, as modified and supplemented by section 13-638.2 of this title, and such other laws as may be applicable.

c. Whenever the board, upon recommendation by the actuary, shall determine that it is necessary to increase the reserves held in the annuity reserve fund, the pension reserve fund or the pension fund, the board may direct that the amount so needed shall be transferred thereto from the contingent reserve fund.

d. (1) The city shall pay to the contingent reserve fund the accrued additional employer cost of providing the rights, benefits and privileges conferred by section 13-159 of this chapter upon members of the uniformed force of the department of sanitation who elect such rights, benefits and privileges pursuant to subdivision b of such section.

(2) Such additional cost shall consist of the amount obtained (a) by computing, as of July second, nineteen hundred sixty-seven, the total of all sums which would have been due, up to and including such date, to the contingent reserve fund with respect to all such members who elect the benefits of such section, if such election by each such member had been authorized by law as provided in subdivision b of such section on the date of his or her appointment as a member of the uniformed force of the department of sanitation, and such election had been made and was in effect on the date on which such member began contributing to the retirement system as a member of such force, and (b) by subtracting from such total mentioned in subparagraph a of this paragraph two, the aggregate of all amounts actually paid in and due to the contingent reserve fund, up to and including July second, nineteen hundred sixty-seven, with respect to all such members making such election.

(3) The sums required to be paid by the city to the contingent reserve fund under the provisions of paragraphs one and two of this subdivision shall be computed by the actuary and shall be paid to such fund by the city in equal annual installments over a period of thirty-five years, beginning with the fiscal year of the city commencing on July first, nineteen hundred sixty-nine.

e. Upon the retirement of such a member, or upon his or her death in the performance of duty, an amount equal to the pension reserve for the pension payable by the city on account of his or her city-service as a member, together with the reserve-for-increased-take-home-pay, shall be transferred from such fund to the pension reserve fund. Contributions shall be paid into the contingent reserve fund, in the manner and to the extent specified by section 13-152 of this chapter, to provide reserves-for-increased-take-home-pay.

f. (1) The city shall pay to the contingent reserve fund the accrued additional employer cost of providing the rights, benefits and privileges conferred by section 13-159 of this chapter upon sanitation workers who elect such rights, benefits and privileges pursuant to subdivision b of such section.

(2) Such additional cost shall consist of the amount obtained (a) by computing, as of July second, nineteen hundred sixty-seven, the total of all sums which would have been due, up to and including such date, to the contingent

reserve fund with respect to all such members who elect the benefits of such section, if such election by each such member had been authorized by law as provided in subdivision b of such section on the date of his or her appointment as a sanitation worker, and such election had been made and was in effect on the date on which such member began contributing to the retirement system as a sanitation worker, and (b) by subtracting from such total mentioned in subparagraph a of this paragraph two, the aggregate of all amounts actually paid in and due to the contingent reserve fund, up to and including July second, nineteen hundred sixty-seven, with respect to all such members making such election.

(3) The sums required to be paid by the city to the contingent reserve fund under the provisions of paragraphs one and two of this subdivision shall be computed by the actuary and shall be paid to such fund by the city in equal annual installments over a period of thirty-five years, beginning with the fiscal year of the city commencing on July first, nineteen hundred sixty-nine.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b par (1) subpar (a) opening clause amended chap 878/1990 § 4

eff. July 25, 1990 applying on and after July 1, 1989

Subd. b par (1) subpar (a) items (vi), (vii) amended chap 249/1996 § 1,

eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. b par (1) subpar (b) items (iii-a), (iii-b) added chap 579/1989 § 1

Subd. b par (1) subpar (b) item (v) separately added chap 580/1989

§ 1 and chap 581/1989 § 77

Subd. b par (1) subpar (c) item (i) separately amended chap 579/1989 § 2

and chap 580/1989 § 2

Subd. b par (2) subpar (a) amended chap 85/2000 § 1, eff. June 23,

2000 and deemed to have been in effect on and after July 1, 1999.

Subd. b par (2) subpar (a) amended chap 249/1996 § 2, eff. June 30, 1996

and deemed in effect on and after July 1, 1995

Subd. b par (2) subpar (a-1) added chap 152/2006 § 2, eff. July 7, 2006

and deemed to have been in full force and effect on and after July 1,

2005. [See § 13-103 Note 1]

Subd. b par (2) subpar (b) amended chap 579/1989 § 3

Subd. b par (2) subpar (b) item (i) subitems (D), (E) amended chap

249/1996 § 3, eff. June 30, 1996 and deemed in effect on and after

July 1, 1995

Subd. b par (2) subpar (b) item (i) subitem (F) added chap 249/1996 § 4, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. b par (2) subpar (b) item (ii) amended chap 85/2000 § 2, eff. June 23, 2000 and deemed to have been in effect on and after July 1, 1999.

Subd. b par (2) subpar (b) item (ii) amended chap 249/1996 § 5, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. b par (2) subpar (c) amended chap 152/2006 § 3, eff. July 7, 2006 and deemed to have been in full force and effect on and after July 1, 2005. [See § 13-103 Note 1]

Subd. b par (2) subpar (c) amended chap 249/1996 § 6, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. b par (3) subpar (b) items (i), (vi) amended chap 581/1989 § 3

Subd. b par (3) subpar (b) item (vii) added chap 581/1989 § 4

Subd. b par (3) subpar (c) items (i), (v), (vi) amended chap 581/1989 § 5

Subd. b par (3) subpar (c) item (vii) amended chap 581/1989 § 6

Subd. b par (3) subpar (c) item (vii) added chap 579/1989 § 4

Subd. b par (4) subpar (k) amended chap 581/1989 § 7

Subd. b par (5) added chap 878/1990 § 5 eff. July 25, 1990 applying on and after July 1, 1989

**DERIVATION**

Formerly § B3-17.0 added chap 929/1937 § 1

Amended chap 509/1960 § 5

Sub d added chap 171/1967 § 6

Subd d added chap 584/1967 § 6

Sub e added chap 821/1968 § 7

Repealed and added chap 876/1968 § 2

Sub e pars 2, 5 amended chap 817/1969 § 14

Sub b amended chap 976/1977 § 2

Sub e repealed chap 976/1977 § 3

(as added chap 821/1968)

(Special provision, unfunded accrued liability chap 976/1977 § 18)

Sub b amended chap 957/1981 § 36

Sub b pars 1, 2, 3 amended chap 914/1982 § 2

Sub b par 4 subpar a item iii amended chap 914/1982 § 3

Sub b par 4 subpar k amended chap 914/1982 § 4

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-128*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-128 Contributions of the city and their use; pension reserve fund.

The pension reserve fund shall be the fund from which shall be paid all pensions, and all pensions-providing-for-increased-take-home-pay, and all benefits in lieu of pensions, and all benefits in lieu of pensions-providing-for-increased-take-home-pay, if any, allowable by the city on account of the city-service of members to whom prior-service is not allowable as provided in this chapter. Should any pension or pension-providing-for-increased-take-home-pay payable from such pension reserve fund be cancelled, the pension reserve or reserve-for-increased-take-home-pay thereon shall thereupon be transferred from the pension reserve fund to the contingent reserve fund. Should any pension or pension-providing-for-increased-take-home-pay payable from such fund be reduced, the amount of the annual reduction in such pension or pension-providing-for-increased-take-home-pay shall be paid annually into the contingent reserve fund during the period of such reduction.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-18.0 added chap 929/1937 § 1

Amended chap 509/1960 § 6

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-129*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-129 Contributions of the city and their use; pension fund.

a. The pension fund shall be the fund in which shall be accumulated the reserves necessary to pay, and from which shall be paid, all pensions and all pensions-providing-for-increased-take-home-pay and all other benefits allowable by the city on account of all service of members to whom prior-service is allowable as provided in this chapter.

b. Upon the basis of the mortality and other tables herein authorized, and regular interest, the actuary shall compute the amount of the single contribution which, if paid into the pension fund at the time of entrance into the retirement system of each such member, would be sufficient to cover the total liability assumed by the pension fund on his account for the payment of future benefits, other than a pension-providing-for-increased-take-home-pay.

c. Until the amount accumulated in the pension fund becomes not less than the present value of all amounts thereafter payable through the pension fund on account of members who have not been retired, other than amounts payable for pensions-providing-for-increased-take-home-pay, the aggregate amount annually due to the pension fund shall be six per cent of the sum of all such single contributions, but not less than the amount payable from the pension fund in the ensuing fiscal year, exclusive of the amount so payable for pensions-providing-for-increased-take-home-pay.

d. Contributions shall be paid into the pension fund, in the manner and to the extent specified by section 13-152 of this chapter, to provide reserves-for-increased-take-home-pay.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-19.0 added chap 929/1937 § 1

Amended chap 509/1960 § 7

Sub c amended chap 876/1968 § 3

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-130*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-130 Contributions of public benefit corporations and their use.

Notwithstanding the requirements of sections 13-127 and 13-129 of this chapter, of the amounts due from the city, all amounts due to the contingent reserve fund and to the pension fund on account of any members of the retirement system during the period of their employment by any authority or body corporate and politic constituting a public benefit corporation or its successor, shall be paid by such employing authority or body corporate and politic or successor.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-20.0 added chap 929/1937 § 1

Amended chap 969/1964 § 3

Amended chap 971/1964 § 3

Sub c amended chap 973/1964 § 5

Sub d added chap 290/1968 § 5

Subs b, c, d repealed chap 976/1977 § 4

Open par designated chap 976/1977 § 5

(formerly sub a)

(Special provision, unfunded accrued liability chap 976/1977 § 18)

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-131*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-131 Contributions by city university of New York.

a. Subject to the provisions of subdivision b of this section, pursuant to the provisions of section sixty-two hundred twenty-seven of the education law, the contributions to the retirement system which, in any fiscal year of the city occurring after June thirtieth, nineteen hundred seventy-nine, are included in the approved programs and services of the city university of New York, as defined in section sixty-two hundred thirty of such law, shall be paid in such fiscal year by such city university.

b. Nothing contained in subdivision a of this section shall be construed as increasing, decreasing, altering or changing the obligations of the city, under sections sixty-two hundred twenty-one, sixty-two hundred thirty and sixty-two hundred thirty-one of such law (as in effect before and after July first, nineteen hundred eighty-one) to appropriate and provide, in the manner, to the extent and for the periods prescribed by such sections, funds required to pay such contributions with respect to such periods. Nothing contained in subdivision a of this section shall be construed as increasing, decreasing, altering or changing the obligations of the state, under such sections of such law, to appropriate and provide the funds required for payment of such contributions in part or in whole and/or for reimbursement of the city in relation thereto, in accordance with the responsibilities of the state with respect to such payment and/or reimbursement, as provided for in such sections.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-20.1 added chap 957/1981 § 37

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-132*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-132 Contributions by state in relation to certain officers and employees of courts.

For the purposes of subdivision nine of section thirty-nine of the judiciary law, the contributions (other than member contributions) required to be made to the retirement system, in so far as such contributions are attributable to elections made by members under paragraph (a) of such subdivision nine, including, without limitation, the contributions required to be made in relation to such members by sections 13-127 of this chapter and 13-704 of this title, shall be pension costs for which payments shall be made to the retirement system by the comptroller of the state of New York pursuant to the provisions of pargraph (b) of such subdivision nine.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-20.2 added chap 957/1981 § 37



Administrative Code of the City of New York



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

*NYC Administrative Code 13-133*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-133 Guarantee of funds.

a. Regular interest, charges payable, the creation and maintenance of reserves in the contingent reserve fund and the pension fund and the maintenance of annuity reserves, pension reserves and reserves-for-increased-take-home-pay as provided for in this chapter and the payment of all pensions, pensions-providing-for-increased-take-home-pay, annuities, retirement allowances, refunds, death benefits and any other benefits granted under the provisions of this chapter, are hereby made obligations of the city. All income, interest and dividends derived from deposits and investments authorized by this chapter shall be used and disposed of in the manner prescribed by subdivision b of this section. Upon the basis of each actuarial determination and appraisal provided for in this chapter, the board shall prepare and submit to the director of management and budget an itemized estimate of the amounts necessary to be appropriated by the city to the various funds to provide for payment in full during the ensuing fiscal year of all such obligations of the city accruing during the ensuing fiscal year. There shall be included annually in the budget a sum sufficient to provide for such obligations of the city. The comptroller shall pay the sums so provided into the various funds provided for by this chapter, subject to the provisions of subdivision b of this section. Nothing contained in this section shall be construed as preventing the payments, if any, required to be made pursuant to sections 13-193 (relating to the transit police variable supplements funds), 13-193 (relating to the housing police variable supplements funds), 13-193.2, 13-193.3, 13-193.4, 13-193.5, 13-193.7, 13-193.6, 13-195 and 13-195.1 of this chapter.

b. (1) Subject to the provisions of paragraphs two, three and four of this subdivision, all income, interest and dividends derived from deposits and investments authorized by this chapter, which income, interest and dividends were heretofore or are hereafter received during any city fiscal year commencing on or after July first, nineteen hundred eighty, shall be used (in accordance with the respective shares of such income, interest and dividends attributable to the

city and other obligors required to pay public employer contribution on account of members) in such fiscal year for the purposes hereinafter specified in this paragraph (to the extent that such income, interest and dividends are sufficient for such purposes), in the order of priority herein stated, as follows:

(A) first, to pay into the funds of the retirement system the amounts of regular interest which are required to be paid into such funds in such fiscal year by reason of being required to be allowed to such funds pursuant to the provisions of section 13-135 of this chapter, and to pay into such funds the amounts of supplementary interest, if any, required to be so paid in such fiscal year under the applicable provisions of such section, and to pay into the annuity savings fund the amounts of special interest, if any, required to be so paid in such fiscal year under the applicable provisions of such section, and to pay into the contingent reserve fund the amounts of additional interest, if any, required to be paid in such fiscal year under the applicable provisions of such section;

(B) second, to pay into the contingent reserve fund the amount of any losses in excess of gains (i) which net losses the retirement system sustained during such fiscal year by reason of sales or other dispositions of securities, and (ii) for which net losses the retirement system is required to be reimbursed in such fiscal year, and (iii) to which net losses section 13-704 of this title, relating to graduated crediting of gains and amortization of losses on dispositions of certain securities, does not apply;

(C) third, if the total amount of such income, interest and dividends received during such fiscal year is in excess of the total amount required to make, in such fiscal year, the payments prescribed by subparagraphs (A) and (B) of this paragraph, the amount of such excess shall be paid into the contingent reserve fund and shall become a part of the assets of such fund.

(2) Notwithstanding the provisions of paragraph one of this subdivision or any other law to the contrary, any such income, interest or dividends which are received by the retirement system may be used for the purpose specified in section 13-705 of this title (relating to expenses incurred in the acquisition, management and protection of investments), regardless of when received and prior to use for the purposes stated in such paragraph one.

(3) (A) Notwithstanding any other provision of this section or any other law to the contrary, the term "all income, interest and dividends derived from deposits and investments", as used in paragraph two of this subdivision (as such subdivision was in effect prior to July first, nineteen hundred eighty), shall be construed, in relation to disposition of all income, interest and dividends received by the retirement system in each of the city's nineteen hundred seventy-six-nineteen hundred seventy-seven and nineteen hundred seventy-seven-nineteen hundred seventy-eight obligations fiscal years (as such fiscal years were defined by paragraph one of this subdivision prior to such July first), as meaning the remainder obtained by subtracting from such income, interest and dividends (as they were after deducting therefrom the amount of any expenses charged thereto pursuant to the provisions of section 13-705 of this title) the sum of (i) the amounts of regular, supplementary and special interest required to be allowed and paid into the appropriate funds of the retirement system in such fiscal year pursuant to the applicable provisions of section 13-135 of this chapter and (ii) the amount of any losses in excess of gains (1) which net losses were sustained by the retirement system during such fiscal year and which net losses were sustained by reason of sales or other dispositions of securities, and (2) to which net losses the provisions of section 13-704 of this title do not apply.

(B) for the purposes of the order of priority governing the disposition of such remainder in the payment fiscal year with respect to each such obligations fiscal year (as such disposition was prescribed by the provisions of this subdivision as in effect during each such payment fiscal year) the provisions of subparagraphs (A) and (B) of such paragraph two shall be deemed to have been inapplicable and the order of priority for such disposition shall be first, the use set forth in subparagraph (C) of such paragraph, second, the use set forth in subparagraph (D) of such paragraph, third, the use set forth in subparagraph (E) of such paragraph and fourth, the use set forth in subparagraph (F) of such paragraph, as such subparagraphs were in effect during such payment fiscal year.

(4) (a) All income, interest and dividends which are derived from deposits and investments authorized by this

chapter and which were received during each of the city's nineteen hundred seventy-eight-nineteen hundred seventy-nine and nineteen hundred seventy-nine-nineteen hundred eighty fiscal years shall (after deducting therefrom any amounts chargeable thereto pursuant to the provisions of section 13-705 of this title) be used (in accordance with the respective shares of such income, interest and dividends attributable to the city and other obligors required to pay public employer contributions on account of members) in each such fiscal year for the purposes hereinafter stated in this subparagraph (a), in the order of priority herein stated, as follows:

(A) first, (i) to pay into the funds of the retirement system the amounts of regular interest which are required to be paid into such funds in such fiscal year wherein such income, interest and dividends were received, which interest is so payable by reason of being required to be allowed to such funds in such fiscal year pursuant to the provisions of section 13-135 of this chapter, (ii) to pay into such funds the amounts of supplementary interest required to be so paid in such fiscal year under the applicable provisions of such section, and (iii) to pay into the annuity savings fund the amounts of special interest required to be so paid in such fiscal year under the applicable provisions of such section, and (iv) to pay into the contingent reserve fund the amounts of additional interest required to be paid in such fiscal year under the applicable provisions of such section;

(B) second, to pay into the contingent reserve fund the amount of any losses in excess of gains (i) which net losses were sustained by the retirement system during such fiscal year in which such income, interest and dividends were received and which net losses were sustained by reason of sales or other dispositions of securities, and (ii) for which net losses the retirement system is required to be reimbursed in such fiscal year, and (iii) to which net losses section 13-704 of this title, relating to graduated crediting of gains and amortization of losses on dispositions of certain securities, does not apply; and

(C) third, to pay into the contingent reserve fund the amount, if any, by which,

(i) the total of all losses which the retirement system sustained during such fiscal year by reason of sales of securities within the meaning of section 13-704 of this title and which the responsible public employer, as defined in paragraph four of subdivision a of section 13-704 of this title, would otherwise be required to amortize pursuant to such section, exceeds

(ii) the total of all gains which were realized during such fiscal year by reason of sales of securities within the meaning of such section and which would otherwise be required by such section to be credited in favor of the responsible public employer in installments.

(b) If the total amount of such income, interest and dividends received during each such fiscal year referred to in subparagraph a of this paragraph four is in excess of the total amount required to make, in the same fiscal year, the payments prescribed by items (A), (B) and (C) of such subparagraph (a), the amount of such excess shall be paid into the contingent reserve fund as of June thirtieth of such fiscal year and shall become a part of the assets of such fund as of such date.

c. (1) (A) The comptroller shall make monthly payments, in twelve equal installments, with respect to obligations which the city incurs to pay sums to the retirement system.

(B) The New York city health and hospitals corporation shall make monthly payments, in twelve equal installments, with respect to obligations which it incurs to pay sums to the retirement system.

(C) The New York city school construction authority shall make monthly payments, in twelve equal installments, with respect to obligations which it incurs to pay sums to the retirement system.

(D) The New York city municipal water finance authority shall make monthly payments, in twelve equal installments, with respect to obligations, if any, which it incurs to pay sums to the retirement system.

(E) The New York city water board shall make monthly payments, in twelve equal installments, with respect to obligations, if any, which it incurs to pay sums to the retirement system.

(F) The New York city transitional finance authority shall make monthly payments, in twelve equal installments, with respect to obligations which it incurs to pay sums to the retirement system.

(2) In the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year and in each city fiscal year thereafter, the equal monthly payments shall be in respect of obligations which accrue in such fiscal year and shall be made in such fiscal year on or before the last day of each month.

(3) In the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year and in each city fiscal year thereafter, the New York city off-track betting corporation, the triborough bridge and tunnel authority and the New York city housing authority shall make their respective annual contributions to the retirement system in respect of obligations which accrue in such fiscal year by paying such contributions on or before January first of such fiscal year.

(4) The board of trustees of the retirement system may waive the requirements of the foregoing provisions of this subdivision with respect to time of payment to such system, provided that any such waiver of time of payment in any instance shall not apply to the time of subsequent payments unless there shall be a subsequent waiver.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 255/2000 § 29, eff. Aug. 16, 2000 and deemed in

force and effect on and after Dec. 29, 1999.

Subd. a amended chap 657/1999 § 3, eff. Dec. 29, 1999.

Subd. a separately amended chap 719/1994 § 37 and chap 720/1994 § 31

both eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. a amended chap 375/1993 § 23 retro. to Jan. 1, 1992

Subd. a amended chap 577/1992 § 22, eff. July 1, 1992

Subd. a separately amended chap 844/1987 § 4 and chap 846/1987 § 4

Subd. c par 1 subpar (C) added chap 738/1988 § 3

Subd. c par (1) subpars (D), (E) added chap 609/1995 § 3, eff. Aug. 8,

1995

Subd. c par (1) subpar (F) added chap 16/1997 § 6, eff. Mar. 5, 1997

**DERIVATION**

Formerly § B3-21.0 added chap 929/1937 § 1

Amended chap 509/1960 § 8

Amended chap 100/1963 § 36

Amended chap 866/1969 § 8

Amended chap 595/1974 § 2

(Legislative findings, investment earnings chap 595/1974 § 1)

(chap 595/1974 § 1 amended chap 801/1975 § 1)

Sub b pars 2, 3 amended chap 801/1975 § 2)

Sub b pars 4, 5 repealed chap 801/1975 § 7

(Note amendments by chap 801/1975 expire and revert chap 801/1975 § 8)

Amended chap 976/1977 § 6

Sub c added chap 785/1978 § 5

Subs b, c amended chap 957/1981 § 38



Administrative Code of the City of New York



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

*NYC Administrative Code 13-134*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-134 Trustees of funds; investments.

The members of the board shall be the trustees of the several funds provided for by this chapter, and shall have full power to invest the same, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and, subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the funds provided for by this chapter shall have been invested as well as of the proceeds of such investments and of any moneys belonging to such funds.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-22.0 added chap 929/1937 § 1

Amended chap 866/1969 § 9



Administrative Code of the City of New York



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

*NYC Administrative Code 13-135*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-135 Allowance of interest.

a. Such board shall annually allow regular interest on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this chapter. The amount so allowed shall be due and payable to such funds, and shall be annually credited thereto by such board.

b. The investment earnings of the retirement system shall be determined for the calendar year nineteen hundred sixty-four. To the extent that such earnings are in excess of the amount allowed as regular interest for calendar year nineteen hundred sixty-four, the board shall declare a rate of special interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the amount required for the allowance of regular interest divided by the aggregate mean amount for the calendar year nineteen hundred sixty-four in the annuity savings funds of members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-four. Special interest, as determined by multiplying said special interest rate by the mean amount for the calendar year nineteen hundred sixty-four in the individual annuity savings funds of persons who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-four, shall be credited as of December thirty-first, nineteen hundred sixty-four to the individual annuity savings funds of persons who are members, with a balance, after adjustment, as of June thirtieth, nineteen hundred sixty-five and who are allowed regular interest at the rate of three per centum per annum for calendar year nineteen hundred sixty-four. For members who are allowed regular interest at three per centum for calendar year nineteen hundred sixty-four and who do not have a balance, after adjustment, in their annuity savings funds as of June thirtieth, nineteen hundred sixty-five, a payment shall be made equal to the amount of special interest which would have been credited as of December thirty-first, nineteen hundred sixty-four had they had a balance in their annuity savings funds as

of June thirtieth, nineteen hundred sixty-five, provided that the sum of said special interest and any additional interest to be paid pursuant to paragraph c hereof is ten dollars or more. Special interest shall not be considered in determining rates of contribution of members.

c. If the full one per centum of special interest has been allowed, then to the extent that the amount of said earnings exceeds the amount allowed as regular interest and the amount allowed or paid as special interest, the board shall declare a rate of additional interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the sum of the allowance of regular interest and the allowance and payment of special interest divided by the aggregate mean amount, for calendar year nineteen hundred sixty-four which would be the reserve-for-increased-take-home-pay of all members to whom special interest credited or paid pursuant to paragraph b hereof. In determining the reserve-for-increased-take-home-pay of any member to whom special interest is credited pursuant to paragraph b hereof additional interest, as determined by multiplying said additional interest rate by the mean amount for calendar year nineteen hundred sixty-four which would be said member's reserve-for-increased-take-home-pay shall be included. However, for members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-four and who retire or die prior to June thirtieth, nineteen hundred sixty-five, the amount of additional interest for calendar year nineteen hundred sixty-four shall not be included in the retirement allowance, but shall be paid in a single payment provided that the sum of said additional interest and any special interest to be paid pursuant to paragraph b hereof is ten dollars or more. Additional interest shall not be considered in determining rates of contribution of members.

d. The investment earnings of the retirement system shall be determined for the calendar year nineteen hundred sixty-five. To the extent that such earnings are in excess of the amount allowed as regular interest for calendar year nineteen hundred sixty-five, the board shall declare a rate of special interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the amount required for the allowance of regular interest divided by the aggregate mean amount for the calendar year nineteen hundred sixty-five in the annuity savings funds of members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-five. Special interest, as determined by multiplying said special interest rate by the mean amount for the calendar year nineteen hundred sixty-five in the individual annuity savings funds of persons who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-five, shall be credited as of December thirty-first, nineteen hundred sixty-five to the individual annuity savings funds of persons who are members, with a balance, after adjustment, as of June thirtieth, nineteen hundred sixty-six and who are allowed regular interest at the rate of three per centum per annum for calendar year nineteen hundred sixty-five. For members who are allowed regular interest at three per centum for calendar year nineteen hundred sixty-five and who do not have a balance, after adjustment, in their annuity savings funds as of June thirtieth, nineteen hundred sixty-six, a payment shall be made equal to the amount of special interest which would have been credited as of December thirty-first, nineteen hundred sixty-five had they had a balance in their annuity savings funds as of June thirtieth, nineteen hundred sixty-six, provided that the sum of said special interest and any additional interest to be paid pursuant to paragraph e hereof is ten dollars or more. Special interest shall not be considered in determining rates of contribution of members.

e. If the full one per centum of special interest has been allowed, then to the extent that the amount of said earnings exceeds the amount allowed as regular interest and the amount allowed or paid as special interest, the board shall declare a rate of additional interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the sum of the allowance of regular interest and the allowance and payment of special interest divided by the aggregate mean amount for calendar year nineteen hundred sixty-five which would be the reserve-for-increased-take-home-pay of all members to whom special interest is credited or paid pursuant to paragraph d hereof. In determining the reserve-for-increased-take-home-pay of any member to whom special interest is credited pursuant to paragraph d hereof, additional interest as determined by multiplying said additional interest rate by the mean amount for calendar year nineteen hundred sixty-five which would be said member's reserve-for-increased-take-home-pay shall be included. However, for members who are allowed

regular interest at three per centum per annum for calendar year nineteen hundred sixty-five and who retire or die prior to June thirtieth, nineteen hundred sixty-six, the amount of additional interest for calendar year nineteen hundred sixty-five shall not be included in the retirement allowance, but shall be paid in a single payment provided that the sum of said additional interest and any special interest to be paid pursuant to paragraph d hereof is ten dollars or more. Additional interest shall not be considered in determining rates of contribution of members.

f. The investment earnings of the retirement system shall be determined for the calendar year nineteen hundred sixty-six. To the extent that such earnings are in excess of the amount allowed as regular interest for calendar year nineteen hundred sixty-six, the board shall declare a rate of special interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the amount required for the allowance of regular interest divided by the aggregate mean amount for the calendar year nineteen hundred sixty-six in the annuity savings funds of members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-six. Special interest, as determined by multiplying said special interest rate by the mean amount for the calendar year nineteen hundred sixty-six in the individual annuity savings funds of persons who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-six, shall be credited as of December thirty-first, nineteen hundred sixty-six to the individual annuity savings funds of persons who are members, with a balance, after adjustment, as of June thirtieth, nineteen hundred sixty-seven and who are allowed regular interest at the rate of three per centum per annum for calendar year nineteen hundred sixty-six. For members who are allowed regular interest at three per centum for calendar year nineteen hundred sixty-six and who do not have a balance, after adjustment, in their annuity savings funds as of June thirtieth, nineteen hundred sixty-seven, a payment shall be made equal to the amount of special interest which would have been credited as of December thirty-first, nineteen hundred sixty-six had they had a balance in their annuity savings funds as of June thirtieth, nineteen hundred sixty-seven, provided that the sum of said special interest and any additional interest to be paid pursuant to paragraph g hereof is ten dollars or more. Special interest shall not be considered in determining rates of contribution of members.

g. If the full one per centum of special interest has been allowed, then to the extent that the amount of said earnings exceeds the amount allowed as regular interest and the amount allowed or paid as special interest, the board shall declare a rate of additional interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the sum of the allowance of regular interest and the allowance and payment of special interest divided by the aggregate mean amount for calendar year nineteen hundred sixty-six which would be the reserve-for-increased-take-home-pay of all members to whom special interest is credited or paid pursuant to paragraph f hereof. In determining the reserve-for-increased-take-home-pay of any member to whom special interest is credited pursuant to paragraph f hereof, additional interest as determined by multiplying said additional interest rate by the mean amount for calendar year nineteen hundred sixty-six which would be said member's reserve-for-increased-take-home-pay shall be included. However, for members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-six and who retire or die prior to June thirtieth, nineteen hundred sixty-seven, the amount of additional interest for calendar year nineteen hundred sixty-six shall not be included in the retirement allowance, but shall be paid in a single payment provided that the sum of said additional interest and any special interest to be paid pursuant to paragraph f hereof is ten dollars or more. Additional interest shall not be considered in determining rates of contribution of members.

h. (1) Subject to the provisions of subdivision j of this section, during the period commencing on July first, nineteen hundred seventy-seven and ending on June thirtieth, nineteen hundred eighty, special interest at the rate of one and one-half per centum per annum, compounded annually, shall be allowed with respect to the individual account of each member in the annuity savings fund.

(2) Subject to the provisions of subdivision j of this section, during the period commencing on July first, nineteen hundred eighty and ending on June thirtieth, nineteen hundred eighty-two, special interest at the rate of three and one-half per centum per annum, compounded annually, shall be allowed with respect to the individual account of each member in the annuity savings fund.

(3) (a) Subject to the provisions of subdivision j of this section, during the period commencing on July first, nineteen hundred eighty-two and ending on July thirty-first, nineteen hundred eighty-three, special interest at the rate of four per centum per annum, compounded annually, shall be allowed with respect to the individual account of each member in the annuity savings fund.

(b) Subject to the provisions of subdivision j of this section, during the period commencing on August first, nineteen hundred eighty-three and ending on June thirtieth, nineteen hundred eighty-five, special interest at the rate of one per centum per annum, compounded annually, shall be allowed with respect to the individual account of each member in the annuity savings fund.

(c) Subject to the provisions of subdivision j of this section, during the period commencing on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight, special interest at the rate of one per centum per annum, compounded annually, shall be allowed with respect to the individual account of each member in the annuity savings fund.

(d) Subject to the provisions of subdivision j of this section, during the period commencing on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety, special interest at the rate of one and one-quarter per centum per annum, compounded annually, shall be allowed with respect to the individual account of each member in the annuity savings fund.

(4) Such special interest provided for by paragraphs one, two and three of this subdivision shall be credited to such individual account of each member entitled thereto in the same manner and at the same time as regular interest is required to be credited to such account with respect to the same period of time. Such special interest shall not be considered in determining rates of contributions of members. Nothing contained in this subdivision h shall be construed as applicable to any member who is subject to the provisions of article fourteen or article fifteen of the retirement and social security law.

i. (1) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of one and one-half per centum per annum compounded annually shall be included for each city fiscal year occurring during the period beginning on July first, nineteen hundred seventy-seven and ending on June thirtieth, nineteen hundred eighty.

(2) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of three and one-half per centum per annum compounded annually shall be included for each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty and ending on June thirtieth, nineteen hundred eighty-two.

(3) (a) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of four per centum per annum compounded annually shall be included for each city fiscal year and portion thereof occurring during the period beginning on July first, nineteen hundred eighty-two and ending on July thirty-first, nineteen hundred eighty-three.

(b) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of one per centum per annum compounded annually shall be included for each city fiscal year and portion thereof occurring during the period beginning on August first, nineteen hundred eighty-three and ending on June thirtieth, nineteen hundred eighty-five.

(c) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of one per centum per annum compounded annually shall be included for each city fiscal year occurring during the period

beginning on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight.

(d) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of one and one-quarter per centum per annum compounded annually shall be included for each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety.

(4) Additional interest shall not be considered in determining rates of contribution of members. Nothing contained in this subdivision i shall be construed as applicable to any member who is subject to the provisions of article fourteen or article fifteen of the retirement and social security law.

j. (1) The provisions of:

(a) paragraph one of subdivision h of this section, to the extent that they grant special interest with respect to transit twenty-year plan members (as defined in subdivision sixty-one of section 13-101 of this chapter) for the period beginning on July first, nineteen hundred seventy-seven and ending on June thirtieth, nineteen hundred eighty; and

(b) paragraph two of such subdivision h, to the extent that such paragraph grants special interest for any period prior to July thirty-first, nineteen hundred eighty-one; and

(c) paragraphs one and two of subdivision i of this section, to the extent that such paragraphs grant additional interest for any period prior to such July thirty-first; shall not apply to any person who was not a member on such July thirty-first and shall not apply to any person to whom, on such July thirty-first, a deferred retirement allowance or any part of such a retirement allowance was payable pursuant to the provisions of section 13-173 of this chapter.

(2) (a) The provisions of subparagraph (a) of paragraph three of subdivision h of this section, to the extent that such subparagraph grants special interest for any period prior to December sixteenth, nineteen hundred eighty-two, and the provisions of subparagraph (a) of paragraph three of subdivision i of this section, to the extent that either such subparagraph grants additional interest for any period prior to such date, shall not apply to any person who was not a member on such date and shall not apply to any person to whom, on such date, a deferred retirement allowance or any part of such a retirement allowance was payable pursuant to the provisions of section 13-173 of this chapter.

(b) The provisions of subparagraph (d) of paragraph three of subdivision h of this section, to the extent that such subparagraph grants special interest for any period prior to the date of enactment of this subparagraph (b) (as such date is certified pursuant to section forty-one of the legislative law), and the provisions of subparagraph (d) of paragraph three of subdivision i of this section, to the extent that such subparagraph grants additional interest for any period prior to such date of enactment, shall not apply to any person who was not a member on such date of enactment and shall not apply to any person to whom, on such date of enactment, a deferred retirement allowance or any part of such a retirement allowance was payable pursuant to the provisions of section 13-173 of this chapter.

(3) Nothing contained in subdivisions h and i of this section shall be construed as granting special or additional interest, as the case may be, to any person with respect to any period wherein such person was not a member entitled to be credited with regular interest for the same period or was not a discontinued member entitled to be credited as a discontinued member, with regular interest for the same period.

k. (1) Subject to the provisions of paragraph four of this subdivision k, in addition to regular interest annually allowed for the period from July first, nineteen hundred seventy-seven to June thirtieth, nineteen hundred eighty on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this chapter, there shall be annually allowed with respect to such period supplementary interest at the rate of one and one-half per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest was credited to such funds with respect to such period.

(2) Subject to the provisions of paragraph four of this subdivision k, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty to June thirtieth, nineteen hundred eighty-two on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this chapter, there shall be annually allowed with respect to such period supplementary interest at the rate of three and one-half per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(3) (a) Subject to the provisions of paragraph (4) of this subdivision k, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty-two to July thirty-first, nineteen hundred eighty-three on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this chapter, there shall be annually allowed with respect to such period supplementary interest at the rate of four per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(b) Subject to the provisions of paragraph (4) of this subdivision k, in addition to regular interest annually allowed for the period from August first, nineteen hundred eighty-three to June thirtieth, nineteen hundred eighty-five on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this chapter, there shall be annually allowed with respect to such period supplementary interest at the rate of one per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(c) Subject to the provisions of paragraph (4) of this subdivision k, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty-five to June thirtieth, nineteen hundred eighty-eight on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this chapter, there shall be annually allowed with respect to such period supplementary interest at the rate of one per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(d) Subject to the provisions of paragraph (4) of this subdivision k, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty-eight to June thirtieth, nineteen hundred ninety on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this chapter, there shall be annually allowed with respect to such period supplementary interest at the rate of one and one-quarter per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(4) The provisions of paragraphs one, two and three of this subdivision k shall not apply to or affect (a) the allowance of interest on or the crediting of interest to accounts of members or discontinued members in the annuity savings fund or (b) the allowance of interest on or the crediting of interest to reserves-for-increased-take-home-pay of members or discontinued members or (c) the determination of the amount of any benefit payable to any member or beneficiary.

l. On or after May first, nineteen hundred eighty-nine and not later than October thirty-first of such year, the board shall submit to the public officers and permanent commission referred to in paragraph (e) of subdivision twelve of section 13-101 of this chapter the recommendations of such board:

(1) as to whether legislation should be enacted providing for the crediting of special interest to members after

June thirtieth, nineteen hundred ninety and if so, the recommended rate thereof and duration of such crediting; and

(2) as to whether legislation should be enacted providing that in the determination of reserves-for-increased-take-home-pay of members entitled to such a reserve, additional interest shall be included for any period after June thirtieth, nineteen hundred ninety, and if so, the recommended rate thereof and the period as to which such interest should be included; and

(3) as to whether legislation should be enacted providing for the crediting of supplementary interest after June thirtieth, nineteen hundred ninety to such funds to which subdivision k of this section is applicable and if so, the recommended rate thereof and duration of such crediting.

m. The allowance of special interest, additional interest and supplementary interest, if any, with respect to any fiscal year of the city beginning on or after July first, nineteen hundred ninety shall be governed by the applicable provisions of section 13-638.2 of this title.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. h par (3) subpar (c) amended chap 581/1989 § 8

subpar (d) added chap 581/1989 § 9

Subd. i par (3) subpar (c) amended chap 581/1989 § 10 subpar (d) added chap 581/1989 § 11

Subd. j par (2) amended chap 581/1989 § 12

Subd. k par (3) subpar (c) amended chap 581/1989 § 13 subpar (d) added chap 581/1989 § 14

Subd. m added chap 878/1990 § 6 eff. July 25, 1990 applying on

and after July 1, 1989

**DERIVATION**

Formerly § B3-23.0 added chap 929/1937 § 1

Amended chap 720/1964 § 5

Amended chap 527/1965 § 1

Subs f, g added chap 639/1966 § 1

Sub h, i added chap 976/1977 § 7

Sub h amended chap 957/1981 § 39

Subs i, j, k added chap 957/1981 § 40

Sub l designated and amended chap 957/1981 § 41

(formerly sub i added chap 976/1977 § 7)

Sub h amended chap 914/1982 § 5

Subs i, j, k amended chap 914/1982 § 6

Sub l amended chap 914/1982 § 7

Sub h pars 3, 4 amended chap 910/1985 § 5

Sub i pars 3, 4 amended chap 910/1985 § 6

Sub k par 3 amended chap 910/1985 § 7

Sub h par 3 subpar c added chap 911/1985 § 4

Sub h pars 3, 4 amended chap 911/1985 § 5

Sub i par 3 subpar c added chap 911/1985 § 6

Sub i pars 3, 4 amended chap 911/1985 § 7

Sub k par 3 subpar c added chap 911/1985 § 8

Sub k par 3 amended chap 911/1985 § 9

Sub l amended chap 911/1985 § 10

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-136*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-136 Custodian of funds.

The comptroller shall be custodian of the several funds provided for by this chapter. Such funds, and all moneys which shall form a part thereof, or which shall hereafter accrue to them, shall be in his custody for the purposes of this chapter subject to the direction, control and approval of such board as to disposition, investment, management and report.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-24.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-137*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-137 Payments from funds.

All payments from such funds shall be made by such comptroller upon a voucher signed by the executive director of the retirement system.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-25.0 added chap 929/1937 § 1

Amended chap 888/1973 § 2

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-138*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-138 Fund for current needs.

For the purpose of meeting disbursements for pensions, pensions-providing-for-increased-take-home-pay, annuities and other payments, there may be kept an available fund, not exceeding ten per cent of the total amount in the several funds provided for by this chapter, on deposit in any bank in this state organized under the laws thereof or under the laws of the United States, or in any trust company incorporated by any law of this state, provided such bank or trust company shall furnish adequate security for such fund, and further provided that the sum deposited in any one bank or trust company shall not exceed twenty-five per cent of the paid-up capital and surplus of such bank or trust company.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-26.0 added chap 929/1937 § 1

Amended chap 509/1960 § 9



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

*NYC Administrative Code 13-139*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-139 Prohibition upon trustees and employees.

Except as provided in this chapter, the trustees and employees of such board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment of the retirement system or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and employees of such board, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board; nor shall any such trustee or employee become an indorser or surety or become in any manner an obligor for moneys loaned by or borrowed from such board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-27.0 added chap 929/1937 § 1



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

*NYC Administrative Code 13-140*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-140 Rules regulating loans to members.

a. Any member in city service who shall have been a member continuously at least three years, may borrow from the contingent reserve fund, subject to such rules and regulations as may be approved by such board, an amount not exceeding seventy-five per centum of the amount in his or her account in the annuity savings fund. The rate of interest payable on any loan made under this section shall be two per centum higher than the rate of regular interest creditable to the account of the member. The amount so borrowed, together with interest on any unpaid balance thereof shall be repaid to the retirement system in equal installments by deduction from the compensation of the member at the time the compensation is paid, but such installments shall be at least five per centum of the member's earnable compensation. All payments of principal and interest made by such member shall be credited to the contingent reserve fund.

b. Each loan made pursuant to this section shall be insured by the retirement system, without cost to the member, against the death of such member in an amount up to but not exceeding ten thousand dollars, as follows:

1. Until thirty days have elapsed after the making thereof, no part of the loan shall be insured.

2. From the thirtieth through the fifty-ninth day after the making thereof, twenty-five per centum of the present value of the outstanding loan shall be insured.

3. From the sixtieth through the eighty-ninth day after the making thereof, fifty per centum of the present value of the outstanding loan shall be insured.

4. On and after the ninetieth day after the making thereof, all of the present value of the outstanding loan shall be

insured.

Upon the death of a member, the amount of insurance so payable shall be used to reduce the outstanding loan.

c. Notwithstanding anything to the contrary in this chapter, the additional deductions required to repay the loan shall be made, and the interest paid on the loan shall be credited to the proper funds of the retirement system. The actuarial equivalent of any unpaid balance of a loan at the time any benefit may become payable shall be deducted from the benefit otherwise payable. A retiree whose benefit has been so reduced may repay the outstanding balance of the loan at any time. Benefits payable after repayment of the loan shall not be subject to the actuarial reduction required by this subdivision.

d. In lieu of a loan, a member whose rate of contribution is cancelled may, (i) if he or she is not a participant in the variable annuity program, withdraw from his or her account in the annuity savings fund, and may redeposit to such account at such time as he or she may elect, any sum in excess of the amount due in such account at the end of the calendar year in which such member became entitled to cancel his or her rate, and (ii) if he or she is a participant in the variable program, withdraw from his or her accounts in the annuity savings fund and the variable annuity savings fund, and may redeposit to the former account at such time as he or she may elect, any sum in excess of the amount that, if he or she were not a participant, would have been due in the former account at the end of the calendar year in which he or she became entitled to cancel his or her rate.

e. Effective January first, nineteen hundred seventy-one, all outstanding loans repayable to the annuity savings fund shall be assumed by the contingent reserve fund. An amount equal to the present value of such outstanding loans, calculated at regular interest, shall be transferred from the contingent reserve fund to the annuity savings fund, and all repayments shall thereafter be made to the contingent reserve fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. c amended chap 511/2005 § 1, eff. Aug. 16, 2005.

**DERIVATION**

Formerly § B3-28.0 added chap 929/1937 § 1

Amended chap 540/1938 § 1

Amended chap 664/1941 § 1

Amended chap 485/1951 § 1

(Rate of interest, insured loan chap 485/1951 §§ 2, 3)

Sub a amended chap 441/1957 § 1

Sub b amended chap 612/1962 § 1

Amended chap 1082/1969 § 2

Sub a amended chap 977/1970 § 2

Sub e designated and amended chap 977/1970 § 2

(formerly sub f)

Sub d repealed chap 977/1970 § 3

Sub d relettered chap 977/1970 § 4

(formerly sub e added chap 1082/1969 § 2)

Subs a, c, d amended chap 903/1971 § 2

Sub a amended chap 500/1981 § 1

Sub b amended chap 521/1985 § 1

Sub a amended chap 642/1985 § 1



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

*NYC Administrative Code 13-141*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-141 Termination of membership; discontinuance of service.

Should a member discontinue city-service except by death or retirement, such member shall be paid such part of the amount of the accumulated deductions, if any, standing to the credit of his or her individual account in the annuity savings fund as he or she shall demand. Such board, however, in its discretion, may withhold for not more than one year after a member last rendered city-service all or part of his or her accumulated deductions, if after a previous discontinuance of service he or she withdrew from the annuity savings fund all or part of the amount of his or her accumulated deductions and failed to redeposit such withdrawn amount in such fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-29.0 added chap 929/1937 § 1

Amended chap 870/1970 § 8

**CASE NOTES FROM FORMER SECTION**

¶ 1. City employee who had been dismissed on charges, **held** entitled to recover from the Employees' Retirement System the pension deductions made periodically by the City from his salary, and such right of recovery could not be defeated on alleged ground that plaintiff was entitled to no compensation from the City because of fraud and dishonesty,

since the action was not one to recover wages, City had not counterclaimed for wages paid, and trustees of the System were holding a fund for plaintiff in capacity of trustee and not employer.-Belt v. N.Y.C. Employees' Retirement System, 103 (64) N.Y.L.J. (3-18-40) 1230, Col. 4 T; aff'd, 261 App. Div. 951, 27 N.Y.S. 2d 422 [1941].

¶ 2. A City employee who had been dismissed from service after filing an application for retirement but before the date set in the application for actual retirement was not entitled to pension benefits. Contention that the deductions made from petitioner's salary and the expected benefits of the Retirement Plan constituted a part of his compensation during his tenure in office and that denial of retirement deprived him of compensation which he has already earned was rejected. Under this section petitioner was entitled only to a repayment of the cumulative deductions standing to his credit.-Matter of Eberle, 285 N.Y. 247, 33 N.Y.S. 2d 692 [1941].

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

*NYC Administrative Code 13-142*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-142 Termination of membership; election to city, county or state office.

Should a member previously in city-service as a city official or employee be elected a city, county or state official, such member may on application therefor and approval by the mayor, withdraw from the retirement system, and upon such withdrawal, he or she shall be paid such part of the amount of the accumulated deductions standing to the credit of his or her individual account in the annuity savings fund as he or she shall be entitled to receive.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-30.0 added chap 929/1937 § 1

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

*NYC Administrative Code 13-143*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-143 Termination of membership; transfer to police pension fund.

a. (1) Any member of the New York city employees' retirement system may transfer his or her credit therein to the police pension fund provided for in subchapter two of chapter two of this title upon attaining membership in said police pension fund. Any person heretofore a member of the New York city employees' retirement system whose membership therein was terminated by his or her attaining membership in said police pension fund and who has not withdrawn his or her contributions to the New York city employees' retirement system may similarly transfer his or her credit to the said police pension fund.

(2) Subject to the provisions of paragraph four of this subdivision, upon the request of such member or person for the transfer of credit within one year after attaining membership in said police pension fund or by April fifth, nineteen hundred forty-eight the actuary of the New York city employees' retirement system shall determine the reserve on the benefits allowable to such member or person as the result of employer contributions, including the reserve-for-increased-take-home-pay, as though such member had not discontinued membership, in the same manner as provided in section forty-three of the retirement and social security law. Subject to the provisions of paragraph four of this subdivision, such reserve shall thereupon be transferred from the contingent reserve fund of the New York city employees' retirement system to the contingent reserve fund of the said police pension fund and the accumulated deductions of such member or person shall thereupon be transferred from the annuity savings fund of the New York city employees' retirement system to the annuity savings fund of the said police pension fund within one year from the date of such request.

(3) Subject to the provisions of subdivision b of this section, no member of the said police pension fund shall be eligible for retirement for service until he or she has served in the police force for a minimum period of twenty or

twenty-five years, or until he or she has reached the age of fifty-five, according to the minimum period or age of retirement elected by such member prior to the certification of his or her rate of contribution.

(4) Notwithstanding the provisions of paragraph two of this subdivision, with respect to transfers pursuant to this section which occur on or after the effective date of this paragraph, the actuary of the New York city employees' retirement system shall not be required to determine the reserve on the benefits allowable to the transferring member as the result of employer contributions, including the reserve-for-increased-take-home-pay, and the transfer of such reserve, including the reserve-for-increased-take-home-pay, from the New York city employees' retirement system to said police pension fund shall not be required. The New York city employees' retirement system, within one year from the date of the request for the transfer of credit, shall comply with all requirements for completing the transfer imposed on it by the provisions of this section. Nothing set forth in this paragraph shall be deemed to modify the requirement set forth in paragraph two of this subdivision that the New York city employees' retirement system transfer to said police pension fund the accumulated deductions of such member.

b. (1) Subject to the provisions of paragraph two of this subdivision any period of allowable service rendered as an "EMT member", as defined in paragraph one of subdivision a of section 13-157.2 of this chapter, as added by chapter five hundred seventy-seven of the laws of two thousand, which immediately precedes service in the police force, and any period of allowable service rendered (i) as a peace officer, as defined in section 2.10 of the criminal procedure law, (ii) in the title of sheriff, deputy sheriff, marshal or district attorney investigator, or (iii) in any position specified in appendix A of operations order 2-25 of the police department of the city of New York dated December eleventh, two thousand two, which immediately precedes service in the police force, and any period of allowable service in the uniformed transit police force, uniformed correction force, housing police service and the uniformed force of the department of sanitation immediately preceding service in the police force, credit for which period of immediately preceding allowable service was or is transferred pursuant to subdivision a of this section, shall be deemed to be service in the police force for purposes of eligibility for benefits and to determine the amount of benefits under the police pension fund.

(2) In any case where, by reason of credit for such immediately preceding service, the date of completion of such member's minimum period for service retirement under the police pension fund became or becomes earlier than such date would be if such credit for such immediately preceding service had not been so acquired, there shall be effected with respect to such member:

(a) such increase in such member's normal rate of contribution, effective as of the date on which such member last became a member of the police pension fund, as may be necessary to reflect such earlier date of eligibility for service retirement; and

(b) the charging of such member who acquired or acquires such credit for such immediately preceding service with a contribution rate deficiency:

(i) which shall accrue from the date on which such member last became a member of the police pension fund; and

(ii) which shall be in such amount as shall be the product of the increase provided in subparagraph (a) of this paragraph two and the member's compensation during the period of time provided in item (i) of this subparagraph (b); and

(iii) which, unless paid by such member in such manner as shall be prescribed by rules and regulations adopted by the board of trustees of such pension fund, shall require an appropriate adjustment of any benefit which may become payable to or on account of such member.

(3) Nothing contained in paragraph two of this subdivision b shall cause a member who acquires or acquired credit for a period of allowable service in any such uniformed force or service by reason of the provisions of paragraph

one of this subdivision to be denied:

(a) the right or entitlement, if any, to terminate or reduce contributions to such police pension fund or to a refund of or credit for contributions paid during the period when the member would have been entitled to terminate or reduce such contributions if he or she had such service credit on the date when he or she last became a member of such police pension fund; or

(b) any other right, benefit or entitlement of a similarly situated member of such police pension fund with equal total service credit consisting only of service in the uniformed force of the police department, provided that the foregoing provisions of this paragraph three shall not be construed in a manner inconsistent with the provisions of paragraph two of this subdivision b.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 647/2004 § 5, eff. Oct. 26, 2004. [See Note 1]

Subd. b par (1) amended chap 498/2005 § 1, eff. Aug. 16, 2005.

Subd. b par (1) amended chap 728/2004 § 1, eff. Dec. 8, 2004.

**DERIVATION**

Formerly § B3-30.1 added chap 625/1947 § 1

Amended chap 509/1960 § 10

Amended chap 941/1981 § 1

**NOTE**

1. Provisions of chap 647/2004:

§ 9. This act shall take effect immediately and shall apply to any covered membership transfer initiated on or after the effective date of this act, and any covered membership transfer initiated prior to the effective date of this act, but for which no transfer of reserves on the benefits allowable to the transferring member as the result of employer contributions, including the reserve-for-increased-take-home-pay, has been made prior to such effective date; provided, however, that no provision of this act shall effect the transfer of reserves required with respect to transfers between any two of the New York state and local police and fire retirement system, the New York city police department subchapter two pension fund and the New York city fire department subchapter two pension fund and with respect to transfers from the New York state and local police and fire retirement system to the metropolitan transportation authority police pension fund.

**CASE NOTES**

¶ 1. There is no impairment of pension rights in the merger of the Housing Authority Police Department with the NYC Police Department because both have the same benefits, Ad Cd §13-156, and since the transfer is pursuant to Ad Cd §13-143 the "three-year rule" which affects the benefits received is inapplicable and the housing police officers will receive full pension credit immediately upon transfer. Nickels v. NYC Hous. Auth., 208 AD2d 203 [1995].

¶ 2. The plan to merge the NYC Housing Authority Police Department with the NYC Police Department as provided for in a vote of the Housing Authority is not constitutional in the absense of legislation insuring that

petitioners' salary and pension benefits are not jeopardized by the proposed merger. Employees transferred are protected by statute from losing their pension credit, Ad Cd §13-143, the salary rate is not protected from impairment. Pension legislation is required. Nickels v. NYC Hous. Auth., 163 Misc. 2d 611 [1994].

¶ 3. A New York City police officer who desires to transfer his service credit from the New York City Employees' Retirement System to the police pension fund must do so within one year following his appointment as a police officer. A transfer request made eight years after appointment was therefore deemed untimely. Moreover, the City was not estopped from enforcing the one year limit even though the City allegedly failed to advise petitioner properly as to the one year rule and its effect. Owens v. McGuire, 121 A.D.2d 292, 503 N.Y.S.2d 387 (1st Dept. 1986).

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*NYC Administrative Code 13-144*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-144 Termination of membership; transfer to fire department pension fund subchapter two.

a. (1) Any member of the New York city employees' retirement system may transfer his or her credit therein to the fire department pension fund provided for in subchapter two of chapter three of this title upon attaining membership in said fire department pension fund. Any person heretofore a member of the New York city employees' retirement system whose membership therein was terminated by such member attaining membership in said fire department pension fund and who has not withdrawn his or her contributions to the New York city employees' retirement system may similarly transfer his or her credit to the said fire department pension fund.

(2) Subject to the provisions of paragraph four of this subdivision, upon the request of such member or person for the transfer of credit within one year after attaining membership in said fire department pension fund or within one year after April fourteenth, nineteen hundred sixty the actuary of the New York city employees' retirement system shall determine the reserve on the benefits allowable to such member or person as the result of employer contributions, including the reserve-for-increased-take-home-pay, as though he or she had not discontinued membership, in the same manner as provided in section forty-three of the retirement and social security law. Subject to the provisions of paragraph four of this subdivision, such reserve shall thereupon be transferred from the contingent reserve fund of the New York city employees' retirement system and the accumulated deductions of such member or person shall thereupon be transferred from the annuity savings fund of the New York city employees' retirement system to the appropriate funds of the said fire department pension fund within one year from the date of such request.

(3) Subject to the provisions of subdivision b of this section, no member of the said fire department pension fund shall be eligible for retirement for service until such member has served in the fire department for a minimum period of twenty or twenty-five years, according to the minimum period for retirement elected by such member prior to the

certification of his or her rate of contribution.

(4) Notwithstanding the provisions of paragraph two of this subdivision, with respect to transfers pursuant to this section which occur on or after the effective date of this paragraph, the actuary of the New York city employees' retirement system shall not be required to determine the reserve on the benefits allowable to the transferring member as the result of employer contributions, including the reserve-for-increased-take-home-pay, and the transfer of such reserve, including the reserve-for-increased-take-home-pay, from the New York city employees' retirement system to said fire department pension fund shall not be required. The New York city employees' retirement system, within one year from the date of the request for the transfer of credit, shall comply with all requirements for completing the transfer imposed on it by the provisions of this section. Nothing set forth in this paragraph shall be deemed to modify the requirement set forth in paragraph two of this subdivision that the New York city employees' retirement system transfer to said fire department pension fund the accumulated deductions of such member.

b. (1) Subject to the provisions of paragraph two of this subdivision, any period of allowable service rendered as an "EMT member," as defined in paragraph one of subdivision a of section 13-157.2 of this chapter, as added by chapter five hundred seventy-seven of the laws of two thousand, which immediately precedes service in the uniformed force of the fire department, and any period of allowable service rendered (i) as a peace officer, as defined in section 2.10 of the criminal procedure law, (ii) in the title of sheriff, deputy sheriff, marshal or district attorney investigator, or (iii) in any position specified in appendix A of the agreement dated October twenty-seventh, two thousand five, among the city of New York, the uniformed firefighters association and the uniformed fire officers association, which immediately precedes service in the uniformed force of the fire department, and any period of allowable service in the uniformed transit police force, uniformed correction force, housing police service and the uniformed force of the department of sanitation immediately preceding service in the uniformed force of the fire department, credit for which period of immediately preceding allowable service was or is transferred pursuant to subdivision a of this section, shall be deemed to be service in the uniformed force of the fire department for purposes of eligibility for benefits and to determine the amount of benefits under the fire department pension fund.

(2) In any case where, by reason of credit for such immediately preceding service, the date of completion of such member's minimum period for service retirement under the fire department pension fund became or becomes earlier than such date would be if such credit for such immediately preceding service had not been so acquired, there shall be effected with respect to such member:

(a) such increase in such member's normal rate of contribution, effective as of the date on which such member became a member of the fire department pension fund, as may be necessary to reflect such earlier date of eligibility for service retirement; and

(b) the charging of such member who acquired or acquires such credit for such immediately preceding service with a contribution rate deficiency:

(i) which shall accrue from the date on which such member last became a member of the fire department pension fund; and

(ii) which shall be in such amount as shall be the product of the increase provided in subparagraph (a) of this paragraph two and the member's compensation during the period of time provided in item (i) of this subparagraph (b); and

(iii) which, unless paid by such member in such manner as shall be prescribed by rules and regulations adopted by the board of trustees of such pension fund, shall require an appropriate adjustment of any benefit which may become payable to or on account of such member.

(3) Nothing contained in paragraph two of this subdivision b shall cause a member who acquires or acquired credit for a period of allowable service in any such uniformed force or service by reason of the provisions of paragraph

one of this subdivision to be denied:

(a) the right or entitlement, if any, to terminate or reduce contributions to such fire department pension fund or to a refund of or credit for contributions paid during a period when the member would have been entitled to terminate or reduce such contributions if such member had such service credit on the date when he or she last became a member of such fire department pension fund; or

(b) any other right, benefit or entitlement of a similarly situated member of such fire department pension fund with equal total service credit consisting only of service in the uniformed force of the fire department, provided that the foregoing provisions of this paragraph three shall not be construed in a manner inconsistent with the provisions of paragraph two of this subdivision b.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par (2) amended chap 647/2004 § 6, eff. Oct. 26, 2004. [See

§ 13-143 Note 1]

Subd. a par (4) added chap 647/2004 § 7, eff. Oct. 26, 2004. [See

§13-143 Note 1]

Subd. b par (1) amended chap 637/2007 § 1, eff. Aug. 28, 2007.

**DERIVATION**

Formerly § B3-30.2 added chap 738/1948 § 1

Amended chap 613/1950 § 1

Amended chap 509/1960 § 11

Amended chap 385/1981 § 47

Amended chap 941/1981 § 1

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*NYC Administrative Code 13-145*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-145 Transfer of retirement system membership of certain marine personnel.

a. Any member of the retirement system who serves in the fire department of the city as a pilot, marine engineer (uniformed), assistant marine engineer (uniformed) or wiper (uniformed) may transfer his or her membership in the retirement system to the pension fund maintained pursuant to subchapter two of chapter three of this title by filing with the board, prior to January first, nineteen hundred seventy-one, a written application, duly executed and acknowledged, requesting such transfer.

b. Upon the filing of such application, the retirement system shall transfer to the retirement allowance accumulation fund of such fire department pension fund subchapter two, in the manner provided for in section forty-three of the retirement and social security law, the reserve on the benefits allowable to such member as a result of employer contributions, including the reserve-for-increased-take-home-pay. In addition, the retirement system shall thereupon transfer the accumulated deductions of such member (as they would be in the absence of a loan, less the unpaid balance of any outstanding loan) to such retirement allowance accumulation fund, after deducting from such accumulated deductions, as so computed, all regular interest which, if such member had not elected to transfer his or her membership, would constitute a part of the accumulated deductions of such member, as they would be in the absence of a loan. The amount of interest so deducted shall be paid into the contingent reserve fund of the retirement system and shall become the property of such system.

c. Any such transferred member:

(1) shall be deemed to have been a member of the fire department pension fund subchapter two during the period wherein he or she rendered credited service, after last becoming a member of the retirement system, in one or

more of the positions in the fire department mentioned in subdivision a of this section; and

(2) shall, for purposes of benefit, but not for purposes of eligibility for benefit, be credited in the fire department pension fund subchapter two with all service which (i) prior to such transfer was rendered by such member in any position other than the positions mentioned in subdivision a of this section and (ii) was credited to such member in the retirement system after his or her last entry into membership in such system.

d. The rate of contribution of any member who elects such transfer of membership shall, on and after the date of the filing of his or her application therefor, be that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) at which he or she would have been contributing on such date to the fire department pension fund subchapter two if:

(1) such member had been appointed a firefighter on the earliest date on which, after last becoming a member of the retirement system, he or she began service in one of the positions in the fire department mentioned in subdivision a of this section; and

(2) such member had then elected to become a member of the fire department pension fund subchapter two; and

(3) such member had then elected, as his or her minimum period of service for retirement, the minimum period elected by him or her pursuant to section 13-350 of chapter three of this title upon the transfer of his or her membership pursuant to this section.

e. (1) Notwithstanding the provisions of subdivision b of this section relating to a transfer of reserve-for-increased-take-home-pay, any such transferred member shall not be entitled, on the date on which such member's application for a transfer is filed, to a reserve-for-increased-take-home-pay which is greater than the amount which such reserve would have equalled if he or she had been a member of the fire department pension fund subchapter two during the entire period of fire department service mentioned in paragraph one of subdivision c of this section.

(2) Any amount by which the reserve-for-increased-take-home-pay transferred with respect to any such transferred member pursuant to subdivision b of this section exceeds the maximum amount of reserve-for-increased-take-home-pay prescribed with respect to such member by paragraph one of this subdivision e shall become the property of the fire department pension fund subchapter two.

f. With respect to each member who elects such transfer of membership, a comparison shall be made between:

(1) the total amount of the member contributions actually made by such member as required contributions, from the date mentioned in paragraph one of subdivision d of this section up to the date of commencement of deductions from his or her compensation at the required rate of contribution prescribed by such subdivision d; and

(2) the total amount of the required member contributions which he or she would have made with respect to the period mentioned in paragraph one of this subdivision f, if he or she had contributed during such period at the required rate prescribed by such subdivision d.

g. (1) If the total amount computed pursuant to paragraph one of subdivision f of this section is less than the total amount computed pursuant to paragraph two of such subdivision f, such member shall contribute the amount of such deficiency, with regular interest thereon, to the appropriate fund of the fire department pension fund subchapter two by deductions from his or her compensation at a rate elected by such member, which shall not be less than five per cent of his or her compensation. The actuarial equivalent of any balance of such deficiency which remains unpaid at the time any benefit under such pension fund may become payable to or with respect to such member shall be deducted from the benefit otherwise payable.

(2) If the total amount computed pursuant to paragraph one of subdivision f of this section is more than the total

amount computed pursuant to paragraph two of such subdivision f, the amount of such excess shall be refunded to such member by the fire department pension fund subchapter two, without interest.

h. In any case where, at the time when any such member seeks to file such an application for transfer of membership, any part of the principal or interest with respect to any loan made by such member pursuant to section 13-140 of this chapter remains unpaid, he or she shall not have the right to make such election unless he or she shall execute and acknowledge, and file with the board, a written agreement providing that from and after the execution of such agreement all of his or her obligations and rights with respect to the principal and interest remaining unpaid on such loan shall be governed by section 13-342 of this title and that the terms and conditions of such loan may be changed or modified by the board of trustees of the fire department pension fund subchapter two with respect to any principal thereof and interest thereon remaining unpaid, so as to conform with the provisions of section 13-342 of this title.

i. Any member who elects such transfer of membership may, prior to certification of his or her rate of contribution prescribed by subdivision d of this section, make the election of a minimum period of service for retirement provided for by section 13-350 of this title.

j. Any member who elects such transfer of membership shall be subject to mandatory retirement upon attainment of age sixty-five under subdivision a of section 15-121 of the code in the same manner as any other member of the uniformed force who is not a medical officer.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-30.3 added chap 490/1970 § 1



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

*NYC Administrative Code 13-145.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-145.1 Transfer of retirement system membership of certain fire marshals.

a. Any member of the retirement system who serves in the fire department of the city as a fire marshal (uniformed), supervising fire marshal (uniformed), deputy chief fire marshal (uniformed) or chief fire marshal (uniformed) may transfer his membership in the retirement system to the pension fund maintained pursuant to subchapter two of chapter three of this title by filing with the board, prior to January first, nineteen hundred eighty-seven, a written application, duly executed and acknowledged, requesting such transfer.

b. Upon the filing of such application, the retirement system shall transfer to the retirement allowance accumulation fund of such fire department pension fund, subchapter two, in the manner provided for in section forty-three of the retirement and social security law, the reserve on the benefits allowable to such member as a result of employer contributions, including the reserve-for-increased-take-home-pay. In addition, the retirement system shall thereupon transfer the accumulated deductions of such member (as they would be in the absence of a loan, less the unpaid balance of any outstanding loan) to such retirement allowance accumulation fund, after deducting from such accumulated deductions, as so computed, all regular interest which, if such member had not elected to transfer his membership would constitute a part of the accumulated deductions of such member, as they would be in the absence of a loan. The amount of interest so deducted shall be paid into the contingent reserve fund of the retirement system and shall become the property of such system.

c. Any such transferred member:

(1) shall be deemed to have been a member of the fire department pension fund, subchapter two, during the period wherein he rendered credited service, after last becoming a member of the retirement system in one or more of

the positions in the fire department mentioned in subdivision a of this section; and

(2) shall, for purposes of benefit, but not for purposes of eligibility for benefit, be credited in the fire department pension fund, subchapter two, with all service which (i) prior to such transfer was rendered by him in any position other than the positions mentioned in subdivision a of this section, and (ii) was credited to him in the retirement system after his last entry into membership in such system.

d. The rate of contribution of any member who elects such transfer of membership shall, on and after the date of the filing of his application therefor, be that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions providing-for-increased-take-home-pay) at which he would have been contributing on such date to the fire department pension fund, subchapter two, if:

(1) he had been appointed a fireman on the earliest date on which, after last becoming a member of the retirement system, he began service in one of the positions in the fire department mentioned in subdivision a of this section; and

(2) he had then elected to become a member of the fire department pension fund, subchapter two; and

(3) he had then elected, as his minimum period of service for retirement, the minimum period elected by him pursuant to section 13-350 of this title upon the transfer of his membership pursuant to this section.

e. (1) Notwithstanding the provisions of subdivision b of this section relating to a transfer of reserve-for-increased-take-home-pay, any such transferred member shall not be entitled, on the date on which his application for a transfer is filed, to a reserve-for-increased-take-home-pay which is greater than the amount which such reserve would have equalled if he had been a member of the fire department pension fund, subchapter two, during the entire period of fire department service mentioned in paragraph one of subdivision c of this section.

(2) Any amount by which the reserve-for-increased-take-home-pay transferred with respect to any such transferred member pursuant to subdivision b of this section exceeds the maximum amount of reserve-for-increased-take-home-pay prescribed with respect to such member by paragraph one of this subdivision e shall become the property of the fire department pension fund, subchapter two.

f. With respect to each member who elects such transfer of membership, a comparison shall be made between:

(1) the total amount of the member contributions actually made by him as required contributions, from the date mentioned in paragraph one of subdivision d of this section up to the date of commencement of deductions from his compensation at the required rate of contribution prescribed by such subdivision d; and

(2) the total amount of the required member contributions which he would have made with respect to the period mentioned in paragraph one of this subdivision, if he had contributed during such period at the required rate prescribed by such subdivision d.

g. (1) If the total amount computed pursuant to paragraph one of subdivision f of this section is less than the total amount computed pursuant to paragraph two of such subdivision f, such member shall contribute the amount of such deficiency, with regular interest thereon, to the appropriate fund of the fire department pension fund, subchapter two, by deductions from his compensation at a rate elected by him, which shall not be less than five percent of his compensation. The actuarial equivalent of any balance of such deficiency which remains unpaid at the time any benefit under such pension fund may become payable to or with respect to such member shall be deducted from the benefit otherwise payable.

(2) If the total amount computed pursuant to paragraph one of subdivision f of this section is more than the total amount computed pursuant to paragraph two of such subdivision f, the amount of such excess shall be refunded to him

by the fire department pension fund, subchapter two, without interest.

h. In any case where, at the time when any such member seeks to file such an application for transfer of membership, any part of the principal or interest with respect to any loan made by such member pursuant to section 13-140 of this chapter remains unpaid, he shall not have the right to make such election unless he shall execute and acknowledge, and file with the board, a written agreement providing that from and after the execution of such agreement all of his obligations and rights with respect to the principal and interest remaining unpaid on such loan shall be covered by section 13-342 of this title and that the terms and conditions of such loan may be changed or modified by the board of trustees of the fire department pension fund, subchapter two, with respect to any principal thereof and interest thereon remaining unpaid, so as to conform with the provisions of such section 13-342 of this title.

i. Any member who elects such transfer of membership may, prior to certification of his rate of contribution prescribed by subdivision d of this section, make the election of a minimum period of service for retirement provided for by section 13-350 of this title.

j. Any member who elects such transfer of membership shall be subject to mandatory retirement upon attainment of age sixty-five under subdivision a of section 15-121 of the code in the same manner as any other member of the uniformed force who is not a medical officer.

**HISTORICAL NOTE**

Section added chap 823/1985 § 1, section number supplied by the

Legislative Bill Drafting Commission

**DERIVATION**

Formerly § B3-30.4 added chap 823/1985 § 1



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*NYC Administrative Code 13-146*

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Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-146 Termination of membership; miscellaneous.

Membership in the retirement system shall cease upon the occurrence of any one of the following conditions:

1. When the time out of city-service, other than time on a preferred civil service list or other than time in the armed forces of the United States in world war II of any member who has resigned or has been separated from the service through no fault of his or her own, and who has total service of less than twenty-five years, shall aggregate more than five years in any period not exceeding ten consecutive years since he or she last became a member.

2. When the time out of city-service of any member, other than time on a preferred civil service list or other than time in the armed forces of the United States in world war II, who has resigned or has been separated from the service through no fault of his or her own before reaching the age of retirement, and who has total service of twenty-five years, or more, shall aggregate more than ten years.

3. When any member shall have withdrawn more than fifty per centum of his or her accumulated deductions.

4. When any member shall have withdrawn the cash benefit provided by section 13-150 of this chapter.

5. When any member shall die.

6. When any member shall be retired on a pension.

7. The provisions of subdivisions one and two of this section with respect to time spent in the armed forces of the United States in world war II shall not apply to county employees.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-31.0 added chap 929/1937 § 1

Subs 1, 2 amended chap 550/1938 § 1

Sub 3 amended chap 495/1940 § 1

Amended LL 2/1947 § 1

Sub 3 amended chap 441/1957 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where the decedent made a written designation of his oldest child to receive retirement benefits upon his death and the child's mother was led by the oldest child to believe that she would pay the decedent's debts and divide the pension money between her sisters and brothers and as a result refrained from changing the beneficiary, the other children were entitled to a judgment impressing a constructive trust upon the benefits.-McKenna v. Marsich, 135 (59) N.Y.L.J. (3-27-56) 6, Col. 1 M.

¶ 2. Because petitioner's membership in the N.Y.C. Employees' Retirement System had terminated on 12/31/70 by operation of law on the fifth anniversary of the expiration of his term of office as a member of the city council, he lacked the eligibility requirement of 5 years of minimum service from July 1, 1973 to his retirement in December, 1978 even though petitioner rejoined the retirement system eight years after he left city service when he became president of the city council.-O'Dwyer v. N.Y.C. Employees' Retirement System, 69 A.D. 2d 799 [1979].

¶ 3. Membership of petitioner in nondisability retirement in N.Y.C. Employees' Retirement System was not terminated when he withdrew his accumulated deductions from the retirement system at the insistence of the system.-O'Dwyer v. N.Y.C. Employees' Retirement System, 69 A.D. 2d 779 [1979].

¶ 4. Court overruled decision of N.Y.C. Employees' Retirement System and ordered that it grant a veteran's pension to former employee despite his criminal conviction. Former employee met standards for securing his veteran's pension under § B3-36.0(2) and that trustees of pension fund acted arbitrarily in denying his application.-Matter of Jesselli (City Employees' Retirement System), 190(8) N.Y.L.J. (7-13-83) 12, Col. 6 T.

¶ 5. Pensioner died shortly after receiving first pension check. "Payment" had been made by pension system pursuant to his choice of pension plans and no change could now be made.-Jackson v. Herkommer, 190(117) N.Y.L.J. (12-20-83) 6, Col. 2 M.

¶ 6. Petitioner was dismissed by Department of Social Services and N.Y.C. Employees' Retirement System subsequently terminated his membership pursuant to subd. 1. However, during 5 year period following his dismissal he re-entered city service and therefore is not subject to automatic termination from retirement system pursuant to subd. 1.-Kaufman v. Dept. of Soc. Services, 99 A.D. 2d 778 [1984].

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Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-147 Right of certain employees to continue to maintain deposit of accumulated deductions.

A person whose position in the New York city transit authority was abolished due to the sale of city owned transit power plants may, at any time prior to the termination of his or her membership, by notice filed with the executive director of the retirement system, elect to continue to maintain his or her accumulated deductions on deposit with the retirement system. Regular interest shall be credited on the accumulated deductions so continued on deposit. Upon filing of such election, membership in the retirement system shall cease.

Such person may at any time prior to the payment of an annuity, as hereinafter provided, withdraw the accumulated deductions standing to the credit of his or her individual account.

Notwithstanding the provisions of section 13-146 of this chapter, such a person shall receive an annuity of equivalent actuarial value to his or her accumulated deductions based on the appropriate mortality tables to be approved by the board of estimate upon written application to the board setting forth at what time, not less than thirty nor more than ninety days subsequent to the execution and filing thereof, he or she desires to receive such annuity, provided such person, at the time specified, shall have attained his or her minimum service retirement age.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-31.1 added chap 310/1960 § 1

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Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-148 Death benefits; ordinary death benefits.

a. Upon the death of a member or of a former member, there shall be paid to his or her estate, or to such person as he or she has nominated or shall nominate by written designation duly executed and filed with such board during the lifetime of the member:

1. Such member's accumulated deductions, if any; and, in addition thereto;

2. (a) If he or she is a member who is in city-service or is on a civil service preferred eligible list by reason of city-service, unless a pension by payable by the city under the provisions of section 13-149 of this chapter, a sum which, subject to the provisions of paragraph four of subdivision e of section 13-638.4 of this title, shall consist of:

(i) an amount equal to the compensation earnable by such member while a member, during the six months immediately preceding his or her death; or

(ii) if the total number of years in which allowable service was rendered exceeds ten, including service which was allowable during former membership, then an amount equal to the compensation earnable by such member in city-service while a member during the twelve months immediately preceding his or her death; or

(iii) if such member, at the time of his or her death, held a career pension plan position, and if the total number of years in which allowable service was rendered includes twenty or more years of career pension plan qualifying service, including career pension plan qualifying service which was allowable during former membership, then an amount equal to twice the compensation earnable by him or her in city-service while a member during the twelve

months immediately preceding his or her death; and

(iv) in addition to the amount payable under item (i), (ii) or (iii) of this subparagraph (a), the reserve-for-increased-take-home-pay, if any.

(b) If the sum of such pension payments made and payable under section 13-149 of this chapter plus the reserve-for-increased-take-home-pay, if any, payable as a lump sum under such section, is a lesser sum, then there shall be paid hereunder the difference between the total of such lesser pension sum and reserve, if any, and the greater amount herein provided as ordinary death benefit.

(c) Where any member, by any designation heretofore or hereafter filed pursuant to the foregoing provisions of this subdivision a and in effect at the time of the death of such member, nominated or shall nominate any person to receive the amount payable under item (i), (ii) or (iii) of subparagraph (a) of this paragraph two, the reserve-for-increased-take-home-pay, if any, of such member payable under item (iv) of such subparagraph (a) shall be paid to the person so nominated.

(d) Payment of the expense of burial not exceeding three hundred dollars to a relative or friend who shall assume responsibility therefor in the absence or failure of the designated beneficiary may be authorized by the comptroller on certificate of the executive director and actuary of the retirement system; such payment by a like amount shall reduce the amount payable to such designated beneficiary or estate.

b. Until the first payment has been made on account of a retirement benefit without optional selection of a member, such member shall be construed by such board to have been in city-service and the benefits provided in this section shall be paid in lieu of the retirement allowance.

c. 1. The member, or on the death of the member, the person nominated by him or her to receive either his or her accumulated deductions, if any, his or her death benefit, or both, may provide by written designation duly executed and filed with such board that the actuarial equivalent of the benefit otherwise payable in a lump sum shall be paid to the person designated in the form of an annuity payable in installments not more often than once a month, the amount of such annuity to be determined at the time of the member's death on the basis of the age of the beneficiary at that time.

2. Where any such designation mentioned in paragraph one of this subdivision c was heretofore or is hereafter filed by a member with respect to a benefit otherwise payable pursuant to the provisions of item (i), (ii) or (iii) of subparagraph (a) of paragraph two of subdivision a of this section, and such designation was or is in effect at the time of the death of such member, or where any such designation was heretofore or is hereafter filed by any person so nominated to receive such benefit, the actuarial equivalent of the reserve-for-increased-take-home-pay, if any, of such member shall be paid to the person named in such designation as beneficiary with respect to such benefit under such item (i), (ii) or (iii), in the form of an annuity and in the manner and in accordance with the method of computation prescribed by paragraph one of this subdivision c.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par 2 subpar (a) amended ch. 749/1992 § 4 eff. July 31, 1992

**DERIVATION**

Formerly § B3-32.0 added chap 929/1937 § 1

Sub c added chap 347/1939 § 1

Amended chap 390/1940 § 1

Sub a par 2 amended chap 137/1951 § 1

Sub b amended chap 448/1957 § 1

Amended chap 509/1960 § 12

Amended chap 787/1962 § 7

(Special provision chap 787/1962 § 8)

Amended chap 821/1968 § 8

Sub a par 2 subpar iii amended chap 817/1969 § 15

Sub a par 1 amended chap 870/1970 § 9

Sub c par 1 amended chap 870/1970 § 10

Sub a par 2 subpar d amended chap 888/1973 § 3

**CASE NOTES FROM FORMER SECTION**

¶ 1. Oral promise of decedent that in event his wife should predecease him he would at time of her death designate plaintiff, who had rendered services to him, as sole beneficiary of any money which on his death might remain to his credit as a member of the New York City Employees Retirement System, **held** void under Personal Property Law § 31, subd. 1, as performance was not to be completed before the end of a lifetime. The amendments of § 31 in 1933 evinced the public policy to outlaw such type of oral claims, and the pension funds of City employees should sedulously be protected accordingly.-Bayreuther v. Reinisch, 264 App. Div. 138, 34 N.Y.S. 2d 674 [1942], aff'd without opinion 290 N.Y. 553, 47 N.E. 2d 959 [1943].

¶ 2. Where deceased member of N.Y.C. Employees' Retirement System in 1937 designated his two children as beneficiaries of the fund in case of his death, in a subsequent separation action brought by his wife the Court denied sequestration of the fund but ordered that decedent be restrained from encumbering or disposing of his interest in the fund and restrained any payment to him out of the fund, but in 1944 he filed with the Pension System a change of designation of beneficiaries, the City's motion to interplead the substituted beneficiaries in an action thereafter brought by his children against the City to recover the fund, was denied on ground that the City in accepting the change of beneficiaries filed with it in 1944 had impliedly ruled that the order in the separation action did not affect an attempt to change beneficiary, and accordingly it could not now say that it was doubtful as to the rightful claimant.-Flanagan v. O'Dwyer, 197 Misc. 5, 86 N.Y.S. 2d 559 [1948], aff'd 275 App. Div. 767, 88 N.Y.S. 903 [1949].

¶ 3. Person who at time of his death had been in the City's employ for ten years and one month but had been a member of the Retirement System for only $9\frac{1}{2}$ years, having failed to avail himself of the privilege accorded by § 1703a of the old Charter to have his retirement period date back to his original entry into the service by making additional payments into the retirement fund, **held** not to have been in the City service for over ten years, and hence under Admin. Code § B3-32.0 he was entitled to a death benefit of six months' compensation rather than a full year's compensation.-Clarke v. Bd. of Estimate of City of N.Y., 105 (122) N.Y.L.J. (5-26-41) 2360, Col. 5 F.

¶ 4. Under Admin. Code § B3-32.0 a credit for the employee's service is limited to city-service "while a member" of the Retirement System, and hence period of deceased member's employment prior to becoming a member of the Retirement System could not be considered in determining whether member had more than ten years of allowable service. Furthermore, the deceased member had never applied for credit for the period of employment prior to joining the retirement system, and salary deductions had never been made for such period.-McKenna v. N.Y. City Employees' Retirement System, 120 (78) N.Y.L.J. (10-21-48) 870, Col. 1 F. Adhered to on reargument, 120 (101) N.Y.L.J.

(11-26-48) 1292, Col. 6 T.

¶ 5. Order denying wife's motion to sequester certain funds allegedly held to husband's credit in the N.Y.C. Employees' Retirement System but nevertheless restraining any disposition or encumbrance by the husband of his interest in the pension fund and any payment to him out of such fund until further order of the Court, **held** not to have impaired validity of husband's subsequent designation of the plaintiffs as beneficiaries of the cash death benefit and the accumulated salary deductions. Such a restraint was clearly not contemplated by the Court nor the parties, and moreover since at the time no pension had as yet accrued to the employee he had no property which was then subject to sequestration. The moneys payable to the beneficiaries in the instant case never belonged to the deceased employee in his lifetime and in fact did not come into existence until his death.-Flanagan v. O'Dwyer, 197 Misc. 5, 94 N.Y.S. 2d 162 [1950].

¶ 6. A widow who successfully proved her claim for ordinary benefits on account of the death of her husband was entitled to interest thereon from the time she demanded payment, at a rate not to exceed 3 per cent.-Cosgrove v. New York City Employees' Retirement System, 137 (107) N.Y.L.J. (6-4-57) 7, Col. 5 F.

¶ 7. An employee can change the beneficiary of his interest in the retirement system at any time before his death. A claim by wife of a deceased employee that her 1937 designation as beneficiary of her husband's interest was irrevocable by the husband was rejected.-Fleming v. N.Y.C. Employees' Retirement System, 148 (117) N.Y.L.J. (12-19-62) 9, Col. 7 M.

¶ 8. An article 78 proceeding by the executors of the estate of a deceased City employee to require the Board of Estimate to accept a designation of beneficiary form executed by the employee before his death was dismissed. The Board was not enjoined by law to honor such designation form after the employee's death. Mandamus is available only where other remedies fail. It cannot be used to enforce rights based upon contract.-Mudzinski v. Bd. of Estimate of City of N.Y., 37 Misc. 2d 1044, 235 N.Y.S. 2d 563 [1962].

¶ 9. City employee's designation of his wife as beneficiary of his retirement benefits was an unqualified directive to make payment to her, and was not affected by alleged oral statement of "intention" to name children as beneficiaries.-Cullom v. Bilicki, 150 (37) N.Y.L.J. (8-21-63) 8, Col. 5 M.

¶ 10. Where deceased member of New York City Employees' Retirement System had designated his mother beneficiary of death and pension benefits prior to his marriage in 1948 and the mother executed an assignment transferring title of all benefits to the widow the Retirement System was required to honor the assignment despite § B3-50.0 which makes such monies unassignable since that provision was only intended to protect a member's future security and to prevent the fund from being diminished during the member's life.-Gagliardi v. N.Y.C. Employees' Retirement System, 174 (76) N.Y.L.J. (10-17-75) 5, Col. 3 M.

¶ 11. Where city employee who died on November 3, 1971 and who retired on March 16, 1971 elected to receive maximum retirement allowance the executors and beneficiaries of his estate were not entitled to the benefits of Option 1 of the New York City Retirement System Plan which would give them the unused portion of the value of his pension fund annuity account as of the time of his retirement on the ground that under this section if "any retired member dies on or after the effective date of his retirement and prior to the first payment on account of his retirement allowance and had not elected Option 1, 2, 3 or 4 with respect to such retirement, he shall be deemed to have elected Option 1 with respect thereto" and that the six monthly checks the deceased received from March through November did not constitute a "first payment" because they were made by the Comptroller without any formal action by the Board of Trustees as to his particular case.-In re Will of Whalen, 51 A.D. 2d 296, 381 N.Y.S. 2d 79 [1976], aff'd 41 N.Y. 2d 854 [1977].

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Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-149 Death benefits; accidental death benefits.

a. Except as otherwise provided in subdivision b of this section, upon the accidental death of a member before retirement, provided that evidence shall be submitted to such board proving that the death of such member was the natural and proximate result of an accident sustained while a member and while in the performance of duty at some definite time and place and that such death was not the result of wilful negligence on his or her part, such member's accumulated deductions, if any, shall be paid to his or her estate, or to such persons as he or she has nominated or shall nominate by written designation, duly acknowledged and filed with such board. Upon application by or on behalf of the dependents of such deceased member, such board shall grant a lump sum payment of the reserve-for-increased-take-home-pay and a pension of one-half of the final compensation of such employee:

1. To his or her surviving spouse, to continue until the death or remarriage of surviving spouse; or

2. If there be no surviving spouse, or if the surviving spouse dies or remarries before any child of such deceased member shall have attained the age of eighteen years, then to his or her child or children under such age, divided in such manner as such board in its discretion shall determine, to continue as a joint and survivor pension of one-half of his or her final compensation until every such child dies or attains such age; or

3. If there be no surviving spouse or child under the age of eighteen years surviving such deceased member, then to his or her dependent father or mother, as the deceased member shall have nominated by written designation duly acknowledged and filed with such board; or, if there be no such nomination, then to his or her dependent father or to his or her dependent mother, as such board in its discretion shall direct, to continue for life; or

4. If there be no surviving person who is eligible to receive such benefits in accordance with paragraph one, two or three of this subdivision, then to the person that such deceased member shall have nominated by written designation duly executed and filed with such board during the lifetime of the member for the purposes of section 13-148 of this chapter.

b. (1) (a) For the purposes of this subdivision b, the term "maximum basic annual salary of sanitation workers" shall mean the highest, basic annual rate of compensation payable to any class of sanitation workers under a schedule or schedules or plan for the compensation of sanitation workers in effect pursuant to law as of the date with respect to which benefits are to be determined pursuant to this subdivision b.

(b) Such term shall exclude any form of salary, compensation, pay, premium or differential for work as a sanitation worker compensable at other than the rate mentioned in subparagraph (a) of this paragraph one.

(c) The exclusions prescribed by subparagraph (b) of this paragraph one shall include, but shall not be limited to, any salary, compensation, pay, premium or differential for overtime or Saturday, Sunday, holiday, snow removal, chart or night work.

(2) Notwithstanding the provisions of subdivision a of this section, upon the accidental death before retirement of a member who is a sanitation member provided that evidence shall be submitted to such board proving that the death of such member was the natural and proximate result of an accident sustained while a member and while in the performance of duty at some definite time and place and that such death was not the result of wilful negligence on his or her part, his or her accumulated deductions shall be paid to his or her estate, or to such persons as he or she has nominated or shall nominate by written designation, duly acknowledged and filed with such board. Upon application by or on behalf of the dependents of such deceased member, such board shall grant a lump sum payment of the reserve-for-increased-take-home-pay and a pension of one-half of such member's annual salary or compensation on the date of his or her death; provided that in no case shall such pension be in an amount which is less than one-half of the maximum basic annual salary of sanitation workers payable as of such date of death to sanitation workers employed by the department of sanitation:

(1) To his or her surviving spouse, to continue until the death of the surviving spouse; or

(2) If there be no surviving spouse, or if the surviving spouse dies before any child of such deceased member shall have attained the age of eighteen years, then to his or her child or children uner such age, divided in such manner as such board in its discretion shall determine, to continue as a joint and survivor pension in the amount hereinabove specified until every such child dies or attains such age; or

(3) If there be no surviving spouse or child under the age of eighteen years surviving such deceased member, then to his or her dependent father or mother, as the deceased member shall have nominated by written designation duly acknowledged and filed with such board; or, if there be no such nomination, then to his or her dependent father or to his or her dependent mother, as such board in its discretion shall direct, to continue for life.

c. Notwithstanding any other provision of law to the contrary, and solely for the purposes of this section, a member shall be deemed to have died as the natural and proximate result of an accident sustained in the performance of duty upon which his or her membership is based, and not as a result of willful negligence on his or her part, provided that such member was in active service upon which his or her membership is based at the time that such member was ordered to active duty, other than for training purposes, pursuant to Title 10 of the United States Code, with the armed forces of the United States, and such member died while on such active duty on or after the effective date of the chapter of the laws of two thousand five which added this subdivision while serving on such active military duty.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par 3 amended chap 408/2000 § 1, eff. Aug. 30, 2000.

Subd. a par 4 added chap 408/2000 § 2, eff. Aug. 30, 2000.

Subd. b par (2) amended chap 290/2001 § 1, eff. Sept. 5, 2001 and

applying to widows or widowers of members who remarry on or after

Sept. 5, 2001.

Subd. c added chap 105/2005 § 23, eff. June 14, 2005.

**DERIVATION**

Formerly § B3-33.0 added chap 929/1937 § 1

Amended chap 509/1960 § 13

Amended chap 331/1969 § 6

Sub a amended chap 870/1970 § 11

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where decedent, in consideration of wife releasing him of his liability for her support during period of their separation and consenting to accept specified weekly payments in the future and agreeing not to institute any action for separation and alimony, had orally promised to designate her as beneficiary of his death benefit in New York City Employees' Retirement System, but had made no effort to carry out his agreement and at time of his death his sister was still the named beneficiary, widow had right to compel specific performance of such contract upon theory that equity will disregard the formal steps and treat the promisee as the beneficiary, considering that done which ought to be done. However, if the widow had brought an action at law against the Employees' Retirement System to compel it to pay her the benefit, fact that another was named as beneficiary pursuant to the statutes would probably constitute a good defense, but here the action was not against the Retirement System, and such System had paid into court the amount involved.-Scanlon v. N.Y. City Employees' Retirement System, 99 (150) N.Y.L.J. (6-29-38) 3134, Col. 4 M.

¶ 2. Plaintiff, to whom deceased member of Employees' Retirement System had made an oral assignment **held** entitled to recover the death benefits and accumulated deductions as against the designated beneficiary, where statements of deceased, which clearly evidenced intent to make a present transfer, were made in the presence of the designated beneficiary, who not only acquiesced in the change but released all claims to the fund in question, and moreover there had been no policy or other document capable of delivery.-Quinn v. Annese, 104 (88) N.Y.L.J. (10-14-40) 1074, Col. 1 F.

¶ 3. Plaintiff, alleging that she had foregone bringing an action to recover moneys lent decedent on his false representations that he had designated her as beneficiary of moneys payable upon his death as a member of the New York City Employees' Retirement System, **held** not entitled to have a lien impressed upon the fund which had become payable upon his death, since plaintiff failed to allege the execution of an enforceable promise by decedent to irrevocably designate plaintiff as a beneficiary.-Brinkley v. Carroll, 105 (119) N.Y.L.J. (5-22-41) 2305, Col. 7 F.

¶ 4. Alleged oral promise of plaintiff's former husband to designate her as the beneficiary of fund payable upon his death by the New York City Employees' Retirement System did not clothe her with any rights to the fund which she might assert against the designated beneficiary, where there was no claim of fraud by the named beneficiary or that deceased intended the fund to be paid to anyone other than the designated beneficiary. The mention of plaintiff's daughter in the application for membership in the Retirement System was of no significance as it was merely made in

response to a request that the applicant list the names of his children.-Brill v. Brill, 112 (70) N.Y.L.J. (9-22-44) 588, Col. 6 F.

¶ 4.1. Decedent named his wife, Margaret Sullivan, as his beneficiary in his application with the New York City Retirement System in 1944. They were divorced that same year. Decedent married the plaintiff in 1954 without making any change of beneficiary. **Held,** proceeds payable on death belonged to Margaret Sullivan, the original beneficiary.-Matter of Sullivan v. City of New York, 143 (95) N.Y.L.J. (5-17-60) 12, Col. 6 M.

¶ 5. Illegitimate child of member of Retirement System who was injured in the performance of his duties and died from such injuries, **held** entitled to accidental death benefit under Greater New York Charter § 1718 (now Admin. Code § B3-33.0).-Ciarlo v. N.Y.C. Employees' Retirement System, 270 App. Div. 594, 61 N.Y.S. 2d 751 [1946], aff'd without opinion, 296 N.Y. 962, 73 N.E. 2d 269 [1947].

¶ 6. New York City Employees' Retirement System **held** entitled to deposit in court certain funds which were the subject of the action, and to a discontinuance of the action against the Retirement System, in view of the complete neutrality of the Retirement System with regard to disposition of the funds in question, and in view of the serious controversy between the two brothers of the deceased.-Walpole v. Walpole, 121 (89) N.Y.L.J. (5-6-49) 1637, Col. 7 T.

¶ 7. Where decedent and her husband died on the same day and under such circumstances that it was impossible to determine who died first, petitioner could not claim or succeed to any interest in her husband's membership certificate in the New York City Employees' Retirement System wherein testatrix, as his wife, was the named beneficiary. Such certificate was an asset of the deceased husband's estate, and the proceeds thereof were payable to his legal representative.-In re McGovern, 106 (106) N.Y.L.J. (11-5-41) 1376, Col. 7 F.

¶ 8. The statutory provisions governing accidental disability retirements are radically different from the provisions controlling an application for accidental death benefits, and decisions under Admin. Code § B3-40.0 relative to disability retirement applications may not be regarded as prescribing the effect to be given to a certification made by the Medical Board as to a death benefit claim.-Daley v. Board of Estimate, 267 App. Div. 592, 49 N.Y.S. 2d 139 [1944].

¶ 9. The Board of Estimate was not required to accede to petitioner's request that it disclose to her the contents of its files, but if the Board intended to rely upon the unsworn testimony of the deceased's fellow employees to contradict petitioner's claim that she and the deceased reported the alleged accident soon after its occurrence, petitioner should be permitted to object to the consideration of such testimony or to contradict the allegations contained therein.-Id.

¶ 10. Section B3-33.0 makes the payment of a pension mandatory where evidence has been submitted to the Board of Estimate proving that the death of a member was the natural and proximate result of an accident sustained while a member in the performance of duty at some definite time and place and not as a result of willful negligence. The claimant has the burden of submitting proof of such facts, and the Board of Estimate has the responsibility for determining, after a hearing, whether those facts have been established.-Daley v. Board of Estimate, 267 App. Div. 592, 49 N.Y.S. 2d 139 [1944].

¶ 11. Resolution of Board of Estimate denying petitioner's claim to an accidental death benefit for death of her husband as result of a coronary thrombosis, could not be sustained on the theory, as a matter of law, that thrombosis could not have been caused accidentally.-Id.

¶ 12. Trustees of New York City Employees' Retirement System properly deducted from pension awarded deceased employee's widow under Admin. Code § B3-33.0 the amount awarded to her by the State Industrial Board pursuant to the Workmen's Compensation Law.-Matter of Daley, 274 App. Div. 938, 83 N.Y.S. 2d 776 [1948], aff'd 298 N.Y. 890, 84 N.E. 2d 805 [1949].

¶ 13. City Register who was struck by automobile less than four minutes after he had left a conference with proprietor of camera shop and his staff concerning a project, financed by City funds, to develop a microfilm process for

recording and indexing more economically instruments of conveyance and other manuscripts filed in the Register's office, **held** to have met his fatal accident while "in the performance of duty" within meaning of Admin. Code § B3-33.0 entitling his widow to an accidental death pension.-Ralph v. Board of Estimate, 306 N.Y. 447, 119 N.E. 2d 37 [1954], reversing 280 App. Div. 942, 116 N.Y.S. 2d 29 [1952].

¶ 14. Where widow's claim to an accidental death benefit based on husband's death from coronary thrombosis, allegedly caused by an accident in the course of his employment, presented a properly contested issue and there was a background of an award in the widow's favor by the State Industrial Board predicated upon a finding of accidental death and a report by a heart specialist, the only fair and efficacious way for the Board of Estimate to ascertain the truth would seem to be by means of a hearing wherein witnesses could be confronted and orally examined and cross-examined. Accordingly, a determination of the Board of Estimate awarding only an ordinary death benefit would be annulled where at no time during investigation by the medical board and the Bureau of Retirement and Pensions was the widow afforded an opportunity to confront or cross-examine witnesses and to produce her own witnesses or testify in her own behalf. Daley v. Board of Estimate, 186 Misc. 905, 62 N.Y.S. 2d 433 [1946].

¶ 15. A claim for accidental death benefits was remitted to the Board of Estimate where the Board failed to exercise an independent judgment on the merits of the claim. The medical board had recommended denial of the claim and the Board of Estimate approved that recommendation. However, the records showed that the Board of Estimate underestimated its own power and duty and overestimated the power of the court upon review and thus failed to make a thorough and painstaking assessment of the evidence presented.-Matter of Kilgus, 308 N.Y. 620, 127 N.E. 2d 705 [1955].

¶ 16. Widow of former transit police officer who died from a line-of-duty accidental injury was entitled to resumption of pension payments from the N.Y.C. Employees' Retirement System after annulment of her remarriage.-Matter of Skagen v. N.Y.C. Employees' Retirement System, 108 Misc. 2d 408 [1981].



Administrative Code of the City of New York



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

*NYC Administrative Code 13-150*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-150 Retirement; separation from service without fault or delinquency.

a. A member who is removed or otherwise involuntarily separated from city-service for any cause other than fault or delinquency on his or her part after having completed twenty years of allowable service, including not less than one-half year during the year immediately preceding such discontinuance, or who is so removed from a position in the competitive or labor class of the classified civil service after any period of service, shall receive in lieu of the benefit provided in section 13-141 of this chapter, as he or she may elect:

1. The amount of his or her accumulated deductions, if any; or, in lieu thereof,

2. An annuity of equivalent actuarial value to his or her accumulated deductions, if any, and, in addition, a pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any, and, in addition, a pension beginning immediately, having a value equal to the present value of the pension, at the beginning of his or her minimum age of service retirement that would be payable to him or her at such age for the period of service creditable to him or her at the time of such removal or separation. If such member has attained age fifty and has completed twenty years of allowable service, including not less than one-half year during the year immediately preceding such discontinuance, he or she shall be paid in addition a pension equal to fifty per cent of the difference between such pension and the pension to which he or she would be eligible had he attained the minimum age of service retirement.

b. His or her membership in the retirement system shall thereupon cease, subject, however, to the provisions of section 13-178 of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 408/1993 § 2 eff. July 21, 1993.

**DERIVATION**

Formerly § B3-35.0 added chap 929/1937 § 1

Amended chap 509/1960 § 14

Amended chap 870/1970 § 12

**NOTE**

Provisions of ch. 408/1993

§ 3. Any employee of the city of New York who, on or after January 1, 1991, was (i) suspended, or (ii) demoted from a position which was abolished or from a title in which the number of positions was reduced, and (iii) retired on or after such date, shall be placed on the preferred list on which such person or persons would have been placed had such person or persons not retired, in accordance with the provisions of section eighty-one of the civil service law.

§ 4. This act shall take effect immediately.

FISCAL NOTE.-This proposed legislation would permit employees of the City of New York to maintain their positions on preferred lists following lay-off while collecting retirement benefits to which they are otherwise entitled.

There are no fiscal implications to the State. Based on the experience of the City of New York in the last round of lay-offs, this legislation is expected to be virtually cost-neutral to the City.

The source of this estimate is Jonathan Schwartz of Jardine Consultants Inc.

**NOTE**

Provisions of Chap 678/1995, eff. Aug. 9, 1995.

AN ACT in relation to the reduction to retirement benefits received by long-term New York city employees who retired upon separation from service without fault or delinquency.

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Notwithstanding any other provision of law, a member of the New York city employees' retirement system who retired in 1991 pursuant to section 13-150 of the administrative code of the city of New York, and who, at the time of retirement, was serving in a title certified to be represented in collective bargaining by the public employee organization with the largest number of employees who are members of the retirement system or its affiliated local public employee organizations, shall have his or her retirement allowance recomputed as follows:

(a) If his retirement allowance was determined pursuant to the provisions of subdivision a of section 13-150 of the administrative code of the city of New York, it shall be recomputed pursuant to the provisions of subdivisions e, f and g of section 13-162 of such code, as though he had satisfied the eligibility requirements set forth in para graph 2 of subdivision d of such section 13-162.

(b) If his retirement allowance was determined pursuant to the provisions of paragraph 7 of subdivision a of

section 13-172 of such code, it shall be recomputed pursuant to the provisions of subdivisions e, f and g of section 13-162 of such code, as though he had satisfied the eligibility requirements set forth in paragraph 2 of subdivision d of such section 13-162.

(c) The recomputations set forth above shall be performed as of the date of the member's retirement.

§ 2. The recomputed retirement allowance shall be payable as of July 1, 1995.

§ 3. This act shall take effect immediately.

**CASE NOTES FROM FORMER SECTION**

¶ 1. Petitioner who, as result of competitive examination held in 1917 had been appointed to position of microanalyst in Department of Health, and by permission of the health authorities had ever since his appointment performed duties of his position in private laboratories in his home or elsewhere, **held** not entitled to pension benefits under City of New York Admin. Code § B3-35.0 on theory that act of Commissioner of Health in notifying him on April 1, 1937, that he would have to carry on his work in laboratory of Health Department or else give up his position, constituted an involuntary separation from the City's service for a cause other than fault or delinquency on his part. Permission given petitioner to do his work in private laboratory was a mere indulgence revocable at any time.-Matter of Ballard (Rice), 167 Misc. 826, 4 N.Y.S. 2d 806 [1938], aff'd without opinion, 254 App. Div. 733, 6 N.Y.S. 2d 92 [1938], aff'd 280 N.Y. 593, 20 N.E. 2d 29 [1939].

¶ 2. Termination of employment of petitioner, who had occupied position of microanalyst in City Department of Health for more than 20 years, because of his failure to become a resident of City of New York prior to January 1, 1938, pursuant to mandate of Local Law No. 40 of 1937 requiring New York City employees thereafter to reside within the City, **held** not construable as a termination of petitioner's employment without fault or delinquency on his part, and hence did not entitle him to pension benefits under New York City Administrative Code § B3-35.0.-Id.

¶ 3. A city employee who, having attained the minimum age of retirement, had filed application for retirement while he was under suspension pending a hearing of departmental charges against him, and who had been dismissed from service before the date set in the application for actual retirement, was not entitled to pension benefits. This section expressly excludes from benefits a person who has been removed from his position for fault or delinquency.-Eberle v. La Guardia, 285 N.Y. 247, 33 N.E. 2d 692 [1941].



*NYC Administrative Code 13-151*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-151 Retirement; minimum ages for service retirement.

Retirement of a member for service shall be made by the board as follows:

1. Any member in city-service may retire upon written application to the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, provided that such member at the time so specified for his or her retirement shall have attained the minimum age of retirement provided for the group of which he or she shall be a member at such time.

(a) The minimum ages for service retirement from the groups provided for by section 13-106 of this chapter, shall be as follows: _____

| Group number | Group name | Minimum service retirement age for group |
|---|---|---|
| One | Laborers and unskilled workers engaged upon duties requiring principally physical exertion. | 58 years |
| Two | Mechanics and skilled workers engaged upon duties requiring principally physical exertion. | 59 years |
| Three | Clerical, administrative, professional and technical workers engaged upon duties requiring principally mental exertion, including heads of departments. | 60 years |

(b) The minimum age for service retirement from any additional group provided for by the board under the provisions of section 13-106 of this chapter, shall be as determined by such board, provided, however, that such board

shall be limited in its selection to an age which shall be within one year of the age determined by the actuary to be the nearest age at which a member, entering the retirement system at the age of twenty-five years and paying the average rate of contribution (without including in the computation the possibility of a reduction of contribution pursuant to section 13-152 of this chapter) applicable to entrants in other service groups at that age, will produce an annuity of one-quarter of such member's final compensation, computed on the basis of regular interest and of the mortality, service and other tables adopted by the board as applicable to the group for which the retirement age is to be determined.

2. Notwithstanding any other provisions of this section or the provisions of any other section of the code to the contrary, a member who is an honorably discharged member of any branch of the armed forces of the United States, having served as such during the time of war and who has attained the age of fifty years, may retire upon his or her own request upon written application to the board setting forth at what time not less than thirty days subsequent to the execution and filing thereof he or she desires to be retired, provided that such member at the time so specified for his or her retirement shall have completed at least twenty-five years of allowable service. Upon retirement such member shall receive an annuity of equivalent actuarial value to his or her accumulated deductions, and, in addition, a pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any, and, in addition, a pension beginning immediately, having a value equal to the present value of the pension at the beginning of his previous minimum age of service retirement that would be payable to him or her at such age for the period of service creditable to him or her at the time of such retirement, provided, however, that the said member on making application for retirement shall pay into the retirement fund a sum of money which calculated on an actuarial basis, together with his or her prior contributions and other accumulations in said fund then to his or her credit, shall be sufficient to entitle the said member to the same annuity, pension-providing-for-increased-take-home-pay, if any, and pension that he would have received had he or she remained in the service of the city until he or she had attained the age at which he or she otherwise would have become eligible for retirement.

3. Notwithstanding any other provisions of this section or the provisions of any other section of the code to the contrary, a member who is separated or discharged under honorable conditions from any branch of the armed forces of the United States, having served as such during the time of war and who has attained the age of fifty years, may retire upon his or her own request upon written application to the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, provided that such member at the time so specified for his retirement shall have completed at least twenty-five years of allowable service. Upon reaching his or her previously selected minimum retirement age such member shall receive an annuity of equivalent actuarial value, at that time, to his or her accumulated deductions, and, in addition, a pension based upon his or her credited years of allowable service, plus the pension-for-increased-take-home-pay, if any. Should such member die before reaching his or her retirement age, then any beneficiary under a selected option will be eligible for benefits under such option at the date upon which the member would have reached his or her selected retirement age.

4. (a) Notwithstanding any other provisions of this section or the provisions of any other section of the code, or any other provisions of law to the contrary, a member may at any time file with such board a written application for retirement in the form required for such application, electing an option or options in accordance with section 13-177 of this chapter, but requesting that such retirement under such option or options shall become effective on the day immediately preceding his or her death. Such application shall be known as an application for presumed retirement. At any time while any such application of a member is being held by the board pursuant to paragraph (b) of this subdivision four, such member may, by filing a written designation in such form as shall be prescribed by the board, elect a different option and/or nominate a new option beneficiary in place of any such beneficiary previously selected with respect to such application.

(b) Such application shall be held by the board until:

(1) such member shall file an application for actual retirement; or

(2) he or she ceases to be a member of the retirement system; or

(3) he or she dies; whichever of such events shall first occur.

(c) In the event of such member's death after he or she has attained eligibility for retirement by reason of service (other than under section 13-150 of this chapter) and while such application for presumed retirement shall continue to be so held by such board, such member's said retirement shall become effective with the same benefits to the beneficiary designated pursuant to section 13-177 of this chapter or to the legal representatives of such member, if no beneficiary was so designated or if the beneficiary last designated predeceased such member, as if such member (if other than a career pension plan member or transit twenty-year plan member) had retired and had become entitled to a retirement allowance on the day immediately preceding the date of his or her death or, in the case of a career pension plan member who so dies or a transit twenty-year plan member who so dies and to whom the provisions of this paragraph have been made applicable pursuant to paragraph (h) of this subdivision four, as if he or she had retired on the day immediately preceding the date of his or her death.

(d) (1) In the event that a member, who would be eligible for retirement by reason of service (other than under section 13-150 of this chapter), dies while in service before filing with such board an application for presumed retirement in the form required for such application, or who, having filed an application for actual retirement in the form required, dies while in service and prior to the effective date of his or her retirement, such member, if other than a career pension plan member or transit twenty-year plan member, shall nevertheless be deemed to have been retired and to have become entitled to a retirement allowance effective on the day immediately preceding the date of his or her death or, if such member dies while a career pension plan member or while a transit twenty-year plan member to whom the provisions of this subparagraph one of this paragraph (d) have been made applicable pursuant to paragraph (h) of this subdivision four, such member shall be deemed to have been retired on the day immediately preceding the date of his death.

(2) If any member presumed to be retired pursuant to subparagraph one of this paragraph (d) had not indicated his or her election of an option under which he or she desired to be retired, he shall be considered as having elected to retire under the option designated as Option 1 of section 13-177 of this chapter.

(3) Except as otherwise prescribed by any other provision of this chapter with respect to any transit twenty-year plan member to whom the provisions of subparagraph one of this paragraph (d) have been made applicable pursuant to paragraph (h) of this subdivision four, if any retired member dies on or after the effective date of his or her retirement and prior to the first payment on account of his or her retirement allowance, and had not elected Option 1, 2, 3 or 4 with respect to such retirement, he or she shall be deemed to have elected Option 1 with respect thereto.

(e) (1) Notwithstanding any provision of paragraph (c) or (d) of this subdivision four to the contrary, in any case where:

(i) any member dies on or after July first, nineteen hundred sixty-eight under such circumstances that a benefit is payable under paragraph (c) of this subdivision and such member had elected Option 1 without designating a beneficiary or with designation of a beneficiary who predeceased such member; and

(ii) any member or retired member dies on or after July first, nineteen hundred sixty-eight under such circumstances that a benefit is payable under paragraph (d) of this subdivision, and such member did not elect an option or, having elected Option 1, did not designate a beneficiary with respect to such option or designated a beneficiary who predeceased such member;

the benefit payable under this subdivision with respect to such death shall be paid as prescribed in subparagraph two of this paragraph (e).

(2) (i) The portion of such benefit based upon such member's annuity, if any, shall be paid to the beneficiary, if any, designated by such member to receive such member's accumulated deductions under section 13-148 of this chapter.

(ii) The portion of such benefit based upon such member's pension shall be paid to the beneficiary, if any, designated by such member to receive his or her death benefit under such section.

(iii) If such member did not designate a beneficiary to receive any benefit payable under such section, the benefit under this subdivision shall be paid to his or her estate.

(f) Except as otherwise provided in paragraph (g) of this subdivision four, the beneficiary designated pursuant to section 13-177 of this chapter, or the legal representatives of such member if no beneficiary was so designated or if the beneficiary last designated predeceased such member, or the beneficiary specified in paragraph (e) of this subdivision four in any case where such paragraph (e) is applicable, to whom benefits are payable under this subdivision, may elect, by a statement in writing executed and filed with the board, to receive the benefits payable under section 13-148 of this chapter in lieu of the benefit payable hereunder.

(g) (1) In the event of the accidental death of any member who dies prior to retirement under such circumstances that benefits would otherwise be payable or might otherwise be required to be paid under section 13-149 of this chapter, the provisions of this subdivision four shall be inapplicable with respect to such death and no benefits shall be payable under this subdivision by reason thereof, except as otherwise provided in subparagraph two of this paragraph (g).

(2) If such accidental death likewise occurs under the circumstances specified in paragraph (c) of this subdivision or in subparagraph one of paragraph (d) of this subdivision:

(a) The accumulated deductions, if any, of such member, notwithstanding any provision of such section 13-149 of this chapter to the contrary, shall be paid to the beneficiary or legal representatives, as the case may be, who would be entitled to receive benefits under this subdivision four if the death of such member were not an accidental death subject to the provisions of such section; and

(b) the beneficiary or legal representatives entitled to receive such accumulated deductions, if any, pursuant to item (a) of this subparagraph two and all persons who are entitled to apply for and receive benefits under such section 13-149 of this chapter as dependents, may elect, by a statement in writing executed and filed by them with the board within six months after such accidental death, that benefits shall be paid under this subdivision four, in lieu of any and all benefits otherwise payable under such section; provided, however, that such right of election shall cease and come to an end in the event that such beneficiary or legal representatives or any such dependent shall execute and file with the board a statement in writing declaring that such signatory does not wish to exercise such right of election.

(h) Notwithstanding any other provisions of this subdivision four, this subdivision shall be inapplicable to all members who are officers or employees of the New York city transit authority, provided, however, that such authority shall have full power and authority to make the provisions of this subdivision applicable to employees covered by agreements hereafter made by the authority with employee representatives duly recognized by the authority and, if so provided in any such agreement, the authority shall adopt a resolution making the provisions of this subdivision applicable to the employees covered by such agreement as of the date specified in such agreement; and, in the event that the authority enters into any such agreement, it may from time to time by resolution make applicable the provisions of this subdivision to such of the officers and employees of the authority not covered by such agreements as it shall designate in any such resolution, and upon the adoption of any such resolution, the provisions of this subdivision shall apply to the officers and employees so designated therein, such applicability to commence on the date of effectiveness specified in such resolution, which date shall not be earlier than the earliest effective date specified for applicability of this subdivision in any such agreement.

(i) Except as otherwise prescribed by any other provision of this chapter with respect to any transit twenty-year plan member to whom the provisions of paragraph (c) of this subdivision four and subparagraph one of paragraph (d) of this subdivision have been made applicable pursuant to paragraph (h) of this subdivision, any member who has elected

Option 2, 3 or 4 pursuant to section 13-177 of this chapter may elect, within the period of time allowed by such section for election of an option, that in the event that he dies on or after the effective date of his retirement and before the first payment on account of his retirement allowance, a benefit under Option 1 shall be paid in lieu of any benefit under Option 2, 3 or 4, as the case may be.

(j) (1) Notwithstanding any other provision of this chapter to the contrary, in any case where any benefit is payable under Option 2, 3 or 4 pursuant to paragraph (c) or (d) of this subdivision four by reason of the death of a career pension plan member or the death of a retired member who was, at the time of his or her retirement, a career pension plan member, and such death occurs before the initial date of retirement allowance payability with respect to such member or retired member, such benefit shall begin on such initial date.

(2) Notwithstanding any other provision of this chapter to the contrary, in any case where any benefit is payable under Option 2, 3 or 4 pursuant to paragraph (c) of this subdivision four or subparagraph one of paragraph (d) of this subdivision by reason of the death of a transit twenty-year plan member to whom the provisions of such paragraph (c) or subparagraph one have been made applicable pursuant to paragraph (h) of this subdivision, and such death occurs before the initial date of retirement allowance payability with respect to such member, as defined by the applicable provisions of this chapter, such benefit shall begin on such initial date.

(k) Notwithstanding any other provision of this chapter to the contrary, in any case where a career pension plan member dies in service while such a member, after attaining the age of fifty-five years, and, at the time of his or her death, has not completed twenty years of career pension plan qualifying service, such member shall be deemed to have died as a fifty-five-year-increased-service-fraction member.

(k-1) (1) Notwithstanding any other provision of this chapter to the contrary, but subject to subparagraph two of this paragraph, in any case where, on or after the date this paragraph becomes a law, a fifty-five-year-increased-service-fraction member dies in service while such a member, after completing twenty or more years of career pension plan qualifying service, such member shall be deemed to have died as a career pension plan member, if status as such a career pension plan member at the time of his or her death would result in a benefit larger than the benefit which would be payable if such member died while a fifty-five-year-increased-service-fraction member.

(2) In any case where a member referred to in subparagraph one of this paragraph is a Tier II member at the time*1 his or her death, any change in the plan membership of such member pursuant to such subparagraph one shall not change, alter or affect the applicability of article eleven of the retirement and social security law to such member.

(l) Notwithstanding any other provision of this chapter to the contrary, in any case where a benefit is payable under any provision of this subdivision four, by reason of the death, on or after the date of enactment of this paragraph, of a career pension plan member or fifty-five-year-increased-service-fraction member, and such benefit or any part thereof would otherwise be required, by reason of an election filed by such member pursuant to subdivision fifty-eight of section 13-101 of this chapter, to be computed on the basis of the three-year-average compensation of such member, such benefit shall nevertheless be computed as if such election had not been made, if such benefit, computed as it would be in the absence of such election, would be greater than it would be if computed on the basis of the three-year-average compensation of such member.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1.

Subd. 4 par (k-1) added chap 96/1995 § 13, eff. June 28, 1995.

**DERIVATION**

Formerly § B3-36.0 added chap 929/1937 § 1

Sub 2 added chap 664/1947 § 1

Sub 3 added chap 717/1949 § 1

Sub 1 par b amended chap 509/1960 § 15

Subs 2, 3 amended chap 509/1960 § 16

Sub 4 added chap 860/1965 § 1

Sub 4 amended chap 821/1968 § 9

Sub 4 par k amended chap 817/1969 § 16

Sub 4 par l added chap 817/1969 § 17

Sub 4 par e subpar 2 item i amended chap 870/1970 § 13

Sub 4 par g subpar 2 amended chap 870/1970 § 14

**CASE NOTES FROM FORMER SECTION**

¶ 1. Under the Admin. Code the members of the Retirement System are entitled to certain rights in the nature of contractual or quasi-contractual rights, and where the statutory conditions for retirement have been met those rights become vested and payment of the pension cannot be withheld in the absence of fault or delinquency at the mere whim of any administrative officer or body.-Eberle v. La Guardia, 285 N.Y. 247, 33 N.E. 2d 692 [1941].

¶ 2. City employee who, having attained the minimum age of retirement, had filed application for retirement while he was under suspension pending hearing of Departmental charges against him, and who had suffered dismissal from the service before the date set in the application for actual retirement, **held** not entitled to pension benefits, since he was not a member of the City service at the time of filing his application for retirement. Such interpretation of Admin. Code § B3-36.0 was bolstered by a consideration of § B3-35.0, which expressly excludes from benefits thereunder a person who has been removed from his position for fault or delinquency.-Id.

¶ 3. Rule 58 of the Rules of the Board of Estimate, providing that the right of an applicant to retirement should not be forfeited by separation from the service subsequent to filing of an application for retirement, would seem to refer to acts which might lead to removal occurring subsequent to the filing of the application, but if its language were inconsistent with § B3-36.0 it could not stand, since a rule must give way to an act of the Legislature.-Id.

¶ 4. Petitioner who, on September 3, 1942, resigned from his position as First Deputy City Clerk following a report by the Commissioner of Investigation questioning his fitness for public office, **held** not to have been validly reappointed to City service on November 5, 1942, when he was purportedly provisionally appointed a clerk in the Department of Hospitals. The appointment was ineffective because the Municipal Civil Service Commission did not approve the appointment until December 14, whereas Civil Service Law, § 1 (1), does not permit a retroactive certification. The appointment was not one of urgency, but was for the sole purpose of qualifying petitioner for retirement. The alleged custom of the Commission to certify to an appointment as of the date of entry into the service could not be recognized in view of the provisions of the statute. Hence petitioner's application of November 9, 1942 for pensioned service retirement was ineffectual because he was not an employee in "City service" on that date.-Matter of Hines v. La Guardia, 293 N.Y. 207, 56 N.E. 2d 553 [1944].

¶ 5. A decree setting aside application for retirement executed by now deceased employee on ground he was mentally incapable of understanding the nature of his acts at the time, was reversed on ground the proof was insufficient as matter of law to establish that he did not understand that he was retiring and that he had elected to receive the

maximum allowance payable during his life, or that by reason of such incompetency he refrained from choosing one of the optional plans, which he would have selected if competent.-Beisman v. N.Y.C. Employees' Retirement System, 275 App. Div. 836, 88 N.Y.S. 2d 411 [1949], rev'g 81 N.Y.S. 2d 373 [1948], aff'd 300 N.Y. 580, 89 N.E. 2d 876 [1949].

¶ 6. Although petitioner might not demand reinstatement to his position as private secretary as he was not protected from removal by Civil Service Law § 22, nevertheless his resignation to take effect later and his practically simultaneous application for retirement were steps taken by his appointing officer, and since he acted in reliance on that agreement his employment by the City did not terminate until the effective date of his retirement under resolution of the Board of Estimate, and therefore he was lawfully retired and entitled to a pension.-Schwartz v. Bd. of Estimate 129 (17) N.Y.L.J. (1-26-53) 276, Col. 1 T.

¶ 7. A Supreme Court Justice who resigned after a jury had found him guilty of conspiracy to obstruct justice but before sentence was passed and who had over 11 years of service prior to resignation was entitled to receive his retirement pension as a matter of constitutional right. Besides, under this section, there is no requirement that an applicant be in City service in order to qualify for a pension.-Keogh v. Wagner, 148 (122) N.Y.L.J. (12-27-62) 12, Col. 1 M, aff'd, 20 App. Div. 2d 380, 247 N.Y.S. 2d 269 [1969], aff'd 15 N.Y. 2d 569, 203 N.E. 2d 298, 254 N.Y.S. 2d 833 [1964].

¶ 8. Petitioner's application for retirement from his position in the Department of Parks was properly denied where the application was not filed by June 30, 1962, as required by chapter 943 of the Laws of 1962. The retirement system was not estopped by the action on petitioner's supervisor in holding himself out as having the authority to file the application.-Magnatta v. Keleher, 236 N.Y.S. 2d 846 [1962].

¶ 9. Widows of sanitation department employees who had completed 19 years and 250 days but less than 20 calendar years of service at the time of their deaths and had elected to retire after 20 years of "allowable service" were not entitled to pension benefits as this section requires 20 years of "allowable" service.-In re Augello v. Lindsay, 40 A.D. 2d 815, 338 N.Y.S. 2d 215 [1972], aff'd 32 N.Y. 2d 621, 295 N.E. 2d 385, 342 N.Y.S. 2d 657 [1973].

¶ 10. Death gamble provision does not apply to terminal leave.-Lombardi v. City of N.Y., 46 A.D. 2d 750, 361 N.Y.S. 2d 1 [1974], aff'd 38 N.Y. 2d 727 [1975].

¶ 11. Sister of deceased retired employee of Department of Sanitation who had applied for maximum benefits and who received a total of 8 retirement checks computed for maximum allowance before he died was not entitled to death benefits on theory that her brother was not given notice of his choice of options where application forms were "replete with notices of the effect of accepting maximum benefits or option for other plans."-McGee v. New York City Employees' Retirement System, 49 A.D. 2d 842, 273 N.Y.S. 2d 600 [1975], aff'd 40 N.Y. 2d 859 [1976].

¶ 12. Petitioner's application for retirement as an honorably discharged veteran of the armed services should not have been denied even though prior to the scheduled retirement date he had been dismissed from the N.Y.C. Transit Authority for misconduct since this provision requires an applicant for retirement to be a member of the retirement system and not a member "in city-service" at the time of retirement.-Rapp v. N.Y.C. Employees' Retirement System, 42 N.Y. 2d 1 [1977].

¶ 13. Where petitioner's husband had applied for retirement nearly two years before retirement system mailed check and he died after check was mailed but before it reached him he died before "first payment" was made and hence petitioner was entitled to a death benefit in a lump sum under option 1a.-Guzman v. N.Y.C. Employees' Retirement System, 56 A.D. 2d 825 [1977], aff'd 45 N.Y. 2d 186 [1978].

¶ 14. This section was not applicable to a member of the New York City Police Department since such a person is not a member of the New York City Employees' Retirement System.-Gunning v. Codd, 65 A.D. 2d 415, 411 N.Y.S. 2d 280 [1978].

¶ 15. Petitioner, who is veteran of Korean War and was discharged with a general discharge "under honorable conditions", is entitled to military veterans' retirement benefits as "an honorably discharged member" of the Armed Forces who served "during the time of war". Failure of petitioner to file for such veterans' retirement benefits prior to his dismissal from service with N.Y.C. for misconduct has no effect on eligibility.-Jacob Jesselli v. N.Y.C. Employees' Retirement System, 119 Misc. 2d 1064 [1983], 107 A.D. 2d 227 [1985].

**FOOTNOTES**

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[Footnote 1]: * So in original. ("of" inadvertently omitted)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-152*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-152 Pensions for increased-take-home-pay.

a. 1. The board of estimate, by resolution adopted prior to June first, nineteen hundred sixty, may elect that the provisions of paragraph one of subdivision c and subdivisions g, h and i of this section shall be applicable to and for the benefit of all other-than-authority members except those to whom such provisions are made inapplicable by or pursuant to the provisions of paragraph two of this subdivision.

2. In the event that the board of estimate adopts such a resolution in accordance with the provisions of paragraph one of this subdivision, the provisions of paragraph one of subdivision c and subdivisions g, h and i of this section shall, on the date on which such paragraph one of subdivision c becomes operative, become applicable to and for the benefit of all other-than-authority members except:

(i) all such members included within the correction service of the classification of the city civil service commission; and

(ii) any other such members whom the board of estimate, in its discretion, designates for exclusion from the applicability of such provisions in such resolution or in any other resolution to that effect adopted by such board prior to June first, nineteen hundred sixty.

3. On and after June first, nineteen hundred sixty, the board of estimate may not exclude from the applicability of subdivisions c, g, h and i of this section, any other-than-authority member as to whom an election of applicability is in effect on such date or thereafter under the provisions of paragraph one, two or four of this subdivision.

4. The board of estimate, by adopting a resolution or resolutions prior to the date on which the provisions of subdivision c of this section cease to be operative, may elect that the provisions of subdivisions c, g, h and i of this section shall be applicable to and for the benefit of any other-than-authority members excluded pursuant to the provisions of subparagraph (ii) of paragraph two of this subdivision. In the event of the adoption of any such resolution before the provisions of paragraph one of subdivision c of this section become operative, the provisions of such paragraph one and of subdivisions g, h and i of this section shall become applicable to and for the benefit of such members on the date on which such paragraph one becomes operative. In the event of the adoption of any such resolution after the provisions of such paragraph one become operative, the provisions of paragraph two of subdivision c of this section and of subdivisions g, h and i of this section shall become applicable to and for the benefit of such members on the date of the commencement of the payroll period beginning next after the date of the adoption of such resolution.

b. 1. The triborough bridge and tunnel authority, the New York city housing authority, and the New York city transit authority, may, with the approval of the board of estimate, each separately elect prior to June first, nineteen hundred sixty, that the provisions of paragraph one of subdivision c and subdivisions g, h and i of this section shall apply to and for the benefit of all members who are officers or employees of the authority making such election, other than any such members to whom such provisions are made inapplicable pursuant to the provisions of paragraph two of this subdivision. Such election shall be made by adoption of a resolution to that effect by the authority, prior to such date, with the approval of the board of estimate granted prior to such date.

2. In the event that any such authority adopts such a resolution with the approval of the board of estimate pursuant to the provisions of paragraph one of this subdivision, the provisions of paragraph one of subdivision c and subdivisions g, h and i of this section shall, on the date on which such paragraph one of subdivision c becomes operative, become applicable to and for the benefit of all members who are officers or employees of such authority, except any such members whom such authority, in its discretion and with the approval of the board of estimate, designates for exclusion from the applicability of such provisions in such resolution or in any other resolution to that effect adopted by such authority and approved by the board of estimate prior to June first, nineteen hundred sixty.

3. On and after June first, nineteen hundred sixty, no such authority making such an election nor the board of estimate may exclude from the applicability of the provisions of subdivisions c, g, h and i of this section, any member who is an officer or employee of such authority and as to whom an election of applicability is in effect on that date under the provisions of paragraphs one and two of this subdivision.

4. Any such authority making such an election pursuant to the provisions of paragraphs one and two of this subdivision, may by adopting a resolution or resolutions and obtaining the approval thereof by the board of estimate prior to the date on which the provisions of subdivision c of this section cease to be operative, elect that the provisions of subdivisions c, g, h and i of this section shall be applicable to and for the benefit of any members who are officers or employees of such authority and who were excluded pursuant to the provisions of paragraph two of this subdivision. In the event that approval of any such resolution is granted by the board of estimate before the provisions of paragraph one of subdivision c of this section become operative, the provisions of such paragraph one and of subdivisions g, h and i of this section shall become applicable to and for the benefit of such members on the date on which such paragraph one becomes operative. In the event that the approval of any such resolution is granted by the board of estimate after the provisions of such paragraph one become operative, the provisions of paragraph two of subdivision c of this section and of subdivisions g, h and i of this section shall become applicable to and for the benefit of such members on the date of the commencement of the payroll period beginning next after the date of the adoption of such resolution.

c. 1. Beginning with the payroll period the first day of which is nearest to July first, nineteen hundred sixty and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-one, the contribution of each member originally entitled to a reduced rate for the first year, exclusive of any increase in such contribution pursuant to subdivisions d, e, f and g of section 13-125 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall

be reduced by two and one-half per centum of the compensation of such member.

2. Beginning with the payroll period the first day of which occurs next after the date on which the board of estimate adopts a resolution pursuant to paragraph four of subdivision a of this section or grants its approval of a resolution pursuant to paragraph four of subdivision b of this section, as the case may be, with respect to any member subsequently entitled to a reduced rate for the first year, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-one, the contribution of such member, exclusive of any increase in such contribution pursuant to subdivisions d, e, f and g of section 13-125 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by two and one-half per centum of the compensation of such member.

3. Where a member's rate of contribution, exclusive of any increase thereof pursuant to subdivisions d, e, f and g of section 13-125 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and before reduction thereof pursuant to the provisions of paragraph one or two of this subdivision, is equal to or less than two and one-half per centum, such rate shall be discontinued.

d. 1. The board of estimate, by resolution adopted prior to June first, nineteen hundred sixty-one, may elect that the provisions of paragraph one of subdivision f and subdivisions g, h and i of this section shall be applicable to all other-than-authority members except those to whom such provisions are made inapplicable by or pursuant to the provisions of paragraph two of this subdivision.

2. In the event that the board of estimate adopts such a resolution in accordance with the provisions of paragraph one of this subdivision, the provisions of paragraph one of subdivision f and subdivisions g, h and i of this section shall, on the date on which such paragraph one of subdivision f becomes operative, become applicable to and for the benefit of all other-than-authority members except any such members whom the board of estimate, in its discretion, designates for exclusion from the applicability of such provisions in such resolution or in any other resolution to that effect adopted by such board prior to June first, nineteen hundred sixty-one.

3. On and after June first, nineteen hundred sixty-one, the board of estimate may not exclude from the applicability of subdivisions f, g, h and i of this section, any other-than-authority member as to whom an election of applicability is in effect on such date or thereafter under the provisions of paragraph one, two or four of this subdivision.

4. The board of estimate, by adopting a resolution or resolutions prior to the date on which the provisions of subdivision f of this section cease to be operative, may elect that the provisions of subdivisions f, g, h and i of this section shall be applicable to and for the benefit of any other-than-authority members excluded pursuant to the provisions of paragraph two of this subdivision. In the event of the adoption of any such resolution before the provisions of paragraph one of subdivision f of this section become operative, the provisions of such paragraph one and of subdivisions g, h and i of this section shall become applicable to and for the benefit of such members on the date on which such paragraph one becomes operative. In the event of the adoption of any such resolution after the provisions of such paragraph one become operative, the provisions of paragraph two of subdivision f of this section and of subdivisions g, h and i of this section shall become applicable to and for the benefit of such members on the date of the commencement of the payroll period beginning next after the date of the adoption of such resolution.

5. In making an election pursuant to the provisions of paragraphs one and two of this subdivision, the board of estimate shall designate a reduced-rate-of-contribution factor to be used in computing the reduction in the contributions of other-than-authority members who are entitled to such reduction under the provisions of this subdivision and subdivision f of this section. Such factor shall be two and one-half per centum or five per centum, whichever such board, in its discretion, shall designate in the resolution making such election. Such factor shall not be changed after it has been designated in such resolution.

e. 1. The triborough bridge and tunnel authority, the New York city housing authority, and the New York city transit authority, may, with the approval of the board of estimate, each separately elect prior to June first, nineteen hundred sixty-one, that the provisions of paragraph one of subdivision f and subdivisions g, h and i of this section shall apply to all members who are officers or employees of the authority making such election, other than any such members to whom such provisions are made inapplicable pursuant to the provisions of paragraph two of this subdivision. Such election shall be made by adoption of a resolution to that effect by the authority, prior to such date, with the approval of the board of estimate granted prior to such date.

2. In the event that any such authority adopts such a resolution with the approval of the board of estimate pursuant to the provisions of paragraph one of this subdivision, the provisions of paragraph one of subdivision f and subdivisions g, h and i of this section shall, on the date on which such paragraph one of subdivision f becomes operative, become applicable to and for the benefit of all members who are officers or employees of such authority, except any such members whom such authority, in its discretion and with the approval of the board of estimate, designates for exclusion from the applicability of such provisions in such resolution or in any other resolution to that effect adopted by such authority and approved by the board of estimate prior to June first, nineteen hundred sixty-one.

3. On and after June first, nineteen hundred sixty-one, neither any such authority making such an election nor the board of estimate may exclude from the applicability of the provisions of subdivisions f, g, h and i of this section, any member who is an officer or employee of such authority and as to whom an election of applicability is in effect on that date under the provisions of paragraphs one and two of this subdivision.

4. Any such authority making such an election pursuant to the provisions of paragraphs one and two of this subdivision, may by adopting a resolution or resolutions and obtaining the approval thereof by the board of estimate prior to the date on which the provisions of subdivision f of this section cease to be operative, elect that the provisions of subdivisions f, g, h and i of this section shall be applicable to and for the benefit of any members who are officers or employees of such authority and who were excluded pursuant to the provisions of paragraph two of this subdivision. In the event that approval of any such resolution is granted by the board of estimate before the provisions of paragraph one of subdivision f of this section become operative, the provisions of such paragraph one and of subdivisions g, h and i of this section shall become applicable to and for the benefit of such members on the date on which such paragraph one becomes operative. In the event that the approval of any such resolution is granted by the board of estimate after the provisions of such paragraph one become operative, the provisions of paragraph two of subdivision f of this section and of subdivisions g, h and i of this section shall become applicable to and for the benefit of such members on the date of the commencement of the payroll period beginning next after the date of the adoption of such resolution.

5. In making an election pursuant to the provisions of paragraphs one and two of this subdivision, any such authority shall, with the approval of the board of estimate, designate a reduced-rate-of-contribution factor to be used in computing the reduction in the contributions of members who are officers or employees of such authority and who are entitled to such reduction under the provisions of this subdivision and subdivision f of this section. Such factor shall be two and one-half per centum or five per centum, whichever such authority, in its discretion, shall designate with the approval of the board of estimate in the resolution making such election. Such factor shall not be changed after it has been designated in such resolution.

f. 1. Beginning with the payroll period the first day of which is nearest to July first, nineteen hundred sixty-one, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-two, the contribution of each member originally entitled to a reduced rate for the second year, exclusive of any increase in such contribution pursuant to subdivisions d, e, f and g of section 13-125 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by an amount obtained by multiplying the compensation of such member by the reduced-rate-of-contribution factor applicable to such member under the provisions of paragraph five of subdivisions d and e of this section.

2. Beginning with the payroll period the first day of which occurs next after the date on which the board of estimate adopts a resolution pursuant to paragraph four of subdivision d of this section or grants its approval of a resolution pursuant to paragraph four of subdivision b of this section, as the case may be, with respect to each member subsequently entitled to a reduced rate for the second year, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-two, the contribution of such member, exclusive of any increase in such contribution pursuant to subdivisions d, e, f and g of section 13-125 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by an amount obtained by multiplying the compensation of such member by the reduced-rate-of-contribution factor applicable to such member under the provisions of paragraph five of subdivisions d and e of this section.

3. Where a member's rate of contribution, exclusive of any increase thereof pursuant to subdivisions d, e, f and g of section 13-125 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and before reduction thereof pursuant to the provisions of paragraph one or two of this subdivision, is equal to or less than the reduced-rate-of-contribution factor applicable to such member, such rate shall be discontinued.

g. 1. Any reduction or discontinuance of a member's contribution, as the case may be, made pursuant to the provisions of this section, shall:

(i) Be subject to waiver by the member as provided in subdivision h of section 13-125 of this chapter, and

(ii) take precedence over the member's privilege under subdivision one of section one hundred thirty-eight-b of the retirement and social security law, to decrease such member's annuity contribution for the purpose of paying his or her contributions for old-age, survivors and disability insurance coverage or the tax imposed upon him pursuant to the federal insurance contributions act.

2. A member to whom or for whose benefit the provisions of subdivision c or f of this section, or both, are applicable under the provisions of subdivisions a, b, d and e of this section, or to whom or for whose benefit the provisions of paragraph fourteen of subdivision j of this section are applicable, or to whom or for whose benefit provisions analogous to the provisions of paragraph fourteen of subdivision j of this section are made applicable pursuant to subdivision m of this section, and who waives any reduction or discontinuance of his or her contribution under such subdivision c, f, j or m, shall be entitled to a pension-providing-for-increased-take-home-pay and death benefits to the same extent as if such waiver had not been made.

h. 1. With respect to each member to whom or for whose benefit the provisions of subdivision c or f of this section, or both, are applicable under the provisions of subdivisions a, b, d and e of this section, or to whom or for whose benefit the provisions of paragraph fourteen of subdivision j of this section are applicable, or to whom or for whose benefit provisions analogous to the provisions of paragraph fourteen of subdivision j of this section are made applicable pursuant to subdivision m of this section, contributions shall be made with respect to each period of such applicability to the contingent reserve fund by the contributing agency, as required by subdivision i of this section and by section 13-127 of this chapter, or shall be made to the pension fund by the contributing agency as required by subdivision i of this section and section 13-129 of this chapter, as the case may be, at a rate fixed by the actuary which shall be computed to be sufficient to provide the death benefit hereunder and the pension-providing-for-increased-take-home-pay which are or may become payable on account of such member.

2. Such a benefit and such a pension-providing-for-increased-take-home-pay shall be based on a reserved-for-increased-take-home-pay.

i. The contributions required to be made to the contingent reserve fund or pension fund respectively under the provisions of subdivision h of this section for the benefit of members mentioned in paragraph one of such subdivision:

(1) shall be paid into such funds with respect to such members who are other-than-authority-or-public-benefit-corporation members or correction members, by the obligor required by law to contribute to the contingent reserve fund or pension fund respectively for their pensions, and (2) shall be paid into such funds by the employing authority or public benefit corporation with respect to such members who are officers or employees of triborough bridge and tunnel authority, the New York city housing authority, the New York city transit authority, the New York city health and hospitals corporation, the New York city off-track betting corporation and the New York city housing development corporation.

j. Provisions relating to fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three.

1. Election of applicability as to other-than-authority members. The board of estimate, by resolution adopted prior to June first, nineteen hundred sixty-two, may elect that the governing provisions of paragraph fourteen of this subdivision j and the provisions of subdivisions g, h and i of this section shall be applicable to and for the benefit of all other-than-authority members, except those to whom such provisions are made inapplicable by or pursuant to the provisions of paragraph two of this subdivision j.

2. Effect of election as to other-than-authority members. If such board adopts a resolution pursuant to the provisions of paragraph one of this subdivision j, the governing provisions of paragraph fourteen of this subdivision j and the provisions of subdivisions g, h and i of this section shall be applicable to and for the benefit of all other-than-authority members except those whom such board, in its discretion, designates in such resolution or in any other resolution adopted prior to June first, nineteen hundred sixty-two:

(i) as absolutely excluded from the applicability of such provisions; and

(ii) as conditionally excluded from the applicability of such provisions unless and until certain events specified in such resolution shall be determined by such board to have occurred; provided that such conditional exclusion shall be subject to the provisions of paragraphs three and four of this subdivision j.

3. Determination of applicability as to other-than-authority members conditionally excluded. If any other-than-authority members are conditionally excluded by such board by any resolution adopted pursuant to the provisions of paragraphs one and two of this subdivision j, and such board shall determine by resolution adopted at any time subsequently that the conditions prerequisite to applicability specified in such resolution of conditional exclusion have been satisfied as to any such members designated in such subsequent resolution, the governing provisions of paragraph fourteen of this subdivision j and the provisions of subdivisions g, h and i of this section shall be applicable to and for the benefit of such members so designated.

4. Election of applicability as to previously excluded other-than-authority members. The board of estimate, by adopting a resolution or resolutions at any time prior to the first day of the payroll period, the first day of which is nearest to June thirtieth, nineteen hundred sixty-three, may elect that the governing provisions of such paragraph fourteen and the provisions of subdivisions g, h and i of this section shall be applicable to and for the benefit of any other-than-authority members excluded absolutely or conditionally pursuant to the provisions of paragraph two of this subdivision. In the event of the adoption of any such resolution, the governing provisions of such paragraph fourteen and the provisions of subdivisions g, h and i of this section shall be applicable to and for the benefit of such members.

5. Prohibition against later exclusion of other-than-authority members. (i) Where an election has been made at any time pursuant to any of the provisions of paragraphs one, two and four of this subdivision j, that the governing provisions of paragraph fourteen of this subdivision j and the provisions of subdivisions g, h and i of this section shall be applicable to and for the benefit of any other-than-authority members, such board may not, after the making of such election, exclude any such member from the applicability of such provisions of such paragraph fourteen and the provisions of such subdivisions g, h and i, unless such exclusion is effected by resolution adopted prior to June first, nineteen hundred sixty-two.

(ii) Where any members have been conditionally excluded from the applicability of the governing provisions of such paragraph fourteen and the provisions of such subdivisions g, h and i, pursuant to the provisions of paragraphs one and two of this subdivision j, such board may not thereafter absolutely exclude any such member from the applicability of such provisions of such paragraph fourteen and such subdivisions g, h and i, unless such absolute exclusion is effected by resolution adopted prior to June first, nineteen hundred sixty-two.

6. Designation of reduced-rate-of-contribution factor or factors as to other-than-authority members. In any resolution making an election of applicability pursuant to any of the provisions of paragraphs one, two and four of this subdivision, such board shall designate the reduced-rate-of-contribution factor or factors to be used in computing the reduction in the contributions of other-than-authority members who are entitled to such reduction by reason of such election. With respect to any such member or any group of such members, such factor shall be two and one-half per centum or five per centum, whichever such board, in its discretion, shall designate as applicable to such member or group of members, provided that any such factor designated with respect to any such member or group of members shall be the same throughout the period of such applicability as to such member or group of members, as such period is set forth in the governing provisions of subparagraphs (ii) and (iii) of paragraph fourteen of this subdivision j. Such factor or factors shall not be changed after the designation of same in any such resolution.

7. Election of applicability as to authority members. The triborough bridge and tunnel authority, the New York city housing authority and the New York city transit authority, may, with the approval of the board of estimate, each separately elect prior to June first, nineteen hundred sixty-two that the governing provisions of paragraph fourteen of this subdivision j and the provisions of subdivisions g, h and i of this section shall apply to and for the benefit of all members who are officers or employees of the authority making such election, other than any such members to whom such provisions are made inapplicable by or pursuant to the provisions of paragraph eight of this subdivision. Such election shall be made by adoption of a resolution to that effect by the authority, prior to such date, with the approval of such board granted prior to such date.

8. Effect of election as to authority members. In the event that any such authority adopts such a resolution with the approval of such board pursuant to the provisions of paragraph seven of this subdivision j, the governing provisions of paragraph fourteen of this subdivision j and the provisions of subdivisions g, h, and i of this section shall be applicable to and for the benefit of all members who are officers or employees of such authority, except any such members whom such authority, in its discretion and with the approval of the board of estimate, designates in such resolution or in any other resolution to that effect adopted by such authority and approved by such board prior to June first, nineteen hundred sixty-two:

(i) as absolutely excluded from the applicability of such provisions; or

(ii) as conditionally excluded from the applicability of such provisions unless and until certain events specified in such resolution shall be determined by such authority, with the approval of such board, to have occurred; provided that such conditional exclusion shall be subject to the provisions of paragraphs nine and ten of this subdivision j.

9. Determination of applicability as to authority members conditionally excluded. If any members are conditionally excluded by any such authority, with the approval of such board, by any resolution adopted pursuant to the provisions of paragraphs seven and eight of this subdivision j, and such authority, with the approval of such board, shall determine by any resolution adopted at any time subsequently that the conditions prerequisite to applicability specified in such resolution of conditional exclusion have been satisfied as to any such members designated in such subsequent resolution, the governing provisions of such paragraph fourteen and the provisions of subdivisions g, h and i of this section shall be applicable to and for the benefit of such members so designated.

10. Election of applicability as to previously excluded authority members. Any such authority making such an election pursuant to the provisions of paragraphs seven and eight of this subdivision, may, by adopting a resolution or resolutions and obtaining the approval thereof by such board prior to the first day of the payroll period, the first day of

which is nearest to June thirtieth, nineteen hundred sixty-three, elect that the governing provisions of paragraph fourteen of this subdivision j and the provisions of subdivisions g, h and i of this section shall be applicable to and for the benefit of any members who are officers or employees of such authority and who were excluded absolutely or conditionally pursuant to the provisions of paragraphs seven and eight of this subdivision j. In the event that approval of any such resolution is granted by such board, the governing provisions of such paragraph fourteen and the provisions of subdivisions g, h and i of this section shall be applicable to and for the benefit of such members.

11. Prohibition against later exclusion of authority members. (i) Where an election has been made at any time by any such authority, with the approval of such board, pursuant to any of the provisions of paragraphs seven, eight and ten of this subdivision j, that the governing provisions of paragraph fourteen of this subdivision j and the provisions of subdivisions g, h and i of this section shall be applicable to and for the benefit of any officers or employees of any such authority, neither such authority nor such board may, after the making of such election, exclude any such officer or employee from the applicability of such provisions of such paragraph fourteen and the provisions of such subdivisions g, h and i, unless such exclusion is effected by a resolution adopted by such authority and approved by such board prior to June first, nineteen hundred sixty-two.

(ii) Where any officers or employees of any such authority have been conditionally excluded from the applicability of the governing provisions of such paragraph fourteen and the provisions of such subdivisions g, h and i, pursuant to the provisions of paragraphs seven and eight of this subdivision j, neither such board nor such authority may thereafter absolutely exclude any such member from the applicability of such provisions of such paragraph fourteen and of such subdivisions g, h and i, unless such absolute exclusion is effected by a resolution adopted by such authority and approved by such board prior to June first, nineteen hundred sixty-two.

12. Designation of reduced-rate-of-contribution factor or factors as to authority members. In any resolution making an election of applicability pursuant to any of the provisions of paragraphs seven, eight and ten of this subdivision j, any such authority shall, with the approval of such board, designate the reduced-rate-of-contribution factor or factors to be used in computing the reduction in contributions of members who are officers or employees of such authority and who are entitled to such reduction by reason of such election. With respect to any such officer or employee or any group of such officers or employees, such factor shall be two and one-half per centum or five per centum, whichever such authority, in its discretion, shall with the approval of such board, designate as applicable to such officer or employee or group of such officers or employees, provided that any such factor designated with respect to any such officer or employee or any group of such officers or employees shall be the same throughout the period of applicability as to such officer or employee or group of officers or employees, as such period is set forth in the governing provisions of subparagraphs (ii) and (iii) of paragraph fourteen of this subdivision j. Such factor or factors shall not be changed after the designation of same in any such resolution.

13. Optional period of retroactive applicability. (i) In any case where an election of applicability is made with respect to any-other-than-authority member or authority member or any group of any such members pursuant to any of the preceding paragraphs of this subdivision j, the board of estimate, or the authority, with the approval of such board, as the case may be, may, in its or their discretion, in the resolution effecting such election, further elect that the contributions of such member or group of members shall be reduced, in the amount or amounts specified in the governing provisions of subparagraph (iv) of paragraph fourteen of this subdivision j, during a period (hereinafter in this subdivision j referred to as "period of retroactive applicability") prior to the first day of the full period of applicability for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three (as such full period is defined in subparagraph (ii) of such paragraph fourteen) or prior to the first day of the applicable partial period of applicability for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three (as such partial period is defined in subparagraph (iii) of such paragraph fourteen), as the case may be. Such period of retroactive applicability shall extend over such period as such board, or such authority with the approval of such board, may in its or their discretion designate, provided that no such period of retroactive applicability with respect to any such member or group of members shall extend to a date earlier than the first day of the payroll period, with respect to such member or group of members, the first day of which is nearest to July first, nineteen hundred sixty.

(ii) Whenever an election of retroactive applicability is made pursuant to the provisions of subparagraph (i) of this paragraph thirteen, such board, or such authority with the approval of such board, shall designate, in the resolution effecting such election, the reduced-rate-of-contribution factor or factors to be used in computing the reduction in the contributions of each member or group of members benefited by such election. With respect to any such member or group of members, such factor shall be two and one-half per centum or five per centum for all or any part of such period of retroactive applicability, whichever such board, or such authority with the approval of such board, as the case may be, may designate, in its or their discretion, as applicable to such member or group of members for the whole or any part of such period. Such factor or factors shall not be changed after the designation of same in such resolution.

(iii) Where an election of retroactive applicability with respect to any member or group of members has been made pursuant to the preceding provisions of this paragraph thirteen, the governing provisions of paragraph fourteen of this subdivision j and the provisions of subdivisions g, h and i of this subdivision j shall be applicable to and for the benefit of such member or group of members.

14. Prescribed reduction in contributions. (i) Base for computing reduction. The contributions of members to whom the provisions of this paragraph fourteen are applicable by reason of an election or determination of applicability made pursuant to any of the provisions of the preceding paragraphs of this subdivision j (excluding from consideration any increase in such contributions pursuant to any of the provisions of subdivisions d, e, f and g of section 13-125 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law) shall be reduced for the period or periods and to the extent hereinafter provided in this paragraph fourteen.

(ii) Full period of applicability for the nineteen hundred sixty-two-nineteen hundred sixty-three fiscal year. Subject to the provisions of paragraph thirteen of this subdivision j, such reduction shall be made, in the applicable amount or amounts specified in subparagraph (iv) of this paragraph fourteen, during the period (hereinafter in this subdivision j referred to as the "full period of applicability for the nineteen hundred sixty-two-nineteen hundred sixty-three fiscal year") from and including the payroll period, the first day of which is nearest to July first, nineteen hundred sixty-two, to and including the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-three, with respect to each other-than-authority member and each authority member:

(a) as to whom an election of applicability is made, prior to the first day of the full period of applicability for the nineteen hundred sixty-two-nineteen hundred sixty-three fiscal year, pursuant to any of the provisions of paragraphs one, two, four, seven, eight and ten of this subdivision j; or

(b) who was conditionally excluded from benefits under this subdivision j pursuant to any of the provisions of paragraphs one, two, seven and eight of this subdivision j and as to whom it has been determined, pursuant to the provisions of paragraph three or nine of this subdivision j, that the conditions precedent to the applicability of this paragraph fourteen were satisfied prior to the first day of the full period of applicability for the nineteen hundred sixty-two-nineteen hundred sixty-three fiscal year.

(iii) Partial period of applicability for the nineteen hundred sixty-two-nineteen hundred sixty-three fiscal year. (a) Such reduction shall be made during the period specified in item (b) of this subparagraph (iii), in the applicable amount or amounts specified in subparagraph (iv) of this paragraph fourteen, with respect to each other-than-authority member and each authority member:

(1) as to whom an election of applicability is made, pursuant to the provisions of paragraph four or ten of this subdivision j, on or after the first day of the full period of applicability for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three; or

(2) who was conditionally excluded from benefits under this subdivision j pursuant to any of the provisions of paragraphs one, two, seven and eight of this subdivision j and as to whom it has been determined, pursuant to the

provisions of paragraph three or nine of this subdivision j, that the conditions precedent to the applicability of this paragraph fourteen were satisfied on or after the first day of the full period of applicability for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three.

(b) With respect to each member mentioned in item (a) of this subparagraph (iii), the reduction prescribed in such item (a) shall be made, subject to the provisions of paragraph thirteen of this subdivision j, during a period (hereinafter in this subdivision j referred to as a "partial period of applicability for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three") from and including the payroll period next succeeding the date of the adoption of the resolution of the board of estimate effecting the election of applicability with respect to such member, or next succeeding the date determined to be that on which the conditions precedent to applicability with respect to such member were satisfied, as the case may be, to and including the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred sixty-three.

(iv) Amount of reduction. The amount of the reduction in the contributions of each other-than-authority member or authority member pursuant to the provisions of this paragraph fourteen shall be as follows:

(a) In the case of each member entitled to a reduction during the full period of applicability for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three, as specified in subparagraph (ii) of this paragraph fourteen, or to a reduction during a partial period of applicability for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three, as specified in subparagraph (iii) of this paragraph fourteen, such amount with respect to such full period or partial period, as the case may be, shall be the product obtained by multiplying the compensation of such member during such full period or partial period, as the case may be, by the reduced-rate-of-contribution factor applicable to such member under the provisions of paragraph six or twelve of this subdivision j.

(b) In the case of each member entitled to a reduction during a period of retroactive applicability pursuant to an election made under the provisions of paragraph thirteen of this subdivision j: (1) such amount, with respect to such period, shall be the product obtained by multiplying the compensation of such member during such period by the reduced-rate-of-contribution factor applicable to such member for such period under the provisions of such paragraph thirteen; or (2) if different reduced-rate-of-contribution factors have been designated pursuant to such provisions for different portions of such period, such amount shall be the sum obtained by multiplying the compensation of such member during each such portion by the reduced-rate-of-contribution factor applicable thereto and by adding together the products resulting from such multi- plication.

k. Where a member's rate of contribution with respect to any period of applicability of benefits or portion of such period under subdivision j or m of this section, exclusive of any increase in such rate pursuant to subdivisions d, e, f and g of section 13-125 of this chapter or any reduction thereof pursuant to the provisions of subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and before reduction thereof as prescribed by paragraph fourteen of such subdivision j, or by a provision analogous to the provisions of paragraph fourteen of subdivision j made applicable to such member pursuant to subdivision m of this section, is equal to or less than the reduced-rate-of-contribution-factor applicable to such period or portion thereof with respect to such member, such rate shall be discontinued as to such period or portion thereof.

m. Provisions relating to fiscal year nineteen hundred sixty-three-nineteen hundred sixty-four and certain subsequent fiscal years.

1. (a) Fiscal year nineteen hundred sixty-three-nineteen hundred sixty-four. The mayor, by executive order, adopted prior to June first, nineteen hundred sixty-three, may provide for a pensions-providing-for-increased-take-home-pay plan for all other-than-authority-members for the fiscal year nineteen hundred sixty-three-nineteen hundred sixty-four analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two. In putting into effect and carrying out such plan, the mayor shall have powers analogous to those

granted to the board of estimate by subdivision j of this section.

(b) Fiscal year nineteen hundred sixty-four-nineteen hundred sixty-five. The mayor, by executive order, adopted prior to June first, nineteen hundred sixty-four, may provide for a pensions-providing-for-increased-take-home-pay plan for all other-than-authority-members for the fiscal year nineteen hundred sixty-four-nineteen hundred sixty-five analogous to that authorized for such members for the fiscal year nineteen hundred sixty-three-nineteen hundred sixty-four by chapter five hundred eighteen of the laws of nineteen hundred sixty-three. In putting into effect and carrying out such plan, the mayor shall have powers analogous to those granted to the board of estimate by subdivision j of this section.

(c) Fiscal year nineteen hundred sixty-five-nineteen hundred sixty-six. The mayor, by executive order adopted prior to June nineteenth, nineteen hundred sixty-five, may provide for a pensions-providing-for-increased-take-home-pay plan for other-than- authority members for the fiscal year nineteen hundred sixty-five-nineteen hundred sixty-six analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two, provided, however, that any such plan which may be so provided for members of the uniformed force of the department of sanitation, as defined in subdivision a of section 13-154 of this chapter, shall designate a reduced-rate-of-contribution factor of two and one-half per centum. In putting into effect and carrying out such plan, the mayor shall have powers analogous to those granted to the board of estimate by subdivision j of this section. For the purpose of carrying out the provisions of this subparagraph (c), wherever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean June nineteenth.

(d) Fiscal year nineteen hundred sixty-six-nineteen hundred sixty-seven. The mayor, by executive order adopted prior to June nineteenth, nineteen hundred sixty-six, may provide for a pensions-providing-for-increased-take-home-pay plan for other-than-authority members for the fiscal year nineteen hundred sixty-six-nineteen hundred sixty-seven analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two, provided, however, that any such plan which may be so provided for members of the uniformed force of the department of sanitation, as defined in subdivision a of section 13-154 of this chapter, shall designate a reduced-rate-of-contribution factor of two and one-half per centum. In putting into effect and carrying out such plan, the mayor shall have powers analogous to those granted to the board of estimate by subdivision j of this section. For the purpose of carrying out the provisions of this subparagraph (d), wherever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean June nineteenth.

(e) Fiscal year nineteen hundred sixty-seven-nineteen hundred sixty-eight. The mayor, by executive order adopted prior to June seventeenth, nineteen hundred sixty-seven, may provide for a pensions-providing-for-increased-take-home-pay plan for other-than-authority members for the fiscal year nineteen hundred sixty-seven-nineteen hundred sixty-eight analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two, provided, however, that any such plan which may be so provided for members of the uniformed force of the department of sanitation, as defined in subdivision a of section 13-154 of this chapter, shall designate a reduced-rate-of-contribution factor of two and one-half per centum. In putting into effect and carrying out such plan, the mayor shall have powers analogous to those granted to the board of estimate by subdivision j of this section. For the purpose of carrying out the provisions of this subparagraph (e), wherever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean June seventeenth.

(f) Additional provisions relating to the period June first, nineteen hundred sixty-eight through June thirtieth, nineteen hundred sixty-eight for sanitation workers.

The mayor, by executive order adopted prior to June first, nineteen hundred sixty-eight, may amend the pensions-providing-for-increased-take-home-pay plan authorized by subparagraph (e) of this subdivision m to provide

that such plan shall designate a reduced rate of contribution factor of five percentum for the period June first, nineteen hundred sixty-eight through June thirtieth, nineteen hundred sixty-eight for members of the uniformed force of the department of sanitation in the title of sanitation worker.

(g) Fiscal year nineteen hundred sixty-eight-nineteen hundred sixty-nine. The mayor, by executive order adopted prior to June seventeenth, nineteen hundred sixty-eight may provide for a pensions-providing-for-increased-take-home-pay plan for other-than-authority members for the fiscal year nineteen hundred sixty-eight-nineteen hundred sixty-nine analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two, provided, however that

(1) any such plan which may so be provided for such members other than members of the uniformed force of the department of sanitation, as defined in subdivision a of section 13-154 of this chapter, shall designate a reduced-rate-of-contribution factor of four percentum. If a bill entitled "An Act to amend the administrative code of the city of New York and the military law, in relation to providing additional right, privileges and benefits for members of the New York city employees' retirement system and establishing an optional career pension plan for certain of such members" is enacted into law, an election by a member to become a career pension plan member or a fifty-five-year-increased-service fraction member shall constitute a waiver, with respect to any period as to which this Item (1) or any subsequently enacted law authorizes a reduction of member contributions under a plan for pension-providing-for-increased-take-home-pay, of any and all claims for such member arising out of any consent determination made under section two hundred twenty of the labor law to any reduction of member contributions greater than that authorized as to such member by this Item (1) or such law, as the case may be, with respect to the period of reduction therein prescribed, and provided further, however, that

(2) Any such plan which may be provided for members of the uniformed force of the department of sanitation as defined in subdivision a of section 13-154 of this chapter, except members in the title of sanitation worker, shall designate a reduced-rate-of-contribution factor of two and one-half per centum, and provided further, however, that

(3) any such plan which may be provided for members of the uniformed force of the department of sanitation in the title of sanitation worker shall designate a reduced-rate-of-contribution factor of five per centum. In putting into effect and carrying out such plan, the mayor shall have powers analogous to those granted to the board of estimate by subdivision j, of this section. For the purpose of carrying out the provisions of this subparagraph (g), wherever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean June seventeenth.

(h) Fiscal year nineteen hundred sixty-nine-nineteen hundred seventy. The mayor, by executive order adopted prior to June sixteenth, nineteen hundred sixty-nine, may provide for a pensions-providing-for-increased-take-home-pay plan for other-than-authority members for the fiscal year nineteen hundred sixty-nine-nineteen hundred seventy analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two, provided, however that

(1) any such plan which may be provided for such members other than members of the uniformed force of the department of sanitation, as defined in subdivision a of section 13-154 of this chapter, shall designate a reduced-rate-of-contribution factor of four percentum. An election by a member to become a career pension plan member or a fifty-five-year-increased-service-fraction member shall constitute a waiver, with respect to any period as to which this item (1) or any subsequently enacted law authorizes a reduction of member contributions under a plan for pension-providing-for-increased-take-home-pay, of any and all claims by such member arising out of any consent determination made under section two hundred twenty of the labor law to any reduction of member contributions greater than that authorized as to such member by this Item (1) or such law, as the case may be, with respect to the period of reduction therein prescribed, and provided further, however, that

(2) Any such plan which may be provided for members of the uniformed force of the department of sanitation as

defined in subdivision a of section 13-154 of this chapter, except members in the title of sanitation worker, shall designate a reduced-rate-of-contribution factor of two and one-half per centum, and provided further, however, that

(3) any such plan which may be provided for members of the uniformed force of the department of sanitation in the title of sanitation worker shall designate a reduced-rate-of-contribution factor of five percentum.

(4) In putting into effect and carrying out such plan, the mayor shall have powers analogous to those granted to the board of estimate by subdivision j of this section. For the purpose of carrying out the provisions of this subparagraph (h), wherever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean June sixteenth.

(i) Fiscal year nineteen hundred seventy-nineteen hundred seventy-one. The mayor, by executive order adopted prior to June sixteenth, nineteen hundred seventy, may provide for a pensions-providing-for-increased-take-home-pay plan for other-than-authority members for the fiscal year nineteen hundred seventy-nineteen hundred seventy-one analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two, provided, however, that:

(1) any such plan which may be provided for such members other than sanitation members (as defined in subdivision sixty-four of section 13-101 of this chapter) shall designate a reduced-rate-of-contribution factor of four percentum. An election by a member to become a career pension plan member or a fifty-five-year-increased-service-fraction member shall constitute a waiver, with respect to any period as to which this item one or any subsequently enacted law authorizes a reduction of member contributions under a plan for pensions-providing-for-increased-take-home-pay, of any and all claims by such member, arising out of any consent determination made under section two hundred twenty of the labor law, to any reduction of member contributions greater than that authorized as to such member by this item one or such law, as the case may be, with respect to the period of reduction therein prescribed, and provided further, however, that

(2) subject to the provisions of item three of this subparagraph i, any such plan which may be provided for sanitation members, except members in the title of sanitation worker, shall designate a reduced-rate-of-contribution factor of two and one-half per centum from and including the payroll period, the first day of which is nearest to October first, nineteen hundred sixty-eight to and including the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred seventy, and provided further, however, that

(3) any reduction made pursuant to item two of this subparagraph i shall be in addition to any reduction made during the period mentioned in such item two pursuant to item two of subparagraph h of paragraph one of this subdivision m and item two of subparagraph g of such paragraph one. The amount of any reduction made pursuant to item two of this subparagraph i in the contribution of any such member for such portion of the period mentioned in such item two as precedes the payroll period, the first day of which is nearest to July first, nineteen hundred seventy shall be refunded without interest unless such reduction has been waived pursuant to subdivision g of this section, and provided further, however, that

(4) any such plan which may be provided for the fiscal year nineteen hundred seventy-nineteen hundred seventy-one for sanitation members shall designate a reduced-rate-of-contribution factor of five percentum.

(5) In putting into effect and carrying out such plan, the mayor shall have powers analogous to those granted to the board of estimate by subdivision j of this section. For the purpose of carrying out the provisions of this subparagraph (i), wherever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean June sixteenth.

(j) Fiscal year nineteen hundred seventy-one-nineteen hundred seventy-two. (1) Subject to the provisions of the succeeding items of this subparagraph (j), the mayor, by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-one, may provide for a

pensions-providing-for-increased-take-home-pay plan for other-than-authority-or-public-benefit-corporation members for the fiscal year nineteen hundred seventy-one-nineteen hundred seventy-two analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two.

(2) In the event that a bill entitled "An act to amend the administrative code of the city of New York and chapter eight hundred seventeen of the laws of nineteen hundred sixty-nine, entitled, `An act to amend the administrative code of the city of New York, in relation to providing additional rights, privileges and benefits for members of the New York city employees' retirement system who are career pension plan members or fifty-five-year-increased-service-fraction members, and for certain beneficiaries of such system', in relation to establishing a new career pension plan for certain members of the New York city employees' retirement system" is enacted into law, any such plan which may be provided pursuant to item one of this subparagraph (j):

(a) shall apply to sanitation members (as defined in subdivision sixty-four of section 13-101 of this chapter) who have elected the benefits of section 13-160 of this chapter or who, pursuant to section 13-154 of this chapter, are members of a retirement plan permitting retirement upon completion of twenty-five years of allowable service in the uniformed force of the department of sanitation (as defined in subdivision a of section 13-154 of this chapter); and

(b) shall not apply to any other-than-authority-or-public-benefit corporation members other than the sanitation members mentioned in subitem (a) of this item two.

(3) Any such plan which may be provided pursuant to items one and two of this subparagraph (j) for the sanitation members designated in such item two shall prescribe as to such members a reduced-rate-of-contribution factor of five per centum.

(4) In the event that the bill referred to in item two of this subparagraph (j) is not enacted into law:

(a) any plan which may be provided pursuant to item one of this subparagraph (j) for other-than-authority-or-public-benefit-corporation members who are not sanitation members shall designate a reduced-rate-of-contribution factor of four per centum; and

(b) any such plan which may be provided for sanitation members shall designate as to such members a reduced-rate-of-contribution factor of five per centum.

(5) In putting into effect and carrying out any plan pursuant to the applicable provisions of the preceding items of this subparagraph (j), the mayor shall have powers analogous to those granted to the board of estimate by subdivision j of this section. For the purpose of carrying out the provisions of the preceding items of this subparagraph (j), wherever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-one.

(6) Nothing contained in the preceding items of this subparagraph (j) shall be construed as impairing or affecting any rights with respect to a pensions-providing-for-increased-take-home-pay plan which may be acquired by a correction member (as defined in subdivision forty of section 13-101 of this chapter) pursuant to paragraph two of subdivision i of section 13-155 of this chapter and paragraph seven of subdivision a of section 13-226 of this title.

(k) Fiscal year nineteen hundred seventy-two-nineteen hundred seventy-three. (1) Subject to the provisions of the succeeding items of this subparagraph (k), the mayor, by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-two or June seventeenth of such year, whichever is later, may provide for a pensions-providing-for-increased-take-home-pay plan for other-than-authority-or-public-benefit-corporation members (as defined in subdivision twenty-one of section 13-101 of this chapter) for the fiscal year nineteen hundred seventy-two-nineteen hundred seventy-three analogous to that authorized for other-than-authority members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three

by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two.

(2) Any such plan which may be provided pursuant to item one of this subparagraph (k) for sanitation members (as defined in subdivision sixty-four of section 13-101 of this chapter) shall prescribe a reduced-rate-of-contribution factor of five per centum with respect to sanitation members.

(3) In the event that a bill entitled "An act to amend the administrative code of the city of New York and chapter eight hundred seventeen of the laws of nineteen hundred sixty-nine, entitled `An act to amend the administrative code of the city of New York, in relation to providing additional rights, privileges and benefits for members of the New York city employees' retirement system who are career pension plan members or fifty-five-year-increased-service-fraction members, and for certain beneficiaries of such system', in relation to establishing a new career pension plan for certain members of the New York city employees' retirement system" is enacted into law, no plan shall be provided pursuant to item one of this subparagraph (k) with respect to any other-than-authority-or-public-benefit-corporation members who are not sanitation members.

(4) In the event that such bill referred to in item three of this subparagraph (k) is not enacted into law, any such plan which may be provided pursuant to item one of this subparagraph (k) for other-than-authority-or-public-benefit-corporation members who are not sanitation members shall prescribe a reduced-rate-of-contribution factor of four per centum with respect to such other-than-authority-or-public-benefit-corporation members who are not sanitation members.

(5) In putting into effect and carrying out any plan pursuant to the applicable provisions of the preceding items of this subparagraph (k), the mayor shall have powers analogous to those granted to the board of estimate by subdivision j of this section. For the purpose of carrying out the provisions of the preceding items of this subparagraph (k), wherever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-two or June seventeenth of such year, whichever is later.

(6) Pursuant to paragraph two of subdivision i of section 13-155 of this chapter, correction members (as defined in subdivision forty of section 13-101 of this chapter), shall be subject to the provisions of paragraph eight of subdivison a of section 13-226 of this title.

2. (a) Fiscal year nineteen hundred sixty-three-nineteen hundred sixty-four. The triborough bridge and tunnel authority, the New York city housing authority and the New York city transit authority may each separately provide, by resolution adopted by the authority and approved by the mayor prior to June first, nineteen hundred sixty-three, for a pensions-providing-for-increased-take-home-pay plan for all members who are officers or employees of the authority providing such plan, for the fiscal year nineteen hundred sixty-three-nineteen hundred sixty-four analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two. In putting into effect and carrying out such plan, each such authority and the mayor, shall have powers analogous to those granted by subdivision j of this section to each such authority and the board of estimate.

(b) Fiscal year nineteen hundred sixty-four-nineteen hundred sixty-five. The triborough bridge and tunnel authority, the New York city housing authority and the New York city transit authority may each separately provide, by resolution adopted by the authority and approved by the mayor prior to June first, nineteen hundred sixty-four, for a pensions-providing-for-increased-take-home-pay plan for all members who are officers or employees of the authority providing such plan, for the fiscal year nineteen hundred sixty-four-nineteen hundred sixty-five analogous to that authorized for such members for the fiscal year nineteen hundred sixty-three-nineteen hundred sixty-four by chapter five hundred eighteen of the laws of nineteen hundred sixty-three. In putting into effect and carrying out such plan, each such authority and the mayor, shall have powers analogous to those granted by subdivision j of this section to each such authority and the board of estimate.

(c) Fiscal year nineteen hundred sixty-five-nineteen hundred sixty-six. The triborough bridge and tunnel authority, the New York city housing authority and the New York city transit authority may each separately provide, by reasolution*9 adopted by the authority and approved by the mayor prior to June nineteenth, nineteen hundred sixty-five, for a pensions-providing-for-increased-take-home-pay plan for members who are officers or employees of the authority providing such plan, for the fiscal year nineteen hundred sixty-five-nineteen hundred sixty-six, analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two. In putting into effect and carrying out such plan, each such authority and the mayor shall have powers analogous to those granted by subdivision j of this section to each such authority and the board of estimate. For the purpose of carrying out the provisions of this subparagraph (c), wherever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean June nineteenth.

(d) Fiscal year nineteen hundred sixty-six-nineteen hundred sixty-seven. The triborough bridge and tunnel authority, the New York city housing authority and the New York city transit authority may each separately provide, by resolution adopted by the authority and approved by the mayor prior to June nineteenth, nineteen hundred sixty-six, for a pensions-providing-for-increased-take-home-pay plan for members who are officers or employees of the authority providing such plan, for the fiscal year nineteen hundred sixty-six-nineteen hundred sixty-seven, analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two. In putting into effect and carrying out such plan, each such authority and the mayor shall have powers analogous to those granted by subdivision j of this section to each such authority and the board of estimate. For the purpose of carrying out the provisions of this subparagraph (d), wherever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean June nineteenth.

(e) Fiscal year nineteen hundred sixty-seven-nineteen hundred sixty-eight. The triborough bridge and tunnel authority, the New York city housing authority and the New York city transit authority may each separately provide, by resolution adopted by the authority and approved by the mayor prior to June seventeenth, nineteen hundred sixty-seven, for a pensions-providing-for-increased-take-home-pay plan for members who are officers or employees of the authority providing such plan, for the fiscal year nineteen hundred sixty-seven-nineteen hundred sixty-eight, analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two. In putting into effect and carrying out such plan, each such authority and the mayor shall have powers analogous to those granted by subdivision j of this section to each such authority and the board of estimate. For the purpose of carrying out the provisions of this subparagraph (e), wherever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean June seventeenth.

(f) Fiscal year nineteen hundred sixty-eight-nineteen hundred sixty-nine. (1) The triborough bridge and tunnel authority and the New York city housing authority may each separately provide, by resolution adopted by the authority and approved by the mayor prior to June seventeenth, nineteen hundred sixty-eight, for a pensions-providing-for-increased-take-home-pay plan for members who are officers or employees of the authority providing such plan, for the fiscal year nineteen hundred sixty-eight-nineteen hundred sixty-nine analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two, provided, however, that any such plan shall designate a reduced-rate-of-contribution factor of four percentum. In putting into effect and carrying out such plan, each such authority and the mayor shall have powers analogous to those granted by subdivision j of this section to each such authority and the board of estimate. For the purpose of carrying out the provisions of this item (1) wherever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean June seventeenth.

(2) Except for members who are officers and employees of the New York city transit authority and who, if a bill entitled "An act to amend the administrative code of the city of New York, in relation to service retirement, vested retirement allowances and certain other benefits under the New York city employees' retirement system, with respect to

certain officers and employees of the New York City Transit Authority" is enacted into law, elect pursuant thereto a plan of retirement upon completion of twenty years of service with a retirement allowance payable at or after age fifty, the New York city transit authority may provide by resolution adopted by the authority and approved by the mayor prior to June seventeenth, nineteen hundred sixty-eight, for a pensions-providing-for-increased-take-home-pay for members who are officers and employees of the authority for the fiscal year nineteen hundred sixty-eight-nineteen hundred sixty-nine, analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two, provided, however, that any such plan which may be provided for members who are eligible for the benefits of the career pension plan if a bill entitled "An act to amend the administrative code of the city of New York and the military law, in relation to providing additional rights, privileges and benefits for members of the New York city employees' retirement system and establishing an optional career pension plan for certain of such members" is enacted into law, regardless of whether such members elect the benefits of such plan, shall designate a reduced-rate-of-contribution factor of four per centum. In putting into effect and carrying out such plan, the authority and the mayor shall have powers analogous to those granted by subdivision j of this section to the authority and the board of estimate. For the purpose of carrying out the provisions of this item two, whenever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean June seventeenth.

(g) Fiscal year nineteen hundred sixty-nine-nineteen hundred seventy. (1) The triborough bridge and tunnel authority and the New York city housing authority may each separately provide, by resolution adopted by the authority and approved by the mayor prior to June sixteenth, nineteen hundred sixty-nine, for a pensions-providing-for-increased-take-home-pay plan for members who are officers or employees of the authority providing such plan, for the fiscal year nineteen hundred sixty-nine-nineteen hundred seventy analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two, provided, however, that any such plan shall designate a reduced-rate-of-contribution factor of four percentum. In putting into effect and carrying out such plan, each such authority and the mayor shall have powers analogous to these granted by subdivision j of this section to each such authority and the board of estimate. For the purpose of carrying out the provisions of this item (1), wherever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean June sixteenth.

(2) (a) Except as otherwise provided in sub-item (b) of this item two, the New York city transit authority may provide by resolution adopted by the authority and approved by the mayor prior to June sixteenth, nineteen hundred sixty-nine, for a pensions-providing-for-increased-take-home-pay plan for members who are officers and employees of the authority for the fiscal year nineteen hundred sixty-nine-nineteen hundred seventy, analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two, provided, however, that any such plan which may be provided for members who are career pension plan members or who are eligible to elect to become career pension plan members, regardless of whether such members make such election, shall designate a reduced-rate-of-contribution factor of four percentum.

(b) No plan for pensions-providing-for-increased-take-home-pay shall be provided under sub-item (a) of this item two with respect to any officer or employee of such authority whose minimum period for service retirement, pursuant to an election made under section 13-161 of this chapter, is twenty years.

(c) In putting into effect and carrying out such plan authorized by sub-item (a) of this item two, the authority and the mayor shall have powers analogous to those granted by subdivision j of this section to the authority and the board of estimate. For the purpose of carrying out the provisions of this item two, whenever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean June sixteenth.

(h) Fiscal year nineteen hundred seventy-nineteen hundred seventy-one. (1) The triborough bridge and tunnel authority and the New York city housing authority may each separately provide, by resolution adopted by the authority and approved by the mayor prior to June sixteenth, nineteen hundred seventy, for a

pensions-providing-for-increased-take-home-pay plan for members who are officers or employees of the authority providing such plan, for the fiscal year nineteen hundred seventy-nineteen hundred seventy-one, analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two, provided, however, that any such plan shall designate a reduced-rate-of-contribution factor of four percentum. In putting into effect and carrying out such plan, each such authority and the mayor shall have powers analogous to those granted by subdivision j of this section to each such authority and the board of estimate. For the purpose of carrying out the provisions of this item one, wherever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean June sixteenth.

(2) (a) Except as otherwise provided in sub-item (b) of this item two, the New York city transit authority may provide by resolution adopted by the authority and approved by the mayor prior to June sixteenth, nineteen hundred seventy, for a pensions-providing-for-increased-take-home-pay plan for members who are officers and employees of the authority, for the fiscal year nineteen hundred seventy-nineteen hundred seventy-one, analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two, provided, however, that any such plan which may be provided for members who are career pension plan members or who are eligible to elect to become career pension plan members, regardless of whether such members make such election, shall designate a reduced-rate-of-contribution factor of four percentum.

(b) No plan for pensions-providing-for-increased-take-home-pay shall be provided under sub-item (a) of this item two with respect to any officer or employee of such authority whose minimum period for service retirement, pursuant to an election made under section 13-161 of this chapter, is twenty years.

(c) In putting into effect and carrying out such plan authorized by sub-item (a) of this item two, the authority and the mayor shall have powers analogous to those granted by subdivision j of this section to the authority and the board of estimate. For the purpose of carrying out the provisions of this item two, whenever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean June sixteenth.

(i) Fiscal year nineteen hundred seventy-one-nineteen hundred seventy-two. (1) In the event that a bill entitled "An act to amend the administrative code of the city of New York and chapter eight hundred seventeen of the laws of nineteen hundred sixty-nine, entitled, `An act to amend the administrative code of the city of New York, in relation to providing additional rights, privileges and benefits for members of the New York city employees' retirement system who are career pension plan members or fifty-five-year-increased-service-fraction members, and for certain beneficiaries of such system', in relation to establishing a new career pension plan for certain members of the New York city employees' retirement system" is enacted into law, no plan for pensions-providing-for-increased-take-home-pay shall be provided for the fiscal year nineteen hundred seventy-one-nineteen hundred seventy-two or any subsequent fiscal year for members who are officers or employees of the triborough bridge and tunnel authority, the New York city housing authority, the New York city health and hospitals corporation or the New York city off-track betting corporation.

(2) Subject to the provisions of items three and four of this subparagraph (i), in the event that the bill mentioned in item one of this subparagraph (i) is not enacted into law, the triborough bridge and tunnel authority, the New York city housing authority, the New York city health and hospitals corporation and the New York city off-track betting corporation may each separately provide, by resolution adopted by the authority or corporation and approved by the mayor prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-one, for a pensions-providing-for-increased-take-home pay plan for members who are officers or employees of the authority or corporation providing such plan, for the fiscal year nineteen hundred seventy-one-nineteen hundred seventy-two, analogous to that authorized by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three with respect to members who were officers or employees of such authorities.

(3) Any such plan which may be provided pursuant to item two of this subparagraph (i) shall designate a reduced-rate-of-contribution factor of four per centum.

(4) In putting into effect and carrying out such plan, each such authority or corporation and the mayor shall have powers analogous to those granted by subdivision j of this section to each such authority and the board of estimate. For the purpose of carrying out the provisions of items two and three of this subparagraph (i), wherever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-one.

(5) In the event that the bill mentioned in item one of this subparagraph (i) is enacted into law, no plan for pensions-providing-for-increased-take-home-pay shall be provided for members who are officers or employees of the New York city transit authority for the fiscal year nineteen hundred seventy-one-nineteen hundred seventy-two.

(6) Subject to the provisions of items seven, eight and nine of this subparagraph (i), in the event that the bill mentioned in item one of this subparagraph (i) is not enacted into law, the New York city transit authority may provide by resolution adopted by the authority and approved by the mayor prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-one, for a pensions-providing-for-increased-take-home-pay plan for members who are officers and employees of the authority, for the fiscal year nineteen hundred seventy-one-nineteen hundred seventy-two, analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two.

(7) Any such plan which may be provided pursuant to item six of the subparagraph (i) for members who are career pension plan members or who are eligible to elect to become career pension plan members, regardless of whether such members make such election, shall designate a reduced-rate-of-contribution factor of four per centum.

(8) No plan shall be provided under item six of this subparagraph (i) with respect to any officer or employee of such transit authority whose minimum period for service retirement, pursuant to an election made under section 13-161 of this chapter, is twenty years.

(9) In putting into effect and carrying out any such plan authorized by items six and seven of this subparagraph (i), the authority and the mayor shall have powers analogous to those granted by subdivision j of this section to the authority and the board of estimate. For the purpose of carrying out the provisions of such items six and seven, whenever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-one.

(10) Nothing contained in any of the preceding items of this subparagraph (i) shall be construed as impairing or affecting any rights with respect to a pensions-providing-for-increased-take-home-pay plan which may be acquired by a housing police member (as defined in subdivision thirty-six of section 13-101 of this chapter) or by a transit police member (as defined in subdivision thirty-two of section 13-101 of this chapter) pursuant to the applicable provisions of paragraph two of subdivision i of section 13-156 of this chapter, paragraph two of subdivision j of section 13-157 of this chapter and paragraph seven of subdivision a of section 13-226 of this title.

(j) Fiscal year nineteen hundred seventy-two-nineteen hundred seventy-three. (1) Subject to the provisions of item ten of this subparagraph (j), in the event that a bill entitled "An act to amend the administrative code of the city of New York and chapter eight hundred seventeen of the laws of nineteen hundred sixty-nine, entitled, `An act to amend the administrative code of the city of New York, in relation to providing additional rights, privileges and benefits for members of the New York city employees' retirement system who are career pension plan members or fifty-five-year-increased-service-fraction members, and for certain beneficiaries of such system', in relation to establishing a new career pension plan for certain members of the New York city employees' retirement system", is enacted into law, no plan for pensions-providing-for-increased-take-home-pay shall be provided for the fiscal year

nineteen hundred seventy-two-nineteen hundred seventy-three or any subsequent fiscal year for members who are officers or employees of the triborough bridge and tunnel authority, the New York city housing authority, the New York city health and hospitals corporation, the New York city off-track betting corporation or the New York city housing development corporation.

(2) Subject to the provisions of items three, four and ten of this subparagraph (j), in the event that the bill mentioned in item one of this subparagraph (j) is not enacted into law, the triborough bridge and tunnel authority, the New York city housing authority, the New York city health and hospitals corporation, the New York city off-track betting corporation and the New York city housing development corporation may each separately provide, by resolution adopted by the authority or corporation and approved by the mayor prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-two or June seventeenth of such year, whichever is later, for a pensions-providing-for-increased-take-home-pay plan for members who are officers or employees of the authority or corporation providing such plan, for the fiscal year nineteen hundred seventy-two-nineteen hundred seventy-three analogous to that authorized by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three with respect to members who were officers or employees of such authorities.

(3) Any such plan which may be provided pursuant to item two of this subparagraph (j) shall designate a reduced-rate-of-contribution factor of four per centum.

(4) In putting into effect and carrying out such plan, each such authority or corporation and the mayor shall have powers analogous to those granted by subdivision j of this section to each such authority and the board of estimate. For the purposes of carrying out the provisions of items two and three of this subparagraph (j), wherever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-two or June seventeenth of such year, whichever is later.

(5) In the event that the bill mentioned in item one of this subparagraph (j) is enacted into law, no plan for pensions-providing-for-increased-take-home-pay shall be provided for the fiscal year nineteen hundred seventy-two-nineteen hundred seventy-three for members who are officers or employees of the New York city transit authority; provided, however, that with respect to members who are officers or employees of the transit authority and who hold transit operating positions (as defined in subdivision sixty of section 13-101 of this chapter and who are not entitled to the benefits of the twenty-year pension plan provided for by section 13-161 of this chapter by reason of not having elected the benefits of section 13-161 of this chapter, the transit authority may provide by resolution adopted by the authority and approved by the mayor prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-two or June seventeenth of such year, whichever is later, for a pensions-providing-for-increased-take-home-pay plan for the fiscal year nineteen hundred seventy-two-nineteen hundred seventy-three, analogous to that authorized for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two, with respect to members who were officers or employees of the transit authority.

(6) Subject to the provisions of items seven, eight, nine and ten of this subparagraph (j), in the event that the bill mentioned in item one of this subparagraph (j) is not enacted into law, the New York city transit authority may provide by resolution adopted by the authority and approved by the mayor prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-two or June seventeenth of such year, whichever is later, for a pensions-providing-for-increased-take-home-pay plan for members who are officers and employees of the authority, for the fiscal year nineteeen hundred seventy-two-nineteen hundred seventy-three, analogous to that authorized for such members for the fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three by chapter seven hundred eighty-seven of the laws of nineteen hundred sixty-two.

(7) Any such plan which may be provided pursuant to item six of this subparagraph (j) for members who hold

career pension plan positions (as defined in subdivision forty-seven of section 13-101 of this chapter) shall designate a reduced-rate-of-contribution factor of four per centum.

(8) No plan shall be provided under item six of this subparagraph (j) with respect to any officer or employee of such transit authority whose minimum period for service retirement, pursuant to an election made under section 13-161 of this chapter, is twenty years.

(9) In putting into effect and carrying out any such plan authorized by items six and seven of this subparagraph (j), the authority and the mayor shall have powers analogous to those granted by subdivision j of this section to the authority and the board of estimate. For the purpose of carrying out the provisions of such items six and seven, whenever the words "June first" appear in such subdivision j, such words shall be deemed to be and to mean the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-two or June seventeenth of such year, whichever is later.

(10) Nothing contained in any of the preceding items of this subparagraph (j) shall be construed as impairing or affecting any rights with respect to a pensions-providing-for-increased-take-home-pay plan which may be acquired by a housing police member (as defined in subdivision thirty-six of section 13-101 of this chapter) or by a transit police member (as defined in subdivision thirty-two of section 13-101 of this chapter) pursuant to the applicable provisions of paragraph two of subdivision i of section 13-156 of this chapter, paragraph two of subdivision j of section 13-157 of this chapter and paragraph eight of subdivision a of section 13-226 of this title.

n. In any case where a plan for pensions-providing-for-increased-take-home-pay provided pursuant to the provisions of subparagraph (j) of paragraph one of subdivision m of this section or subparagraph (i) of paragraph two of such subdivision m or any subsequently enacted law prescribes a reduction of member contributions with respect to a member for a prescribed period and in any case where any such provision prohibits the adoption of a pensions-providing-for-increased-take-home-pay plan with respect to a member for a prescribed period, an election by such member to become a career pension plan member or a fifty-five-year-increased-service-fraction member, where such election is authorized by the applicable provisions of this chapter, shall constitute a waiver of any and all claims by such member, arising out of any consent determination made under section two hundred twenty of the labor law, to any increased-take-home-pay plan rights different from or greater than the rights, if any, prescribed with respect to such member for such period by or pursuant to the provisions of such subparagraph (j) or (i) or such subsequently enacted law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-36.1 added chap 509/1960 § 1

Sub d amended chap 727/1961 § 1

Sub j added chap 787/1962 § 1

Subs g, h amended chap 787/1962 § 1

Sub k added chap 787/1962 § 3

Sub m added chap 518/1963 § 1

Subs g, h amended chap 518/1963 § 2

Sub k amended chap 518/1963 § 3

Sub j par 14 subpar iii heading amended chap 518/1963 § 6

Sub m heading amended chap 633/1964 § 1

Sub m par 1 subpar a designated, heading added chap 633/1964 § 2

Sub m par 1 subpar b added chap 633/1964 § 3

Sub m par 2 subpar a designated, heading added chap 633/1964 § 4

Sub m par 2 subpar b added chap 633/1964 § 5

Sub m par 1 subpar c added chap 382/1965 § 1

Sub m par 2 subpar c added chap 382/1965 § 2

Sub m par 1 subpar d added chap 611/1966 § 1

Sub m par 2 subpar d added chap 611/1966 § 2

Sub m par 1 subpar e added chap 379/1967 § 1

Sub m par 2 subpar e added chap 379/1967 § 2

Sub m par 1 subpars f, g added chap 825/1968 § 1

Sub m par 2 subpar f added chap 825/1968 § 2

Sub m par 1 subpar h added chap 870/1969 § 1

Sub m par 2 subpar g added chap 870/1969 § 2

Sub m par 1 subpar i added chap 960/1970 § 1

Sub m par 2 subpar h added chap 960/1970 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. Under this standard, a police officer who allegedly hurt his back while leaning over to place a ticket on a car windshield was held not to be entitled to accidental disability retirement. Matter of Lichtenstein v. Board of Trustees, 57 N.Y.2d 1010, 457 N.Y.S.2d 472 (1982).The same result was reached where the alleged injury occurred to an officer who was removing barriers at a concert in a city park. Del Grosso v. Board of Trustees, 113 Misc.2d 440, 448 N.Y.S.2d 933 (Sup. Ct. New York Co. 1982).

**CASE NOTES**

¶ 1. The decision to deny accidental disability benefits was rationally based where there was evidence to support the respondent's finding that the there was no causal relationship between the line of duty incident and petitioner's present complaints. The court noted that petitioner continued to work for 10 years after the incident and did not seek medical attention for the claimed condition until several years after the incident. Mooney v. Bratton, 234 A.D.2d 27, 650 N.Y.S.2d 556. (App. Div. 1st Dept. 1996).

¶ 2. A line-of-duty injury claim must be based upon a sudden fortuitous mischance, unexpected, out of the ordinary and injurious in impact. An injury that occurs in the absence of an unexpected event but rather as a result of activity undertaken in the performance of ordinary employment duties, considered in light of the particular employment in question, is not an an "accidental injury" within the meaning of the statute. Thus, accidental disability benefits will be denied for injuries sustained while performing routine duties but not resulting from unexpected events. Where an officer suffered from depression but could not tie the depression to a distinct accident, he was not entitled to accidental disability retirement. Hipple v. Ward, 146 A.D.2d 201, 539 N.Y.S.2d 917 (1st Dept. 1989)

¶ 3. On the other hand, an "accidental injury" was found to have occurred where a police officer lost his balance and fell to the floor twisting his knee and where an officer while entering his patrol car slipped on a wet pavement damaging an elbow (Matter of McCambridge v. McGuire, 62 N.Y.2d 563, 479 N.Y.S.2d 171 [1984]), and where an officer sustained a knee injury while falling in an overcrowded gym during a boxing lesson at the police academy (Matter of Carr v. Ward, 119 A.D.2d 163, 506 N.Y.S.2d 338 [1st Dept. 1986]).

**FOOTNOTES**

9

[Footnote 9]: * So in original. (Word misspelled.)

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-153*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-153 Credit for service.

a. Subject to the provisions of subdivision c of this section, notwithstanding any inconsistent provision of law, any member of the uniformed transit police force, uniformed correction force, housing police service and uniformed force of the department of sanitation (any of which forces or service is hereinafter referred to as a "NYCERS uniformed force") who immediately prior to his or her appointment or employment as such, has served or shall have served as a member of any other NYCERS uniformed force:

(i) shall have the time served by him or her in any of such positions counted as service in his or her present service in any of such positions in determining his or her compensation and promotion in any of such positions; and

(ii) upon his or her application therefor, shall have any of such time which constitutes allowable service counted as service in his or her present service in any of such positions in determining his or her retirement and pension in any of such positions.

b. (1) Subject to the provisions of subdivision c of this section, notwithstanding any provision of law to the contrary, in any case where, pursuant to section forty-three of the retirement and social security law, any member of a NYCERS uniformed force shall have transferred or shall transfer to the retirement system, credit for service in the uniformed police force of the police department of the city or credit for service in the uniformed force of the fire department of the city, and such service in either such uniformed police force or uniformed force of the fire department immediately preceded or immediately precedes the service of such member in such NYCERS uniformed force, such member shall have the time so served by him or her in such police department or fire department counted as service in his or her present service in any such NYCERS uniformed force for purposes of eligibility for benefits and to determine

the amount of benefits as a member of the retirement system.

(2) Subject to the provisions of subdivision c of this section, in any case where:

(i) a member of a NYCERS uniformed force was credited by the police pension fund, subchapter two or the department pension fund, subchapter two with allowable service as a member of either such pension fund; and

(ii) such allowable service immediately preceded the commencement of the service of such member in such NYCERS uniformed force; and

(iii) such member is ineligible to transfer credit for such allowable service in such police department or fire department to the retirement system pursuant to section forty-three of the retirement and social security law; such member shall have such credited service as a member of either such pension fund counted as service in his present position in any such NYCERS uniformed force for purposes of eligibililty for benefits and to determine the amount of benefits as a member of the retirement system, provided such member prior to July first, nineteen hundred eighty-two files with the retirement system, an application to obtain such service credit and prior to such July first pays into the annuity savings fund of the retirement system a sum equal to the amount of the employee contributions required to have been paid to such police pension fund or fire department pension fund, as the case may be, for such period of credited service.

c. In any case where, by reason of credit for previous allowable service acquired pursuant to subdivision a or subdivision b of this section, the date of completion of a member's minimum period for service retirement became or becomes earlier than such date would have been or would be if such credit for such previous allowable service had not been so acquired, there shall be effected with respect to such member:

(i) such increase in such member's normal rate of contribution, effective as of the date of the commencement of the member's allowable service in the NYCERS uniformed force with respect to which such previous allowable service is to be credited, as may be necessary to reflect such earlier date of eligibility for service retirement; and

(ii) the charging of such member who acquired or acquires such service credit with a contribution rate deficiency:

(A) which shall accrue from the date on which such member commenced allowable service in the NYCERS uniformed force with respect to which such previous allowable service is credited; and

(B) which shall be paid prior to the effective date of retirement and if partially paid prior to such date, shall result in pro rata credit for such previous allowable service.

d. In no event shall any person be allowed credit for previous allowable service rendered in any of the hereinabove mentioned positions so as to cause such previous allowable service to be credited and transferred as service in any of the above named positions more than once.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-36.2.6 added chap 640/1980 § 1

Amended chap 941/1981 § 2

**CASE NOTES**

¶ 1. The Board of Trustees, in deciding to award ordinary disability rather than accidental disability, can rely upon the Medical Board's recommendation that there is no causal relation between the claimed disability and a service related injury, even though the Medical Board did not examine the pension member. Although factors such as the member's failure to return to full duty following a service related injury and the absence of a prior medical history of the disabling condition may be relevant on the issue of causation, none of these factors is dispositive, and a denial of accidental disability benefits may be upheld despite their existence. Thus, so long as the determination is based on credible evidence, i.e. where there is a rational explanation for the findings of the Board of Trustees based on review of records, x-rays, etc., by the Medical Board, the determination will be upheld. Meyer v. Board of Trustees, Article 1-B Pension Fund, 90 N.Y.2d 139, 659 N.Y.S.2d 215.

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-154*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-154 Optional retirement after twenty-five years of allowable service rendered in the uniformed force of the department of sanitation; retirement allowances for service in such force.

a. For the purposes of this section the uniformed force of the department of sanitation shall be deemed to consist of sanitation worker, assistant foreman, foreman, district superintendent, senior superintendent, supervising superintendent, principal superintendent, city superintendent, director of operations and general superintendent.

b. Any member of the uniformed force of the department of sanitation who (1) is appointed to such uniformed force after the first day of July nineteen hundred sixty-three, and (2) elects to contribute for the right to retire after twenty-five years of allowable service, and (3) selects a service-fraction of one one-hundredth of his or her final compensation, and (4) shall have at least twenty-five years of allowable service in said uniformed force, may retire upon written application to the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired.

c. 1. Any member of the uniformed force of the department of sanitation who is in such uniformed force on the first day of July, nineteen hundred sixty-three, and who has or shall have at least twenty-five years of allowable service in said uniformed force, may retire upon written application to the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, such member desires to be retired.

2. A service fraction heretofore selected by a member of the said uniformed force shall not affect his or her right to retire after twenty-five years of allowable service as provided in this subdivision c.

d. 1. Except as otherwise provided in section 13-160 of this chapter, upon retirement for service, a member of

such force (including any such member not subject to subdivision b or c of this section) shall receive, in lieu of any other retirement allowance for service provided for by this title, a retirement allowance which shall consist of:

(a) an annuity which shall be the actuarial equivalent of such member's accumulated deductions at the time of his or her retirement; and

(b) a pension which shall be equal to one service fraction of such member's final compensation, multiplied by the number of years of his or her allowable service; and

(c) a further pension of one-half of one service fraction of such member's final compensation multiplied by the number of his or her years of allowable service in such force, rendered after July second, nineteen hundred sixty-five; and

(d) a pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which such member may be entitled; if any.

2. The service fraction used in computing the pension of a member of such force pursuant to subparagraphs (b) and (c) of paragraph one of this subdivision d shall be as hereinafter in this paragraph two prescribed, provided such service fraction is in effect with respect to such member at the time of the filing of his or her application for service retirement:

(a) In the case of any such member who elected a service fraction of one one-hundredth of his or her final compensation pursuant to and at the time permitted by subdivision b, e or f of this section or paragraph six of subdivision a of section 13-172 of this chapter, or to whom a service fraction of one one-hundredth of his or her final compensation was assigned pursuant to subdivision g of this section, such service fraction shall be one one-hundredth;

(b) In the case of any such member who, on or before June thirtieth, nineteen hundred thirty, by his or her written election duly acknowledged and filed with the board, consented to the necessary deductions from his or her compensation for an increase of pension to a pension based upon a service fraction of one one-hundred-twentieth, or who, on or after July first, nineteen hundred thirty, elected age fifty-five as his or her minimum retirement age, pursuant to and at the time permitted by section 13-164 of this chapter, such service fraction shall be one one-hundred-twentieth; and

(c) In the case of any other such member, such service fraction shall be that applicable to his group pursuant to the provisions of subdivision b of section 13-172 of this chapter.

e. (1) Notwithstanding any other provision of this section or any other provision of this chapter, any member of the uniformed force of the department of sanitation who was appointed to such uniformed force after the first day of July, nineteen hundred sixty-three and prior to April twenty-fourth, nineteen hundred sixty-four, who has not elected to contribute for the right to retire after twenty-five years of allowable service pursuant to the provisions of subdivision b of this section, may, by a written application duly executed and acknowledged and filed with the board, prior to the first day of October, nineteen hundred sixty-four, elect to contribute for the right to retire after twenty-five years of such service and select a service fraction of one one-hundredth of his or her final compensation.

(2) Any such member who makes such election and selection pursuant to the provisions of paragraph one of this subdivision e shall be entitled to retire for service pursuant to the provisions of subdivision b of this section.

f. Notwithstanding any other provision of this section or any other provision of this chapter, any member of the uniformed force of the department of sanitation who was in such force on the first day of July, nineteen hundred sixty-three, may, by a written application executed and acknowledged and filed with the board, prior to the first day of October, nineteen hundred sixty-four, elect to contribute to the retirement system on the basis of a service fraction of one one-hundredth of his or her final compensation.

g. Notwithstanding any other provision of this section or any other provision of this chapter, any person who is appointed a member of the uniformed force of the department of sanitation on or after April twenty-fourth, nineteen hundred sixty-four, shall contribute to the retirement system on the basis of a service fraction of one one-hundredth of his final compensation. Any such member, upon completion of at least twenty-five years of allowable service in such uniformed force, may retire upon written application to the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, and upon his or her retirement such member shall receive a retirement allowance consisting of the components and computed in the manner specified in subdivision d of this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-36.2 added chap 262/1963 § 1

Subs e, f, g added chap 951/1964 § 1

Amended chap 387/1965 § 3

(Special provision chap 387/1965 §§ 5, 6)

Sub d par 1 open par amended chap 171/1967 § 4

Sub d par 1 open par amended chap 384/1967 § 4

Sub a amended chap 511/1973 § 3

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-155*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-155 Optional retirement after twenty or twenty-five years of allowable service rendered in the uniformed correction force.

a. A new correction member may elect, prior to the certification of his or her rate of contribution, if not previously a member of the retirement system, and within thirty days after his or her appointment to the uniformed correction force, if such person is a member of the retirement system at the time of such appointment, to contribute on the basis of a minimum retirement period of twenty years of allowable service rendered in such correction force, by a written election duly executed and acknowledged, and filed with the board. The rate of contribution of a member so electing shall be equal to that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) at which he or she would contribute to the police pension fund maintained pursuant to subchapter two of chapter two of this title if (1) on the date of his or her appointment as a member of the uniformed correction force he or she had been appointed a member of the police force of the city, and (2) he or she had elected a minimum retirement period of twenty years as a member of such police pension fund. Upon the retirement of such a new correction member for service, he or she shall receive a retirement allowance consisting of:

1. an annuity which shall be the actuarial equivalent of his accumulated deductions at the time of his or her retirement; and

2. a pension-providing-for-increased-take-home-pay, which shall be the actuarial equivalent of the reserve-for-increased-take-home-pay to which such member may then be entitled, if any; and

3. a pension which shall be equal to:

(a) seventy-five per cent of one-fortieth of his or her final compensation multiplied by not to exceed the number of years of service in the uniformed correction force on and after July first, nineteen hundred sixty-five, credited to him or her, which aggregates not more than twenty years of service, plus

(b) fifty-five per cent of one-sixtieth of his or her final compensation for the number of years of city-service prior to October first, nineteen hundred fifty-one acquired other than in the uniformed correction force, plus

(c) seventy-five per cent of one-sixtieth of his or her final compensation multiplied by: (1) the number of years of city-service after October first, nineteen hundred fifty-one, acquired other than in the uniformed correction force, and (2) the number of years of service in the uniformed correction force credited to him or her in excess of twenty.

b. A new correction member may elect, prior to the certification of his or her rate of contribution, if not previously a member of the retirement system, and within thirty days after his or her appointment to the uniformed correction force, if such person is a member of the retirement system at the time of such appointment, to contribute on the basis of a minimum retirement period of twenty-five years of allowable service rendered in such correction force, by a written election duly executed and acknowledged, and filed with the board. The rate of contribution of a member so electing shall be equal to that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) at which he or she would contribute to the police pension fund maintained pursuant to subchapter two of chapter two of this title if (1) on the date of his or her appointment as a member of the uniformed correction force he or she had been appointed a member of the police force of the city, and (2) he or she had elected a minimum retirement period of twenty-five years as a member of such police pension fund. Upon the retirement of such a new correction member for service, he or she shall receive a retirement allowance consisting of:

1. an annuity which shall be the actuarial equivalent of his accumulated deductions at the time of his or her retirement; and

2. a pension-providing-for-increased-take-home-pay which shall be the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

3. a pension which shall be equal to:

(a) seventy-five per cent of one-fiftieth of his or her final compensation multiplied by not to exceed the number of years of service in the uniformed correction force on and after July first, nineteen hundred sixty-five, credited to him or her, which aggregates not more than twenty-five years of service, plus

(b) fifty-five per cent of one-sixtieth of his or her final compensation for the number of years of city-service prior to October first, nineteen hundred fifty-one acquired other than in the uniformed correction force, plus

(c) seventy-five per cent of one-sixtieth of his final compensation multiplied by: (1) the number of years of city-service after October first, nineteen hundred fifty-one acquired other than in the uniformed correction force, and (2) the number of years of service in the uniformed correction force credited to him or her in excess of twenty-five.

c. A prior correction member may elect, on or before September thirtieth, nineteen hundred sixty-five, by a written election duly executed and acknowledged, and filed with the board, to contribute on and after July first, nineteen hundred sixty-five at a rate of contribution equal to that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) at which he or she would have been contributing on such July first to the police pension fund maintained pursuant to subchapter two of chapter two of this title if (1) he or she were on that date a member of the police force of the city and of such police pension fund, and (2) he or she had elected a minimum retirement period of twenty years as a member of such fund, and (3) he or she had been appointed to the city police force on the date on which he was appointed a member of the uniformed correction force, and (4) where such member

was appointed to the uniformed correction force prior to March twenty-ninth, nineteen hundred forty, such police pension fund maintained pursuant to such subchapter two had been in existence on the date of such appointment. Upon the retirement of such a prior correction member for service, he or she shall receive a retirement allowance consisting of:

1. an annuity which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

2. a pension-providing-for-increased-take-home-pay which shall be the actuarial equivalent of that portion of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any, remaining after deducting from such reserve (a) all sums therein, including regular interest thereon, credited to him or her while a member of the uniformed correction force, prior to January fifth, nineteen hundred sixty-three, plus (b) all sums therein, including regular interest thereon, credited to him or her for the period between January fifth, nineteen hundred sixty-three and June thirtieth, nineteen hundred sixty-five, both dates inclusive, which are derived from that part of a reduced-rate-of-contribution factor in excess of two and one-half per cent, provided that such sums mentioned in subparagraphs (a) and (b) of this paragraph two, shall, at the time of his or her retirement, be withdrawn from the credit of such member, shall become the property of the retirement system, and shall be paid into the contingent reserve fund provided for in section 13-127 of this chapter; and

3. a pension which shall be equal to:

(a) fifty-five per cent of one-fortieth of his or her final compensation multiplied by not to exceed twenty years of service in the uniformed correction force, prior to October first, nineteen hundred fifty-one, credited to him or her, plus

(b) seventy-five per cent of one-fortieth of his final compensation multiplied by not to exceed the number of years of service in the uniformed correction force on and after October first, nineteen hundred fifty-one, credited to him or her, which, together with the years of service in such force credited to him or her prior to such date, aggregates twenty years of service, plus

(c) fifty-five per cent of one-sixtieth of his or her final compensation for the number of years of city-service prior to October first, nineteen hundred fifty-one acquired other than in the uniformed correction force, plus

(d) seventy-five per cent of one-sixtieth of his or her final compensation multiplied by: (1) the number of years of city-service on and after October first, nineteen hundred fifty-one, acquired other than in the uniformed correction force, and (2) the number of years of service in the uniformed correction force credited to him or her in excess of twenty.

d. A prior correction member may elect, on or before September thirtieth, nineteen hundred sixty-five, by a written election duly executed and acknowledged, and filed with the board, to contribute on and after July first, nineteen hundred sixty-five at a rate of contribution equal to that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) at which he or she would have been contributing on such July first to the police pension fund maintained pursuant to subchapter two of chapter two of this title if (1) he or she were on that date a member of the police force of the city and of such police pension fund, and (2) he or she had elected a minimum retirement period of twenty-five years as a member of such fund, and (3) he or she had been appointed to the city police force on the date on which he or she was appointed a member of the uniformed correction force, and (4) where such member was appointed to the uniformed correction force prior to March twenty-ninth, nineteen hundred forty, such police pension fund maintained pursuant to such subchapter two had been in existence on the date of such appointment. Upon the retirement of such a member for service he or she shall receive a retirement allowance consisting of:

1. an annuity which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

2. a pension-providing-for-increased-take-home-pay which shall be the actuarial equivalent of that portion of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any, remaining after deducting from such reserve (a) all sums therein, including regular interest thereon, credited to him or her while a member of the uniformed correction force, prior to January fifth, nineteen hundred sixty-three, plus (b) all sums therein, including regular interest thereon, credited to him or her for the period between January fifth, nineteen hundred sixty-three and June thirtieth, nineteen hundred sixty-five, both dates inclusive, which are derived from that part of a reduced-rate-of-contribution factor in excess of two and one-half per cent, provided that such sums mentioned in subparagraphs (a) and (b) of this paragraph two, shall, at the time of his or her retirement, be withdrawn from the credit of such member, shall become the property of the retirement system, and shall be paid into the contingent reserve fund provided for in section 13-127 of this chapter; and

3. a pension which shall be equal to:

(a) fifty-five per cent of one-fiftieth of his or her final compensation multiplied by not to exceed twenty-five years of service in the uniformed correction force prior to October first, nineteen hundred fifty-one, credited to him or her, plus

(b) seventy-five per cent of one-fiftieth of his or her final compensation multiplied by not to exceed the number of years of service in the uniformed correction force on and after October first, nineteen hundred fifty-one, credited to him or her, which, together with the years of service in such force credited to him or her prior to such date, aggregates twenty-five years of service, plus

(c) fifty-five per cent of one-sixtieth of his or her final compensation for the number of years of city-service prior to October first, nineteen hundred fifty-one acquired other than in the uniformed correction force, plus

(d) seventy-five per cent of one-sixtieth of his or her final compensation multiplied by: (1) the number of years of city-service on and after October first, nineteen hundred fifty-one acquired other than in the uniformed correction force, and (2) the number of years of service in the uniformed correction force credited to him or her in excess of twenty-five.

e. Any correction member who has elected pursuant to this section, optional retirement after twenty or twenty-five years of allowable service and who shall have attained the minimum period of service retirement elected by him or her, upon his or her own written application to and filed with the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, shall be retired as of the date specified in said application, provided that at the time so specified for his or her retirement, his or her term or tenure of office or employment shall not have terminated or have been forfeited, and provided further that upon his or her request in writing, the member shall be granted a leave of absence from the date of filing said application until the date the retirement becomes effective.

f. Notwithstanding any other provision of this section, the provisions of section two hundred seven-d of the general municipal law shall apply to any correction member in the same manner and to the same extent as if the definition of "policeman" in such section included a paid officer or member of the uniformed correction force; provided, however, that any such member shall not be entitled to any rights or benefits under such section two hundred seven-d in the event that, if a member of the police force of the city and of the police pension fund maintained pursuant to subchapter two of chapter two of this title, who had elected a minimum period of service as a prerequisite for eligibility for retirement for service and who had served in the city police force beyond such minimum period of service, were to retire for any cause whatsoever on the same date as that on which such correction member retires for any cause whatsoever, the provisions of such section two hundred seven-d would not be applicable, operative or effective for determining the rights or benefits of such member of the city police force.

g. (1) Notwithstanding the provisions of subdivisions a, b, c and d of this section, a correction member shall,

upon retirement for service, and in lieu of any lesser amount prescribed by the applicable provisions of such subdivisions or otherwise, receive a retirement allowance on account of his or her minimum period of service rendered as a member of the uniformed correction force, which shall, subject to the provisions of this subdivision g, be equal to one-half of his or her annual compensation earnable upon the date of his or her retirement; provided, however, that any such member shall not be entitled to a retirement allowance, determined under and pursuant to the foregoing provisions of this paragraph one, on account of his or her minimum period of such service, in the event that, if a member of the police force of the city and of the police pension fund maintained pursuant to subchapter two of chapter two of this title, who had elected completion of a minimum period of service as a prerequisite for eligibility for retirement for service, were to retire for service on the same date as such correction member, the provisions of subdivision one of section two hundred seven-e of the general municipal law, as added by chapter two hundred fifty-eight of the laws of nineteen hundred sixty-three, would not be applicable, operative or effective for determining the rights to a retirement allowance of such member of the city police force for such minimum period of service and would not provide for such member of such police force, the retirement allowance specified in such subdivision one for such minimum period of service, in lieu of any lesser benefit otherwise prescribed.

(2) The addition and computation of a further pension, in order to provide such retirement allowance under paragraph one of subdivision g for a correction member, shall be subject to the terms and conditions of subdivision two of section two hundred seven-e of the general municipal law, as added by chapter two hundred fifty-eight of the laws of nineteen hundred sixty-three, in the same manner and to the same extent as if the term "uniformed force of the police department of such city", mentioned in such subdivision, included the uniformed correction force.

(3) Where additional retirement benefits are payable to correction members under the provisions of this section, other than the provisions of this subdivision and subdivision f thereof, or are required to be paid under the provisions of section two hundred seven-d of the general municipal law, as made applicable by the provisions of such subdivision f, such additional benefits shall be paid, for service in addition to and in excess of the minimum service requirements, in addition to the minimum retirement benefits required to be paid by this subdivision g.

h. Notwithstanding the provisions of section 13-166 of this chapter or any other section of the code to the contrary, no correction member electing optional retirement pursuant to this section, who is on the date of such election sixty-three or more years of age or who on or after such date attains the age of sixty-three years, shall continue serving as a member of the uniformed correction force but shall be retired, provided, however, that any such member who is not eligible for retirement at the age of sixty-three may continue to serve as a member of such force only until such time as he or she becomes eligible for retirement for service.

i. (1) The provisions of this section shall apply to correction members as herein provided, notwithstanding the provisions of sections 13-125 and 13-172 of this chapter or any other provision of the code or law to the contrary.

(2) Except as otherwise provided in this section, on and after July first, nineteen hundred sixty-five, each correction member shall have and shall be entitled and subject to the same rights, benefits, privileges and obligations as a member of the police force of the city who is a member of the police pension fund maintained pursuant to subchapter two of chapter two of this title, with respect to the matters provided for in sections 13-219, 13-225, 13-226, 13-239, 13-242, 13-243, 13-244, 13-251, 13-252, 13-254, 13-256, 13-257, 13-258, 13-261, 13-261.3 and 13-262 of such subchapter two; provided, however, that:

(a) each correction member shall have and shall be entitled and subject to such rights, benefits, privileges and obligations as to such matters only in so far as such rights, benefits, privileges and obligations accrue on and after July first, nineteen hundred sixty-five, and nothing contained in this paragraph two shall confer upon or create in relation to any correction member any such right, benefit, privilege or obligation with respect to any period of time or event occurring before July first, nineteen hundred sixty-five; and

(b) such rights, benefits, privileges and obligations conferred upon or created in relation to each correction

member by this paragraph two with respect to such matters provided for in such sections of such subchapter two, shall be in lieu of any and all rights, benefits, privileges and obligations which, if such member were not a correction member, (1) would accrue to him or her under this chapter, on and after July first, nineteen hundred sixty-five, with respect to such matters, or (2) he or she would have and would be entitled and subject to under this chapter, with respect to such matters, for any period of time on and after such date, or by reason of any event occurring on or after such date; and

(c) any and all rights, benefits, privileges and obligations of a correction member under this chapter, in so far as they accrued prior to July first, nineteen hundred sixty-five, or arose from or were based upon any event occurring prior to such date, shall be governed by and determined in accordance with the provisions of this chapter which would be applicable to such member if he or she were not a correction member; and

(d) for the purpose of determining the rights, benefits, privileges and obligations of a correction member under this paragraph two, nothing contained in subparagraphs (a) and (c) of this paragraph two shall be construed as depriving any such member (1) of credit, as otherwise granted or authorized by the provisions of this chapter, for city-service rendered prior to July first, nineteen hundred sixty-five, or (2) of credit for contributions made by such member prior to such date, or (3) of rights, accruing prior to such date, with respect to any plan for pensions-providing-for-increased-take-home-pay, provided that such rights as to such plan shall be reduced to the extent and in the manner provided in paragraph two of subdivisions c and d of this section and in paragraphs six and eleven of this subdivision i.

(3) The rights, benefits, privileges and obligations conferred upon or created in relation to correction members by paragraph two of this subdivision i shall be determined by the retirement system in accordance with the actuarial tables adopted from time to time for the police pension fund maintained pursuant to subchapter two of chapter two of this title and such tables shall be employed by the retirement system, in making any such determination, in the same manner as they are employed under such subchapter two in determining the corresponding rights, benefits, privileges and obligations of members of such police pension fund.

(4) The rights, benefits, privileges and obligations conferred upon or created in relation to correction members by paragraph two of this subdivision i shall be administered by the retirement system pursuant to its rules and regulations and nothing contained in this section or in any other law shall be construed as conferring upon the board of trustees of the police pension fund maintained pursuant to subchapter two of chapter two of this title, or the medical board or any other agency of such pension fund, any jurisdiction, power or duties to administer such rights, benefits, privileges or obligations or to adopt rules or regulations relating thereto.

(5) Notwithstanding any other provision of this section, where any part of the principal and interest with respect to any loan made to a member pursuant to section 13-140 of this chapter remains unpaid at the time when such member seeks to elect to become a correction member pursuant to the applicable provisions of subdivisions a, b, c and d of this section, such member shall not have the right to make such election unless he or she shall execute and acknowledge, and file with the board, a written agreement providing that from and after the execution of such agreement, all of his or her obligations and rights with respect to the principal and interest remaining unpaid on such loan shall be governed by section 13-239 of this title, and that the terms and conditions of such loan may be changed or modified by the board, with respect to any principal thereof and interest thereon remaining unpaid, so as to conform with the provisions of section 13-239 of this title. For the purpose of this paragraph and of paragraph two of this subdivision i, wherever the term "pension fund" appears in section 13-239 of this title, it shall be deemed to mean the retirement system.

(6) In any case where an ordinary death benefit or accidental death benefit is payable pursuant to the provisions of paragraph two of this subdivision i and the applicable provisions of section 13-243 or section 13-244 of this title, as the case may be, by reason of the death of a prior correction member, any reserve-for-increased-take-home-pay payable or allocable to any beneficiary under such provisions shall first be reduced in the manner prescribed by paragraph two of subdivision c or d, as the case may be, of this section and the amount of the deduction from such reserve, as

prescribed by subparagraphs (a) and (b) of such paragraph two, shall be withdrawn from the credit of such member, shall become the property of the retirement system and shall be paid into the contingent reserve fund provided for in section 13-127 of this chapter.

(7) In any case where an accidental death benefit is payable, pursuant to the provisions of paragraph two of this subdivision i and section 13-244 of this title, by reason of the death of a correction member, the provisions of section 13-244 of this title prescribing that the pension payable thereunder shall in no case be less than one-half of the full salary payable to a first-grade patrol officer on the date of death of such employee, shall not apply to the determination of the amount of the death benefit payable by reason of the death of such correction member, and the amount of such death benefit, including any pension payable, shall be determined as if such provisions were not included in such section 13-244 of this title.

(8) The provisions of section 13-150 of this chapter shall not apply to any correction member.

(9) For the purposes of paragraph two of this subdivision i, wherever the following terms appear in any section of subchapter two of chapter two of this title mentioned in such paragraph two, they shall be deemed to have the following meanings:

(a) "commissioner": head of the agency in which the correction member is employed;

(b) "medical board": the medical board of the retirement system;

(c) "city-service": city-service as defined in subdivision three of section 13-101 of this chapter.

(d) "board": the board of trustees of the retirement system.

(e) "police service": allowable service in the uniformed correction force as a member of such force, excluding any service credit acquired by transfer under any provision of law.

(f) "discontinued member": a correction member who has discontinued service in the uniformed correction force and has a vested right to a retirement allowance under the provisions of section 13-256 of this title.

(10) For the purposes of paragraph two of this subdivision i, the provisions of section 13-252 of this title shall not be applicable to a correction member for whom application for retirement for accident disability is made, in any case where the city-service claimed to have resulted in the alleged disability of such member was performed prior to July first, nineteen hundred sixty-five.

(11) In any case where a retirement allowance for accident disability is payable, pursuant to the provisions of paragraph two of this subdivision i and section 13-258 of this title, with respect to a prior correction member, any reserve-for-increased-take-home-pay constituting the basis of a pension payable pursuant to subdivision two of such section 13-258 of this title, shall first be reduced in the manner prescribed by paragraph two of subdivision c or d, as the case may be, of this section, and the amount of the deduction from such reserve, as prescribed by subparagraphs (a) and (b) of such paragraph two, shall be withdrawn from the credit of such member, shall become the property of the retirement system, and shall be paid into the contingent reserve fund provided for in section 13-127 of this chapter. The pension payable with respect to such member pursuant to such subdivision two of such section 13-258 of this title shall be the actuarial equivalent of the portion of such reserve remaining after such deduction.

(12) For the purposes of paragraph two of this subdivision i, the provisions of section 13-262 of this title shall be deemed to refer to a beneficiary receiving or entitled to receive a retirement allowance under subdivision a, b, c or d of this section, who re-enters city-service.

(13) The applicability of section 13-225 of this title to each prior correction member, pursuant to the provisions

of paragraph two of this subdivision i, shall be subject to the provisions of the opening paragraph of subdivision c or d of this section, as the case may be, with respect to rate of contribution.

(14) (a) For the purpose of computing an annuity and a pension, pursuant to paragraphs one and two of subdivision c of section 13-256 of this title, for a discontinued member, service credit acquired by such member pursuant to section forty-three of the retirement and social security law and accumulated contributions transferred pursuant to such section shall be excluded.

(b) For city-service credited to a discontinued member, other than allowable service in the uniformed correction force as a member of such force, such member shall receive, in lieu of any other pension under section 13-256 of this title for such other service:

(i) a pension which shall be equal to fifty-five per cent of one-sixtieth of his or her final compensation multiplied by the number of years of such other city-service rendered prior to October first, nineteen hundred fifty-one; and

(ii) a pension which shall be equal to seventy-five per cent of one-sixtieth of his final compensation multiplied by the number of years of such other city-service rendered on and after October first, nineteen hundred fifty-one.

j. For the purposes of this section, the words, "final compensation", shall mean the average annual compensation earnable by a member for city-service during the last five years of city-service, or during any other five consecutive years of city-service since he or she last became a member which such member shall designate.

k. In the event that a correction member, without having previously retired as such member, shall cease to be a member of the uniformed correction force and shall enter upon any other form of city-service, the provisions of subdivision g of section 13-107 of this chapter shall be inapplicable to such member, and in the event that any benefit shall become payable under this chapter to such member or to any beneficiary of such member, while such member is performing any such other form of city-service, his or her service in the uniformed correction force shall be credited and treated in the same manner as such other form of city-service.

l. Nothing contained in this section shall affect or decrease the amount of the contributions due from any correction member for any period prior to July first, nineteen hundred sixty-five or give rise to any right on the part of any such member to a refund of any contributions made by him or her for any period prior to such date or to any benefit in lieu of such refund.

m. The provisions of section 13-108 of this chapter shall be inapplicable to any correction member so long as he or she shall be such a member.

n. (1) The election by any correction member of optional retirement after twenty or twenty-five years of allowable service pursuant to the applicable provisions of subdivisions a, b, c and d of this section shall constitute a consent and agreement by each member that in the event that any provision of this section confers, or is adjudged by any court of competent jurisdiction to confer upon such member any right, benefit or privilege which is greater than the corresponding right, benefit or privilege which such member would possess if he or she were, under the same circumstances, a member of the police force of the city and a member of the police pension fund maintained pursuant to subchapter two of chapter two of this title, the legislature shall have the right and power to enact any law or laws or amendments thereto which diminish such right, benefit or privilege of such correction member so that the same becomes equal to such corresponding right, benefit or privilege which he or she would possess if he or she were a member of such police pension fund.

(2) In enacting this section, the legislature, in pursuance of the consent and agreement provided for by paragraph one of this subdivision n, does hereby reserve to the state of New York and to itself, the right and power to enact any law or laws or amendments thereto referred to in such paragraph one.

(3) For the purposes of this subdivision n, if any correction member was appointed a member of the uniformed correction force prior to March twenty-ninth, nineteen hundred forty, such police pension fund maintained pursuant to such subchapter two shall be deemed to have been in existence on the date of such appointment.

(4) Every written election of optional retirement executed and filed pursuant to the applicable provisions of subdivisions a, b, c and d of this section shall contain a copy of this subdivision n; provided, however, that the omission of such copy from any such written election shall not invalidate the consent granted and agreement made by such election, as herein prescribed.

o. (1) Any member who is a member of the uniformed correction force on the effective date of this subdivision o and at the time of filing an application as hereinafter in this subdivision provided, may, by a written application duly executed and acknowledged and filed with the board prior to January first, nineteen hundred seventy-one, elect to contribute to the retirement system for the right to be a correction member, under the terms and conditions set forth in this section and to retire after twenty or twenty-five years, as he or she may designate, of allowable service rendered in the uniformed correction force, at a retirement allowance computed pursuant to the applicable provisions of this section.

(2) The rate of contribution of any member making such election, shall, on and after July first, nineteen hundred sixty-five, or on the date of the commencement of his service both as a member of the uniformed correction force and as a member of the retirement system, whichever is later, be that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) at which, on such later date applicable to him or her, he or she would have been contributing to the police pension fund maintained pursuant to subchapter two of chapter two of this title if (a) he or she were on that date a member of such police pension fund and (b) he or she had elected, as his or her minimum period of service for retirement, the minimum period designated by him or her pursuant to this subdivision o, and (c) he or she had been appointed to the police force of the city on the date on which he or she was appointed to the uniformed correction force.

(3) (a) The reserve-for-increased-take-home-pay of any member who elects to become a correction member pursuant to the provisions of this subdivision o, shall, upon his or her death or retirement while a correction member, be reduced by deducting therefrom:

(i) all sums in such reserve, including regular interest thereon, credited to him or her with respect to any period prior to January fifth, nineteen hundred sixty-three, during which period he or she was a member of the uniformed correction force; and

(ii) all sums in such reserve, including regular interest thereon, credited to him or her with respect to the period from January fifth, nineteen hundred sixty-three to January twelfth, nineteen hundred sixty-seven, both dates inclusive, which sums are derived from that part of a reduced-rate-of-contribution factor in excess of two and one-half per cent.

(b) Any sums deducted as provided for in subparagraph (a) of this paragraph three shall be withdrawn from the credit of such member and shall become the property of the retirement system.

(4) In the case of any member who elects to become a correction member pursuant to the provisions of this subdivision o, a comparison shall be made between:

(a) the total amount of the member contributions actually made by him or her as required contributions, from the date as of which he or she is required to begin contributing as a correction member under the provisions of paragraph two of this subdivision o up to the date of commencement of deductions from his or her compensation at the required rate of contribution prescribed by such paragraph two; and

(b) the total amount of the required member contributions which he or she would have made with respect to the period mentioned in subparagraph (a) of this paragraph four, if he or she had contributed during such period at the

required rate prescribed by such paragraph two.

(5) (a) If the total amount computed pursuant to subparagraph (a) of paragraph four of this subdivision o is less than the total amount computed pursuant to subparagraph (b) of such paragraph four, such member shall contribute the amount of such deficiency, with regular interest thereon, to the appropriate fund of the retirement system by deductions from his or her compensation at a rate elected by him or her, which shall not be less than five per cent of his or her compensation. The actuarial equivalent of any balance of such deficiency which remains unpaid at the time any benefit may become payable to or with respect to such member shall be deducted from the benefit otherwise payable.

(b) If the total amount computed pursuant to subparagraph (a) of paragraph four of this subdivision o is more than the total amount computed pursuant to subparagraph (b) of such paragraph four, the amount of such excess shall be refunded to him or her without interest.

(6) Any member who elects to become a correction member pursuant to the provisions of this subdivision o shall in no event have or obtain any right, benefit or privilege which is greater than he or she would have had or obtained if he or she had elected to become a correction member at the time when he or she was originally eligible to make such election.

p. (1) For the purposes of this subdivision p, the following terms shall mean and include:

(a) "Member of another uniformed force pension plan". A transit police member, a housing police member or a sanitation member who has elected and is entitled to the benefits of section 13-160 of this chapter.

(b) "Service as a member of another uniformed force pension plan." Credited service rendered:

(i) in the uniformed transit police force while a transit police member; or

(ii) in the housing police service while a housing police member; or

(iii) in the uniformed force of the department of sanitation, while a member entitled to the benefits of section 13-160 of this chapter.

(2) In any case where:

(a) the minimum period of service for retirement of a correction member is twenty years, and such member, after last becoming a member of the retirement system and prior to becoming a correction member, was a member of another uniformed force pension plan on the basis of election of twenty years as his or her minimum period of service for retirement; or

(b) the minimum period of service for retirement of a correction member is twenty-five years, and such member, after last becoming a member of the retirement system and prior to becoming a correction member, was a member of another uniformed force pension plan on the basis of election of twenty or twenty-five years as his or her minimum period of service for retirement; such prior service as a member of another uniformed force pension plan rendered after he or she last became a member of the retirement system shall be credited to him or her for all purposes, including eligibility for benefit, as if it had been rendered in the uniformed correction force while a correction member.

q. (1) Notwithstanding any other provision of this code to the contrary, any correction member who was a member in city-service on the effective date of this subdivision and who shall thereafter purchase service credit pursuant to paragraph two of this subdivision for any period of continuous city-service in a position in the uniformed correction force, which period: (a) next precedes the date on which such member last became a member; and

(b) begins not earlier than the date six months prior to the date on which he last became a member; shall be credited with such service for the purpose of determining the amount of his retirement allowance and in computing the

minimum period of service retirement elected by him. Service credit used pursuant to this subdivision to satisfy such requirements shall in no event exceed six months.

(2) A correction member who elects to purchase service credit under the provisions of paragraph one of this subdivision shall pay into the annuity savings fund of the retirement system the amount of the employee contributions required to have been paid into the retirement system for such service, within one year after this subdivision shall take effect.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. i par (2) open par amended chap 582/1997 § 1, eff. Sept. 17, 1997.

Subd. q added chap 369/1996 § 1, eff. July 30, 1996

**DERIVATION**

Formerly § B3-36.3 added chap 954/1964 § 2

Sub i par 2 open par amended chap 827/1969 § 4

Sub i par 9 subpars e, f added chap 827/1969 § 5

Sub i par 14 added chap 827/1969 § 6

Sub i par 9 subpar d amended chap 866/1969 § 10

Subs o, p added chap 764/1970 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-156*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-156 Optional retirement after twenty or twenty-five years of allowable service rendered in the housing police service.

a. A new housing police member may elect, prior to the certification of his or her rate of contribution, if not previously a member of the retirement system, and within thirty days after his or her appointment to the housing police service, if such person is a member of the retirement system at the time of such appointment, to contribute on the basis of a minimum retirement period of twenty years of allowable service rendered in the housing police service by a written election duly executed and acknowledged, and filed with the board. The rate of contribution of a member so electing shall be equal to that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) at which he or she would contribute to the police pension fund maintained pursuant to subchapter two of chapter two of this title if (1) on the date of his or her appointment to the housing police service he or she had been appointed a member of the police force of the city, and (2) he or she had elected a minimum retirement period of twenty years as a member of such police pension fund. Upon the retirement of such a new housing police member for service, he or she shall receive a retirement allowance consisting of:

1. an annuity which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

2. a pension-providing-for-increased-take-home-pay, which shall be the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

3. a pension which shall be equal to:

(a) seventy-five per cent of one-fortieth of his or her final compensation multiplied by not to exceed the number of years of service in the housing police service on and after July first, nineteen hundred sixty-four, credited to him or her, which aggregates not more than twenty years of service, plus

(b) fifty-five per cent of one-sixtieth of his or her final compensation for the number of years of city-service prior to October first, nineteen hundred fifty-one acquired other than in the housing police service, plus

(c) seventy-five per cent of one-sixtieth of his or her final compensation multiplied by: (1) the number of years of city-service after October first, nineteen hundred fifty-one, acquired other than in the housing police service, and (2) the number of years of service in the housing police service credited to him or her in excess of twenty.

b. A new housing police member may elect, prior to the certification of his or her rate of contribution, if not previously a member of the retirement system, and within thirty days after his or her appointment to the housing police service, if such person is a member of the retirement system at the time of such appointment, to contribute on the basis of a minimum retirement period of twenty-five years of allowable service rendered in the housing police service, by a written election duly executed and acknowledged, and filed with the board. The rate of contribution of a member so electing shall be equal to that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) at which such member would contribute to the police pension fund maintained pursuant to subchapter two of chapter two of this title if (1) on the date of his or her appointment to the housing police service he or she had been appointed a member of the police force of the city, and (2) he or she had elected a minimum retirement period of twenty-five years as a member of such police pension fund. Upon the retirement of such a new housing police member for service, he or she shall receive a retirement allowance consisting of:

1. an annuity which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

2. a pension-providing-for-increased-take-home-pay which shall be the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

3. a pension which shall be equal to:

(a) seventy-five per cent of one-fiftieth of his or her final compensation multiplied by not to exceed the number of years of service in the housing police service on and after July first, nineteen hundred sixty-four, credited to him or her, which aggregates not more than twenty-five years of service, plus

(b) fifty-five per cent of one-sixtieth of his or her final compensation for the number of years of city-service prior to October first, nineteen hundred fifty-one acquired other than in the housing police service, plus

(c) seventy-five per cent of one-sixtieth of his or her final compensation multiplied by: (1) the number of years of city-service after October first, nineteen hundred fifty-one acquired other than in the housing police service, and (2) the number of years of service in the housing police service credited to him or her in excess of twenty-five.

c. A prior housing police member may elect, on or before September thirtieth, nineteen hundred sixty-five, by a written election duly executed and acknowledged, and filed with the board, to contribute on and after July first, nineteen hundred sixty-five at a rate of contribution equal to that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) at which he or she would have been contributing on such July first to the police pension fund maintained pursuant to subchapter two of chapter two of this title if (1) he or she were on that date a member of the police force of the city and of such police pension fund, and (2) he or she had elected a minimum retirement period of twenty years as a member of such fund, and (3) he or she had been appointed to the city police force on the date on which he or she was appointed to the housing police service. Upon the retirement of such a prior

housing police member for service, he or she shall receive a retirement allowance consisting of:

1. an annuity which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

2. a pension-providing-for-increased-take-home-pay which shall be the actuarial equivalent of that portion of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any, remaining after deducting from such reserve (a) all sums therein, including regular interest thereon, credited to him or her while serving in the housing police service, prior to January fifth, nineteen hundred sixty-three, plus (b) all sums therein, including regular interest thereon, credited to him or her for the period between January fifth, nineteen hundred sixty-three and June thirtieth, nineteen hundred sixty-five, both dates inclusive, which are derived from that part of a reduced-rate-of-contribution factor in excess of two and one-half per cent, provided that such sums mentioned in subparagraphs (a) and (b) of this paragraph two, shall, at the time of his or her retirement, be withdrawn from the credit of such member, shall become the property of the retirement system, and shall be paid into the contingent reserve fund provided for in section 13-127 of this chapter; and

3. a pension which shall be equal to:

(a) seventy-five per cent of one-fortieth of his or her final compensation multiplied by not to exceed twenty years of service in the housing police service credited to him or her, plus

(b) fifty-five per cent of one-sixtieth of his or her final compensation for the number of years of city-service prior to October first, nineteen hundred fifty-one acquired other than in the housing police service, plus

(c) seventy-five per cent of one-sixtieth of his or her final compensation multiplied by: (1) the number of years of city-service on and after October first, nineteen hundred fifty-one, acquired other than in the housing police service, and (2) the number of years of service in the housing police service credited to him or her in excess of twenty.

d. A prior housing police member may elect, on or before September thirtieth, nineteen hundred sixty-five, by a written election duly executed and acknowledged, and filed with the board, to contribute on and after July first, nineteen hundred sixty-five at a rate of contribution equal to that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) at which he or she would have been contributing on such July first to the police pension fund maintained pursuant to subchapter two of chapter two of this title if (1) he or she were on that date a member of the police force of the city and of such police pension fund, and (2) he or she had elected a minimum retirement period of twenty-five years as a member of such fund, and (3) he or she had been appointed to the city police force on the date on which he or she was appointed to the housing police service. Upon the retirement of such a member for service he or she shall receive a retirement allowance consisting of:

1. an annuity which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

2. a pension-providing-for-increased-take-home-pay which shall be the actuarial equivalent of that portion of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any, remaining after deducting from such reserve (a) all sums therein, including regular interest thereon, credited to him or her while serving in the housing police service, prior to January fifth, nineteen hundred sixty-three, plus (b) all sums therein, including regular interest thereon, credited to him or her for the period between January fifth, nineteen hundred sixty-three and June thirtieth, nineteen hundred sixty-five, both dates inclusive, which are derived from that part of a reduced-rate-of-contribution factor in excess of two and one-half per cent, provided that such sums mentioned in subparagraphs (a) and (b) of this paragraph two, shall, at the time of his or her retirement, be withdrawn from the credit of such member, shall become the property of the retirement system, and shall be paid into the contingent reserve fund provided for in section 13-127 of this chapter; and

3. a pension which shall be equal to:

(a) seventy-five per cent of one-fiftieth of his or her final compensation multiplied by not to exceed twenty-five years of service in the housing police service credited to him or her, plus

(b) fifty-five per cent of one-sixtieth of his or her final compensation for the number of years of city-service prior to October first, nineteen hundred fifty-one acquired other than in the housing police service, plus

(c) seventy-five per cent of one-sixtieth of his or her final compensation multiplied by: (1) the number of years of city-service on and after October first, nineteen hundred fifty-one acquired other than in the housing police service, and (2) the number of years of service in the housing police service credited to him or her in excess of twenty-five.

e. Any housing police member who has elected pursuant to this section, optional retirement after twenty or twenty-five years of allowable service and who shall have attained the minimum period of service retirement elected by him or her, upon his or her own written application to and filed with the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, shall be retired as of the date specified in said application, provided that at the time so specified for his or her retirement, his or her term or tenure of office or employment shall not have terminated or have been forfeited, and provided further that upon his or her request in writing, the member shall be granted a leave of absence from the date of filing said application until the date the retirement becomes effective.

f. Notwithstanding any other provision of this section, the provisions of section two hundred seven-d of the general municipal law shall apply to any housing police member in the same manner and to the same extent as if the definition of "policeman" in such section included a paid officer or member of the housing police service; provided, however, that any such member shall not be entitled to any rights or benefits under such section two hundred seven-d in the event that, if a member of the police force of the city and of the police pension fund maintained pursuant to subchapter two of chapter two of this title, who had elected a minimum period of service as a prerequisite for eligibility for retirement for service and who had served in the city police force beyond such minimum period of service, were to retire for any cause whatsoever on the same date as that on which such housing police member retires for any cause whatsoever, the provisions of such section two hundred seven-d would not be applicable, operative or effective for determining the rights or benefits of such member of the city police force.

g. (1) Notwithstanding the provisions of subdivisions a, b, c and d of this section, a housing police member shall, upon retirement for service, and in lieu of any lesser amount prescribed by the applicable provisions of such subdivisions or otherwise, receive a retirement allowance on account of his or her minimum period of service rendered in the housing police service, which shall, subject to the provisions of this subdivision g, be equal to one-half of his or her annual compensation earnable upon the date of his or her retirement; provided, however, that any such member shall not be entitled to a retirement allowance, determined under and pursuant to the foregoing provisions of this paragraph one, on account of his or her minimum period of such service, in the event that, if a member of the police force of the city and of the police pension fund maintained pursuant to subchapter two of chapter two of this title, who had elected completion of a minimum period of service as a prerequisite for eligibility for retirement for service, were to retire for service on the same date as such housing police member, the provisions of subdivision one of section two hundred seven-e of the general municipal law, as added by chapter two hundred fifty-eight of the laws of nineteen hundred sixty-three, would not be applicable, operative or effective for determining the rights to a retirement allowance of such member of the city police force for such minimum period of service and would not provide for such member of such police force, the retirement allowance specified in such subdivision one for such minimum period of service, in lieu of any lesser benefit otherwise prescribed.

(2) Subject to the provisions of section 13-130 of this chapter, the addition and computation of a further pension, in order to provide the retirement allowance mentioned in paragraph one of this subdivision g for housing police members, shall be subject to the terms and conditions of subdivision two of section two hundred seven-e of the general

municipal law, as added by chapter two hundred fifty-eight of the laws of nineteen hundred sixty-three, in the same manner and to the same extent as if the term "uniformed force of the police department of such city", mentioned in such subdivision, included the housing police service.

(3) Where additional retirement benefits are payable to housing police members under the provisions of this section, other than the provisions of this subdivision and subdivision f thereof, or are required to be paid under the provisions of section two hundred seven-d of the general municipal law, as made applicable by the provisions of such subdivision f, such additional benefits shall be paid, for service in addition to and in excess of the minimum service requirements, in addition to the minimum retirement benefits required to be paid by this subdivision g.

h. (1) Subject to the provisions of paragraph three of this subdivision, when a housing police captain who is a housing police member shall have acted under regular detail in any capacity above the rank of housing police captain and shall have received additional compensation therefor, during a period or periods aggregating two years, such housing police officer, upon retirement pursuant to the provisions of subdivision e of this section, shall be entitled to a retirement allowance equal to that to which he would be entitled under the provisions of subdivision c of section 14-114 of this code, if:

(a) he had been a captain of the police force of the city who retired after having acted under regular detail in a capacity above the rank of captain in such city police force for a period or periods aggregating two years, and

(b) the highest salary received by him during such assumed period or periods of service in a capacity above the rank of captain in such city police force were identical with the highest salary actually received by such housing police officer during the period or periods of his service as a housing police officer in a capacity above the rank of housing police captain, and

(c) he had served in such city police force for a total period of time identical with his total period of service in the uniformed housing police service, and

(d) he had made during such assumed period of service in the city police force, the same election or elections as to waiver and withdrawal of waiver of a reduction in contributions by reason of any plan for pensions-providing-for-increased-take-home-pay, as he made during such period of service in the uniformed housing police service.

(2) Subject to the provisions of paragraph three of this subdivision, when a housing police captain who is a housing police member shall have served in the rank of housing police captain for a period of ten years, he shall have the same right to a retirement allowance as if he had been detailed to act as inspector and had served as such and had received additional compensation therefor during a period or periods of time aggregating two years. A housing police captain who is a housing police member and who shall have served as such less than ten years and more than five years, shall have the same right to a retirement allowance as if he had been detailed to act as a deputy inspector and had served as such and had received additional compensation therefor during a period or periods of time aggregating two years. For the purpose of determining the retirement allowance to which any housing police captain is entitled under the provisions of this paragraph, the salary of an inspector or deputy inspector of the police force of the city, at the time of such retirement of such housing police captain, shall be deemed to be identical with the salary of an inspector or deputy inspector, as the case may be, in the housing police service, at the same time. In the event that the detail of housing police captain acting as inspector, or deputy inspector, does not exist in the housing police service or the uniformed housing police service, then, for the purposes of this paragraph two, it shall be deemed that such detail does exist with the same salary as is applicable to such rank in the New York city police force at the time of such retirement of any such housing police captain.

(3) In any case where a housing police officer entitled to a retirement allowance under paragraph one or two of this subdivision, is a prior housing police member, and by reason of any such waiver or waivers by such housing police

officer, he is entitled to receive a pension-providing-for-increased-take-home-pay, in addition to the portions of his retirement allowance otherwise payable under the foregoing provisions of this subdivision, such pension-providing-for-increased-take-home-pay shall be reduced in the manner prescribed by paragraph two of subdivision c or d of this section, as the case may be, and the pension-providing-for-increased-take-home-pay paid to such housing police officer shall be such pension as so reduced, and the sums deducted from the reserve-for-increased-take-home-pay, as prescribed by such paragraph two, shall, at the time of retirement of such housing police officer, be withdrawn from his credit, shall become the property of the retirement system and should be paid into the contingent reserve fund provided for in section 13-127 of this code.

i. Notwithstanding the provisions of section 13-166 of this chapter or any other section of the code to the contrary, no housing police member electing optional retirement pursuant to this section, who is on the date of such election sixty-three or more years of age or who on or after such date attains the age of sixty-three years, shall continue serving in the housing police service but shall be retired, provided, however, that any such member who is not eligible for retirement at the age of sixty-three may continue to serve in such service only until such time as he or she becomes eligible for retirement for service.

j. (1) The provisions of this section shall apply to housing police members as herein provided, notwithstanding the provisions of sections 13-125 and 13-172 of this chapter or any other provision of the code or law to the contrary.

(2) Except as otherwise provided in this section and section 13-130 of this chapter, on and after July first, nineteen hundred sixty-five, each housing police member shall have and shall be entitled and subject to the same rights, benefits, privileges and obligations as a member of the police force of the city who is a member of the police pension fund maintained pursuant to subchapter two of chapter two of this title, with respect to the matters provided for in sections 13-219, 13-225, 13-226, 13-239, 13-242, 13-243, 13-244, 13-251, 13-252, 13-254, 13-256, 13-257, 13-258, 13-261, 13-261.2, 13-261.3 and 13-262 of such subchapter two; provided, however, that:

(a) each housing police member shall have and shall be entitled and subject to such rights, benefits, privileges and obligations as to such matters only in so far as such rights, benefits, privileges and obligations accrue on and after July first, nineteen hundred sixty-five, and nothing contained in this paragraph two shall confer upon or create in relation to any housing police member any such right, benefit, privilege or obligation with respect to any period of time or event occurring before July first, nineteen hundred sixty-five; and

(b) such rights, benefits, privileges and obligations conferred upon or created in relation to each housing police member by this paragraph two with respect to such matters provided for in such sections of such subchapter two, shall be in lieu of any and all rights, benefits, privileges and obligations which, if such member were not a housing police member, (1) would accrue to him or her under this chapter, on and after July first, nineteen hundred sixty-five, with respect to such matters, or (2) he or she would have and would be entitled and subject to under this chapter, with respect to such matters, for any period of time on and after such date, or by reason of any event occurring on or after such date; and

(c) any and all rights, benefits, privileges and obligations of a housing police member under this chapter, in so far as they accrued prior to July first, nineteen hundred sixty-five, or arose from or were based upon any event occurring prior to such date, shall be governed by and determined in accordance with the provisions of this title which would be applicable to such member if he or she were not a housing police member; and

(d) for the purpose of determining the rights, benefits, privileges and obligations of a housing police member under this paragraph two, nothing contained in subparagraphs (a) and (c) of this paragraph two shall be construed as depriving any such member (1) of credit, as otherwise granted or authorized by the provisions of this chapter, for city-service rendered prior to July first, nineteen hundred sixty-five, or (2) of credit for contributions made by such member prior to such date, or (3) of rights, accruing prior to such date, with respect to any plan for pensions-providing-for-increased-take-home-pay, provided that such rights as to such plan shall be reduced to the extent

and in the manner provided in paragraph two of subdivisions c and d of this section and in paragraphs six and eleven of this subdivision i.

(3) The rights, benefits, privileges and obligations conferred upon or created in relation to housing police members by paragraph two of this subdivision i shall be determined by the retirement system in accordance with the actuarial tables adopted from time to time for the police pension fund maintained pursuant to subchapter two of chapter two of this title and such tables shall be employed by the retirement system, in making any such determination, in the same manner as they are employed under such subchapter two in determining the corresponding rights, benefits, privileges and obligations of members of such police pension fund.

(4) The rights, benefits, privileges and obligations conferred upon or created in relation to housing police members by paragraph two of this subdivision i shall be administered by the retirement system pursuant to its rules and regulations and nothing contained in this section or in any other law shall be construed as conferring upon the board of trustees of the police pension fund maintained pursuant to subchapter two of chapter two of this title, or the medical board or any other agency of such pension fund, any jurisdiction, power or duties to administer such rights, benefits, privileges or obligations or to adopt rules or regulations relating thereto.

(5) Notwithstanding any other provision of this section, where any part of the principal and interest with respect to any loan made to a member pursuant to section 13-140 of this chapter remains unpaid at the time when such member seeks to elect to become a housing police member pursuant to the applicable provisions of subdivisions a, b, c and d of this section, such member shall not have the right to make such election unless he or she shall execute and acknowledge, and file with the board, a written agreement providing that from and after the execution of such agreement, all of his or her obligations and rights with respect to the principal and interest remaining unpaid on such loan shall be governed by section 13-239 of this title, and that the terms and conditions of such loan may be changed or modified by the board, with respect to any principal thereof and interest thereon remaining unpaid, so as to conform with the provisions of section 13-239 of this title. For the purposes of this paragraph and of paragraph two of this subdivision i, wherever the term "pension fund" appears in such section, it shall be deemed to mean the retirement system.

(6) In any case where an ordinary death benefit or accidental death benefit is payable pursuant to the provisions of paragraph two of this subdivision i and the applicable provisions of section 13-243 or section 13-244 of this title, as the case may be, by reason of the death of a prior housing police member, any reserve-for-increased-take-home-pay payable or allocable to any beneficiary under such provisions shall first be reduced in the manner prescribed by paragraph two of subdivision c or d, as the case may be, of this section and the amount of the deduction from such reserve, as prescribed by subparagraphs (a) and (b) of such paragraph two, shall be withdrawn from the credit of such member, shall become the property of the retirement system and shall be paid into the contingent reserve fund provided for in section 13-127 of this chapter.

(7) In any case where an accidental death benefit is payable, pursuant to the provisions of paragraph two of this subdivision i and section 13-244 of this title, by reason of the death of a housing police member, the provisions of section 13-244 of this title prescribing that the pension payable thereunder shall in no case be less than one-half of the full salary payable to a first-grade police officer on the date of death of such employee, shall not apply to the determination of the amount of the death benefit payable by reason of the death of such housing police member, and the amount of such death benefit, including any pension payable, shall be determined as if such provisions were not included in such section.

(8) The provisions of section 13-150 of this chapter shall not apply to any housing police member.

(9) For the purposes of paragraph two of this subdivision i, wherever the following terms appear in any section of subchapter two of chapter two of this title mentioned in such paragraph two, they shall be deemed to have the following meanings:

(a) "commissioner": the New York city housing authority;

(b) "medical board": the medical board of the retirement system;

(c) "city-service": city-service as defined in subdivision three of section 13-101 of this chapter;

(d) "board": the board of trustees of the retirement system;

(e) "police service": allowable service in the housing police service as a member of such service, excluding any service credit acquired by transfer under any provision of law;

(f) "discontinued member": a housing police member who has discontinued service in the housing police service and has a vested right to a retirement allowance under the provisions of section 13-256 of this title.

(10) For the purposes of paragraph two of this subdivision i, the provisions of section 13-252 of this title shall not be applicable to a housing police member for whom application for retirement for accident disability is made, in any case where the city-service claimed to have resulted in the alleged disability of such member was performed prior to July first, nineteen hundred sixty-five.

(11) In any case where a retirement allowance for accident disability is payable, pursuant to the provisions of paragraph two of this subdivision i and section 13-258 of this title, with respect to a prior housing police member, any reserve-for-increased-take-home-pay constituting the basis of a pension payable pursuant to subdivision two of section 13-258 of this title, shall first be reduced in the manner prescribed by paragraph two of subdivision c or d, as the case may be, of this section, and the amount of the deduction from such reserve, as prescribed by subparagraphs (a) and (b) of such paragraph two, shall be withdrawn from the credit of such member, shall become the property of the retirement system, and shall be paid into the contingent reserve fund provided for in section 13-127 of this chapter. The pension payable with respect to such member pursuant to such subdivision two of section 13-258 of this title shall be the actuarial equivalent of the portion of such reserve remaining after such deduction.

(12) For the purposes of paragraph two of this subdivision i, the provisions of section 13-262 of this title shall be deemed to refer to a beneficiary receiving or entitled to receive a retirement allowance under subdivision a, b, c or d of this section, who re-enters city-service.

(13) The applicability of section 13-225 of this title to each prior housing police member, pursuant to the provisions of paragraph two of this subdivision i, shall be subject to the provisions of the opening paragraph of subdivision c or d of this section, as the case may be, with respect to rate of contribution.

(14) (a) For the purpose of computing an annuity and a pension, pursuant to paragraphs one and two of subdivision c of section 13-256 of this title, for a discontinued member, service credit acquired by such member pursuant to section forty-three of the retirement and social security law and accumulated contributions transferred pursuant to such section shall be excluded.

(b) For city-service credited to a discontinued member, other than allowable service in the housing police service as a member of such service, such member shall receive, in lieu of any other pension under section 13-256 of this title for such other service:

(i) a pension which shall be equal to fifty-five per cent of one-sixtieth of his or her final compensation multiplied by the number of years of such other city-service rendered prior to October first, nineteen hundred fifty-one; and

(ii) a pension which shall be equal to seventy-five per cent of one-sixtieth of his or her final compensation multiplied by the number of years of such other city-service rendered on and after October first, nineteen hundred fifty-one.

k. For the purposes of this section, the words, "final compensation", shall mean the average annual compensation earnable by a member for city-service during the last five years of city-service, or during any other five consecutive years of city-service since he or she last became a member which such member shall designate.

l. In the event that a housing police member, without having previously retired as such member, shall cease to be employed in the housing police service and shall enter upon any other form of city service, the provisions of subdivision g of section 13-107 of this chapter shall be inapplicable to such member, and in the event that any benefit shall become payable under this chapter to such member or to any beneficiary of such member, while such member is performing any such other form of city-service, his or her service in the housing police service shall be credited and treated in the same manner as such other form of city-service.

m. Nothing contained in this section shall affect or decrease the amount of the contributions due from any housing police member for any period prior to July first, nineteen hundred sixty-five or give rise to any right on the part of any such member to a refund of any contributions made by such member for any period prior to such date or to any benefit in lieu of such refund.

n. The provisions of section 13-108 of this chapter shall be inapplicable to any housing police member so long as he or she shall be such a member.

o. (1) The election by any housing police member of optional retirement after twenty or twenty-five years of allowable service pursuant to the applicable provisions of subdivisions a, b, c and d of this section shall constitute a consent and agreement by each member that in the event that any provision of this section confers, or is adjudged by any court of competent jurisdiction to confer upon such member any right, benefit or privilege which is greater than the corresponding right, benefit or privilege which such member would possess if he or she were, under the same circumstances, a member of the police force of the city and a member of the police pension fund maintained pursuant to subchapter two of chapter two of this title, the legislature shall have the right and power to enact any law or laws or amendments thereto which diminish such right, benefit or privilege of such housing police member so that the same becomes equal to such corresponding right, benefit or privilege which such member would possess if he or she were a member of such police pension fund.

(2) In enacting this section, the legislature, in pursuance of the consent and agreement provided for by paragraph one of this subdivision n, does hereby reserve to the state of New York and to itself, the right and power to enact any law or laws or amendments thereto referred to in such paragraph one.

(3) Every written election of optional retirement executed and filed pursuant to the applicable provisions of subdivisions a, b,c and d of this section shall contain a copy of this subdivision n; provided, however, that the omission of such copy from any such written election shall not invalidate the consent granted and agreement made by such election, as herein prescribed.

p. (1) Any member who holds a position in the housing police service on the effective date of this subdivision o and at the time of filing an application as hereinafter in this subdivision provided, may, by a written application duly executed and acknowledged and filed with the board prior to January first, nineteen hundred seventy-one, elect to contribute to the retirement system for the right to be a housing police member under the terms and conditions set forth in this section and to retire after twenty or twenty-five years, as such member may designate, of allowable service rendered in the housing police service, at a retirement allowance computed pursuant to the applicable provisions of this section.

(2) The rate of contribution of any member making such election, shall, on and after July first, nineteen hundred sixty-five, or on the date of the commencement of his or her service both in a position in the housing police service and as a member of the retirement system, whichever is later, be that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for

pensions-providing-for-increased-take-home-pay) at which, on such later date applicable to him or her, he or she would have been contributing to the police pension fund maintained pursuant to subchapter two of chapter two of this title if (a) he or she were on that date a member of such police pension fund and (b) he or she had elected, as his or her minimum period of service for retirement, the minimum period designated by him or her pursuant to this subdivision o, and (c) he or she had been appointed to the police force of the city on the date on which he or she was appointed to a position in the housing police service.

(3) (a) The reserve-for-increased-take-home-pay of any member who elects to become a housing police member pursuant to the provisions of this subdivision o, shall, upon his or her death or retirement while a housing police member, be reduced by deducting therefrom:

(i) all sums in such reserve, including regular interest thereon, credited to him or her with respect to any period prior to January fifth, nineteen hundred sixty-three, during which period he or she held a position in the housing police service; and

(ii) all sums in such reserve, including regular interest thereon, credited to him or her with respect to the period from January fifth, nineteen hundred sixty-three to January twelfth, nineteen hundred sixty-seven, both dates inclusive, which sums are derived from that part of a reduced-rate-of-contribution factor in excess of two and one-half per cent.

(b) Any sums deducted as provided for in subparagraph (a) of this paragraph three shall be withdrawn from the credit of such member and shall become the property of the retirement system.

(4) In the case of any member who elects to become a housing police member pursuant to the provisions of this subdivision o, a comparison shall be made between:

(a) the total amount of the member contributions actually made by him or her as required contributions, from the date as of which he or she is required to begin contributing as a housing police member under the provisions of paragraph two of this subdivision o up to the date of commencement of deductions from his or her compensation at the required rate of contribution prescribed by such paragraph two; and

(b) the total amount of the required member contributions which such member would have made with respect to the period mentioned in subparagraph (a) of this paragraph four, if he or she had contributed during such period at the required rate prescribed by such paragraph two.

(5) (a) If the total amount computed pursuant to subparagraph (a) of paragraph four of this subdivision o is less than the total amount computed pursuant to subparagraph (b) of such paragraph four, such member shall contribute the amount of such deficiency, with regular interest thereon, to the appropriate fund of the retirement system by deductions from his or her compensation at a rate elected by him or her, which shall not be less than five per cent of his or her compensation. The actuarial equivalent of any balance of such deficiency which remains unpaid at the time any benefit may become payable to or with respect to such member shall be deducted from the benefit otherwise payable.

(b) If the total amount computed pursuant to subparagraph (a) of paragraph four of this subdivision o is more than the total amount computed pursuant to subparagraph (b) of such paragraph four, the amount of such excess shall be refunded to such member without interest.

(6) Any member who elects to become a housing police member pursuant to the provisions of this subdivision o shall in no event have or obtain any right, benefit or privilege which is greater than he or she would have had or obtained if he or she had elected to become a housing police member at the time when he or she was originally eligible to make such election.

q. (1) Notwithstanding any other provision of this section or chapter to the contrary, any housing police member who was a member in city-service on the effective date of this subdivision and who shall hereafter purchase service

credit pursuant to paragraph two of this subdivision for any period of continuous city-service in a position in the uniformed housing police service, which period:

(a) next precedes the date on which such member last became a member; and

(b) begins not earlier than the date six months prior to the date on which he or she last became a member; shall be credited with such service for the purpose of determining the amount of his or her retirement allowance and in computing the minimum period of service retirement elected by him or her. Service credit used pursuant to this subdivision to satisfy such requirements shall in no event exceed six months.

(2) A housing police member who elects to purchase service credit under the provisions of paragraph one of this subdivision shall pay into the annuity savings fund of the retirement system the amount of the employee contributions required to have been paid into the retirement system for such service, within one year after this subdivision shall take effect.

(3) Notwithstanding the provisions of paragraph two of this subdivision, any housing police member who desires to purchase service credit under the provisions of paragraph one of this subdivision and who, for reasons not ascribable to his or her negligence, did not or was unable to avail himself or herself of the opportunity to purchase service credit at an earlier date, shall be allowed to elect to purchase service credit under the provisions of paragraph one of this subdivision if he or she shall pay into the annuity savings of the retirement system the amount of the employee contributions required to have been paid into the retirement system for such service by July first, nineteen hundred ninety-three.

r. Notwithstanding the provisions of any general, special, local law charter, administrative code or rule or regulation to the contrary, the payment of any pension to a housing police member shall not be revoked, repealed or diminished by reason of the pensioner holding or receiving any compensation as the result of his or her election to a public office under the state of New York, or of any city, county or other political subdivision or agency or board of the state of New York.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. h added chap 933/1990 § 1, eff. Nov. 9, 1990.

Subd. i relettered chap 933/1990 § 1, eff. Nov. 9, 1990. (formerly subd. h)

Subd. j relettered chap 933/1990 § 1, eff. Nov. 9, 1990. (formerly subd. i)

Subd. j par (2) open par amended chap 582/1997 § 2, eff. Sept. 17, 1997.

Subd. j par (2) open par amended chap 755/1987 § 1.

Subds. k-p relettered chap 933/1990 § 1, eff. Nov. 9, 1990. (formerly subds. j-o)

Subd. q relettered chap 933/1990 § 1 eff. Nov. 9, 1990. (formerly subd. p) par (3) added chap 672/1992 § 1 eff. July 31, 1992.

Subd. r relettered chap 933/1990 § 1, eff. Nov. 9, 1990. (formerly subd. q) added chap 678/1989 § 1.

**DERIVATION**

Formerly § B3-36.3 added chap 971/1964 § 2

Sub i par 2 open par amended chap 827/1969 § 7

Sub i par 9 subpars e, f added chap 827/1969 § 8

Sub i par 14 added chap 827/1969 § 9

Sub i par 9 subpar d amended chap 866/1969 § 11

Sub o added chap 765/1970 § 1

Sub p added chap 861/1980 § 1

**CASE NOTES**

¶ 1. There is no impairment of pension rights in the merger of the Housing Authority Police Department with the NYC Police Department because both have the same benefits, Ad Cd §13-156, and since the transfer is pursuant to Ad Cd §13-143 the "three-year rule" which affects the benefits received is inapplicable and the housing police officers will receive full pension credit immediately upon transfer. Nickels v. NYC Hous. Auth., 208 AD2d 203 [1995].

¶ 2. Neither section 13-156(j)(2) nor 13-157(j)(2) requires parity of variable supplemental benefits between City police retirees and Housing and Transit Police retirees. Gagliardo v. Dinkins, 636 N.Y.S.2d 314 (App.Div. 1st Dept. 1996).

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-157*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-157 Optional retirement after twenty or twenty-five years of allowable service rendered in the uniformed transit police force.

a. A new transit police member may elect, prior to the certification of his or her rate of contribution, if not previously a member of the retirement system, and within thirty days after his or her appointment to the uniformed transit police force, if such person is a member of the retirement system at the time of such appointment, to contribute on the basis of a minimum retirement period of twenty years of allowable service rendered in such transit police force, by a written election duly executed and acknowledged, and filed with the board. The rate of contribution of a member so electing shall be equal to that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) at which he or she would contribute to the police pension fund maintained pursuant to subchapter two of chapter two of this title if (1) on the date of his or her appointment as a member of the uniformed transit police force he or she had been appointed a member of the police force of the city, and (2) he or she had elected a minimum retirement period of twenty years as a member of such police pension fund. Upon the retirement of such a new transit police member for service, such member shall receive a retirement allowance consisting of:

1. an annuity which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

2. a pension-providing-for-increased-take-home-pay, which shall be the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

3. a pension which shall be equal to:

(a) seventy-five per cent of one-fortieth of his or her final compensation multiplied by not to exceed the number of years of service in the uniformed transit police force on and after July first, nineteen hundred sixty-four, credited to him or her, which aggregates not more than twenty years of service, plus

(b) fifty-five per cent of one-sixtieth of his or her final compensation for the number of years of city-service prior to October first, nineteen hundred fifty-one acquired other than in the uniformed transit police force, plus

(c) seventy-five per cent of one-sixtieth of his or her final compensation multiplied by: (1) the number of years of city-service after October first, nineteen hundred fifty-one, acquired other than in the uniformed transit police force, and (2) the number of years of service in the uniformed transit police force credited to him or her in excess of twenty.

b. A new transit police member may elect, prior to the certification of his or her rate of contribution, if not previously a member of the retirement system, and within thirty days after his or her appointment to the uniformed transit police force, if such person is a member of the retirement system at the time of such appointment, to contribute on the basis of a minimum retirement period of twenty-five years of allowable service rendered in such transit police force, by a written election duly executed and acknowledged, and filed with the board. The rate of contribution of a member so electing shall be equal to that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) at which he or she would contribute to the police pension fund maintained pursuant to subchapter two of chapter two of this title if (1) on the date of his or her appointment as a member of the uniformed transit police force he or she had been appointed a member of the police force of the city, and (2) he or she had elected a minimum retirement period of twenty-five years as a member of such police pension fund. Upon the retirement of such a new transit police member for service, he or she shall receive a retirement allowance consisting of:

1. an annuity which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

2. a pension providing-for-increased-take-home-pay which shall be the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

3. a pension which shall be equal to: (a) seventy-five per cent of one-fiftieth of his or her final compensation multiplied by not to exceed the number of years of service in the uniformed transit police force on and after July first, nineteen hundred sixty-four, credited to him or her, which aggregates not more than twenty-five years of service, plus

(b) fifty-five per cent of one-sixtieth of his or her final compensation for the number of years of city-service prior to October first, nineteen hundred fifty-one acquired other than in the uniformed transit police force, plus

(c) seventy-five per cent of one-sixtieth of his or her final compensation multiplied by: (1) the number of years of city-service after October first, nineteen hundred fifty-one acquired other than in the uniformed transit police force, and (2) the number of years of service in the uniformed transit police force credited to him or her in excess of twenty-five.

c. A prior transit police member may elect, on or before September thirtieth, nineteen hundred sixty-four, by a written election duly executed and acknowledged, and filed with the board, to contribute on and after July first, nineteen hundred sixty-four at a rate of contribution equal to that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) at which he or she would have been contributing on such July first to the police pension fund maintained pursuant to subchapter two of chapter two of this title if (1) he or she were on that date a member of the police force of the city and of such police pension fund, and (2) he or she had elected a minimum retirement period of twenty years as a member of such fund, and (3) he or she had been appointed to the city police force on the date on which he or she was appointed a member of the uniformed transit police force, and (4) where such member was appointed to the uniformed transit police force prior to March twenty-ninth, nineteen hundred forty, such

police pension fund maintained pursuant to such subchapter two had been in existence on the date of such appointment. Upon the retirement of such a prior transit police member for service, he or she shall receive a retirement allowance consisting of:

1. an annuity which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

2. a pension-providing-for-increased-take-home-pay which shall be the actuarial equivalent of that portion of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any, remaining after deducting from such reserve (a) all sums therein, including regular interest thereon, credited to him or her while a member of the uniformed transit police force, prior to January fifth, nineteen hundred sixty-three, plus (b) all sums therein, including regular interest thereon, credited to him or her for the period between January fifth, nineteen hundred sixty-three and June thirtieth, nineteen hundred sixty-four, both dates inclusive, which are derived from that part of a reduced-rate-of-contribution factor in excess of two and one-half per cent, provided that such sums mentioned in subparagraphs (a) and (b) of this paragraph two, shall, at the time of his or her retirement, be withdrawn from the credit of such member, shall become the property of the retirement system, and shall be paid into the contingent reserve fund provided for in section 13-127 of this chapter; and

3. a pension which shall be equal to:

(a) fifty-five per cent of one-fortieth of his or her final compensation multiplied by not to exceed twenty years of service in the uniformed transit police force, prior to October first, nineteen hundred fifty-one, credited to him or her, plus

(b) seventy-five per cent of one-fortieth of his or her final compensation multiplied by not to exceed the number of years of service in the uniformed transit police force on and after October first, nineteen hundred fifty-one, credited to him or her, which, together with the years of service in such force credited to him or her prior to such date, aggregates twenty years of service, plus

(c) fifty-five per cent of one-sixtieth of his or her final compensation for the number of years of city-service prior to October first, nineteen hundred fifty-one acquired other than in the uniformed transit police force, plus

(d) seventy-five per cent of one-sixtieth of his or her final compensation multiplied by: (1) the number of years of city-service on and after October first, nineteen hundred fifty-one, acquired other than in the uniformed transit police force, and (2) the number of years of service in the uniformed transit police force credited to him or her in excess of twenty.

d. A prior transit police member may elect, on or before September thirtieth, nineteen hundred sixty-four, by a written election duly executed and acknowledged, and filed with the board, to contribute on and after July first, nineteen hundred sixty-four at a rate of contribution equal to that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) at which he or she would have been contributing on such July first to the police pension fund maintained pursuant to subchapter two of chapter two of this title if (1) he or she were on that date a member of the police force of the city and of such police pension fund, and (2) he or she had elected a minimum retirement period of twenty-five years as a member of such fund, and (3) he or she had been appointed to the city police force on the date on which he or she was appointed a member of the uniformed transit police force, and (4) where such member was appointed to the uniformed transit police force prior to March twenty-ninth, nineteen hundred forty, such police pension fund maintained pursuant to such subchapter two had been in existence on the date of such appointment. Upon the retirement of such a member for service he or she shall receive a retirement allowance consisting of:

1. an annuity which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

2. a pension-providing-for-increased-take-home-pay which shall be the actuarial equivalent of that portion of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any, remaining after deducting from such reserve (a) all sums therein, including regular interest thereon, credited to him or her while a member of the uniformed transit police force, prior to January fifth, nineteen hundred sixty-three, plus (b) all sums therein, including regular interest thereon, credited to him or her for the period between January fifth, nineteen hundred sixty-three and June thirtieth, nineteen hundred sixty-four, both dates inclusive, which are derived from that part of a reduced-rate-of-contribution factor in excess of two and one-half per cent, provided that such sums mentioned in subparagraphs (a) and (b) of this paragraph two, shall, at the time of his or her retirement, be withdrawn from the credit of such member, shall become the property of the retirement system, and shall be paid into the contingent reserve fund provided for in section 13-127 of this chapter; and

3. a pension which shall be equal to:

(a) fifty-five per cent of one-fiftieth of his or her final compensation multiplied by not to exceed twenty-five years of service in the uniformed transit police force prior to October first, nineteen hundred fifty-one, credited to him or her, plus

(b) seventy-five per cent of one-fiftieth of his or her final compensation multiplied by not to exceed the number of years of service in the uniformed transit police force on and after October first, nineteen hundred fifty-one, credited to him or her, which, together with the years of service in such force credited to him or her prior to such date, aggregates twenty-five years of service, plus

(c) fifty-five per cent of one-sixtieth of his or her final compensation for the number of years of city-service prior to October first, nineteen hundred fifty-one acquired other than in the uniformed transit police force, plus

(d) seventy-five per cent of one-sixtieth of his or her final compensation multiplied by: (1) the number of years of city-service on and after October first, nineteen hundred fifty-one acquired other than in the uniformed transit police force, and (2) the number of years of service in the uniformed transit police force credited to him or her in excess of twenty-five.

e. Any transit police member who has elected pursuant to this section, optional retirement after twenty or twenty-five years of allowable service and who shall have attained the minimum period of service retirement elected by him or her, upon his or her own written application to and filed with the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, shall be retired as of the date specified in said application, provided that at the time so specified for his or her retirement, his or her term or tenure of office or employment shall not have terminated or have been forfeited, and provided further that upon his or her request in writing, the member shall be granted a leave of absence from the date of filing said application until the date the retirement becomes effective.

f. Notwithstanding any other provision of this section, the provisions of section two hundred seven-d of the general municipal law shall apply to any transit police member in the same manner and to the same extent as if the definition of "policeman" in such section included a paid officer or member of the uniformed transit police force; provided, however, that any such member shall not be entitled to any rights or benefits under such section two hundred seven-d in the event that, if a member of the police force of the city and of the police pension fund maintained pursuant to subchapter two of chapter two of this title; who had elected a minimum period of service as a prerequisite for eligibility for retirement for service and who had served in the city police force beyond such minimum period of service, were to retire for any cause whatsoever on the same date as that on which such transit police member retires for any cause whatsoever, the provisions of such section two hundred seven-d would not be applicable, operative or effective for determining the rights or benefits of such member of the city police force.

g. (1) Notwithstanding the provisions of subdivisions a, b, c and d of this section, a transit police member shall,

upon retirement for service, and in lieu of any lesser amount prescribed by the applicable provisions of such subdivisions or otherwise, receive a retirement allowance on account of his or her minimum period of service rendered as a member of the uniformed transit police force, which shall, subject to the provisions of this subdivision g, be equal to one-half of his or her annual compensation earnable upon the date of his or her retirement; provided, however, that any such member shall not be entitled to a retirement allowance, determined under and pursuant to the foregoing provisions of this paragraph one, on account of his or her minimum period of such service, in the event that, if a member of the police force of the city and of the police pension fund maintained pursuant to subchapter two of chapter two of this title, who had elected completion of a minimum period of service as a prerequisite for eligibility for retirement for service, were to retire for service on the same date as such transit police member, the provisions of subdivision one of section two hundred seven-e of the general municipal law, as added by chapter two hundred fifty-eight of the laws of nineteen hundred sixty-three, would not be applicable, operative or effective for determining the rights to a retirement allowance of such member of the city police force for such minimum period of service and would not provide for such member of such police force, the retirement allowance specified in such subdivision one for such minimum period of service, in lieu of any lesser benefit otherwise prescribed.

(2) Subject to the provisions of section 13-130 of this chapter, the addition and computation of a further pension, in order to provide such retirement allowance under paragraph one of this subdivision g for a transit police member, shall be subject to the terms and conditions of subdivision two of section two hundred seven-e of the general municipal law, as added by chapter two hundred fifty-eight of the laws of nineteen hundred sixty-three, in the same manner and to the same extent as if the term "uniformed force of the police department of such city", mentioned in such subdivision, included the uniformed transit police force.

(3) Where additional retirement benefits are payable to transit police members under the provisions of this section, other than the provisions of this subdivision and subdivision f thereof, or are required to be paid under the provisions of section two hundred seven-d of the general municipal law, as made applicable by the provisions of such subdivision f, such additional benefits shall be paid, for service in addition to and in excess of the minimum service requirements, in addition to the minimum retirement benefits required to be paid by this subdivision g.

h. (1) Subject to the provisions of paragraph three of this subdivision h, when a transit captain who is a transit police member shall have acted under regular detail in any capacity above the rank of transit captain and shall have received additional compensation therefor, during a period or periods aggregating two years, such transit officer, upon retirement pursuant to the provisions of subdivision e of this section, shall be entitled to a retirement allowance equal to that to which he or she would be entitled under the provisions of subdivision c of section 14-114 of the code, if:

(a) he or she had been a captain of the police force of the city who retired after having acted under regular detail in a capacity above the rank of captain in such city police force for a period or periods aggregating two years, and

(b) the highest salary received by him or her during such assumed period or periods of service in a capacity above the rank of captain in such city police force were identical with the highest salary actually received by such transit officer during the period or periods of his or her service as a transit officer in a capacity above the rank of transit captain, and

(c) he or she had served in such city police force for a total period of time identical with his or her total period of service in the uniformed transit police force, and

(d) he or she had made during such assumed period of service in the city police force, the same election or elections as to waiver and withdrawal of waiver of a reduction in contributions by reason of any plan for pensions-providing-for-increased-take-home-pay, as he or she made during such period of service in the uniformed transit police force.

(2) Subject to the provisions of paragraph three of this subdivision h, when a transit captain who is a transit

police member shall have served in the rank of transit captain for a period of ten years, he or she shall have the same right to a retirement allowance as if he or she had been detailed to act as inspector and had served as such and had received additional compensation therefor during a period or periods of time aggregating two years. A transit captain who is a transit police member and who shall have served as such less than ten years and more than five years, shall have the same right to a retirement allowance as if he or she had been detailed to act as a deputy inspector and had served as such and had received additional compensation therefor during a period or periods of time aggregating two years. For the purpose of determining the retirement allowance to which any transit captain is entitled under the provisions of this paragraph two, the salary of an inspector or deputy inspector of the police force of the city, at the time of such retirement of such transit captain, shall be deemed to be identical with the salary of an inspector or deputy inspector, as the case may be, in the transit police force, at the same time. In the event that the detail of transit captain acting as inspector or deputy inspector does not exist in the transit police department or the uniformed transit police force, then, for the purposes of this paragraph two, it shall be deemed that such detail does exist with the same salary as is applicable to such rank in the New York city police force at the time of such retirement of any such transit captain.

(3) In any case where a transit officer entitled to a retirement allowance under paragraph one or two of this subdivision h, is a prior transit police member, and by reason of any such waiver or waivers by such transit officer, he or she is entitled to receive a pension-providing-for-increased-take-home-pay, in addition to the portions of his or her retirement allowance otherwise payable under the foregoing provisions of this subdivision h, such pension-providing-for-increased-take-home-pay shall be reduced in the manner prescribed by paragraph two of subdivision c or d of this section, as the case may be, and the pension-providing-for-increased-take-home-pay paid to such transit officer shall be such pension as so reduced, and the sums deducted from the reserve-for-increased-take-home-pay, as prescribed by such paragraph two, shall, at the time of retirement of such transit officer, be withdrawn from his or her credit, shall become the property of the retirement system and should be paid into the contingent reserve fund provided for in section 13-127 of this chapter.

(4) In lieu of any other retirement benefits granted to him or her upon retirement from the uniformed transit police force, any transit police member who shall have served as a chief of the transit police department on or after January first, nineteen hundred sixty-nine, shall, at his or her election, be entitled upon retirement to a retirement allowance which shall consist of an annuity which is the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement from the uniformed transit police force and a pension which, when added to such annuity, shall be equal to two-thirds of his or her salary as chief of the transit police department. For the purpose of computing the annuity portion of such retirement allowance, his or her accumulated deductions shall be the required amount of such deductions at the time of his or her retirement from the uniformed transit police force, without any increase resulting from excess contributions and without any decrease resulting from withdrawals, loans, optional modification, payment of his or her contributions for old age and survivor's insurance coverage, or from any other transaction authorized by law.

i. Notwithstanding the provisions of section 13-166 of this chapter or any other section of the code to the contrary, no transit police member electing optional retirement pursuant to this section, who is on the date of such election sixty-three or more years of age or who on or after such date attains the age of sixty-three years, shall continue serving as a member of the uniformed transit police force but shall be retired, provided, however, that any such member who is not eligible for retirement at the age of sixty-three may continue to serve as a member of such force only until such time as he or she becomes eligible for retirement for service, provided further that, at the discretion of the chief personnel officer within the transit authority and upon the recommendation of the chief of the transit police force, the deputy chief of the transit police force may continue to serve in such position beyond such age.

j. (1) The provisions of this section shall apply to transit police members as herein provided, notwithstanding the provisions of sections 13-125 and 13-172 of this chapter or any other provision of the code or law to the contrary.

(2) Except as otherwise provided in this section and section 13-130 of this chapter, on and after July first, nineteen hundred sixty-four, each transit police member shall have and shall be entitled and subject to the same rights,

benefits, privileges and obligations as a member of the police force of the city who is a member of the police pension fund maintained pursuant to subchapter two of chapter two of this title, with respect to the matters provided for in sections 13-219, 13-225, 13-226, 13-239, 13-242, 13-243, 13-244, 13-251, 13-252, 13-254, 13-256, 13-257, 13-258, 13-261, 13-261.2, 13-261.3 and 13-262 of such subchapter two; provided, however, that:

(a) each transit police member shall have and shall be entitled and subject to such rights, benefits, privileges and obligations as to such matters only in so far as such rights, benefits, privileges and obligations accrue on and after July first, nineteen hundred sixty-four, and nothing contained in this paragraph two shall confer upon or create in relation to any transit police member any such right, benefit, privilege or obligation with respect to any period of time or event occurring before July first, nineteen hundred sixty-four; and

(b) such rights, benefits, privileges and obligations conferred upon or created in relation to each transit police member by this paragraph two with respect to such matters provided for in such sections of such subchapter two, shall be in lieu of any and all rights, benefits, privileges and obligations which, if such member were not a transit police member, (1) would accrue to him or her under this title, on and after July first, nineteen hundred sixty-four, with respect to such matters, or (2) he or she would have and would be entitled and subject to under this chapter, with respect to such matters, for any period of time on and after such date, or by reason of any event occurring on or after such date; and

(c) any and all rights, benefits, privileges and obligations of a transit police member under this chapter, in so far as they accrued prior to July first, nineteen hundred sixty-four, or arose from or were based upon any event occurring prior to such date, shall be governed by and determined in accordance with the provisions of this chapter which would be applicable to such member if he or she were not a transit police member; and

(d) for the purpose of determining the rights, benefits, privileges and obligations of a transit police member under this paragraph two, nothing contained in subparagraphs (a) and (c) of this paragraph two shall be construed as depriving any such member (1) of credit, as otherwise granted or authorized by the provisions of this chapter, for city-service rendered prior to July first, nineteen hundred sixty-four, or (2) of credit for contributions made by such member prior to such date, or (3) of rights, accruing prior to such date, with respect to any plan for pensions-providing-for-increased-take-home-pay, provided that such rights as to such plan shall be reduced to the extent and in the manner provided in paragraph two of subdivisions c and d of this section, and in subdivision h of this section and in paragraphs six and eleven of this subdivision j.

(3) The rights, benefits, privileges and obligations conferred upon or created in relation to transit police members by paragraph two of this subdivision j shall be determined by the retirement system in accordance with the actuarial tables adopted from time to time for the police pension fund maintained pursuant to subchapter two of chapter two of this title and such tables shall be employed by the retirement system, in making any such determination, in the same manner as they are employed under such subchapter two in determining the corresponding rights, benefits, privileges and obligations of members of such police pension fund.

(4) The rights, benefits, privileges and obligations conferred upon or created in relation to transit police members by paragraph two of this subdivision j shall be administered by the retirement system pursuant to its rules and regulations and nothing contained in this section or in any other law shall be construed as conferring upon the board of trustees of the police pension fund maintained pursuant to subchapter two of chapter two of this title, or the medical board or any other agency of such pension fund, any jurisdiction, power or duties to administer such rights, benefits, privileges or obligations or to adopt rules or regulations relating thereto.

(5) Notwithstanding any other provision of this section, where any part of the principal and interest with respect to any loan made to a member pursuant to section 13-140 of this chapter remains unpaid at the time when such member seeks to elect to become a transit police member pursuant to the applicable provisions of subdivisions a, b, c and d of this section, such member shall not have the right to make such election unless he or she shall execute and acknowledge, and file with the board, a written agreement providing that from and after the execution of such

agreement, all of his or her obligations and rights with respect to the principal and interest remaining unpaid on such loan shall be governed by section 13-239 of this title, and that the terms and conditions of such loan may be changed or modified by the board, with respect to any principal thereof and interest thereon remaining unpaid, so as to conform with the provisions of section 13-239 of this title. For the purposes of this paragraph and of paragraph two of this subdivision j, wherever the term "pension fund" appears in such section 13-239 of this title, it shall be deemed to mean the retirement system.

(6) In any case where an ordinary death benefit or accidental death benefit is payable pursuant to the provisions of paragraph two of this subdivision j and the applicable provisions of section 13-243 or section 13-244 of this title, as the case may be, by reason of the death of a prior transit police member, any reserve-for-increased-take-home-pay payable or allocable to any beneficiary under such provisions shall first be reduced in the manner prescribed by paragraph two of subdivision c or d, as the case may be, of this section and the amount of the deduction from such reserve, as prescribed by subparagraphs (a) and (b) of such paragraph two, shall be withdrawn from the credit of such member, shall become the property of the retirement system and shall be paid into the contingent reserve fund provided for in section 13-127 of this chapter.

(7) In any case where an accidental death benefit is payable, pursuant to the provisions of paragraph two of this subdivision j and section 13-244 of this title, by reason of the death of a transit police member, the provisions of section 13-244 of this title prescribing that the pension payable thereunder shall in no case be less than one-half of the full salary payable to a first-grade patrolman on the date of death of such employee, shall not apply to the determination of the amount of the death benefit payable by reason of the death of such transit police member, and the amount of such death benefit, including any pension payable, shall be determined as if such provisions were not included in such section.

(8) The provisions of section 13-150 of this chapter shall not apply to any transit police member.

(9) For the purposes of paragraph two of this subdivision j, wherever the following terms appear in any section of subchapter two of chapter two of this title mentioned in such paragraph two, they shall be deemed to have the following meanings:

(a) "commissioner": the New York city transit authority.

(b) "medical board": the medical board of the retirement system.

(c) "city-service": city-service as defined in subdivision three of section 13-101 of this chapter.

(d) "board": the board of trustees of the retirement system.

(e) "police service": allowable service in the uniformed transit police force as a member of such force, excluding any service credit acquired by transfer under any provision of law.

(f) "discontinued member": a transit police member who has discontinued service in the uniformed transit police force and has a vested right to a retirement allowance under the provisions of section 13-256 of this title.

(10) For the purposes of paragraph two of this subdivision j, the provisions of section 13-252 of this title shall not be applicable to a transit police member for whom application for retirement for accident disability is made, in any case where the city-service claimed to have resulted in the alleged disability of such member was performed prior to July first, nineteen hundred sixty-four.

(11) In any case where a retirement allowance for accident disability is payable, pursuant to the provisions of paragraph two of this subdivision j and section 13-258 of this title, with respect to a prior transit police member, any reserve-for-increased-take-home-pay constituting the basis of a pension payable pursuant to subdivision two of section

13-258 of this title, shall first be reduced in the manner prescribed by paragraph two of subdivision c or d, as the case may be, of this section, and the amount of the deduction from such reserve, as prescribed by subparagraphs (a) and (b) of such paragraph two, shall be withdrawn from the credit of such member, shall become the property of the retirement system, and shall be paid into the contingent reserve fund provided for in section 13-127 of this chapter. The pension payable with respect to such member pursuant to such subdivision two of such section 13-258 of this title shall be the actuarial equivalent of the portion of such reserve remaining after such deduction.

(12) For the purposes of paragraph two of this subdivision j,

(a) the provisions of section 13-262 of this title shall be deemed to refer to a beneficiary receiving or entitled to receive a retirement allowance under subdivision a, b, c or d of this section, who re-enters city-service; and

(b) wherever the following terms appear in section 13-262 of this title, they shall be deemed to have the following meaning:

(i) police commissioner: the chief of the transit police force;

(ii) deputy police commissioner: the deputy chief of the transit police force.

(13) The applicability of section 13-225 of this title to each prior transit police member, pursuant to the provisions of paragraph two of this subdivision j, shall be subject to the provisions of the opening paragraph of subdivision c or d of this section, as the case may be, with respect to rate of contribution.

(14) (a) For the purpose of computing an annuity and a pension, pursuant to paragraphs one and two of subdivision c of section 13-256 of this title, for a discontinued member, service credit acquired by such member pursuant to section forty-three of the retirement and social security law and accumulated deductions transferred pursuant to such section shall be excluded.

(b) For city-service credited to a discontinued member, other than allowable service in the uniformed transit police force as a member of such force, such member shall receive, in lieu of any other pension under section 13-256 of this title for such other service:

(i) a pension which shall be equal to fifty-five per cent of one-sixtieth of his or her final compensation multiplied by the number of years of such other city-service rendered prior to October first, nineteen hundred fifty-one; and

(ii) a pension which shall be equal to seventy-five per cent of one-sixtieth of his or her final compensation multiplied by the number of years of such other city-service rendered on and after October first, nineteen hundred fifty-one.

k. For the purposes of this section, the words, "final compensation", shall mean the average annual compensation earnable by a member for city-service during the last five years of city-service, or during any other five consecutive years of city-service since he or she last became a member which such member shall designate.

l. In the event that a transit police member, without having previously retired as such member, shall cease to be a member of the uniformed transit police force and shall enter upon any other form of city-service, the provisions of subdivision g of section 13-107 of this chapter shall be inapplicable to such member, and in the event that any benefit shall become payable under this chapter to such member or to any beneficiary of such member, while such member is performing any such other form of city-service, his or her service in the uniformed transit police force shall be credited and treated in the same manner as such other form of city-service.

m. Nothing contained in this section shall affect or decrease the amount of the contributions due from any transit police member for any period prior to July first, nineteen hundred sixty-four or give rise to any right on the part of any

such member to a refund of any contributions made by him or her for any period prior to such date or to any benefit in lieu of such refund.

n. The provisions of section 13-108 of this chapter shall be inapplicable to any transit police member so long as he or she shall be such a member.

o. (1) The election by any transit police member of optional retirement after twenty or twenty-five years of allowable service pursuant to the applicable provisions of subdivisions a, b, c and d of this section shall constitute a consent and agreement by each member that in the event that any provision of this section confers, or is adjudged by any court of competent jurisdiction to confer upon such member any right, benefit or privilege which is greater than the corresponding right, benefit or privilege which such member would possess if he or she were, under the same circumstances, a member of the police force of the city and a member of the police pension fund maintained pursuant to subchapter two of chapter two of this title, the legislature shall have the right and power to enact any law or laws or amendments thereto which diminish such right, benefit or privilege of such transit police member so that the same becomes equal to such corresponding right, benefit or privilege which he or she would possess if he or she were a member of such police pension fund.

(2) In enacting this section, the legislature, in pursuance of the consent and agreement provided for by paragraph one of this subdivision o, does hereby reserve to the state of New York and to itself, the right and power to enact any law or laws or amendments thereto referred to in such paragraph one.

(3) For the purposes of this subdivision o, if any transit police member was appointed a member of the uniformed transit police force prior to March twenty-ninth, nineteen hundred forty, such police pension fund maintained pursuant to such subchapter two shall be deemed to have been in existence on the date of such appointment.

(4) Every written election of optional retirement executed and filed pursuant to the applicable provisions of subdivisions a, b, c and d of this section shall contain a copy of this subdivision o; provided, however, that the omission of such copy from any such written election shall not invalidate the consent granted and agreement made by such election, as herein prescribed.

q. (1) Notwithstanding any other provision of this section or chapter to the contrary, any transit police member who was a member in city-service on July first, nineteen hundred seventy-two and who shall hereafter purchase service credit pursuant to paragraph two of this subdivision q for any period of continuous city-service in a position in the uniformed transit police force, which period:

(a) next precedes the date on which such member last became a member; and

(b) begins not earlier than the date six months prior to the date on which he or she last became a member; shall be credited with such service for the purpose of determining the amount of his or her retirement allowance and in computing the minimum period of service retirement elected by such member. Service credit used pursuant to this subdivision q to satisfy such requirements shall in no event exceed six months.

(2) A transit police member who elects to purchase service credit under the provisions of paragraph one of this subdivision q shall pay into the annuity savings fund of the retirement system the amount of the employee contributions required to have been paid into the retirement system for such service, within one year after this act shall take effect.

r. The transit authority, which previously elected to make the benefits of this section available for a limited period, may make the benefits of such section available to those members of the uniformed transit police force who, for reasons not ascribable to their own negligence, failed to make timely application to be covered under such section. The transit authority may so elect by filing with the administrative head of the New York city employees' retirement system on or before December thirty-first, nineteen hundred eighty, written notice of such election together with certification that the transit police officers concerned are not barred from participating under this section as a result of their own

negligence.

s. Upon election, any member of the uniformed transit police pension plan who was a member of the New York city employees' retirement system while employed as a New York city transit police force trainee shall receive qualifying service credit in said uniformed transit police pension plan for prior creditable service earned while employed as a uniformed transit police force trainee, by paying into the annuity savings fund additional member contributions plus interest which would have been paid or credited had such member been a uniformed transit police officer plan member from his or her last date of appointment as a transit police force trainee or date of membership, whichever is later, provided such payment is made within one year after this subdivision shall take effect.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. i amended chap 636/1991 § 1, eff. July 26, 1991

Subd. j par (2) open par amended chap 582/1997 § 3, eff. Sept. 17, 1997

Subd. j par. (2) open par amended chap 775/1987 § 2

Subd. j par (12) amended chap 636/1991 § 2 eff. July 26, 1991

**DERIVATION**

Formerly § B3-36.3 added chap 969/1964 § 2

Sub f amended chap 973/1964 § 1

Sub g pars 1, 2 amended chap 973/1964 § 2

Sub j par 2 subpar b amended chap 973/1964 § 3

Sub l amended chap 973/1964 § 4

Sub h par 4 added chap 808/1969 § 1

Sub j par 2 open par amended chap 827/1969 § 9-a

Sub j par 9 subpars e, f added chap 827/1969 § 10

Sub j par 14 added chap 827/1969 § 11

Sub j par 9 subpar d amended chap 866/1969 § 12

Sub q added chap 1006/1972 § 1

Sub r added chap 641/1980 § 1

Sub s added chap 952/1983 § 1

Sub s amended chap 1014/1983 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-157.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-157.1 Twenty-five year retirement program for investigator members.

a. Definitions. The following words and phrases as used in this section shall have the following meanings unless a different meaning is plainly required by the context.

1. "Investigator member" shall mean a member who is a police officer as defined in paragraph (g) of subdivision thirty-four of section 1.20 of the criminal procedure law.

2. "Twenty-five year retirement program" shall mean all the terms and conditions of this section.

3. "Starting date of the twenty-five year retirement program" shall mean the date of enactment of this section, as such date is certified pursuant to section forty-one of the legislative law.

4. "Participant in the twenty-five year retirement program" shall mean any investigator member who, under the applicable provisions of subdivision b of this section, is entitled to the rights, benefits and privileges and is subject to the obligations of the twenty-five year retirement program, as applicable to him or her.

5. "Discontinued member" shall mean a participant in the twenty-five year retirement program who, while he or she was an investigator member, discontinued service as such a member and has a right to a deferred vested benefit under the provisions of subdivision d of this section.

b. Participation in twenty-five year retirement program. 1. Subject to the provisions of paragraph five of this subdivision, any person who is an investigator member on the starting date of the twenty-five year retirement program

may elect to become a participant in the twenty-five year retirement program by filing, within one hundred eighty days after the provisions of this paragraph take effect, a duly executed application for such participation with the retirement program of which such person is a member, provided he or she is such an investigator member on the date such application is filed.

2. Subject to the provisions of paragraph five of this subdivision, any person who becomes an investigator member after the starting date of the twenty-five year retirement program may elect to become a participant in the twenty-five year retirement program by filing, within the later of (i) one hundred eighty days after becoming such an investigator member or (ii) one hundred eighty days after the provisions of this paragraph take effect, a duly executed application for such participation with the retirement system of which such person is a member, provided he or she is such an investigator member on the date such application is filed.

3. Any election to be a participant in the twenty-five year retirement program shall be irrevocable.

4. Where any participant in the twenty-five year retirement program shall cease to be employed as an investigator member, he or she shall cease to be such a participant and, during any period in which such person is not so employed, he or she shall not be a participant in the twenty-five year retirement program and shall not be eligible for the benefits of subdivision c of this section.

5. Where any participant in the twenty-five year retirement program terminates service as an investigator member and returns to such service as an investigator member at a later date, he or she shall again become such a participant on that date.

c. Service retirement benefits. 1. A participant in the twenty-five year retirement program:

(i) who has completed twenty-five or more years of credited service; and

(ii) who files with the retirement system an application for service retirement setting forth at what time he or she desires to be retired; and

(iii) who shall be a participant in the twenty-five year retirement program at the time so specified for his or her retirement; shall be retired pursuant to the provisions of this section affording early service retirement.

2. Notwithstanding any other provision of law to the contrary, the early service retirement benefit for participants in the twenty-five year retirement program who retire pursuant to paragraph one of this subdivision shall be a retirement allowance consisting of:

(i) an amount, on account of the required minimum period of service, equal to fifty-five percent of the salary earned in the year prior to his or her retirement; plus

(ii) an amount for each additional year of credited service, or fraction thereof, beyond such required minimum period of service equal to one and seven-tenths percent of the final average salary for such credited service during the period from the completion of twenty-five years of credited service to the date of retirement.

d. Vesting. 1. A participant in the twenty-five year retirement program who:

(i) discontinues service as an investigator member, other than by death or retirement; and

(ii) prior to such discontinuance, completed fifteen but less than twenty-five years of credited service; and

(iii) does not withdraw in whole or in part his or her accumulated member contributions pursuant to section 13-141 of this chapter, shall be entitled to receive a deferred vested benefit as provided in this subdivision.

2. (i) Upon such discontinuance under the conditions and in compliance with the provisions of paragraph one of this subdivision, such deferred vested benefit shall vest automatically.

(ii) Such vested benefit shall become payable on the earliest date on which such discontinued member could have retired for service if such discontinuance had not occurred.

3. Such deferred vested benefit shall be a retirement allowance consisting of an amount equal to two and two-tenths percent of such discontinued member's final average salary, multiplied by the number of years of credited service.

e. Member contributions. All investigator members of the twenty-five year retirement program shall be required to contribute to the retirement system in the manner specified by section 13-225 of this code with respect to members covered by subdivision b of section 13-247 of this code. Such required contributions shall pertain to all years of service rendered subsequent to June thirtieth, nineteen hundred ninety-seven.

**HISTORICAL NOTE**

Section added chap 370/1996 § 1, eff. July 30, 1996.

Subd. b pars 1, 2 amended chap 285/1997 § 1, eff. July 29, 1997.

Subd. c par 1 amended chap 633/1999 § 1, eff. Nov. 16, 1999.

Subd. e amended chap 285/1997 § 2, eff. July 29, 1997.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-157.2*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-157.2 Twenty-five12 year retirement program for dispatcher members.

a. Definitions. The following words and phrases as used in this section shall have the following meanings unless a different meaning is plainly required by the context.

1. "Dispatcher member" shall mean a member of the retirement system who is employed by the city of New York as a fire alarm dispatcher, a supervising fire alarm dispatcher, level one, a supervising fire alarm dispatcher, level two, director of dispatch operations, or deputy director of dispatch operations.

2. "Twenty-five year retirement program" shall mean all the terms and conditions of this section.

3. "Starting date of the twenty-five year retirement program" shall mean the date of enactment of this section.

4. "Participant in the twenty-five year retirement program" shall mean any dispatcher member who, under the applicable provisions of subdivision b of this section, is entitled to the rights, benefits and privileges and is subject to the obligations of the twenty-five year retirement program, as applicable to him or her.

5. "Discontinued member" shall mean a participant in the twenty-five year retirement program who, while he or she was a dispatcher member, discontinued service as such a member and has a right to a deferred vested benefit under the provisions of subdivision d of this section.

6. "Allowable service as a dispatcher member" shall mean (i) service as a dispatcher member and all service in the following civil service titles: chief fire alarm dispatcher, administrative fire alarm dispatcher, bus operator (transit),

train dispatcher (transit), firefighter, police officer, correction officer, fire marshal, probation officer, police communications technician, supervising police communications technician, principal police communications technician, police administrative aide, senior police administrative aide, emergency medical technician, advanced emergency medical technician, emergency medical service specialist level I, emergency medical specialist level II, fire prevention inspector, fire protection inspector, senior fire prevention inspector, principal fire prevention inspector, associate fire protection inspector, county detective, detective (NYPD), detective investigator, senior detective investigator, deputy sheriff, senior deputy sheriff, inspector of fire alarm boxes, radio operator, radio repair technician, supervisor of radio repair operations, taxi and limousine inspector, senior taxi and limousine inspector, triborough bridge and tunnel officer; and (ii) a member of the retirement system who is employed by the city of New York in a title whose duties require the supervision of employees whose civil service title is included in subparagraph (i) of this paragraph.

b. Participation in the twenty-five year retirement program. 1. Subject to the provisions of paragraphs five and six of this subdivision, any person who is a dispatcher member on the starting date of the twenty-five year retirement program may elect to become a participant in the twenty-five year retirement program by filing, within one hundred eighty days after the starting date of the twenty-five year retirement program, a duly executed application for such participation with the retirement system of which such person is a member, provided he or she is such a dispatcher member on the date such application is filed.

2. Subject to the provisions of paragraphs five and six of this subdivision, any person who becomes a dispatcher member after the starting date of the twenty-five year retirement program may elect to become a participant in the twenty-five year retirement program by filing, within one hundred eighty days after becoming such a dispatcher member, a duly executed application for such participation with the retirement system of which such person is a member, provided he or she is such a dispatcher member on the date such application is filed.

3. Any election to be a participant in the twenty-five year retirement program shall be irrevocable.

4. Where any participant in the twenty-five year retirement program shall cease to be employed as a dispatcher member, he or she shall cease to be such a participant and, during any period in which such person is not so employed, he or she shall not be a participant in the twenty-five year retirement program and shall not be eligible for the benefits of subdivision c of this section.

5. Where any participant in the twenty-five year retirement program terminates service as a dispatcher member and returns to such service as a dispatcher member at a later date, he or she shall again become such a participant on that date.

6. Notwithstanding any other provision of law to the contrary, any person who is eligible to become a participant in the twenty-five year retirement program pursuant to paragraph one or two of this subdivision for the full one hundred eighty day period provided for in such applicable paragraph and who fails to timely file a duly executed application for such participation with the retirement system, shall not thereafter be eligible to become a participant in such program.

c. Service retirement benefits. 1. A participant in the twenty-five year retirement program:

(i) who has completed twenty-five or more years of allowable service as a dispatcher member; and

(ii) who files with the retirement system an application for service retirement setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired; and

(iii) who shall be a participant in the twenty-five year retirement program at the time so specified for his or her retirement; shall be retired pursuant to the provisions of this section affording early service retirement.

2. Notwithstanding any other provision of law to the contrary, the early service retirement benefit for a participant in the twenty-five year retirement program who retires pursuant to paragraph one of this subdivision shall be

a retirement allowance consisting of:

(i) an amount, on account of the required minimum period of service, equal to the sum of (a) an annuity which shall be the actuarial equivalent of the accumulated deductions from his or her pay during such period, (b) a pension for increased-take-home-pay which shall be the actuarial equivalent of the reserve for increased-take-home-pay to which he or she may be entitled for such period, and (c) a pension which, when added to such annuity and such pension for increased-take-home-pay, produces a retirement allowance equal to fifty-five percent of the salary earned or earnable in the year prior to his or her retirement; plus

(ii) an amount for each additional year of allowable service as a dispatcher member, or fraction thereof, beyond such required minimum period of service equal to one and seven-tenths percent of the salary earned or earnable in the year prior to his or her retirement for such allowable service during the period from the completion of twenty-five years of allowable service as a dispatcher member to the date of retirement.

d. Vesting. 1. A participant in the twenty-five year retirement program who:

(i) discontinues service as a dispatcher member, other than by death or retirement; and

(ii) prior to such discontinuance, completed five but less than twenty-five years of allowable city service; and

(iii) does not withdraw in whole or in part his or her accumulated member contributions pursuant to section 13-141 of this chapter, shall be entitled to receive a deferred vested benefit as provided in this subdivision.

2. (i) Upon such discontinuance under the conditions and in compliance with the provisions of paragraph one of this subdivision, such deferred vested benefit shall vest automatically.

(ii) Such vested benefit shall become payable on the earliest date on which such discontinued member could have retired for service if such discontinuance had not occurred.

3. Such deferred vested benefit shall be a retirement allowance consisting of an amount equal to two and two-tenths percent of such discontinued member's salary earned or earnable in the year prior to his or her discontinuance, multiplied by the number of years of allowable service as a dispatcher member.

e. Member contributions. All dispatcher members of the twenty-five year retirement program shall be required to make member contributions and additional member contributions in accordance with and subject to the same rights, privileges, obligations and procedures as govern the member contributions and additional member contributions required by subdivision d of section four hundred forty-five-e of the retirement and social security law.

For the purpose of applying, under this subdivision, such subdivision d to a dispatcher member of the twenty-five year retirement program who is subject to the provisions of this section, and is not subject to the provisions of article eleven of the retirement and social security law, the term "credited service", as used in such subdivision, shall be deemed to mean allowable service as a dispatcher member.

**HISTORICAL NOTE**

Section added chap 576/2000 § 1, eff. Dec. 8, 2000.

**FOOTNOTES**

12

[Footnote 12]: * There are two sections 13-157.2

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*NYC Administrative Code 13-157.2*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-157.2 Twenty-five13 year retirement program for EMT members.

a. Definitions. The following words and phrases as used in this section shall have the following meanings unless a different meaning is plainly required by the context.

1. "EMT member" shall mean a member of the retirement system who is employed by the city of New York or by the New York city health and hospitals corporation in a title whose duties are those of an emergency medical technician or advanced emergency medical technician (as those terms are defined in section three thousand one of the public health law), or in a title whose duties require the supervision of employees whose duties are those of an emergency medical technician or advanced emergency medical technician (as those terms are defined in section three thousand one of the public health law).

2. "Twenty-five year retirement program" shall mean all the terms and conditions of this section.

3. "Starting date of the twenty-five year retirement program" shall mean the date of enactment of this section.

4. "Participant in the twenty-five year retirement program" shall mean any EMT member who, under the applicable provisions of subdivision b of this section, is entitled to the rights, benefits and privileges and is subject to the obligations of the twenty-five year retirement program, as applicable to him or her.

5. "Discontinued member" shall mean a participant in the twenty-five year retirement program who, while he or she was an EMT member, discontinued service as such a member and has a right to a deferred vested benefit under the provisions of subdivision d of this section.

6. "Allowable service as an EMT member" shall mean (i) all service as an EMT member; and (ii) all service while employed by the city of New York or by the New York city health and hospitals corporation in the title motor vehicle operator.

b. Participation in the twenty-five year retirement program. 1. Subject to the provisions of paragraphs five and six of this subdivision, any person who is an EMT member on the starting date of the twenty-five year retirement program may elect to become a participant in the twenty-five year retirement program by filing, within one hundred eighty days after the starting date of the twenty-five year retirement program, a duly executed application for such participation with the retirement system of which such person is a member, provided he or she is such an EMT member on the date such application is filed.

2. Subject to the provisions of paragraphs five and six of this subdivision, any person who becomes an EMT member after the starting date of the twenty-five year retirement program may elect to become a participant in the twenty-five year retirement program by filing, within one hundred eighty days after becoming such an EMT member, a duly executed application for such participation with the retirement system of which such person is a member, provided he or she is such an EMT member on the date such application is filed.

3. Any election to be a participant in the twenty-five year retirement program shall be irrevocable.

4. Where any participant in the twenty-five year retirement program shall cease to be employed as an EMT member, he or she shall cease to be such a participant and, during any period in which such person is not so employed, he or she shall not be a participant in the twenty-five year retirement program and shall not be eligible for the benefits of subdivision c of this section.

5. Where any participant in the twenty-five year retirement program terminates service as an EMT member and returns to such service as an EMT member at a later date, he or she shall again become such a participant on that date.

6. Notwithstanding any other provision of law to the contrary, any person who is eligible to become a participant in the twenty-five year retirement program pursuant to paragraph one or two of this subdivision for the full one hundred eighty day period provided for in such applicable paragraph and who fails to timely file a duly executed application for such participation with the retirement system, shall not thereafter be eligible to become a participant in such program.

c. Service retirement benefits. 1. A participant in the twenty-five year retirement program:

(i) who has completed twenty-five or more years of allowable service as an EMT member; and

(ii) who files with the retirement system an application for service retirement setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired; and

(iii) who shall be a participant in the twenty-five year retirement program at the time so specified for his or her retirement; shall be retired pursuant to the provisions of this section affording early service retirement.

2. Notwithstanding any other provision of law to the contrary, the early service retirement benefit for a participant in the twenty-five year retirement program who retires pursuant to paragraph one of this subdivision shall be a retirement allowance consisting of:

(i) an amount, on account of the required minimum period of service, equal to the sum of (a) an annuity which shall be the actuarial equivalent of the accumulated deductions from his or her pay during such period, (b) a pension for increased-take-home-pay which shall be the actuarial equivalent of the reserve for increased-take-home-pay to which he or she may be entitled for such period, and (c) a pension which, when added to such annuity and such pension for increased-take-home-pay, produces a retirement allowance equal to fifty-five percent of the salary earned or earnable in the year prior to his or her retirement; plus

(ii) an amount for each additional year of allowable service as an EMT member, or fraction thereof, beyond such required minimum period of service equal to one and seven-tenths percent of the salary earned or earnable in the year prior to his or her retirement for such allowable service during the period from the completion of twenty-five years of allowable service as an EMT member to the date of retirement.

d. Vesting. 1. A participant in the twenty-five year retirement program who:

(i) discontinues service as an EMT member, other than by death or retirement; and

(ii) prior to such discontinuance, completed five but less than twenty-five years of allowable city service; and

(iii) does not withdraw in whole or in part his or her accumulated member contributions pursuant to section 13-141 of this chapter, shall be entitled to receive a deferred vested benefit as provided in this subdivision.

2. (i) Upon such discontinuance under the conditions and in compliance with the provisions of paragraph one of this subdivision, such deferred vested benefit shall vest automatically.

(ii) Such vested benefit shall become payable on the earliest date on which such discontinued member could have retired for service if such discontinuance had not occurred.

3. Such deferred vested benefit shall be a retirement allowance consisting of an amount equal to two and two-tenths percent of such discontinued member's salary earned or earnable in the year prior to his or her discontinuance, multiplied by the number of years of allowable service as an EMT member.

e. Member contributions. All EMT members of the twenty-five year retirement program shall be required to make member contributions and additional member contributions in accordance with the subject to the same rights, privileges, obligations and procedures as govern the member contributions and additional member contributions required by subdivision d of section four hundred forty-five-e of the retirement and social security law.

For the purpose of applying, under this subdivision, subdivision d of section four hundred forty-five-e of the retirement and social security law to an EMT member of the twenty-five year retirement program who is subject to the provisions of this section, and is not subject to the provisions of article eleven of the retirement and social security law, the term "credited service", as used in such subdivision, shall be deemed to mean allowable service as an EMT member.

**HISTORICAL NOTE**

Section added chap 577/2000 § 1, eff. Dec. 8, 2000.

**FOOTNOTES**

13

[Footnote 13]: * There are two sections 13-157.2

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*NYC Administrative Code 13-157.3*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-157.3 Twenty-five year retirement program for special officer, parking control specialist, school safety agent, campus peace officer, and New York city taxi and limousine inspector members.

a. Definitions. The following words and phrases as used in this section shall have the following meanings unless a different meaning is plainly required by the context.

1. "Special officers" shall mean all peace officers who are special officers of any rank employed by a mayoral agency of the city of New York or the New York city health and hospitals corporation or the New York city housing authority or the board of education of the city of New York and shall include all persons who are employed by the city of New York in the title urban park ranger or associate urban park ranger.

2. "Parking control specialist" shall mean a peace officer employed by the New York city department of transportation as a parking control specialist.

3. "School safety agent" shall mean a peace officer employed as a school safety agent of any rank employed by the New York city police department or the board of education of the city of New York.

4. "Campus peace officer" shall mean a peace officer employed as a campus peace officer of any rank employed by the city university of New York.

5. "Taxi and limousine inspector" shall mean a peace officer of any rank employed by the New York city taxi and limousine commission.

6. "Twenty-five year retirement program" shall mean all the terms and conditions of this section.

7. "Starting date of the twenty-five year retirement program" shall mean the effective date of this section; provided that, for persons who are employed by the city of New York in the title urban park ranger and associate urban park ranger, "starting date of the twenty-five retirement program" shall mean the effective date of the amendment to paragraph one of this subdivision made in section one of the chapter of the laws of two thousand three which amended this paragraph.

8. "Participant in the twenty-five year retirement program" shall mean any special officer, parking control specialist, school safety agent, campus peace officer or taxi and limousine inspector who, under the applicable provisions of subdivision b of this section, is entitled to the rights, benefits and privileges and is subject to the obligations of the twenty-five year retirement program, as applicable to him or her.

9. "Discontinued member" shall mean a participant in the twenty-five year retirement program who, while he or she was employed as a special officer, parking control specialist, school safety agent, campus peace officer or taxi and limousine inspector discontinued service as such a member and has a right to a deferred vested benefit under the provisions of subdivision d of this section.

10. "Allowable service as a special officer, parking control specialist, school safety agent, campus peace officer or taxi and limousine inspector member" shall mean all service while employed by the city of New York or by the New York city health and hospitals corporation, the New York city board of education, the city university of New York or the New York city taxi and limousine commission in a title whose duties are those of a peace officer under the criminal procedure law.

11. "Retirement system" shall mean the New York city employees' retirement system or the New York city board of education retirement system.

b. Participation in the twenty-five year retirement program. 1. Subject to the provisions of paragraphs four and five of this subdivision, a person who is a special officer, parking control specialist, school safety agent, campus peace officer or taxi and limousine inspector on the starting date of the twenty-five year retirement program may elect to become a participant in the twenty-five year retirement program by filing, within one hundred eighty days after the starting date of the twenty-five year retirement program, a duly executed application for such participation with the retirement system of which such person is a member, provided he or she is such a special officer, parking control specialist, school safety agent, campus peace officer or taxi and limousine inspector on the date such application is filed.

2. Any election to be a participant in the twenty-five year retirement program shall be irrevocable.

3. Where any participant in the twenty-five year retirement program shall cease to be employed as a special officer, parking control specialist, school safety agent, campus peace officer or taxi and limousine inspector he or she shall cease to be such a participant and, during any period in which such person is not so employed, he or she shall not be a participant in the twenty-five year retirement program and shall not be eligible for the benefits of subdivision c of this section.

4. Where any participant in the twenty-five year retirement program terminates service as a special officer, parking control specialist, school safety agent, campus peace officer or taxi and limousine inspector and returns to such service as a special officer, parking control specialist, school safety agent, campus peace officer, or taxi and limousine inspector at a later date, he or she shall again become such a participant on that date.

5. Notwithstanding any other provision of law to the contrary, any person who is eligible to become a participant in the twenty-five year retirement program pursuant to paragraph one or two of this subdivision for the full one hundred eighty day period provided for in such applicable paragraph and who fails to timely file a duly executed application for such participation with the retirement system, shall not thereafter be eligible to become a participant in such program.

c. Service retirement benefits. 1. A participant in the twenty-five year retirement program:

(i) who has completed twenty-five or more years of allowable service as a special officer, parking control specialist, school safety agent, campus peace officer or taxi and limousine inspector; and

(ii) who files with the retirement system an application for service retirement setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired; and

(iii) who shall be a participant in the twenty-five year retirement program at the time so specified for his or her retirement; shall be retired pursuant to the provisions of this section affording early service retirement.

2. Notwithstanding any other provision of law to the contrary, the early service retirement benefit for a participant in the twenty-five year retirement program who retires pursuant to paragraph one of this subdivision shall be a retirement allowance consisting of:

(i) an amount, on account of the required minimum period of service, equal to the sum of (a) an annuity which shall be the actuarial equivalent of the accumulated deductions from his or her pay during such period, (b) a pension for increased-take-home-pay which shall be the actuarial equivalent of the reserve for increased-take-home-pay to which he or she may be entitled for such period, and (c) a pension which, when added to such annuity and such pension for increased-take-home-pay, produces a retirement allowance equal to fifty-five percent of the salary earned or earnable in the year prior to his or her retirement; plus

(ii) an amount for each additional year of allowable service as a special officer, parking control specialist, school safety agent, campus peace officer or taxi and limousine inspector, or fraction thereof, beyond such required minimum period of service equal to one and seven-tenths percent of the final average salary for such allowable service during the period from the completion of twenty-five years of allowable service as a special officer, parking control specialist, school safety agent, campus peace officer or taxi and limousine inspector to the date of retirement.

d. Vesting. 1. A participant in the twenty-five year retirement program who:

(i) discontinues service as a special officer, parking control specialist, school safety agent, campus peace officer or taxi and limousine inspector, other than by death or retirement; and

(ii) prior to such discontinuance, completed five but less than twenty-five years of allowable city service; and

(iii) does not withdraw in whole or in part his or her accumulated member contributions pursuant to section 13-141 of this chapter, shall be entitled to receive a deferred vested benefit as provided in this subdivision.

2. (i) Upon such discontinuance under the conditions and in compliance with the provisions of paragraph one of this subdivision, such deferred vested benefit shall vest automatically.

(ii) Such vested benefit shall become payable on the earliest date on which such discontinued member could have retired for service if such discontinuance had not occurred.

3. Such deferred vested benefit shall be a retirement allowance consisting of an amount equal to two and two-tenths percent of such discontinued member's salary earned or earnable in the year prior to his or her discontinuance, multiplied by the number of years of allowable service as a special officer, parking control specialist, school safety agent, campus peace officer or taxi and limousine inspector.

e. Member contributions. All special officer, parking control specialist, school safety agent, campus peace officer, or taxi and limousine inspector members, of the twenty-five year retirement program shall be required to make member contributions and additional member contributions in accordance with and subject to the same rights, privileges, obligations and procedures as govern the member contributions and additional member contributions

required by subdivision d of section four hundred forty-five-f of the retirement and social security law.

For the purpose of applying, under this subdivision, such subdivision d to a special officer, parking control specialist, school safety agent, campus peace officer or taxi and limousine inspector member of the twenty-five year retirement program who is subject to the provisions of this section, and is not subject to the provisions of article eleven of the retirement and social security law, the term "credited service", as used in such subdivision, shall be deemed to mean allowable service as a special officer, parking control specialist, school safety agent, campus peace officer or taxi and limousine inspector.

**HISTORICAL NOTE**

Section added chap 582/2001 § 1, eff. Dec. 19, 2001.

Subd. a par 1 amended chap 640/2003 § 1, eff. Oct. 7, 2003.

Subd. a par 1 amended chap 617/2002 § 1, eff. Oct. 2, 2002.

Subd. a par 3 amended chap 617/2002 § 1, eff. Oct. 2, 2002.

Subd. a par 7 amended chap 640/2003 § 2, eff. Oct. 7, 2003.

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*NYC Administrative Code 13-157.4*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-157.4 Twenty year retirement program for investigator members.

a. Definitions. The following words and phrases as used in this section shall have the following meanings unless a different meaning is plainly required by the context.

1. "Investigator member" shall mean a member who is a police officer as defined in paragraph (g) of subdivision thirty-four of section 1.20 of the criminal procedure law.

2. "Twenty year retirement program" shall mean all the terms and conditions of this section.

3. "Starting date of the twenty year retirement program" shall mean the effective date of this section, as such date is certified pursuant to section forty-one of the legislative law.

4. "Participant in the twenty year retirement program" shall mean any investigator member who, under the applicable provisions of subdivision b of this section, is entitled to the rights, benefits and privileges and is subject to the obligations of the twenty year retirement program, as applicable to him or her.

5. "Discontinued member" shall mean a participant in the twenty year retirement program who, while he or she was an investigator member, discontinued service as such a member and has a right to a deferred vested benefit under the provisions of subdivision d of this section.

b. Participation in twenty year retirement program. 1. Subject to the provisions of paragraph five of this subdivision, any person who is an investigator member on the starting date of the twenty year retirement program may

elect to become a participant in the twenty year retirement program by filing, within one hundred eighty days after the starting date of the twenty year retirement program, a duly executed application for such participation with the retirement program of which such person is a member, provided he or she is such an investigator member on the date such application is filed.

2. Subject to the provisions of paragraph five of this subdivision, any person who becomes an investigator member after the starting date of the twenty year retirement program may elect to become a participant in the twenty year retirement program by filing, within one hundred eighty days after becoming such an investigator member, a duly executed application for such participation with the retirement system of which such person is a member, provided he or she is such an investigator member on the date such application is filed.

3. Any election to be a participant in the twenty year retirement program shall be irrevocable.

4. Where any participant in the twenty year retirement program shall cease to be employed as an investigator member, he or she shall cease to be such a participant and, during any period in which such person is not so employed, he or she shall not be a participant in the twenty year retirement program and shall not be eligible for the benefits of subdivision c of this section.

5. Where any participant in the twenty year retirement program terminates service as an investigator member and returns to such service as an investigator member at a later date, he or she shall again become such a participant on that date.

c. Service retirement benefits. 1. A participant in the twenty year retirement program:

(i) who has completed twenty or more years of service as a police officer as defined in paragraph (g) of subdivision thirty-four of section 1.20 of the criminal procedure law; and

(ii) who files with the reitrement system an application for service retirement setting forth at what time he or she desires to be retired; and

(iii) who shall be a participant in the twenty year retirement program at the time so specified for his or her retirement; shall be retired pursuant to the provisions of this section affording early service retirement.

2. Notwithstanding any other provision of law to the contrary, the early service retirement benefit for participants in the twenty year retirement program who retire pursuant to paragraph one of this subdivision shall be a retirement allowance consisting of:

(i) an amount, on account of the required minimum period of service, equal to fifty percent of the salary earned in the year prior to his or her retirement; plus

(ii) an amount for each additional year of credited service as an investigator member, or fraction thereof, beyond such required minimum period of service equal to one-sixtieth of the average annual earnings from his or her date of eligibility for retirement to the actual date of retirement; plus

(iii) an amount for each year, or fraction thereof, of service credit not included in subparagraph (i) or (ii) of this paragraph equal to fifty-five percent of one-sixtieth of his or her final compensation if such service credit was for service rendered prior to October first, nineteen hundred fifty-one, or seventy-five percent of one-sixtieth of his or her final compensation if such service was rendered subsequent to October first, nineteen hundred fifty-one.

d. Vesting. 1. A participant in the twenty year retirement program who: (i) discontinues service as an investigator member, other than by death or retirement; and

(ii) prior to such discontinuance, completed five but less than twenty years of service as a police officer, as

defined in paragraph (g) of subdivision thirty-four of section 1.20 of the criminal procedure law; and

(iii) does not withdraw in whole or in part his or her accumulated member contributions pursuant to section 13-141 of this chapter, shall be entitled to receive a deferred vested benefit as provided in this subdivision.

2. Upon such discontinuance under the conditions and in compliance with the provisions of paragraph one of this subdivision, such deferred vested benefit shall vest automatically.

3. Such deferred vested benefit shall be a retirement allowance consisting of an amount equal to two and five-tenths percent of such discontinued member's final average salary, multiplied by the number of years of service as a police officer, as defined in paragraph (g) of subdivision thirty-four of section 1.20 of the criminal procedure law.

e. Member contributions. All investigator members of the twenty year retirement program shall be required to contribute to the retirement system in the manner specified by section 13-225 of this title with respect to members covered by subdivision a of section 13-247 of this title. Such required contributions shall pertain to all years of service rendered subsequent to June thirtieth, two thousand four.

f. An investigator member who is a member of the twenty year retirement program shall have and shall be entitled to the same rights, benefits, privileges and obligations as a member of the police force of the city who is a member of the police pension fund maintained pursuant to subchapter two of chapter two of this title, with respect to the matters provided for in sections 13-246 and 13-256 of such subchapter two.

g. An investigator member who is a member of the twenty year retirement program shall not be entitled to any additional retirement credit pursuant to subdivision a of section nine hundred eleven of the retirement and social security law.

**HISTORICAL NOTE**

Section added chap 695/2004 § 1, eff. Nov. 16, 2004.

Subd. c par 2 amended chap 711/2006 § 1, eff. Sept. 13, 2006.

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*NYC Administrative Code 13-158*

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Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-158 Optional retirement after twenty-five years of allowable service by certain sanitation department officers and employees; retirement allowance upon service retirement.

a. Any member of the retirement system who:

(1) heretofore entered or shall hereafter enter city-service as a member of the uniformed force of the department of sanitation, as such force is defined in subdivision a of section 13-154 of this chapter; and

(2) has heretofore completed or shall hereafter complete not less than twenty years of service as a member of such uniformed force; and

(3) has heretofore completed or shall hereafter complete not less than twenty-five years of allowable city-service, including the service mentioned in paragraph two of this subdivision a; and

(4) is serving in the department of sanitation as commissioner thereof or as the secretary to such department or as the confidential investigator thereof, at the time of the filing of an application for service retirement as hereinafter in this subdivision authorized; and

(5) at the time of such filing, is required to make contributions to the retirement system at a rate calculated on the basis of a service-fraction of not less than one one-hundredth of his or her final compensation; may retire upon written application to the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, and upon retirement for service he or she shall receive, on account of the first twenty-five years of his or her city-service, in lieu of any smaller retirement allowance for such period of service

otherwise provided for by this chapter, a minimum retirement allowance which shall be equal to one-half of his or her annual salary or compensation when so retired.

b. There shall be added by the city, whenever required, a further pension of such amount which, together with the member's annuity based on accumulated deductions from his or her pay during his or her first twenty-five years of city-service (including regular interest to the date of completion of such period of city service), shall be sufficient to provide him or her with a minimum retirement allowance, on account of the first twenty-five years of his or her allowable city-service, equal to one-half of his or her annual salary or compensation when so retired. For the purpose only of determining the amount of the additional pension contributions by the city that may be required, the member's annuity shall be computed, as it would be, (a) if it were not reduced by the actuarial equivalent of any outstanding loan, (b) if it were not increased by the actuarial equivalent of any additional contributions, (c) if it were not reduced by reason of the member's election to decrease his or her annuity contributions in order to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage, (d) as it would be without any optional modification.

c. For city-service by such a member of the retirement system in addition to and in excess of twenty-five years, there shall be added to the retirement allowance to which he or she is entitled under subdivisions a and b of this section:

(1) an annuity which shall be computed in the following man- ner:

(a) There shall be added together: (1) the total amount of the accumulated deductions of such member, whenever made, as the same are on the date of his or her retirement, including all voluntary, additional contributions, whenever made; and (2) the amount of any loan to such member outstanding as of the date of his or her retirement.

(b) There shall be added together: (1) the amount of the accumulated deductions of such member, as of the date on which he or she completed twenty-five years of allowable city-service, exclusive of the value, as of such date, of all of his or her voluntary, additional contributions made up to and including such date; and (2) the amount of any loan to such member outstanding on such date.

(c) The annuity to which such member shall be entitled under this paragraph one shall be the actuarial equivalent of the remainder obtained by subtracting the sum computed pursuant to subparagraph (b) of this paragraph from the sum computed pursuant to subparagraph (a) of this paragraph.

(2) a pension which shall be equal to one service-fraction of his*10 such member's final compensation multiplied by the number of his or her years of allowable city-service from the day after he or she completed twenty-five years of allowable city-service to the date of his or her retirement; and

(3) a pension which shall be the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may be entitled, if any, for the period from the day after he or she completed twenty-five years of allowable city-service to the date of his or her retirement.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-36.4 added chap 1022/1965 § 1

**FOOTNOTES**

10

[Footnote 10]: * So in original.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-159*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-159 Optional retirement by sanitation workers after twenty years of allowable service in such capacity in the department of sanitation; retirement allowance upon service retirement.

a. For the purposes of this section, the term "sanitation worker" shall mean a person holding the position of sanitation worker in the sanitation service of the classification of the city civil service commission.

b. (1) (a) Any member who is in service as a sanitation worker in the department of sanitation on the second day of July, nineteen hundred sixty-seven, may, by a written application duly executed and acknowledged and filed with the board prior to the first day of January, nineteen hundred sixty-eight, elect to contribute to the retirement system for the right to retire after twenty years of allowable service as a sanitation worker in such department.

(b) Any member who is in service as a sanitation worker in the department of sanitation on the effective date of this subparagraph (b) and at the time of filing an application as hereinafter in this subparagraph (b) provided, may by a written application duly executed and acknowledged and filed with the board prior to the first day of January, nineteen hundred seventy, elect to contribute to the retirement system for the right to retire after twenty years of allowable service as a sanitation worker in such department.

(2) (a) The rate of contribution of any such member making such election pursuant to subparagraph (a) or subparagraph (b) of paragraph one of this subdivision b, and whose rate of contribution is not required to be determined pursuant to paragraph three of subdivision c of this section, by reason of an election made in compliance with the provisions of paragraph one of such subdivision c, shall be that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) which would have been established for such member if:

(i) at the time of his or her appointment as a sanitation worker in such department, there had been available to him or her an optional plan for service retirement upon completion of twenty years of allowable service as a sanitation worker in the department of sanitation, at a retirement allowance, for the first twenty years of such service, consisting of a pension and an annuity of twenty-five seventy-fifths of such pension, which together would equal one-half of the member's annual salary or compensation at the time of retirement; and

(ii) such member had then elected the benefits of such plan; and

(iii) such member's rate of contribution had then been fixed as a proportion of his or her compensation which, when deducted from each payment of his or her prospective earnable compensation prior to his or her eligibility for service retirement and accumulated at regular interest until completion of his or her minimum period for service retirement, would be computed to provide, at that time, an annuity equal to twenty-five seventy-fifths of the pension then allowable to him or her for such minimum period of service as a sanitation worker.

(b) The rate of contribution prescribed by subparagraph (a) of this paragraph two with respect to any such member shall begin on July third, nineteen hundred sixty-seven or on the date of the commencement of his or her service both as a sanitation worker in such department and as a member of the retirement system, whichever is later.

c. (1) Subject to the privilege of electing the benefits of this section conferred by subparagraph (b) of paragraph one of subdivision a of this section, any person who is appointed a sanitation worker in the department of sanitation on or after the third day of July, nineteen hundred sixty-seven, may elect to contribute to the retirement system for the right to retire after twenty years of allowable service as a sanitation worker in such department, by executing and acknowledging a written election to such effect and by filing such election with the board:

(a) prior to certification of his or her rate of contribution, if such person is not a member of the retirement system at the time of such appointment; and

(b) within thirty days after such appointment, if such person is a member of the retirement system at the time of such appointment.

(2) Notwithstanding the provisions of paragraph one of this subdivision c, any person who (a) is appointed a sanitation worker in the department of sanitation after July second, nineteen hundred sixty-seven and (b) had prior membership in the retirement system as a sanitation worker occurring after July second, nineteen hundred sixty-seven and prior to such appointment, and (c) did not elect the benefits of this section during such prior membership mentioned in subparagraph (b) of this paragraph two, or, after having made such election, withdrew same, shall not, except as otherwise provided in subparagraph (b) of paragraph one of subdivision b of this section, be eligible to elect the benefits of this section, whether or not he or she is a member of the retirement system at the time of such appointment.

(3) Upon the basis of the tables herein authorized, and regular interest, the actuary of such board shall determine for each such person making such election pursuant to this subdivision c, the proportion of compensation which, when deducted from each payment of his or her prospective earnable compensation prior to his or her eligibility for service retirement and accumulated at regular interest until completion of his or her period for service retirement, shall be computed to provide, at that time, an annuity equal to twenty-five seventy-fifths of the pension then allowable to him or her, pursuant to paragraph three of subdivision f of this section, for such minimum period of service as a sanitation worker.

d. (1) At any time subsequent to one year after the filing of such an election by any sanitation worker pursuant to subdivision b or c of this section, he or she may withdraw such election by making, acknowledging and filing with the board a written withdrawal. Thereafter the provisions of this section shall be inapplicable to such member and he or she shall not be eligible to elect again the benefits of this section; provided, however, that a sanitation worker who has previously withdrawn such an election shall not thereby be prevented from electing the benefits of this section in compliance with the provisions of subparagraph (b) of paragraph one of subdivision b of this section.

(2) In any case where any sanitation worker in the department of sanitation has elected the benefits of this section and shall thereafter cease to be a sanitation worker in such department, the provisions of this section, notwithstanding any other provision of this chapter, shall be inapplicable to such member during any period wherein he or she does not hold such position.

(3) (a) During any period wherein the provisions of this section are inapplicable, under the provisions of paragraph one or two of this subdivision d, to any member who is a member of the uniformed force of the department of sanitation (as defined in subdivision a of section 13-154 of this chapter), the rate of contribution of such member shall be as prescribed by the applicable provisions of subparagraph (a) and (b) of paragraph two of subdivision a of section 13-125 of this chapter and the eligibility and rights of such member with respect to service retirement and other benefits under this chapter shall be governed by the applicable provisions of this chapter in the same manner as if such member had not elected the benefits of this section.

(b) During any period wherein the provisions of this section are inapplicable, under the provisions of paragraph one or two of this subdivision to a member who is not a member of such uniformed force, such member shall contribute to the retirement system and his or her eligibility and rights with respect to retirement for service shall be governed by the provisions of this chapter applicable to a member who has elected to contribute to such system on the basis of selection of a service fraction of one one-hundredth of his or her final compensation and attainment of eligibility for service retirement upon reaching the age of fifty-five years.

e. Any member who (1) is a sanitation worker in such department at the time of filing application for service retirement under this section, and (2) has elected the benefits of this section pursuant to subdivision b or c of this section and has not withdrawn such election, and (3) shall have at least twenty years of allowable service as a sanitation worker in such department, may retire upon written application to the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired. Upon such retirement, such member shall receive, in lieu of any other retirement allowance for service provided for by this chapter, a retirement allowance as provided for in subdivisions f, g and h of this section.

f. On account of the first twenty years of such member's allowable service as a sanitation worker in such department, he or she shall receive a retirement allowance consisting of:

(1) An annuity which shall be, subject to the provisions of paragraph g of this section, the actuarial equivalent of the accumulated deductions from his or her pay during such period of twenty years of service as a sanitation worker (including regular interest to the date of completion of such period of service); and

(2) A pension-providing-for-increased-take-home-pay which is the actuarial equivalent of the reserve-for-increased-take-home-pay, if any, to which he or she may be entitled for such period of twenty years of service as a sanitation worker (including regular interest to the date of completion of such period of service); and

(3) A pension, which, when added to such annuity and such pension-providing-for-increased-take-home-pay, produces a retirement allowance equal to one-half of his or her annual salary or compensation when so retired.

g. For the purpose only of determining the amount of the pension payable pursuant to paragraph three of subdivision f of this section, the annuity referred to in paragraph one of such subdivision, if any, shall be computed, as it would be, (1) if it were not reduced by the actuarial equivalent of any outstanding loan, (2) if it were not increased by the actuarial equivalent of any additional contributions, (3) if it were not reduced by reason of the member's election to decrease his or her annuity contributions in order to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage, and (4) as it would be without any optional modification.

h. For allowable service rendered by such a member in addition to and in excess of such first twenty years of allowable service as a sanitation worker, there shall be added to the retirement allowance to which such member is entitled under subdivision f of this section:

(1) an annuity which shall be computed in the following man- ner:

(a) there shall be added together: (i) the total amount of the accumulated deductions of such member, whenever made, as the same are on the date of his or her retirement, including all voluntary, additional contributions, whenever made; and (ii) the amount of any loan to such member outstanding as of the date of his or her retirement;

(b) there shall be determined the amount of the accumulated deductions credited to such member with respect to the first twenty years of his or her allowable service as a sanitation worker in such department, (i) exclusive of the value, as of the date of the completion of such twenty years of service, of all of his or her voluntary, additional contributions made with respect to such period, and (ii) exclusive of the value of any accumulated deductions, including voluntary, additional contributions, credited with respect to any period of allowable service, other than as a sanitation worker, rendered by such member prior to such date, and (iii) treating such accumulated deductions with respect to such first twenty years of service, as they would be if not reduced by any loan made by such member;

(c) the annuity to which such member shall be entitled under this paragraph one shall be the actuarial equivalent of the remainder obtained by subtracting the sum computed pursuant to subparagraph (b) of this paragraph from the sum computed pursuant to subparagraph (a) of this paragraph; and

(2) a pension which shall be equal to one service-fraction of his or her final compensation multiplied by the number of his or her years of allowable service, other than such twenty years of allowable service as a sanitation worker; and

(3) a further pension of one-half of one service-fraction of his or her final compensation multiplied by the number of his or her years of allowable service as a sanitation worker in such department, rendered both (i) after the completion of such period of twenty years of service in such capacity and (ii) after July second, nineteen hundred sixty-five; and

(4) a pension-providing-for-increased-take-home-pay which shall be the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may be entitled, if any, for all periods of his or her allowable service other than such period of twenty years of allowable service as a sanitation worker.

i. Notwithstanding any other provision of this chapter, the service-fraction of any sanitation worker who elects the benefits of this section shall, for the purpose of determining his or her retirement allowance under this section, be one one-hundredth of his or her final compensation.

j. In any case where, with respect to any period wherein the provisions of this section are applicable to a sanitation worker in the department of sanitation by reason of his or her election of the benefits hereof, deductions are required to be made from his or her compensation pursuant to the provisions of section 13-108 of this chapter by reason of an application for service credit filed by him or her under such section, such deductions with respect to such period shall be made on the basis of his or her normal rate of contribution under the provisions of this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-36.5 added chap 171/1967 § 1

Subs b, c amended chap 331/1969 § 7

Sub d par 1 amended chap 331/1969 § 8

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-160*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-160 Optional retirement by members of the uniformed force of the department of sanitation after twenty years of allowable service in such force; retirement allowance upon service retirement.

a. For the purposes of this section, the uniformed force of the department of sanitation shall be deemed to consist of sanitation worker, assistant foreman, foreman, district superintendent, senior superintendent, supervising superintendent, principal superintendent, city superintendent, director of operations and general superintendent.

b. (1) (a) Any member who is a member of the uniformed force of the department of sanitation on the second day of July, nineteen hundred sixty-seven, may, by a written application duly executed and acknowledged and filed with the board prior to the first day of January, nineteen hundred sixty-eight, elect to contribute to the retirement system for the right to retire after twenty years of allowable service as a member of such force.

(b) Any member who is a member of the uniformed force of the department of sanitation on the effective date of this subparagraph (b) and at the time of filing an application as hereinafter in this subparagraph (b) provided, may, by a written application duly executed and acknowledged and filed with the board prior to the first day of January, nineteen hundred seventy, elect to contribute to the retirement system for the right to retire after twenty years of allowable service as a member of such force.

(2) (a) The rate of contribution of any such member making such election pursuant to subparagraph (a) or (b) of paragraph one of this subdivision b, and whose rate of contribution is not required to be determined pursuant to paragraph three of subdivision c of this section, by reason of an election made in compliance with the provisions of paragraph one of such subdivision c, shall be that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) which

would have been established for such member if:

(i) at the time of his or her appointment as a member of such force, there had been available to him or her an optional plan for service retirement upon completion of twenty years of allowable service as a member of the uniformed force of the department of sanitation, at a retirement allowance, for the first twenty years of such service, consisting of a pension and an annuity of twenty-five seventy-fifths of such pension, which together would equal one-half of the member's annual salary or compensation at the time of retirement; and

(ii) such member had then elected the benefits of such plan; and

(iii) such member's rate of contribution had then been fixed as a proportion of his or her compensation which, when deducted from each payment of his or her prospective earnable compensation prior to his or her eligibility for service retirement and accumulated at regular interest until completion of his or her minimum period for service retirement, would be computed to provide, at that time, an annuity equal to twenty-five seventy-fifths of the pension then allowable to him or her for such minimum period of service as a member of the uniformed force of the department of sanitation.

(b) The rate of contribution prescribed by subparagraph (a) of this paragraph two with respect to any such member shall begin on July third, nineteen hundred sixty-seven or on the date of the commencement of his or her service both as a member of such uniformed force and as a member of the retirement system, whichever is later.

c. (1) Subject to the privilege of electing the benefits of this section conferred by subparagraph (b) of paragraph one of subdivision a of this section, any person who is appointed a member of the uniformed force of the department of sanitation on or after the third day of July, nineteen hundred sixty-seven, may elect to contribute to the retirement system for the right to retire after twenty years of allowable service as a member of such force, by executing and acknowledging a written election to such effect and by filing such election with the board:

(a) prior to certification of his or her rate of contribution, if such person is not a member of the retirement system at the time of such appointment; and

(b) within thirty days after such appointment, if such person is a member of the retirement system at the time of such appointment.

(2) Notwithstanding the provisions of paragraph one of this subdivision c, any person who (a) is appointed a member of the uniformed force of the department of sanitation after July second, nineteen hundred sixty-seven and (b) had prior membership in the retirement system as a member of such force occurring after July second, nineteen hundred sixty-seven and prior to such appointment and (c) did not elect the benefits of this section during such prior membership mentioned in subparagraph (b) of this paragraph two, or, after having made such election, withdrew same, shall not, except as otherwise provided in subparagraph (b) of paragraph one of subdivision b of this section, be eligible to elect the benefits of this section, whether or not he or she is a member of the retirement system at the time of such appointment.

(3) Upon the basis of the tables herein authorized, and regular interest, the actuary of such board shall determine for each such person making such election pursuant to this subdivision c, the proportion of compensation which, when deducted from each payment of his or her prospective earnable compensation prior to his or her eligibility for service retirement and accumulated at regular interest until completion of his or her period for service retirement, shall be computed to provide, at that time, an annuity equal to twenty-five seventy-fifths of the pension then allowable to him such member, pursuant to paragraph three of subdivision f of this section, for such minimum period of service as a member of the uniformed force of the department of sanitation.

d. (1) At any time subsequent to one year after the filing of such an election by any member of the uniformed force of the department of sanitation pursuant to subdivision b or c of this section, such member may withdraw such

election by making, acknowledging and filing with the board a written withdrawal. Thereafter the provisions of this section shall be inapplicable to such member and he or she shall not be eligible to elect again the benefits of this section; provided, however, that a member of such force who has previously withdrawn such an election shall not thereby be prevented from electing the benefits of this section in compliance with the provisions of subparagraph (b) of paragraph one of subdivision b of this section.

(2) (a) During any period wherein the provisions of this section are inapplicable, under the provisions of paragraph one of this subdivision d, to any member who is a member of the uniformed force of the department of sanitation, the rate of contribution of such member shall be as prescribed by the applicable provisions of subparagraph (a) and (b) of paragraph two of subdivision a of section 13-125 of this chapter and the eligibility and rights of such member with respect to service retirement and other benefits under this chapter shall be governed by the applicable provisions of this chapter in the same manner as if such member had not elected the benefits of this section.

(b) During any period wherein the provisions of this section are inapplicable, under the provisions of paragraph one of this subdivision to a member who is not a member of such uniformed force, such member shall contribute to the retirement system and his or her eligibility and rights with respect to retirement for service shall be governed by the provisions of this chapter applicable to a member who has elected to contribute to such system on the basis of selection of a service fraction of one one-hundredth of his or her final compensation and attainment of eligibility for service retirement upon reaching the age of fifty-five years.

e. Any member who (1) is a member of the uniformed force of the department of sanitation at the time of filing application for service retirement under this section, and (2) has elected the benefits of this section pursuant to subdivision b or c of this section and has not withdrawn such election, and (3) shall have at least twenty years of allowable service as a member of such force, may retire upon written application to the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired. Upon such retirement, such member shall receive, in lieu of any other retirement allowance for service provided for by this chapter, a retirement allowance as provided for in subdivisions f, g and h of this section.

f. On account of the first twenty years of such member's allowable service as a member of the uniformed force of the department of sanitation, he or she shall receive a retirement allowance consisting of:

(1) An annuity which shall be, subject to the provisions of paragraph g of this section, the actuarial equivalent of the accumulated deductions from his or her pay during such period of twenty years of service as a member of such force (including regular interest to the date of completion of such period of service); and

(2) A pension-providing-for-increased-take-home-pay which is the actuarial equivalent of the reserve-for-increased-take-home-pay, if any, to which he or she may be entitled for such period of twenty years of service as a member of such force (including regular interest to the date of completion of such period of service); and

(3) A pension, which, when added to such annuity and such pension-providing-for-increased-take-home-pay, produces a retirement allowance equal to one-half of his or her annual salary or compensation when so retired.

g. For the purpose only of determining the amount of the pension payable pursuant to paragraph three of subdivision f of this section, the annuity referred to in paragraph one of such subdivision, if any, shall be computed, as it would be, (1) if it were not reduced by the actuarial equivalent of any outstanding loan, (2) if it were not increased by the actuarial equivalent of any additional contributions, (3) if it were not reduced by reason of the member's election to decrease his or her annuity contributions in order to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage, and (4) as it would be without any optional modification.

h. For allowable service rendered by such a member in addition to and in excess of such first twenty years of allowable service as a member of the uniformed force of the department of sanitation, there shall be added to the retirement allowance to which he or she is entitled under subdivision f of this section:

(1) an annuity which shall be computed in the following man- ner:

(a) there shall be added together: (i) the total amount of the accumulated deductions of such member, whenever made, as the same are on the date of his or her retirement, including all voluntary, additional contributions, whenever made; and (ii) the amount of any loan to such member outstanding as of the date of his or her retirement;

(b) there shall be determined the amount of the accumulated deductions credited to such member with respect to the first twenty years of his or her allowable service as a member of such force, (i) exclusive of the value, as of the date of the completion of such twenty years of service, of all his or her voluntary, additional contributions made with respect to such period, and (ii) exclusive of the value of any accumulated deductions, including voluntary, additional contributions, credited with respect to any period of allowable service, other than as a member of the uniformed force of the department of sanitation, rendered by such member prior to such date, and (iii) treating such accumulated deductions with respect to such first twenty years of service, as they would be if not reduced by any loan made by such member;

(c) the annuity to which such member shall be entitled under this paragraph one shall be the actuarial equivalent of the remainder obtained by subtracting the sum computed pursuant to subparagraph (b) of this paragraph from the sum computed pursuant to subparagraph (a) of this paragraph; and

(2) a pension which shall be equal to one service-fraction of his such member's final compensation multiplied by the number of his or her years of allowable service, other than such twenty years of allowable service as a member of the uniformed force of the department of sanitation; and

(3) a further pension of one-half of one service-fraction of his or her final compensation multiplied by the number of his or her years of allowable service as a member of such force, rendered both (i) after the completion of such period of twenty years of service in such force and (ii) after July second, nineteen hundred sixty-five; and

(4) a pension-providing-for-increased-take-home-pay which shall be the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may be entitled, if any, for all periods of his or her allowable service other than such period of twenty years of allowable service as a member of the uniformed force of the department of sanitation.

i. Notwithstanding any other provision of this chapter, the service-fraction of any member of the uniformed force of the department of sanitation who elects the benefits of this section shall, for the purpose of determining his or her retirement allowance under this section, to be one one-hundredth of his or her final compensation.

j. In any case where, with respect to any period wherein the provisions of this section are applicable to a member of the uniformed force of the department of sanitation by reason of his or her election of the benefits hereof, deductions are required to be made from his or her compensation pursuant to the provisions of section 13-108 of this chapter by reason of an application for service credit by such member under such section, such deductions with respect to such period shall be made on the basis of his or her normal rate of contribution under the provisions of this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-36.5 added chap 584/1967 § 1

Subs b, c amended chap 331/1969 § 9

Sub d par 1 amended chap 331/1969 § 10

Sub a amended chap 511/1973 § 4



Administrative Code of the City of New York



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

*NYC Administrative Code 13-161*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-161 Optional service retirement for certain officers and employees of the New York city transit authority after twenty years of designated service, with retirement allowance payable at or after age fifty.

a. For the purposes of this section, the following terms shall mean and include:

1. "Transit hourly-paid employee." A person holding a position in group one of the rapid transit railroad service, as classified by the city civil service commission.

2. "Transit annually-paid employee." A person who is employed by the transit authority in a position or classification of positions to which the provisions of this section have been made applicable by a resolution adopted by such authority pursuant to paragraph one of subdivision k of this section, and who is not a transit hourly-paid employee.

3. "Transit annually-paid operating employee." A transit annually-paid employee who holds a position in group two of the rapid transit railroad service, as classified by the city civil service commission.

4. "Transit annually-paid non-operating employee with prior transit service." A transit annually-paid employee who holds a position which is not in the rapid transit railroad service, as classified by such commission, and who held any such position on the date of effectiveness of a resolution of the transit authority making the provisions of this section applicable to such position.

5. "Subsequently appointed transit annually-paid non-operating employee." A transit annually-paid employee who holds a position which is not in the rapid transit railroad service and who was appointed to any such position for the first time after the date of effectiveness of a resolution of the transit authority making the provisions of this section

applicable to such position.

6. "Initial date of retirement allowance payability." The earliest date as of which payment of a member's retirement allowance may be caused by such member to commence under the provisions of this section.

7. "Transit authority." The New York city transit authority.

8. "Transit service." (a) In the case of any member who is a transit hourly-paid employee or transit annually-paid operating employee or subsequently appointed transit annually-paid non-operating employee, such term shall mean allowable service with the transit authority in any one or more of such capacities.

(b) In the case of any member who is a transit annually-paid non-operating employee with prior transit service, such term shall mean allowable city-service, but shall not include city-service rendered on or after July first, nineteen hundred sixty-eight, in other than a position with the transit authority.

b. (1) Any member who is in service as a transit hourly-paid employee with the transit authority on the first day of July, nineteen hundred sixty-eight, may elect, by a written application duly executed and acknowledged and filed with the board of estimate prior to the first day of January, nineteen hundred sixty-nine, to contribute to the retirement system for the right to retire as provided in this section after twenty years of transit service, with retirement allowance payable at or after age fifty. Such election shall be subject to the provisions of subdivision l of this section.

(2) Subject to the provisions of subdivision l of this section, the rate of contribution, on and after July first, nineteen hundred sixty-eight, of any such member making such election shall be that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) which would have been established for such member if (a) at the time of his or her appointment as a transit hourly-paid employee with such authority, there had been available to him or her an optional plan providing for service retirement upon his or her completion of twenty years of transit service and payment, not earlier than attainment of age fifty, of a retirement allowance for the first twenty years of such service, consisting of a pension and an annuity which together would equal one-half of the member's salary or compensation earnable by him or her in the year prior to his or her retirement, and (b) such member had, at the time of such appointment, elected the benefits of such plan and (c) his or her rate of contribution had then been fixed as a proportion of his or her compensation which, when deducted from each payment of his or her prospective earnable compensation prior to the completion of his or her twentieth year of transit service and accumulated at regular interest until completion of such twenty years of transit service, would be computed to provide an annuity, which, as of the initial date of retirement allowance payability with respect to such member, would be equal to twenty-five seventy-fifths of the pension allowable to him or her for such minimum period of service under the provisions of this section.

(3) Any member who was in service as a transit hourly paid employee with the transit authority on the first day of July, nineteen hundred sixty-eight, and any person who was appointed a transit hourly paid employee with the transit authority on or after the first day of July, nineteen hundred sixty-eight, who did not elect the benefits of subdivision b of this section within the time therein provided for such election, may elect, by a written election duly executed and acknowledged and filed with the board prior to the last day of December, nineteen hundred sixty-nine, to contribute to the retirement system for the right to retire after twenty years of allowable service as a transit hourly paid employee with the transit authority. All contributions and benefits payable by or on account of such member shall be computed on the basis of such right to retire after twenty years of allowable service as a transit hourly paid employee with the transit authority, as if he or she had made such election within the time prescribed by subdivision b of this section.

c. (1) (a) Any person who is appointed a transit hourly-paid employee with the transit authority after the first day of July, nineteen hundred sixty-eight, may, in the manner hereinafter provided in this paragraph one, elect the right to retire as provided in this section after completion of twenty years of transit service, with retirement allowance payable at or after age fifty.

(b) Such person may make such election by executing and acknowledging a written election to such effect and by filing such election with the board:

(i) prior to certification of his or her rate of contribution, if such person is not a member of the retirement system at the time of such appointment; and

(ii) Within thirty days after such appointment, if such person is a member of the retirement system at the time of such appointment.

(c) In the case of any such election made by a member on or after July first, nineteen hundred sixty-eight and prior to July first, nineteen hundred seventy, such election shall constitute an election to contribute while a transit twenty-year plan member (as defined in subdivision sixty-one of section 13-101 of this chapter) to the retirement system for such right at the rate of contribution prescribed by paragraph three of this subdivision c; provided, however that if such member is relieved, pursuant to the provisions of subdivision l of this section, of the making of contributions, such member shall be required to contribute at such rate until the effective date of such relief.

(2) Notwithstanding the provisions of paragraph one of this subdivision c, any person who (a) is appointed a transit hourly-paid employee with the transit authority after July first, nineteen hundred sixty-eight and (b) had prior membership in the retirement system as a transit hourly-paid employee or transit annually-paid employee occurring after July first, nineteen hundred sixty-eight and prior to such appointment, and (c) did not elect the benefits of this section during such prior membership mentioned in sub-paragraph (b) of this paragraph two, or, after having made such election, withdrew same, shall not be eligible to elect the benefits of this section, whether or not he or she is a member of the retirement system at the time of such appointment.

(3) Subject to the provisions of subdivision l of this section, upon the basis of the tables herein authorized and regular interest, the actuary of such board shall determine for each such person making such election pursuant to this subdivision c, the proportion of compensation which, when deducted from each payment of his or her prospective earnable compensation prior to his or her completion of his or her twentieth year of transit service and accumulated at regular interest until completion of such twenty years of transit service, shall be computed to provide an annuity which, as of the initial date of retirement allowance payability with respect to such member, shall be equal to twenty-five seventy-fifths of the pension then allowable to him or her for such minimum period of service under the provisions of this section.

d. (1) At any time subsequent to one year after the filing of an election of the benefits of this section by any transit hourly-paid employee or transit annually-paid employee pursuant to this section, he or she may withdraw such election by making, acknowledging and filing with the board a written withdrawal. Thereafter the provisions of this section shall be inapplicable to such member and he or she shall not be eligible to elect again the benefits of this section.

(2) In any case where any member who is a transit hourly-paid employee or transit annually-paid employee with the transit authority has elected the benefits of this section and shall thereafter, and before he or she acquires a vested right to a retirement allowance under this section, change his or her status so that he or she is neither a transit hourly-paid employee nor a transit annually-paid employee with such authority, the provisions of this section, notwithstanding any other provision of this title, shall be inapplicable to such member during any such period wherein he or she does not hold either such position.

(3) (a) During any period wherein the provisions of this section are inapplicable, under the provisions of paragraph one of this subdivision d, to any member who is a transit hourly-paid employee or transit annually-paid employee:

(i) if the service of such member with the transit authority as such employee began prior to July first, nineteen hundred sixty-eight, his or her minimum retirement age, service-fraction and normal rate of contribution shall be as they were immediately prior to his or her election of the benefits of this section;

(ii) if the service of such member with the transit authority as such employee began after June thirtieth, nineteen hundred sixty-eight, the minimum retirement age of such member shall be fifty-five years, his or her pension shall be as prescribed by paragraph six of subdivision a of section 13-172 of this chapter for the years of his or her allowable service therein mentioned and his or her normal rate of contribution shall be that which would have been fixed for such member if at the time when his or her last membership in the retirement system began, he or she had elected to contribute to the retirement system as provided for in such paragraph six.

(b) (i) During any period wherein the provisions of this section are inapplicable, under the provisions of paragraph two of this subdivision d, to a member, then unless such member shall become eligible for and acquire by election or otherwise pursuant to the provisions of this title, rights or status other than as hereinafter set forth in this subparagraph (b), the rights and status of such member with respect to minimum retirement age, service-fraction, rate of contribution and privilege of electing any optional plan of retirement shall, except as otherwise provided in item (ii) of this subparagraph (b), be as they would be if the last membership of such member in the retirement system began on such date on which the provisions of this section became inapplicable to such member and such member was not on such date in service with the transit authority.

(ii) During the period of three years after such date on which the provisions of this section became inapplicable to such member, then unless he or she acquires other rights and status pursuant to other applicable provisions of this chapter:

(1) his or her eligibility for service retirement and his or her retirement allowance, if the service of such member with the transit authority began prior to July first, nineteen hundred sixty-eight, shall be determined in the same manner as if he or she had not elected the benefits of this section; and

(2) his or her eligibility for service retirement and his or her retirement allowance, if the service of such member with the transit authority began after June thirtieth, nineteen hundred sixty-eight, shall be determined on the basis of a minimum retirement age of fifty-five and a pension computed pursuant to paragraph six of subdivision a of section 13-172 of this chapter for the years of allowable service of such member mentioned in such subdivision.

(c) During any period wherein the provisions of this section are inapplicable to any member under the provisions of paragraph one or two of this subdivision d, the eligibility and rights of such member with respect to benefits under this chapter shall be governed, subject to the provisions of subparagraphs (a) and (b) of this paragraph three, by the applicable provisions of this chapter in the same manner as if such member had not elected the benefits of this section.

e. (1) Any member who (a) has elected optional retirement pursuant to this section and (b) has not withdrawn such election and (c) has completed twenty years of transit service, and (d) is a transit hourly-paid employee or transit annually-paid employee at the completion of such period of service, shall have, effective with the date on which he or she has completed such twenty years of transit service, a vested right to a retirement allowance, and to retire for service, subject to the provisions hereinafter set forth in this subdivision e and the applicable provisions of this section.

(2) Subject to the provisions of paragraph four of this subdivision e, any such member who meets the conditions specified in paragraph one of this subdivision e, and who is in city-service as a transit hourly-paid employee or as a transit annually-paid employee and who has not withdrawn his or her accumulated deductions, except as permitted by subdivision c of section 13-140 of this chapter, and except as such deductions or any portion thereof may be paid pursuant to subparagraph (d) of paragraph six of this subdivision e, may retire upon his or her own request, regardless of age, upon written application to the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, and, upon the effective date of his or her retirement, or his or her attainment of age fifty, whichever is the later, such member shall be paid a retirement allowance calculated pursuant to the provisions of subdivisions f, g and h of this section.

(3) If any such member dies on or after the effective date of his or her retirement and before the first payment on

account of his or her retirement allowance is made, then such member, whether or not he or she has selected any option, shall be deemed to have selected option one, and any beneficiary under such option one shall be eligible for benefits under such option as of the date of such death but not earlier than the date upon which such member would have reached the age of fifty years.

(4) Notwithstanding any other provisions of this section, or the provisions of any other section of the code to the contrary, in any case where any member who has a vested right to a retirement allowance under the provisions of this section is dismissed for cause by the transit authority, such dismissal shall in no wise impair or defeat such vested right to a retirement allowance, or his or her right to retire from the retirement system as provided in this section, except only as provided in paragraphs five and six of this subdivision. Where any member who has such a vested right is so dismissed for cause, and such vested right, under the provisions of this paragraph four, is not thereby defeated, such member shall be deemed to have been retired for service as of the date of such dismissal. In any case where any member who has such a vested right is, on any basis other than cause, removed or otherwise involuntarily separated from city-service as a transit hourly-paid employee or transit annually-paid employee, such member shall be deemed to have been retired for service as of the date on which such removal or separation becomes effective.

(5) (a) In the event that any such member who has a vested right to a retirement allowance shall, prior to the effective date of his or her retirement, be dismissed from the service of the transit authority because of drunkenness on duty or because of theft of transit authority property, then upon such dismissal his or her rights as a member shall cease and terminate and the retirement system shall be discharged of all further obligations to such member, except that he or she shall have a right to a return of his or her accumulated deductions, if any.

(b) For the purpose of this paragraph five, "theft of transit authority property" shall be construed to include:

(i) any case where a member wilfully takes or retains, for his or her own use or benefit:

(1) moneys or property belonging to or under the jurisdiction of the transit authority; or

(2) moneys or property belonging to any passenger, provided such taking or retention occurs while such passenger is upon or using any of the transit facilities under the jurisdiction of the transit authority; and

(ii) any acceptance from the transit authority of wages or sick pay for time actually worked for any employer other than such authority.

(6) (a) In the event that any such member who has a vested right to a retirement allowance, shall, prior to the effective date of his or her retirement, be arrested or indicted on a criminal charge which is a felony under the laws of the state of New York, or of the United States, his or her vested right to a retirement allowance shall be temporarily divested and he or she shall be temporarily divested of the right to retire under this section, subject to the provisions of subparagraph (b) of this paragraph six.

(b) If, during the twelve-month period subsequent to such arrest or indictment, whichever occurs first, such member is convicted of a felony in the prosecution instituted by such arrest or indictment, then upon such conviction, his or her vested right to a retirement allowance shall be permanently divested and forfeited and his or her membership in the retirement system shall cease and terminate, and the retirement system shall be discharged of all further obligations to such member, except that he or she shall have a right to a return of his or her accumulated deductions, if any, less any payments made to such member pursuant to subparagraph (d) of this paragraph six.

(c) If such member is not so convicted, then upon the expiration of such twelve-month period or upon his or her earlier acquittal of the felony or felonies charged in such prosecution, his or her vested right to a retirement allowance and to retire under this section shall be reinstated and if such member had filed an application for retirement under paragraph two of this subdivision e, the effective date of his or her retirement and the initial date of retirement allowance payability with respect to such member shall be the same as if such temporary divestment had not occurred.

(d) Any such member who has attained the age of fifty years and who has filed an application for retirement under paragraph two of this subdivision e and whose right to retire has been temporarily divested pursuant to subparagraph (a) of this paragraph six, shall, if he or she is then credited with accumulated deductions, have the right, upon his or her written election filed with the board, to receive each month from the retirement system, after the date on which his or her retirement would otherwise become effective and during such period of temporary divestment, an amount to be designated by him or her, not in excess of the amount of the monthly benefit which would have been payable to such member if his or her right to retire had not been temporarily divested, provided that the total of such payments to him or her shall not exceed the amount of his or her accumulated deductions after reduction of same by the amount of any outstanding loan. In the event that the right of such member to retire is reinstated pursuant to the provisions of subparagraph c of this paragraph six, such payments shall be deemed to be and treated as payments on account of his or her retirement allowance.

(e) In any case where any such member files an application for retirement and his or her right to retire is temporarily divested under the provisions of subparagraph (a) of this paragraph six, the employment of such member by the transit authority or the holding of office by such member with the authority, as the case may be, shall for all purposes cease and terminate on the date on which his or her retirement would otherwise become effective, whether or not such member be convicted in the prosecution causing such temporary divestment.

f. A member who has retired under this section shall receive, on account of the first twenty years of his or her transit service and in lieu of any other retirement allowance for such twenty years of service, a retirement allowance consisting of:

(1) An annuity which shall be, subject to the provisions of subdivision g of this section, the actuarial equivalent, as of the date on which such member's retirement allowance becomes payable, of the accumulated deductions from his or her pay, if any, during such period of twenty years of transit service (including regular interest to and including the completion of such period of twenty years of service); and

(2) A pension-providing-for-increased-take-home-pay which is the actuarial equivalent, as of the date on which such member's retirement allowance becomes payable, of the reserve-for-increased-take-home-pay, if any, to which he or she may be entitled for such period of twenty years of transit service (including regular interest to and including the completion of such period of twenty years of service); and

(3) A pension, which, when added to such annuity, if any, and such pension-providing-for-increased-take-home-pay, if any, produces a retirement allowance equal to one-half of his or her salary or compensation earnable by such member for transit service in the year prior to his or her retirement.

g. For the purpose only of determining the amount of the pension payable pursuant to paragraph three of subdivision f of this section, the annuity referred to in paragraph one of such subdivision, if any, shall be computed, as it would be, (1) if it were not reduced by the actuarial equivalent of any outstanding loan, (2) if it were not increased by the actuarial equivalent of any additional contributions, (3) if it were not reduced by reason of the member's election to decrease his or her annuity contributions in order to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage, and (4) as it would be without any optional modification.

h. For allowable service rendered by such member in addition to and in excess of such first twenty years of transit service, such member shall receive, in addition to the retirement allowance to which he or she is entitled under subdivision f of this section and in lieu of any other retirement allowance for such additional and excess allowable service:

(1) an annuity, if any, which shall be computed in the following manner:

(a) there shall be added together: (i) the total amount of the accumulated deductions of such member, if any, whenever made, as the same are on the date on which such member's retirement allowance becomes payable, including

all voluntary, additional contributions, whenever made; and (ii) the amount of any loan to such member outstanding as of such date;

(b) there shall be determined the amount of the accumulated deductions, if any, credited to such member with respect to the first twenty years of his or her transit service, as such deductions were at the completion of such first twenty years of service (i) exclusive of the value, as of the date of completion of such period of service, of all of his or her voluntary, additional contributions made with respect to such period of twenty years, and (ii) exclusive of the value, as of such date of completion, of any accumulated deductions, including voluntary, additional contributions, credited with respect to any period of allowable service (other than transit service) rendered by such member prior to completion of such period of twenty years of service, and (iii) treating such accumulated deductions with respect to such first twenty years of transit service as they would be if not reduced by any loan made by such member:

(c) the annuity to which such member shall be entitled under this paragraph one, if any, shall be the actuarial equivalent, as of the date on which such member's retirement allowance becomes payable, of the remainder obtained by subtracting the sum computed pursuant to subparagraph (b) of this paragraph one from the sum computed pursuant to subparagraph (a) of this paragraph; and

(2) a pension which shall be equal to one service-fraction of his or her final compensation multiplied by the number of his or her years of allowable service, other than such twenty years of transit service; and

(3) a further pension of one-half of one service-fraction of his or her final compensation multiplied by the number of his or her years of transit service rendered both (i) after the completion of such period of twenty years of transit service and (ii) on or after July first, nineteen hundred sixty-eight; and

(4) a pension-providing-for-increased-take-home-pay which shall be the actuarial equivalent, as of the date on which such member's retirement allowance becomes payable, of the reserve-for-increased-take-home-pay to which he or she may be entitled, if any, for all periods of his or her allowable service other than such period of twenty years of transit service.

i. Notwithstanding any other provision of this chapter, the service-fraction of any transit hourly-paid employee or transit annually-paid employee who elects the benefits of this section shall, for the purpose of determining his or her retirement allowance under this section, be one one-hundredth of his or her final compensation.

j. In any case where, with respect to any period wherein the provisions of this section are applicable to a transit hourly-paid employee or transit annually-paid employee by reason of his or her election of the benefits hereof, deductions are required to be made from his or her compensation pursuant to the provisions of subdivision one of section 13-108 of this chapter by reason of an application for service credit filed by him or her under such section, such deductions with respect to such period shall, subject to the provisions of subdivision three of such section, be made on the basis of his or her normal rate of contribution under the provisions of this section.

k. (1) The transit authority shall have power and authority to make the provisions of this section applicable to officers and employees holding such positions or employed in such classifications of positions (other than positions of transit hourly-paid employees) as it shall designate by one or more resolutions adopted by it on or before July first, nineteen hundred sixty-nine. Such applicability shall commence on the date of effectiveness specified in any such resolution, which date shall not be earlier than July first, nineteen hundred sixty-eight, nor later than July first, nineteen hundred sixty-nine.

(2) Any member who becomes a transit annually-paid employee by virtue of such a resolution and who is in service in a position as such employee with the transit authority on the date of effectiveness specified in such resolution, may, by a written application duly executed and acknowledged and filed with the board of estimate within six months from such date of effectiveness, elect to contribute to the retirement system for the right to retire after completion of twenty years of transit service, with retirement allowance payable at or after age fifty.

(3) Subject to the provisions of subdivision l of this section, the rate of contribution, on and after such date of effectiveness, of any such member making such election shall be that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) which would have been established for such member if (a) at the time of his or her appointment as a transit annually-paid employee which such authority, if such member is a transit annually-paid operating employee or subsequently appointed transit annually-paid nonoperating employee, or, at the time of his or her last entry into cityservice, if such member is a transit annually-paid non-operating employee with prior transit service, there had been available to him or her an optional plan for service retirement upon his or her completion of twenty years of transit service, and payment, not earlier than attainment of age fifty, of a retirement allowance for the first twenty years of such service, consisting of a pension and an annuity, which together would equal one-half of the member's salary or compensation earnable by him or her for transit service in the year prior to his or her retirement, and (b) such member had elected the benefits of such plan at the time of such appointment or last entry into city-service, as the case may be, and (c) his or her rate of contribution had been fixed, at such time of appointment or last entry into city-service, as the case may be, as a proportion of his or her compensation which, when deducted from each payment of his or her prospective earnable compensation prior to the completion of his or her twentieth year of transit service and accumulated at regular interest until completion of such twenty years of transit service, would be computed to provide an annuity which, as of the initial date of retirement allowance payability with respect to such member, would be equal to twenty-five seventy-fifths of the pension allowable to him or her for such minimum period of service under the provisions of this section.

(4) (a) Any person who is appointed after the date of effectiveness of any such resolution, to a position with the transit authority to which the provisions of this section are made applicable by such resolution, may, in the manner hereinafter provided in this paragraph four, elect the right to retire as provided in this section upon completion of twenty years of transit service, with retirement allowance payable at or after age fifty.

(b) Such person may make such election by executing and acknowledging a written election to such effect and by filing such election with the board:

(i) prior to certification of his or her rate of contribution, if such person is not a member of the retirement system at the time of such appointment; and

(ii) within thirty days after such appointment, if such person is a member of the retirement system at the time of such appointment.

(c) In the case of any such election made by a member after such date of effectiveness and prior to July first, nineteen hundred seventy, such election shall constitute an election to contribute while a transit twenty-year plan member (as defined in subdivision sixty-one of section 13-101 of this chapter) for such right to the retirement system at the rate of contribution prescribed by paragraph six of this subdivision k; provided, however, that if such member is relieved, pursuant to the provisions of subdivision l of this section, of the making of contributions, such member shall be required to contribute at such rate until the effective date of such relief.

(5) Notwithstanding the provisions of paragraph four of this subdivision k, any person who is appointed a transit annually-paid employee with the transit authority after July first, nineteen hundred sixty-eight and who, prior to such appointment as a transit annually-paid employee, had prior membership in the retirement system as a transit annually-paid employee or transit hourly-paid employee and did not elect the benefits of this section during such prior membership, or, after having made such election, withdrew same, shall not be eligible to elect the benefits of this section, whether or not he or she is a member of the retirement system at the time of such appointment.

(6) Subject to the provisions of subdivision l of this section, upon the basis of the tables herein authorized and regular interest, the actuary of such board shall determine for each transit annually-paid employee making such election pursuant to paragraph four of this subdivision k, the proportion of compensation which, when deducted from each

payment of his or her prospective earnable compensation prior to his or her completion of his or her twentieth year of transit service and accumulated at regular interest until completion of such twenty years of transit service, shall be computed to provide an annuity which as of the initial date of retirement allowance payability with respect to such member, shall be equal to twenty-five seventy-fifths of the pension then allowable to him or her for such minimum period of service under the provisions of this section.

l. (1) A transit twenty-year plan member (as defined in subdivision sixty-one of section 13-101 of this chapter) who is in service with the transit authority on June thirtieth, nineteen hundred seventy as a transit hourly-paid employee may elect, by a written application duly executed and acknowledged and filed with the board prior to January first, nineteen hundred seventy-one, to be relieved, pursuant to the provisions of paragraph two of this subdivision l, of making further contributions and to qualify for retirement under the provisions of this section without making further contributions.

(2) Any such member who makes such an election shall not, commencing with his or her payroll period, the first day of which is next after July first, nineteen hundred seventy and thereafter while he or she remains a transit twenty-year plan member, be required to make further contributions to the retirement system as provided in paragraphs one and two of subdivision b of this section or paragraphs one and three of subdivision c of this section, whichever are applicable to him or her, and commencing with such payroll period and thereafter while he or she remains a transit twenty-year plan member, the making of further deductions from his or her compensation as provided for in such applicable paragraphs shall not be required.

(3) Any person who is appointed a transit hourly-paid employee on or after July first, nineteen hundred seventy and who elects to become a transit twenty-year plan member shall not, while he or she remains a transit twenty-year plan member, be required to make contributions to the retirement system as provided for in paragraph three of subdivision c of this section and while he or she remains a transit twenty-year plan member, no deductions from his or her compensation shall be made as provided for in such paragraph three.

(4) (a) The transit authority shall have full power and authority, by resolution or resolutions adopted on or before July first, nineteen hundred seventy-one, to designate as eligible for the election described in subparagraph (b) of this paragraph four, one or more categories, as it may determine, of transit twenty-year plan members, who, as of the effective date of any such resolution applicable to their category (which date shall not be earlier than July first, nineteen hundred seventy or later than July first, nineteen hundred seventy-one) are in the service of the transit authority as transit annually-paid operating employees, transit annually-paid non-operating employees with prior transit service or subsequently appointed transit annually-paid non-operating employees.

(b) Any such resolution may provide that such eligible members therein designated, may, by a written application duly executed and acknowledged and filed with the board no later than six months after such effective date, elect to be relieved, pursuant to the provisions of paragraph five of this subdivision l, of making further contributions and to qualify for retirement under the provisions of this section without making further contributions.

(5) Any such member who makes such election pursuant to paragraph four of this subdivision l shall not, on or after the effective date of such resolution applicable to him or her and thereafter while he or she remains a transit twenty-year plan member, be required to make further contributions to the retirement system as provided in paragraphs two and three of subdivision k of this section or paragraphs four and six of such subdivision, whichever of such paragraphs are applicable to him or her, and commencing on such effective date and thereafter while he or she remains a transit twenty-year plan member, the making of further deductions, as provided for in such applicable paragraphs, from his or her compensation shall not be required.

(6) (a) The transit authority shall have full power and authority, by resolution or resolutions adopted on or before July first, nineteen hundred seventy-one, to designate as non-contributory members as provided for in subparagraph (b) of this paragraph six, one or more categories, as it may determine, of persons who, after the effective

date of any such resolution applicable to their category (which date shall not be earlier than July first, nineteen hundred seventy or later than July first, nineteen hundred seventy-one) are appointed transit annually-paid operating employees, transit annually-paid non-operating employees with prior transit service or subsequently appointed transit annually-paid non-operating employees and who become transit twenty-year plan members.

(b) Any such member designated as a non-contributory member pursuant to subparagraph (a) of this paragraph six shall not, while he or she remains a transit twenty-year plan member be required to make contributions to the retirement system as provided for in paragraph six of subdivision k of this section and while he or she remains a transit twenty-year plan member, no deductions from his or her compensation shall be made as provided for in such paragraph six.

(7) In any case where any deductions from the compensation of a twenty-year pension plan member are made as contributions under the applicable provisions of subdivision b, c or k of this section with respect to any period in relation to which, under the foregoing provisions of this subdivision l, he or she is relieved of making contributions, such deductions shall be refunded to such member, without interest.

(8) Nothing contained in the foregoing paragraphs of this subdivision l shall be construed to require that a normal rate of contribution heretofore assigned to a transit twenty-year plan member pursuant to the provisions of paragraphs one and two of subdivision b of this section or paragraphs one and three of subdivision c of this section or paragraphs two and three of subdivision k of this section or paragraphs four and six of such subdivision k, whichever of such paragraphs are applicable to such member, shall not be retained by him or her for the purposes of this chapter, subject to the provisions of this section, or to require that a normal rate of contribution shall not be hereafter assigned to and retained by a transit twenty-year plan member, pursuant to the applicable provisions of such paragraphs of such subdivisions b, c and k, for the purposes of this chapter, subject to the provisions of this section.

(9) (a) In any case where any transit twenty-year plan member is relieved, pursuant to the foregoing provisions of this subdivision l, of making contributions, all required contributions heretofore or hereafter made by such member during any period wherein he or she was not or is not so relieved shall nevertheless remain required contributions (whether or not made by him or her while a transit twenty-year plan member) for all of the purposes of this chapter, including, but not limited to the purposes of subdivisions f, g and h of this section, and nothing contained in the foregoing paragraphs of this subdivision l or any other provision of law shall be construed as changing their status as required contributions to any other status.

(b) No contributions of a transit twenty-year pension plan member who is so relieved shall be deemed excess contributions under subdivision c of section 13-140 of this chapter unless such contributions, if such member were not so relieved, would be excess contributions.

(10) (a) Any transit twenty-year plan member:

(1) who is relieved of making contributions by the provisions of paragraphs one and two of this subdivision l, or

(ii) who is relieved of making contributions by the provisions of paragraphs four and five of this subdivision l;

may, for the purpose of purchasing additional annuity, elect to continue to contribute to the retirement system at the rate of two and one half per centum, five per centum, seven and one half per centum, or ten per centum of earnable compensation.

(b) Any contributions made by a transit twenty-year plan member pursuant to subparagraph (a) of this paragraph ten shall be deemed to be voluntary, additional contributions for all of the purposes of this title, including but not limited to the purposes of subdivisions f, g and h of this section.

(c) Such voluntary, additional contributions shall not enter into the computation for allowance on ordinary

disability retirement as described in section 13-174 of this chapter.

m. In any case where a transit twenty-year plan member (as defined in subdivision sixty-one of section 13-101 of this chapter) who had membership in the retirement system immediately prior to becoming a transit twenty-year plan member dies while a transit twenty-year plan member but before completing twenty years of transit service, such member, if he or she would have been eligible, on the day next preceding the day of his or her death, to retire for service had he or she remained a member under the retirement plan applicable to him or her immediately before he or she became a transit twenty-year plan member, shall be deemed to have died while a member of such immediately preceding retirement plan.

n. (1) Notwithstanding any other provision of this section to the contrary, any person who is a transit hourly-paid employee on June thirtieth, nineteen hundred seventy and who is not on that date a transit twenty-year plan member (as defined in subdivision sixty-one of section 13-101 of this chapter) may elect, by a written application duly executed and acknowledged and filed with the board on or after July first, nineteen hundred seventy and prior to January first, nineteen hundred seventy-one, the right to retire under the provisions of this section after twenty years of transit service, with retirement allowance payable at or after age fifty.

(2) Subject to the provisions of subdivision l of this section, the rate of contribution, on and after July first, nineteen hundred sixty-eight, of any such member making such election who was a transit hourly-paid employee on June thirtieth, nineteen hundred sixty-eight and whose last membership in the retirement system began on or before such June thirtieth, shall be that determined in accordance with the method of computation prescribed by paragraph two of subdivision b of this section.

(3) Such election by a member described in paragraph two of this subdivision n shall constitute an election to contribute on and after July first, nineteen hundred sixty-eight to the retirement system, for benefits as a transit twenty-year pension plan member, at the rate of contribution prescribed by paragraph two of subdivision b of this section; provided that if such member is relieved, pursuant to the provisions of subdivision l of this section, of making contributions, he or she shall not be required to make contributions on or after the effective date of such relief.

(4) Subject to the provisions of subdivision l of this section, in the case of any such member making such election who was appointed a transit hourly-paid employee with the transit authority on or after July first, nineteen hundred sixty-eight, his or her rate of contribution, on and after the date of such appointment, shall be that determined in accordance with the method of computation prescribed by paragraph three of subdivision c of this section.

(5) Such election by a member described in paragraph four of this subdivision n shall constitute an election to contribute to the retirement system, on and after the date of his or her appointment as a transit hourly-paid employee, for benefits as a transit twenty-year pension plan member, at the rate of contribution prescribed by paragraph three of subdivision c of this section; provided that if such member is relieved, pursuant to the provisions of subdivision l of this section, of making contributions, he or she shall not be required to make contributions on or after the effective date of such relief.

(6) In any case where any member makes such election pursuant to paragraph one of this subdivision n, any required contributions made by such member in excess of those required by the applicable provisions of paragraph three or five of this subdivision shall, to the extent of such excess, be refunded to such member, without interest.

(7) In any case where any member makes such election pursuant to paragraph one of this subdivision n and the required contributions made by such member during the period specified in the applicable provisions of paragraph three or five of this subdivision are smaller than those required by such provisions, such member, notwithstanding any provision of subdivision l of this section or any other provision of law to the contrary, shall, on and after the date on which he or she makes such election, continue to make contributions at his or her rate of contribution as a twenty-year pension plan member until such deficiency is satisfied.

(8) (a) Notwithstanding any other provision of this chapter to the contrary, the reserve-for-increased-take-home-pay, if any, credited to any member who makes such election pursuant to paragraph one of this subdivision n shall be reduced by the applicable amount prescribed by subparagraph (b) or (c) of this paragraph eight.

(b) In the case of any such member who was a transit hourly-paid employee on July first, nineteen hundred sixty-eight, such reserve shall be reduced by the amount of all sums (together with regular interest thereon) which, if such election had not been made, would be required to be added to such reserve as due from the city with respect to any period or portion thereof occurring on or after July first, nineteen hundred sixty-eight.

(c) In the case of any such member who was appointed a transit hourly-paid employee after July first, nineteen hundred sixty-eight, such reserve shall be reduced by the amount of all sums (together with regular interest thereon) which, if such election had not been made, would be required to be added to such reserve as due from the city with respect to any period or portion thereof occurring on or after the date on which such member was appointed a transit hourly-paid employee.

(d) The amount of such reduction prescribed by subparagraph (b) or (c) of this paragraph eight shall become the property of the retirement system.

(9) Notwithstanding any other provision of this section to the contrary, any person who is appointed a transit hourly-paid employee on or after July first, nineteen hundred seventy, may elect the right to retire as provided in this section after completion of twenty years of transit service, with retirement allowance payable at or after age fifty, by executing and acknowledging a written election to such effect and by filing such election with the board:

(a) prior to:

(i) the date of certification of his or her rate of contribution; or

(ii) January first, nineteen hundred seventy-one;

whichever is later, if such person is not a member of the retirement system at the time of such appointment; or

(b) prior to:

(i) the thirty-first day after such appointment; or

(ii) January first, nineteen hundred seventy-one;

whichever is later, if such person is a member of the retirement system at the time of such appointment.

(10) If a member who makes such election pursuant to paragraph nine of this subdivision n, made required contributions to the retirement system with respect to the whole or any part of the period between such appointment and such election, by reason of status as a member of the retirement system prior to the filing of such election, the amount of such required contributions shall be refunded to such member, without interest.

(11) If a member who makes such election pursuant to paragraph nine of this subdivision n was credited with any sum representing an initiation of or addition to reserve-for-increased-take-home-pay which, if such election had not been made, would be due from the city with respect to such period or portion thereof mentioned in paragraph ten of this subdivision, such sum, with regular interest thereon, shall be deducted from such reserve and shall become the property of the retirement system.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-36.6 added chap 290/1968 § 1

Sub b par 3 added chap 806/1969 § 1

Sub k par 4 amended chap 866/1969 § 13

Sub b pars 1, 2 amended chap 870/1970 § 21

Sub c pars 1, 3 amended chap 870/1970 § 22

(Legislative finding, divest, dismissed from service, chap 870/1970 § 23)

Sub e par 5 subpar a amended chap 870/1970 § 24

Sub e par 6 subpar a amended chap 870/1970 § 25

Sub e par 6 subpars b, d amended chap 870/1970 § 26

Sub f par 1 amended chap 870/1970 § 27

Sub f par 3 amended chap 870/1970 § 28

Sub h par 1 amended chap 870/1970 § 29

Sub j amended chap 870/1970 § 30

Sub k pars 3, 4 amended chap 870/1970 § 31

Sub k par 6 amended chap 870/1970 § 32

Subs l, m, n added chap 870/1970 § 33

**CASE NOTES**

¶ 1. Where plaintiff in 1970 filed with the retirement system a pension selection form for Plan B and five years later wrote the retirement system that he had discovered that he had mistakenly checked Plan B when he had intended to check Plan A and was advised by the retirement system that he could change to Plan A, after which plaintiff filed his selection of Plan A with retirement system and was later advised by the retirement system that he had been inadvertently advised that he would be permitted to change from Plan B to Plan A, plaintiff's selection of Plan B would not be reformed since the retirement system retained the power to correct its previous erroneous action purporting to grant his request.-Weinberg v. N.Y.C. Employees' Retirement System, 71 A.D. 2d 672, 418 N.Y.S. 2d 950 [1979], aff'd, 50 N.Y. 2d 970 [1980].

¶ 2 Subdivision j, paragraph (2) of this section was held constitutional and it did not unconstitutionally deprive former Assistant District Attorney who waived his rights under an optional superior plan by withdrawing therefrom of his vested pension rights by creating an additional optional pension plan.-Nussbaum v. N.Y.C. Employees' Retirement System, 53 N.Y. 2d 1018 [1981], modifying, 74 A.D. 2d 782.

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-162*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-162 Optional service retirement upon completion of minimum period of service under career pension plan.

a. (1) (a) Any member in city-service who, at the time of filing an application as hereinafter in this subparagraph (a) provided, holds a career pension plan position, may elect, by a written application duly executed and filed with the board of estimate on or after the date of enactment of this section and prior to July first, nineteen hundred sixty-eight, to become a career pension plan member commencing on July first, nineteen hundred sixty-eight and to contribute to the retirement system for the right to retire under the career pension plan; provided, however, that if any member filing such an application is not in city-service in a career pension plan position on July first, nineteen hundred sixty-eight, such application shall be void and of no effect.

(b) Any member in city-service on June thirtieth, nineteen hundred seventy, who on that date held a career pension plan position, and at the time of filing an application as hereinafter in this subparagraph (b) provided, holds a career pension plan position, may elect, by a written application duly executed and filed with the board on or after September first, nineteen hundred seventy-nine, and prior to January thirty-first, nineteen hundred eighty, to become a career pension plan member commencing on July first, nineteen hundred sixty-eight, and to contribute to the retirement system for the right to retire under the career pension plan.

(2) The normal rate of contribution of any such member making such election pursuant to paragraph one of this subdivision a, shall, commencing on June twenty-ninth, nineteen hundred sixty-eight, or, in the case of any such member making an election during the period September first, nineteen hundred seventy-nine and January thirty-first, nineteen hundred eighty, be that which would have been established for such member if:

(a) on the date (after he or she last became a member) on which his or her career pension plan qualifying service

first began, the provisions of this section had been in effect, and he or she had been eligible for and had on such date elected the benefits of the career pension plan; and

(b) his or her rate of contribution had then been fixed, on the basis of the tables herein authorized with respect to group three mentioned in subdivision b of section 13-172 of this chapter, and regular interest, as a proportion of his or her compensation which, when deducted from each payment of his or her prospective earnable compensation prior to the completion of his or her twenty-fifth year of career pension plan qualifying service and accumulated at regular interest until completion of such twenty-five years of service, would be computed to provide an annuity, which, as of the initial date of retirement allowance payability with respect to such member, would be equal to one-half of the pension allowable to him or her for such period of service under the provisions of this section.

(3) For the purpose only of fixing a rate of contribution pursuant to paragraph two of this subdivision a, any such member:

(a) if he or she held a physically taxing position on the date mentioned in subparagraph (a) of paragraph two of this subdivision, shall be deemed to have continued or to continue in a physically taxing position until the completion of twenty-five years of career pension plan qualifying service on the part of such member; and

(b) if he or she did not hold a physically taxing position on the date mentioned in subparagraph (a) of paragraph two of this subdivision, shall be deemed not to have held or not to hold any physically taxing position until the completion of twenty-five years of career pension plan qualifying service.

b. (1) Any member who did not hold a career pension plan position during the period beginning on the date of enactment of this section and ending on June thirtieth, nineteen hundred sixty-eight, and who, after last becoming a member and on or after July first, nineteen hundred sixty-eight, begins for the first time or resumes city-service in a career pension plan position, may, if he or she is in city-service in a career pension plan position at the time of filing an application as hereinafter in this paragraph one provided, elect to contribute to the retirement system for the right to retire under the career pension plan, by duly executing a written application and by filing same with the board within two years after the date on which he or she so begins for the first time, or first so resumes, as the case may be, city-service in a career pension plan position. Any member making such election shall become a career pension plan member commencing on the date as of which, under the applicable provisions of paragraph two or paragraph three of this subdivision b, he or she is required to begin contributing for such right to retire.

(2) Upon the basis of the tables herein authorized with respect to group three mentioned in subdivision b of section 13-172 of this chapter, and regular interest, the actuary of such board shall determine for each such member who makes such election pursuant to paragraph one of this subdivision b, and who, after last becoming a member of the retirement system and prior to the date of enactment of this section, had no career pension plan qualifying service, the proportion of compensation which, when deducted from each payment of his or her prospective earnable compensation, from the time when he or she begins city-service in a career pension plan position and prior to his or her completion of twenty-five years of career pension plan qualifying service, and accumulated at regular interest until completion of such twenty-five years of service, shall be computed to provide an annuity which, as of the initial date of retirement allowance payability with respect to such member, shall be equal to one-half of the pension then allowable to him or her for such period of service under the provisions of this section. The normal rate of contribution of such member shall be as prescribed in this paragraph two, commencing on the date on which he or she begins such service as a member in a career pension plan position.

(3) The normal rate of contribution of each such member who makes such election pursuant to paragraph one of this subdivision b and who, after last becoming a member of the retirement system and prior to the date of enactment of this section, had career pension plan qualifying service, shall, beginning on the date on which he or she first resumes city-service as a member in a career pension plan position, be that which would have been established for such member if (a) on the date (after he or she last became a member) on which his or her career pension plan qualifying service first

began, the provisions of this section had been in effect and he or she had been eligible for and had on such date elected the benefits of the career pension plan, and (b) his or her rate of contribution had then been fixed in accordance with the method of computation provided for in subparagraph (b) of paragraph two of subdivision a of this section.

(4) For the purpose only of fixing a rate of contribution pursuant to paragraph two or paragraph three of this subdivision b:

(a) any such member mentioned in such paragraph two or paragraph three who, on the date of the commencement of his or her career pension plan qualifying service, holds or held, as the case may be, a physically taxing position, shall be deemed to continue or to have continued in a physically taxing position during the first twenty-five years of career pension plan qualifying service on the part of such member; and

(b) any such member mentioned in such paragraph two or paragraph three who, on the date of the commencement of his or her career pension plan qualifying service, does not hold or did not hold, as the case may be, a physically taxing position, shall be deemed not to hold or not to have held a physically taxing position during the first twenty-five years of career pension plan qualifying service on the part of such member.

b-1. (1) Subject to the provisions of paragraph five of subdivision c of this section and subdivision c-1 thereof, on or after the date this subdivision becomes a law, any fifty-five-year-increased-service-fraction member in city-service may elect, by a written application duly executed and filed with the board, to become a career pension plan member and to contribute to the retirement system, pursuant to the appropriate provisions of this section, for the right to retire under the career pension plan.

(2) Such member shall become a career pension plan member upon the filing of such application.

c. (1) Subject to the provisions of paragraph ten of subdivision m of this section and paragraph five of this subdivision, a career pension plan member, at any time subsequent to one year after the filing of his or her election of the benefits of this section pursuant to subdivision a of this section or subdivision b or subdivision b-1 thereof, may withdraw such election by duly executing and filing with the board a written withdrawal.

(2) After the filing of such a withdrawal (a) the provisions of this section, other than this paragraph two and paragraphs four and five of this subdivision c and subdivisions b-1 and c-1 of this section, shall be inapplicable to such member and (b) he or she shall not be a career pension plan member and (c) he or she shall not be eligible to elect again the benefits of this section, except as otherwise provided in subdivisions b-1 and c-1 of this section.

(3) (a) In any case where a member who has elected the benefits of this section, shall before completing twenty-five years of career pension plan qualifying service, cease to hold a career pension plan position:

(i) the provisions of this section, other than this paragraph three and paragraph four of this subdivision, shall be inapplicable to such member during any period wherein he or she does not hold such a position; and

(ii) such member shall not be a career pension plan member during such period; and

(iii) if such member shall end any such period by again performing city-service in any career pension plan position, such provisions of this section shall again be applicable to such member while he or she holds such position.

(b) A member who has elected the benefits of this section and who has completed twenty-five years of career pension plan qualifying service shall, after completion of such period of service and while performing city-service as a member of the retirement system in any position, whether or not a career pension plan position, continue to be entitled to the benefits of this section and shall continue to be a career pension plan member, unless such member shall become eligible for and elect, pursuant to the provisions of this chapter, the benefits of any other optional plan for retirement.

(4) (a) Subject to the provisions of subdivisions b-1 and c-1 of this section and except as otherwise provided in subparagraph (b) of this paragraph four, on and after the date on which such provisions of this section become inapplicable to any such member under the provisions of paragraph two of this subdivision c and during any period wherein such provisions of this section are inapplicable, under the provisions of paragraph three of this subdivision c, to any such member:

(i) the minimum retirement age of such member shall be fifty-five years; and

(ii) the pension to which such member shall be entitled upon his or her retirement for service, shall be as prescribed in paragraph seven of subdivision a of section 13-172 of this chapter, with respect to the years of allowable service of such member mentioned in such paragraph; and

(iii) the normal rate of contribution of such member shall be as prescribed by item (i) of subparagraph (d) of paragraph two of subdivision a of section 13-125 of this chapter.

(iv) Subject to the foregoing provisions of this subparagraph (a), the eligibility and rights of such member with respect to benefits under this chapter shall be governed by the applicable provisions thereof in the same manner as if such member had not elected to become a career pension plan member.

(b) The provisions of subparagraph (a) of this paragraph four:

(i) shall not be construed as preventing any such member mentioned in such subparagraph, who, by reason of a position held by him or her, would otherwise become eligible, under any of the provisions of this chapter, to elect any optional plan for retirement providing rights, benefits or status other than as specified in such subparagraph, from electing, pursuant to such provisions, the rights, benefits or status provided by such plan; and

(ii) shall not apply to any such member mentioned in such subparagraph (a) during any period wherein any of the provisions of section 13-154, 13-158, 13-159, 13-160 or 13-165 of this chapter prescribe with respect to such member, rights, benefits or status other than as specified in such subparagraph.

(5) (a) In any case where, on or after the date this paragraph becomes a law, a career pension plan member becomes a fifty-five-year-increased-service-fraction member by reason of his or her withdrawal, pursuant to paragraph one of this subdivision, of his or her election to be a career pension plan member, such member shall not thereafter be eligible to elect, pursuant to the applicable provisions of subdivision b-1 of this section, again to become a career pension plan member, except as otherwise provided in subparagraph (c) of this paragraph.

(b) In any case where, on or after such effective date, a fifty-five-year-increased-service-fraction member becomes a career pension plan member by reason of such member's election to do so pursuant to the applicable provisions of subdivision b-1 of this section, such member who made such election shall not thereafter be eligible to withdraw, pursuant to paragraph one of this subdivision, such election, except as otherwise provided in subparagraph (c) of this paragraph.

(c) Any member referred to in subparagraph (a) or subparagraph (b) of this paragraph shall be eligible to file an election or a withdrawal, as the case may be, provided (i) such member files an application for service retirement no more than thirty days after the filing of such election or withdrawal and retires pursuant to such application or (ii) such member, under circumstances qualifying him or her for a vested rights retirement allowance, discontinues city-service no more than thirty days after the filing of such election or withdrawal.

c-1. In any case where any member, at the time of making any election or filing any withdrawal authorized by the preceding provisions of this section, is a Tier II member, and in any case where a Tier II member becomes subject to the provisions of paragraph three of subdivision c of this section, the making of such election or the filing of such withdrawal or the status of such member as subject to such paragraph three shall not change, alter or affect the

applicability of article eleven of the retirement and social security law to such member and nothing contained in such preceding provisions or such paragraph three shall be construed as changing, altering or affecting the applicability of such article to such member.

d. (1) Subject to the provisions of subdivision h of this section, any career pension plan member in city-service may retire on written application to the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, provided that such member, at the time so specified for his or her retirement, shall have completed twenty-five years of career pension plan qualifying service.

(2) A retirement allowance calculated pursuant to subdivisions e, f and g of this section shall begin with respect to such mem- ber:

(a) on the effective date of his or her retirement or upon his or her attainment of age fifty-five, whichever is later, if he or she is a career pension plan member who has not completed twenty-five or more years of allowable service in one or more physically taxing positions; and

(b) on the effective date of his or her retirement or upon his or her attainment of age fifty, whichever is later, if he or she is a career pension plan member who has completed twenty-five or more years of allowable service in one or more physically taxing positions.

e. A career pension plan member who has retired pursuant to subdivision d of this section shall receive, on account of the first twenty-five years of his or her career pension plan qualifying service and in lieu of any other retirement allowance for such twenty-five years of service, a retirement allowance consisting of:

(1) An annuity which shall be, subject to the provisions of subdivision f of this section, the actuarial equivalent, as of the date on which the retirement allowance of such member begins, of the accumulated deductions from his or her pay during such period of twenty-five years of career pension plan qualifying service; and

(2) A pension-providing-for-increased-take-home-pay which, subject to the provisions of subdivision f of this section, is the actuarial equivalent, as of the date on which the retirement allowance of such member begins, of the reserve-for-increased-take-home-pay, if any, to which he or she may be entitled for such period of twenty-five years of career pension plan qualifying service; and

(3) (a) Subject to the provisions of paragraph two of subdivision e of section 13-638.4 of this title, a pension, which, when added to such annuity and such pension-providing-for-increased-take-home-pay, produces a retirement allowance equal to the product of two and two-tenths per centum of such member's salary or compensation earnable by him or her for city-service in the year prior to his or her retirement, multiplied by twenty-five, unless such pension shall be required to be determined pursuant to subparagraph (b) of this paragraph three.

(b) If such member shall elect, pursuant to subdivision fifty-eight of section 13-101 of this chapter, that such pension be computed on the basis of his or her three-year-average compensation, such pension shall instead be an amount which, when added to such annuity and such pension-providing-for-increased-take-home-pay, produces a retirement allowance equal to the product of two and two-tenths per centum of the three-year-average compensation of such member, multiplied by twenty-five.

f. (1) For the purpose only of determining the amount of the pension payable pursuant to paragraph three of subdivision e of this section, the annuity referred to in paragraph one of such subdivision, if any, shall be computed, as it would be (a) if it were not reduced by the actuarial equivalent of any outstanding loan, (b) if it were not increased by the actuarial equivalent of any additional contributions, (c) if it were not reduced by reason of the member's election to decrease his or her annuity contributions in order to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage, and (d) as it would be without any optional modification.

(2) If such period of twenty-five years of career pension plan qualifying service is not continuous and is interrupted by any period or periods of city-service other than career pension plan qualifying service, then for the purpose only of determining the amount of such member's accumulated deductions pursuant to paragraph one of subdivision e of this section, and for the purpose only of determining the amount of the member's reserve-for-increased-take-home-pay pursuant to paragraph two of such subdivision e:

(a) there shall be excluded from the computation of the amount of such accumulated deductions, any accumulated deductions of such member with respect to each such period or periods of city-service other than career pension plan qualifying service; and

(b) there shall be excluded from the computation of the amount of such reserve-for-increased-take-home-pay, the contributions of the city to the contingent reserve fund on account of reserve-for-increased-take-home-pay with respect to each such period or periods of city-service other than career pension plan qualifying service, and regular interest on such contributions.

(3) (a) Notwithstanding any other provision of this section to the contrary, in any case where the normal rate of contribution of a career pension plan member has been fixed on the basis of service in a physically taxing position pursuant to paragraph two of subdivision a of this section and subparagraph (a) of paragraph three of such subdivision a, or the normal rate of contribution of such a member has been fixed on the basis of service in a physically taxing position pursuant to the applicable provisions of paragraph two or three of subdivision b of this section and subparagraph (a) of paragraph four of such subdivision b, as the case may be, and such member retires for service on or after the date on which he or she attains the age of fifty-five years and after completing twenty-five or more years of career pension plan qualifying service, the provisions of subparagraph (b) of this paragraph three shall apply to the computation of the retirement allowance of such member, if such member qualifies for such applicability under the provisions of such subparagraph (b).

(b) If the amount of the accumulated deductions of such member, as required to be determined for the purpose of computing an annuity pursuant to paragraph one of subdivision e of this section and paragraphs one and two of this subdivision f, exceeds the amount which such accumulated deductions would have equalled if the normal rate of contribution of such member had instead been fixed on a basis excluding service in any physically taxing position, pursuant to the provisions of subparagraph (b) of paragraph three of such subdivision a or subparagraph (b) of paragraph four of such subdivision b, as the case may be, the amount of such excess shall be treated as additional contributions of such member.

g. For allowable service, whether or not such service is career pension plan qualifying service, rendered by such member in addition to and in excess of such first twenty-five years of career pension plan qualifying service, he or she shall receive, in addition to the retirement allowance to which he or she is entitled under subdivision e of this section and in lieu of any other retirement allowance for such additional and excess allowable service:

(1) an annuity which shall be the actuarial equivalent, as of the date on which the retirement allowance of such member begins, of the difference between:

(a) his or her total accumulated deductions as of the date on which his or her retirement allowance begins or, where a loan is outstanding on such date, his or her total accumulated deductions as of such date, as they would be in the absence of a loan; and

(b) such member's accumulated deductions as required to be determined for the purpose of computing an annuity pursuant to paragraph one of subdivision e of this section and subdivision f of this section; and

(2) a pension-providing-for-increased-take-home-pay which is the actuarial equivalent of the reserve-for-increased-take-home-pay, if any, to which such member may be entitled for all periods of allowable service other than such first twenty-five years of career pension plan qualifying service; and

(3) (a) subject to the provisions of paragraph two of subdivision e of section 13-638.4 of this title, a pension, for the years of such member's allowable service rendered prior to July first, nineteen hundred sixty-eight, other than such first twenty-five years of career pension plan qualifying service, which pension shall be equal to the product obtained by multiplying the number of such years of allowable service (other than such first twenty-five years of career pension plan qualifying service) by one and two-tenths per centum of such member's salary or compensation earnable by him or her for city-service in the year prior to his or her retirement, unless such pension is required to be determined pursuant to subparagraph (b) of this paragraph three;

(b) if such member shall elect, pursuant to subdivision fifty-eight of section 13-101 of this chapter, that such pension be computed on the basis of his or her three-year-average compensation, such pension shall instead be equal to the product obtained by multiplying the number of such years of allowable service (other than such first twenty-five years of career pension plan qualifying service) by one and two-tenths per centum of such member's three-year-average compensation; and

(4) (a) subject to the provisions of paragraph two of subdivision e of section 13-638.4 of this title, a pension, for the years of such member's allowable service rendered after June thirtieth, nineteen hundred sixty-eight, other than such first twenty-five years of career pension plan qualifying service, which pension shall be equal to the product obtained by multiplying the number of such years of allowable service rendered after June thirtieth, nineteen hundred sixty-eight (other than such first twenty-five years of career pension plan qualifying service) by one and seven-tenths per centum of such member's salary or compensation earnable by him or her for city-service in the year prior to his or her retirement, unless such pension is required to be determined pursuant to subparagraph (b) of this paragraph four;

(b) if such member shall elect, pursuant to subdivision fifty-eight of section 13-101 of this chapter, that such pension be computed on the basis of his or her three-year-average compensation, such pension shall instead be equal to the product obtained by multiplying the number of such years of allowable service rendered after June thirtieth, nineteen hundred sixty-eight (other than such first twenty-five years of career pension plan qualifying service) by one and seven-tenths per centum of the three-year average compensation of such member.

h. (1) Notwithstanding any other provision of this section to the contrary, any career pension plan member in city-service may retire on written application to the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, provided that such member:

(a) at the time so specified for his or her retirement, shall have completed at least twenty but less than twenty-five years of career pension plan qualifying service; and

(b) would, if he or she remained in city-service, have been able to complete at least twenty-five years of career pension plan qualifying service (i) before attaining the age of sixty-five years, if such member did not, at the time of his or her retirement, hold a position the title of which was then included in the list of positions with deferred mandatory retirement age, or (ii) before attaining the age of seventy years, if such member, at the time of his or her retirement, held a position the title of which was then included in such list.

(2) If such member is a career pension plan member who has not completed at least twenty years of allowable service in one or more physically taxing positions, a retirement allowance calculated pursuant to paragraph five of this subdivision h shall begin with respect to such member on the later of the following dates:

(a) the date next following the earliest date on which, had he or she remained in city-service, he or she could have completed twenty-five years of career pension plan qualifying service;

(b) the date on which he or she attains the age of fifty-five years.

(3) If such member is a career pension plan member who has completed at least twenty years of allowable service in one or more physically taxing positions, then subject to the provisions of paragraph four of this subdivision h,

a retirement allowance calculated pursuant to paragraph five of this subdivision h shall begin with respect to such member on the later of the following dates:

(a) the date next following the earliest date on which, had he or she remained in city-service, he or she could have completed twenty-five years of allowable service in one or more of physically taxing positions;

(b) the date on which he or she attains the age of fifty years.

(4) In any case where the date determined pursuant to subparagraph (a) of paragraph three of this subdivision h is later than the date on which the retirement allowance of such member would begin under paragraph two of this subdivision, the retirement allowance of such member under this subdivision shall begin on such last-mentioned date.

(5) A career pension plan member who has retired pursuant to paragraph one of this subdivision h shall receive, in lieu of any other retirement allowance, a retirement allowance which shall be computed in the manner prescribed by the provisions of subdivisions e and g of this section and paragraphs one and two of subdivision f of this section, except that:

(a) any reference in such subdivisions e and g and paragraphs one and two of subdivision f to a career pension plan member who has retired pursuant to subdivision d of this section shall be deemed to denote, instead, a career pension plan member who has retired pursuant to this subdivision h; and

(b) wherever the word "twenty-five" appears in such subdivisions e and g and paragraphs one and two of such subdivision f, or reference is made therein to a period of twenty-five years of career pension plan qualifying service, there shall be deemed to be substituted therefore, the number of years of career pension plan qualifying service rendered by the member retiring pursuant to this subdivision h, for whom a retirement allowance is to be computed pursuant to this paragraph five.

i. In any case where, with respect to any period wherein any member is a career pension plan member, deductions are required to be made from his or her compensation pursuant to the provisions of section 13-108 of this chapter by reason of an application for service credit filed by him or her under such section, such deductions with respect to such period shall be made on the basis of his or her normal rate of contribution under the provisions of this section.

j. Notwithstanding any other provision of this chapter to the contrary, any career pension plan member who was a member in city-service on December thirty-first, nineteen hundred sixty-seven and who has heretofore purchased or shall hereafter purchase service credit pursuant to section 13-108 of this chapter for any period of continuous career pension plan qualifying service, which period:

(1) next precedes the date on which such member last became a member; and

(2) begins not earlier than the date six months prior to the date on which he or she last became a member; shall, in addition to being credited with such service as provided for by such section 13-108 of this chapter, be credited with such service for the purpose of satisfying the requirements of this section with respect to eligibility for retirement hereunder. Service credit used pursuant to this subdivision j to satisfy such requirements shall in no event exceed six months.

k. (1) Notwithstanding any other provision of this chapter to the contrary, any career pension plan member who:

(a) was a member in city-service on December thirty-first, nineteen hundred sixty-seven; and

(b) has continuous city-service as a member since he or she last became a member; and

(c) has heretofore purchased or shall hereafter purchase service credit, pursuant to section 13-108 of this chapter,

for a continuous period of career pension plan qualifying service, next preceding the date on which he or she last became a member; and

(d) has attained a status requiring that he or she be retired for superannuation pursuant to subdivision three of section 13-166 of this chapter; and

(e) at that time, shall not have completed twenty-five years of career pension plan qualifying service, unless such purchased service credit be used toward satisfaction of the requirements of this section with respect to eligibility to retire pursuant to subdivision d of this section; shall, in addition to being credited with such purchased service as provided for by such section 13-108 of this chapter, be credited with such purchased service, subject to the provisions of paragraph two of this subdivision k, for the purpose of determining eligibility to retire for service under subdivision d of this section.

(2) Where any part of such purchased service credit is in excess of the part required to be added to the career pension qualifying service rendered by such member since last becoming a member, in order to produce twenty-five years of career pension plan qualifying service in compliance with the eligibility requirements of subdivision d of this section, such excess part shall not be used for the purpose of satisfying such eligibility requirements. In any such case, for the purpose of determining the date of commencement of such period of twenty-five years of career pension plan qualifying service, the excess part shall be deemed to be the earlier part of the period of service for which credit was so purchased.

(3) Notwithstanding any other provision of this chapter to the contrary, any career pension plan member or fifty-five-year-increased-service-fraction member who:

(a) meets the requirements and conditions set forth in subparagraphs (a), (b) and (c) of paragraph one of this subdivision k; and

(b) is at any time in such a state of health as to meet the requirements for ordinary disability retirement under section 13-167 of this chapter, other than the requirements thereof with respect to city-service or membership in the retirement system, and would at such time be unable to satisfy such requirements with respect to service or membership unless service credit purchased by such member as provided in subparagraph (c) of paragraph one of this subdivision k were used to satisfy such requirements;

shall, in addition to being credited with such purchased service as provided for by section 13-108 of this chapter, be credited with such purchased service as allowable member service for the purpose of determining eligibility for retirement for ordinary disability under section 13-167 of this chapter.

l. (1) The mayor, within five days after the enactment of this section, shall by executive order designate an officer or employee of the city to perform the functions prescribed by this subdivision 1 with respect to promulgation and maintenance of the official list of physically taxing positions.

(2) Not later than fifteen days after the enactment of this section, the list administrator shall prepare and file in his or her office a proposed list of titles of positions which:

(a) by reason of their duties, as established pursuant to law, require heavy duty and extraordinary physical effort; and

(b) are career pension plan positions.

(3) Within five days after the filing of such list, the list administrator shall cause notice of the filing of such list, together with a copy thereof, to be mailed by certified mail to the certified employee organization acting as list representative, if any.

(4) If such organization shall, within ten days after the mailing of such notice and copy of such proposed list, file with the list administrator an objection in writing asserting that the title of any position was erroneously omitted from or included in such proposed list, the list administrator shall, within five days after the filing of such an objection, file in his or her office and mail by certified mail to such organization, an answer to such objection, accepting or rejecting same. The list administrator shall promptly transmit to the board of collective bargaining, each such objection not so accepted, together with his or her answer rejecting same. Such board, within twenty days after receipt of any such objection and answer, shall determine such dispute and direct the list administrator, in accordance with its decision, to include the title of such position in or omit same from the official list of physically taxing positions.

(5) (a) Promptly after determination of all such disputes by the board of collective bargaining, pursuant to paragraph four of this subdivision one, or promptly after expiration of the period for the filing of such objections, whichever is later, the list administrator shall promulgate, file in his or her office and cause to be published in the City Record, a list conforming to the requirements of subparagraph (b) of this paragraph five, which shall be known as the "official list of physically taxing positions."

(b) Such list shall consist of:

(i) the titles of all positions included in the proposed list filed pursuant to paragraph two of this subdivision a, with respect to which no objections were filed pursuant to paragraph four of this subdivision; and

(ii) the titles of all positions which were claimed in objections to be proper additions to such list and which were accepted by the list administrator as such proper additions, in an answer filed by him or her pursuant to such paragraph four; and

(iii) the titles of all positions required to be added to such list by reason of determinations of disputes by the board of collective bargaining pursuant to such paragraph four.

(c) Such official list shall take effect and shall be deemed to be in effect as of June twenty-ninth, nineteen hundred sixty-eight, whether or not it is promulgated on or prior to such date.

(6) (a) If the list administrator, after the promulgation of such official list pursuant to paragraph five of this subdivision one, finds that the title of any position, other than the positions mentioned in item (iii) of subparagraph (b) of such paragraph five, was erroneously excluded from or included in such list or finds that such list is otherwise erroneous, he or she may correct such error by action taken in accordance with the succeeding provisions of this paragraph six.

(b) At any time after the promulgation of such official list and not later than June thirtieth, nineteen hundred sixty-nine, the list administrator may file in his or her office a notice of intention to correct such official list. Such notice shall specify the nature of such error and the nature of the corrective action proposed to be taken by him.

(c) The list administrator, within five days after the filing of such notice in his or her office, shall cause a copy thereof to be mailed by certified mail to the certified employee organization acting as list representative, if any.

(d) Within five days after the mailing of such notice, such organization may file with the list administrator an objection in writing to such proposed action. The list administrator shall, within five days after the filing of such an objection, file in his or her office and mail by certified mail to such organization an answer to such objection, accepting or rejecting same. The list administrator shall promptly transmit to the board of collective bargaining each such objection not so accepted, together with his or her answer rejecting such objection. Such board, within twenty days after receipt of any such objection and answer, shall determine such dispute.

(e) After the determination of all such disputes by the board of collective bargaining with respect to such notice of intention to correct, or after expiration of the period for the filing of objections thereto, whichever is later, the list

administrator shall issue an order amending or changing such official list in conformity with the proposed corrective action set forth in the notice of intention to correct; provided, however, that no such action shall be inconsistent with any answer of the list administrator accepting any such objection; and provided further, that where any such proposed action was reviewed by the board of collective bargaining pursuant to subparagraph (d) of this paragraph six, the list administrator may issue such an order only if permitted by the determination of such board and any such order issued by him or her shall be consistent with the determination of such board.

(f) The inclusion or exclusion of the title of any position from such official list pursuant to any such order, and any other amendment, change or correction in such list pursuant to any such order, shall take effect as of June twenty-ninth, nineteen hundred sixty-eight, with the same force and effect as if such list, as originally promulgated as of such date, had reflected such inclusion, exclusion, amendment, change or correction.

(7) (a) In any case where, after promulgation of such official list pursuant to paragraph five of this subdivision l, any position is created, modified or re-titled, or the duties of any position are changed, and such position, as so created, modified, re-titled or changed, is a career pension plan position, the list administrator, promptly after the creation, modification, re-titling or change of duties of such position, shall file in his or her office a notice of intention to determine the status of such position under the career pension plan. Such notice shall state whether the list administrator proposes to determine that the title of such position shall or shall not be included in such official list. The list administrator, within five days after the filing of such notice in his or her office, shall cause a copy thereof to be mailed by certified mail to the certified employee organization acting as list representative, if any. Within five days after the mailing of such notice, such organization may file an objection to such proposed action.

(b) The list administrator shall answer any such objection and the board of collective bargaining shall determine any dispute with respect to such objection in accordance with the provisions of subparagraph d of paragraph six of this subdivision l.

(c) Promptly after the determination of all such disputes by the board of collective bargaining, or promptly after the expiration of the period for the filing of such objections, whichever is later, the list administrator shall issue an order, consistent with any answer accepting an objection and any determination of the board of collective bargaining resolving any such dispute, determining whether such position shall be included or excluded from such official list. If the title of such position is to be included therein pursuant to the provisions of this paragraph seven, such list shall be appropriately amended by such order so as to set forth such title, and such amendment shall be deemed to take effect as of the date on which such position was created, modified or re-titled, or the duties thereof were changed, as the case may be.

(d) Notwithstanding any provision of this paragraph seven to the contrary, in any case where a position held by a career pension plan member is modified or re-titled, or the duties thereof are changed, and the title of such position immediately prior to such action in relation thereto, was included in the list of physically taxing positions, the title of such position, so long as it is held by such career pension plan member who held same on the date on which it was modified or retitled, or the duties thereof were changed, shall be deemed, solely for the purpose of determining the rights, privileges and benefits of such member under this section, to continue to be included in the list of physically taxing positions, irrespective of any order of the list administrator, issued pursuant to this paragraph seven, removing the title of such position from such list. If such career pension plan member shall cease to hold such position, it shall thereupon have such status with respect to such list as is provided for in the order issued by the list administrator pursuant to this paragraph.

(8) (a) Promptly after issuing any order under the provisions of this subdivision l, the list administrator shall file a copy thereof with the executive director of the retirement system and shall cause such order to be published in the City Record.

(b) Whenever mailing by certified mail is required by the provisions of this subdivision one, mailing so effected

shall be sufficient if the matter required to be so mailed is enclosed in an envelope addressed to the last known address of the certified employee organization acting as list representative at its last known address as shown by (i) the records of the department of labor of the city, in the case of any such organization recognized pursuant to paragraph (b) of subdivision fortynine of section 13-101 of this chapter, and (ii) the records of the board of certification, in the case of any such organization certified pursuant to paragraph (d) of such subdivision forty-nine.

(9) All determinations of the board of collective bargaining under this subdivision l shall be final and conclusive and shall not be subject to question or review in any court or place whatever.

m. (1) The following terms, as used in this subdivision, shall have the following meanings, unless a different meaning is plainly required by the context:

(a) "Fractional plan member". Any Tier I member holding a career pension plan position who is not a career pension plan member or a fifty-five-year-increased-service-fraction member.

(b) "Career pension plan contribution rate starting date". The later of (i) June twenty-ninth, nineteen hundred sixty-eight; or (ii) the date (after the member last became a member) on which such member's career pension plan qualifying service first began.

(c) "Former fractional plan member". Any person who was a fractional plan member immediately prior to October first, nineteen hundred ninety-three, and who is deemed to have elected to become a career pension plan member pursuant to the provisions of paragraph two of this subdivision.

(d) "ITHP program". Any program referred to in subdivision b of section four hundred eighty of the retirement and social security law under which the employer assumes all or a part of the member contributions which otherwise would be made by its employees who are members of the retirement system.

(e) "ITHP reduction starting date". The first day of the first payroll period which begins after October first, nineteen hundred ninety-three.

(2) Subject to the provisions of paragraph three of this subdivision, any fractional plan member in city-service on October first, nineteen hundred ninety-three, who holds a career pension plan position on such date, shall, on such date, be deemed to have elected to become a career pension plan member commencing on his or her career pension plan contribution rate starting date, and to contribute to the retirement system for the right to retire under the career pension plan.

(3) Any person who is deemed to have elected to become a career pension plan member pursuant to the provisions of paragraph two of this subdivision may elect to withdraw from the career pension plan and void such deemed election by filing, on or before September thirtieth, nineteen hundred ninety-four, a duly executed written withdrawal with the executive director of the retirement system.

(4) Upon the filing by such person of such a withdrawal pursuant to the provisions of paragraph three of this subdivision, (i) the provisions of this section, other than this paragraph four, shall be inapplicable to such person retroactively to October first, nineteen hundred ninety-three; (ii) such person shall not be a career pension plan member; (iii) he or she shall again become a fractional plan member retroactive to such date, and his or her rights, benefits, privileges and obligations as a member shall be governed by the provisions which governed such rights, benefits, privileges and obligations immediately prior to such date as if he or she never had become a career pension plan member pursuant to the provisions of paragraph two of this subdivision; and (iv) he or she shall not be eligible at any time in the future to again become a career pension plan member or to become a fifty-five-year-increased-service-fraction member.

(5) The normal rate of contribution of any career pension plan member who is a former fractional plan member

shall be fixed in accordance with the provisions of paragraphs two and three of subdivision a of this section and, for such purposes, the opening paragraph of paragraph two of such subdivision a shall be deemed to require the calculation of such contribution rate for any such member. For such purposes, the term career pension plan contribution rate starting date (as defined in subparagraph (b) of paragraph one of this subdivision) shall be substituted for June twenty-ninth, nineteen hundred sixty-eight in the opening paragraph of paragraph two of subdivision a of this section.

(6) Notwithstanding the provisions of subdivision b of section four hundred eighty of the retirement and social security law or any other provision of law to the contrary, on and after the ITHP reduction starting date, the rate per centum of member contributions of any former fractional plan member assumed by the employer under any ITHP program, shall, for any payroll period in which such member is a career pension plan member or a fifty-five-year-increased-service-fraction member be the rate obtained by subtracting one per centum from the rate per centum which otherwise would be assumed by such employer under such program if the chapter of the laws of nineteen hundred ninety-three which added this paragraph had not been enacted.

(7) Notwithstanding any other provision of law to the contrary, on and after the ITHP reduction starting date, the member contributions required to be made by any former fractional plan member, for any payroll period in which such member is a career pension plan member or a fifty-five-year-increased-service-fraction member, may not be reduced pursuant to section one hundred thirty-eight-b of the retirement and social security law.

(8) Notwithstanding any other provision of law to the contrary, on and after October first, nineteen hundred ninety-three, a former fractional plan member who is a career pension plan member or a fifty-five-year-increased-service-fraction member may not elect to eliminate or reduce his or her contributions to the retirement system pursuant to the provisions of subdivision c-2 of section 13-125 of this chapter, and any such election made by such person prior to such date shall be deemed to be invalid on and after such date.

(9) Notwithstanding any other provision of law to the contrary, on and after October first, nineteen hundred ninety-three, a former fractional plan member who is a career pension plan member or a fifty-five-year-increased-service-fraction member may not withdraw from his or her account in the annuity savings fund any excess amount pursuant to subdivision d of section 13-140 of this chapter.

(10) Notwithstanding the provisions of paragraph one of subdivision c of this section which permits a career pension plan member to withdraw his or her election of the benefits of this section at any time subsequent to one year after the filing of such election, or any other provision of law to the contrary, any career pension plan member who is deemed to have elected to become a career pension plan member pursuant to the provision of paragraph two of this subdivision may, at any time on or after October first, nineteen hundred ninety-three, withdraw such deemed election of the benefits of this section and become a fifty-five-year-increased-service-fraction member pursuant to, in accordance with and subject to the applicable provisions of subdivision c of this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b-1 added chap 96/1995 § 14, eff. June 28, 1995.

Subd. c par (1) amended chap 96/1995 § 15 eff. June 28, 1995.

Subd. c par (1) amended chap 374/1993 § 2 eff. July 21, 1993

Subd. c par (2) amended chap 96/1995 § 15 eff. June 28. 1995.

Subd. c par (4) open par amended chap 96/1995 § 16, eff. June 28, 1995.

Subd. c par 5 added chap 96/1995 § 17, eff. June 28, 1995.

Subd. c-1 added chap 96/1995 § 18, eff. June 28, 1995.

Subd. e par (3) subpar (a) amended chap 749/1992 § 5 eff. July 31, 1992

Subd. g par (3) subpar (a) amended chap 749/1992 § 6 eff. July 31, 1992 par (4) subpar (a) amended chap 749/1992 § 7 eff. July 31, 1992

Subd. m added chap 374/1993 § 3 eff. July 21, 1993

**DERIVATION**

Formerly § B3-36.6 added chap 821/1968 § 3

Sub a pars 2, 3 amended chap 817/1969 § 3

Sub b pars 2, 3, 4 amended chap 817/1969 § 4

Sub c par 3 amended chap 817/1969 § 5

Sub d par 1 amended chap 817/1969 § 6

Sub e open par, pars 1, 2 amended chap 817/1969 § 7

Sub f par 2 amended chap 817/1969 § 8

Sub f par 3 subpar a amended chap 817/1969 § 8-a

Sub g amended chap 817/1969 § 9

Sub h pars 1, 2 amended chap 817/1969 § 10

Sub h par 5 subpar b amended chap 817/1969 § 10-a

Sub j amended chap 817/1969 § 11

Sub k pars 1, 2 amended chap 817/1969 § 12

Sub l par 8 subpar a amended chap 888/1973 § 4

Sub a par 1 subpar b amended chap 612/1979 § 1

Sub a par 2 open par amended chap 612/1979 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. Pay raises were to be included in New York City Employees' Retirement System in the "earnable compensation" upon which pension of city employee was to be determined even though a number of his payroll checks did not reflect increase due him and even though checks were not protested since it is the money earnable prior to retirement that forms the basis for determination of the pension. Brooks v. City of N.Y., 68 Misc. 2d 866, 328 N.Y.S. 2d 356 [1972].

¶ 2. Where plaintiff in 1970 filed with the retirement system a pension selection form for Plan B and five years later wrote the retirement system that he had discovered that he had mistakenly checked Plan B when he had intended to

check Plan A and was advised by the retirement system that he could change to Plan A, after which plaintiff filed his selection of Plan A with retirement system and was later advised by the retirement system that he had been inadvertently advised that he would be permitted to change from Plan B to Plan A, plaintiff's selection of Plan B would not be reformed since the retirement system retained the power to correct its previous erroneous action purporting to grant his request.-Weinberg v. N.Y.C. Employees' Retirement System, 71 A.D. 2d 672, 418 N.Y.S. 2d 950 [1979], aff'd 50 N.Y. 2d 970 [1980].

¶ 3. Subdivision j, paragraph (2) of this section was held constitutional and it did not unconstitutionally deprive former Assistant District Attorney who waived his rights under an optional superior plan by withdrawing therefrom of his vested pension rights by creating an additional optional pension plan.-Nussbaum v. N.Y.C. Employees' Retirement System, 53 N.Y. 2d 1018 [1981], modifying, 74 A.D. 2d 782.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-163*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-163 Medical review in transit police member disability cases.

a. As used in this section, the following terms shall mean and include:

(1) "Bargaining representative". The public employee organization which is authorized to represent a transit police member for purposes of collective bargaining with the New York city transit authority.

(2) "Panel of medical experts". Those physicians whose names are set forth in a list of medical experts prepared annually by the commissioner of health and filed in his or her office and with the executive director of the retirement system on or before July first. The experts so designated shall be physicians having qualifications as specialists in such fields of medicine as such commissioner deems an essential background (i) for ascertaining, in cases where an application for disability retirement is filed by or with respect to a transit police member, whether such member is physically or mentally incapacitated for the performance of city-service, and (ii) for rendering of reports or certifications as to diagnosis and issues of causal relationship with respect to such applications. Each of such physicians shall have had, prior to his or her designation, at least ten years of practice in the field with respect to which he or she is designated. The names of such physicians shall be separately grouped on such list, according to the fields of medicine in which they are expert, and the names in each group shall be consecutively numbered.

(3) "Party entitled to review". Either of the following:

(i) the bargaining representative of such member; or

(ii) the New York city transit authority.

b. (1) In any case where an application for retirement of a transit police member for disability has been filed pursuant to section 13-157 of this chapter, the secretary of the retirement system, promptly after the retirement board acts on the report or certification of the medical board with respect to such application, shall give notice of such action by the board constituting such head to such member and to the New York city transit authority. Within fifteen days after such notification, any party entitled to review may file with the secretary a written request that a special medical committee, as provided for in this section, shall review the conclusions and recommendations of the medical board set forth in its report or certification.

(2) (i) Any request for review filed by a bargaining representative with respect to such application for disability retirement shall be void and of no effect unless such request includes a waiver, as hereinafter provided, duly executed and acknowledged by the transit police member or by a person acting in his or her behalf as hereinafter provided. Such waiver may be executed by a person acting in behalf of such member in any case where, at the time of the execution of such waiver by such person, the circumstances are such that if such application for disability retirement had not been previously filed by or with respect to such member, such person would at such time of execution be authorized under the provisions of section 13-157 of this chapter to file, as a person acting in behalf of such member, an application for disability retirement of such member.

(ii) Such waiver shall provide that the execution thereof by such member or by a person acting in his or her behalf as hereinabove authorized shall constitute an agreement by such member that his or her application for disability retirement under section 13-157 of this chapter shall be disposed of by action of the board constituting the head of the retirement system pursuant to the provisions of this section, that such action shall be final and conclusive, and that he or she waives any and all rights which he or she might otherwise have to seek or obtain any other disposition of such application for disability retirement by court or administrative proceedings or otherwise. A waiver so executed and filed shall be effective and binding upon such member, in accordance with its terms.

c. Promptly after the filing of a request for review to be made by a special medical committee, the secretary shall transmit a copy of such request and of the report or certification of the medical board to the commissioner of health.

d. The commissioner, upon receipt of such report or certification and request, shall promptly designate three of the physicians on the panel of medical experts as a special medical committee for the purpose of reviewing the recommendations and conclusions of the medical board in such case. Such physicians shall be selected by him or her from the panel group possessing the specialist qualifications deemed essential by him or her for such review. All selections of physicians pursuant to this subdivision d shall be made in order of numerical standing in the group from which selection is to be made, and on the basis of continuous rotation within the group.

e. (1) Promptly after making the selection prescribed by subdivision d of this section, the commissioner of health shall notify the selected physicians and the executive director thereof.

(2) Such special medical committee shall, within thirty days after such notification to the physicians constituting such committee is completed, perform, with respect to the application for retirement of such member for disability, the same functions of medical examination or otherwise as are prescribed by applicable provisions of law for performance by the medical board with respect to such application, and shall within such period adopt by majority vote and file with the executive director a report or certification, as the case may be, stating the conclusions and recommendations of such committee concerning the matters required to be reported on or certified by the medical board, pursuant to such applicable provisions of law, with respect to such application.

f. The conclusions and recommendations of the special medical committee shall supersede those of the medical board.

g. (1) Each physician who serves as a member of a special medical committee shall receive a fee for such service, to be determined by the comptroller of the city.

(2) With respect to each case in which a special medical committee acts, one-half of the fees of the members of such committee shall be paid by the city. The other half of such fees shall be paid by the bargaining representative of the transit police member concerned in such case.

h. (1) Within forty-five days after the filing of the report or certification of the special medical committee, the board constituting the head of the retirement system shall act on such report or certification as hereinafter provided in this subdivision h.

(2) If the application is for ordinary disability retirement of the member pursuant to section 13-157 of this chapter, and if the medical examination by the special medical committee shows that such member is physically or mentally incapacitated for the performance of duty as a uniformed police officer patrolling the transit system and ought to be retired, such committee shall so report and such board constituting such head shall retire such member for ordinary disability as of the date on which such board constituting such head acted on the report of the medical board with respect to such application, or as of the date ninety days after the filing of such application for such retirement, whichever is earlier.

(3) If the application is for accident disability retirement of the member pursuant to section 13-157 of this chapter and if the medical examination and investigation of the special medical committee shows that such member is physically or mentally incapacitated for the performance of city-service as a natural and proximate result of an accidental injury received in such city-service while a member, and that such disability was not the result of wilful negligence on the part of such member and that such member should be retired, the special medical committee shall so certify to such board constituting such head stating the time, place and conditions of such city-service performed by such member resulting in such disability, and such board constituting such head shall retire such member for accident disability as of the date on which such board acted on the report of the medical board with respect to such application.

i. In any case where a request for review by a special medical committee is filed pursuant to the provisions of this section, the provisions of section 13-157 of this chapter shall be superseded by the provisions of this section to the extent that the provisions of this section are inconsistent therewith.

j. (1) In any case where the provisions of this section require the executive director to give notice to a transit police member, the secretary may give such notice by delivery to such member personally or by mailing same to his or her last known address, as shown by the records of the transit police department of the New York city transit authority.

(2) In any case where the provisions of this section require the giving of notice or the transmission of papers to any other person, such notice may be given or transmission effected by delivery to such person, by delivery at his or her office to any of his or her employees, or by mailing to the office address of such person.

(3) In any case where notice is given by mail pursuant to this subdivision j, such notice shall be deemed to be given on the date of mailing.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-36.7 added chap 1077/1974 § 1

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

*NYC Administrative Code 13-164*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-164 Retirement; selection of age fifty-five.

Notwithstanding the provisions of section 13-151 of this chapter, any person becoming a member who was not previously a member or who during his last previous membership in the retirement system contributed on the basis of a minimum retirement age of fifty-five, may elect, prior to the certification of his or her rate of contribution; and any member may elect, prior to the first day of October, nineteen hundred forty-nine, to contribute on the basis of a minimum retirement age of fifty-five by a written election duly executed and acknowledged and filed with the board. The minimum age of retirement for such member so electing shall be fifty-five years, and all contributions and benefits payable by or on account of such member shall be computed on the basis of such minimum retirement age. The method of computation and deductions prescribed by this section shall be appropriately modified in the case of a member for whom a rate is otherwise fixed pursuant to section 13-152 of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-37.0 added chap 929/1937 § 1

Amended chap 550/1940 § 1

Amended chap 927/1941 § 1

Amended chap 420/1942 § 1

Amended chap 862/1946 § 1

Amended chap 715/1949 § 1

Amended chap 509/1960 § 17



Administrative Code of the City of New York



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

*NYC Administrative Code 13-165*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-165 Election and assignment of retirement plans with respect to certain members.

a. Notwithstanding any other provision of this chapter to the contrary, any member in city-service who:

(1) did not, prior to filing an application to become a fifty-five-year-increased-service-fraction member as hereinafter in this subdivision a provided, file an application to become a career pension plan member pursuant to subparagraph (a) of paragraph one of subdivision a of section 13-162 of this chapter, relating to the career pension plan; and

(2) at the time of filing an application as hereinafter in this subdivision a provided, holds a career pension plan position; may elect, by a written application duly executed and filed with the board of estimate on or after the date of enactment of this section and prior to July first, nineteen hundred sixty-eight, that commencing on July first, nineteen hundred sixty-eight, his or her minimum age for service retirement shall be fifty-five years and his or her pension, upon his or her retirement for service, shall be determined pursuant to paragraph seven of subdivision a of section 13-172 of this chapter for the service mentioned in such paragraph; provided, however, that if any member filing such an application to become a fifty-five-year-increased-service-fraction member is not in city-service in a career pension plan position on July first, nineteen hundred sixty-eight, such application shall be void and of no effect.

b. Notwithstanding any other provision of this chapter to the contrary, any member in city-service on June thirtieth, nineteen hundred sixty-eight, who:

(1) on such date held a career pension plan position; and

(2) is not, at the time of filing an application as hereinafter in this subdivision b provided, either a career pension plan member or a former career pension plan member who, by withdrawal, ceased to be a career pension plan member; and

(3) at the time of filing an application as hereinafter in this subdivision b provided, holds a career pension plan position; may by a written application duly executed and filed with the board on or after July first, nineteen hundred sixty-eight, and prior to July first nineteen hundred seventy, elect that his or her minimum age for service retirement shall be fifty-five years and that his or her pension, upon his or her retirement for service, shall be determined pursuant to paragraph seven of subdivision a of section 13-172 of this chapter for the service mentioned in such paragraph.

c. The normal rate of contribution of each member making such an election pursuant to subdivision a or subdivision b of this section shall, commencing on June twenty-ninth, nineteen hundred sixty-eight, be that prescribed by the applicable provisions of subparagraph (d) of paragraph two of subdivision a of section 13-125 of this chapter.

d. (1) Notwithstanding any other provision of this chapter to the contrary, but subject to the provisions of paragraph two of this subdivision d, any member who last becomes a member after June thirtieth, nineteen hundred sixty-eight, shall, during any period wherein he or she holds a career pension plan position:

(a) have a minimum service retirement age of fifty-five years; and

(b) be entitled, upon retirement for service, to a pension determined pursuant to paragraph seven of subdivision a of section 13-172 of this chapter, with respect to the years of allowable service of such member mentioned in such paragraph seven.

(2) The provisions of paragraph one of this subdivision d shall be inapplicable to any member who last becomes a member after June thirtieth, nineteen hundred sixty-eight, during any period wherein he or she is a career pension plan member pursuant to section 13-162 of this chapter, relating to the career pension plan.

e. (1) Notwithstanding any other provision of this chapter to the contrary, but subject to the provisions of paragraph three of this subdivision e, any member (other than a career pension plan member who has completed twenty-five years of career pension plan qualifying service), regardless of when he or she last became a member, who:

(a) after June thirtieth, nineteen hundred sixty-eight, first begins city-service in any position mentioned in paragraph (a) of subdivision forty-seven of section 13-101 of this chapter, or in subparagraphs two, three and four of paragraph (b) of such subdivision; or

(b) after such date, resumes city-service in any position mentioned in such paragraph (a) or subparagraphs two, three and four; shall, during any period wherein he or she holds any such position mentioned in such paragraph or subparagraphs and wherein he or she is not a transit twenty-year plan member, a transit police member, a correction member or a housing police member, have a minimum service retirement age of fifty-five years and shall be entitled, upon retirement for service during such period, to a pension determined pursuant to paragraph six of subdivision a of section 13-172 of this chapter with respect to the years of allowable service of such member mentioned in such paragraph.

(2) (a) The normal rate of contribution of any fifty-five-year-one-per-centum member who became such a member pursuant to paragraph one of this subdivision e after last becoming a member, and who had a rate of contribution other than as prescribed in this subparagraph (a) immediately before so becoming a fifty-five-year-one-per-centum member, shall be that which would have been established for such member, on the basis of the tables herein authorized with respect to group three mentioned in subdivision b of section 13-172 of this chapter, and regular interest, if he or she had become a fifty-five-year-one-per-centum member on the date of the commencement of his or her last membership in the retirement system.

(b) Any member who last becomes a member at the time when he or she becomes a fifty-five-year-one-per-centum member pursuant to paragraph one of this subdivision e, shall contribute to the retirement system, on the basis of the tables herein authorized with respect to group three mentioned in subdivision b of section 13-172 of this chapter, and regular interest, for the right to retire for service as a fifty-five-year-one-per-centum member.

(3) Nothing contained in paragraph one of this subdivision e shall be construed as withholding the status of a fifty-five-year-increased-service-fraction member where such status is granted by any provision of this chapter prescribing rights upon cessation of status as a transit twenty-year plan member.

(4) (a) Notwithstanding any other provision of this title to the contrary, any transit-hourly-paid employee, as defined in section 13-161 of this chapter, subject to the provisions of subparagraph (c) of this paragraph, who last became a member prior to July first, nineteen hundred seventy-six, shall, during any period wherein he holds such position and wherein he is not a transit twenty-year plan member, be a fifty-five year increased-service-fraction member and have a minimum service retirement age of fifty-five years and shall be entitled, upon retirement for service during such period, to a pension determined pursuant to paragraph seven of subdivision a of section 13-172 of this chapter with respect to the years of allowable service of such member mentioned in such paragraph.

(b) The normal rate of contribution of any fifty-five year increased-service-fraction member who became such a member pursuant to this paragraph, shall be that which would have been established for such member on the basis of the tables herein authorized with respect to group three mentioned in subdivision b of section 13-172 of this chapter and regular interest, if he had become a fifty-five year one per centum member on the date of the commencement of his last membership in the retirement system.

(c) The provisions of this paragraph shall not apply to any member mentioned in subparagraph (a) of this paragraph, unless such member shall file an application to become a fifty-five year increased-service-fraction member on or before December thirty-first, nineteen hundred eighty-eight.

(d) The provisions of this paragraph shall also be applicable to any member mentioned in subparagraph (a) of this paragraph who retired after August of nineteen hundred eighty-five, who would have been eligible to become a fifty-five year increased-service-fraction member, if he shall file an application to become such a member on or before December thirty-first, nineteen hundred eighty-eight.

f. Status as a fifty-five-year-increased-service-fraction member acquired under this section shall be subject to change at the election of the member as provided for by the applicable provisions of section 13-162 of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. e par (4) added chap 852/1987 § 1

Subd. f added chap 96/1995 § 19, eff. June 28, 1995.

**DERIVATION**

Formerly § B3-37.1 added chap 821/1968 § 10

Sub e par 1 amended chap 817/1969 § 18

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

*NYC Administrative Code 13-166*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-166 Retirement; for superannuation.

Retirement of a member for service shall be made by the board as follows:

1. Each member in city-service who has attained the age of seventy and each member in city-service who attains the age of seventy shall be retired forthwith or on the first day of the calendar month next succeeding that in which such member shall have attained the age of seventy years. A member in city-service, however, who has or shall have attained the age of seventy years, upon the approval of the appropriate head of an agency, may request the board to be continued in the public service for a period of two years and such board, where advantageous to the public service, may grant such request for such period, not exceeding two years, as such board may determine. At the termination of such additional period of service, such board in like manner may permit such employee to continue in the public service for successive two year periods or any portion thereof. In no case shall public service be continued after a member shall have attained the age of eighty years. The provisions of this subdivision one shall not apply to any member whose status with respect to retirement for superannuation is governed by subdivisions two and three of this section.

2. Not later than July first, nineteen hundred sixty-eight, the city civil service commission shall promulgate and file in its office, a list of titles of positions with respect to which, in the judgment of the commission, it will be advantageous to the public service to permit incumbents to remain in city-service until age seventy. The commission shall amend or revise such list from time to time, as may be necessary, so that such list shall continuously reflect the titles of positions which, in the judgment of the commission, are of the nature above in this subdivision two described. Such list shall be known as the "list of positions with deferred mandatory retirement age". Promptly after promulgation of such list, and promptly after adoption of any amendments or revisions thereof, the commission shall transmit a copy of such list, amendments or revisions to the executive director of the retirement system and shall cause same to be

published in the City Record for a period of five days.

3. (a) Except as otherwise provided in paragraphs (d) and (e) of this subdivision three:

(1) each career pension plan member in city-service who (i) becomes such a member pursuant to subdivision a of section 13-162 of this chapter, relating to the career pension plan, and (ii) on or after January first, nineteen hundred sixty-nine, attains the age of sixty-five years, and (iii) is a career pension plan member at the time of attaining such age; and

(2) each fifty-five-year-increased-service-fraction member in city-service who (i) becomes such a member pursuant to subdivision a or subdivision b of section 13-165 of this chapter and (ii) on or after January first, nineteen hundred sixty-nine, attains the age of sixty-five years and (iii) is a fifty-five-year-increased-service-fraction member at the time of attaining such age; and

(3) each member in city-service (i) whose last membership in the retirement system begins on or after July first, nineteen hundred sixty-eight and (ii) who attains the age of sixty-five years and (iii) who at the time of attaining such age, holds a career pension plan position; shall be retired on the first day of the calendar month next succeeding that in which such member shall have attained the age of sixty-five years.

(b) Except as otherwise provided in paragraphs (d) and (e) of this subdivision three, each career pension plan member in city-service who (i) becomes such a member pursuant to subdivision a of such section 13-162 of this chapter and (ii) attains the age of sixty-five years prior to January first, nineteen hundred sixty-nine, and (iii) holds a career pension plan position on the date next preceding the later of the following dates:

(1) January first, nineteen hundred sixty-nine;

(2) the first day of the month next succeeding that in which he or she elects to become a career pension plan member pursuant to subdivision a of section 13-162 of this chapter; shall be retired as of the later of such dates.

(c) Except as otherwise provided in paragraphs (d) and (e) of this subdivision three, each fifty-five-year-increased-service-fraction member in city-service who (i) becomes such a member pursuant to subdivision a or b of section 13-165 of this chapter and (ii) attains the age of sixty-five years prior to January first, nineteen hundred sixty-nine, and (iii) holds a career pension plan position on the date next preceding the later of the following dates:

(1) January first, nineteen hundred sixty-nine;

(2) the first day of the month next succeeding that in which he or she elects to become a fifty-five-year-increased-service-fraction member pursuant to such subdivision a or b;

shall be retired as of the later of such dates.

(d) (1) Subject to the provisions of paragraph (e) of this subdivision three:

(a) any member mentioned in paragraph (a) of this subdivision three who, at the time of reaching the age of sixty-five years, is in city-service in a position on the list of positions with a deferred mandatory retirement age promulgated pursuant to subdivision two of this section; and

(b) any member mentioned in paragraph (b) or (c) of this subdivision three, who on the date next preceding the applicable date on which he or she would otherwise be required to be retired under the provisions of such paragraph (b) or (c), is in city-service in a position on the list of positions with a deferred mandatory retirement age;

shall not, so long as he or she continues to serve in any such position on such list, be retired for superannuation

until he or she attains the age of seventy years.

(2) If any such member mentioned in subparagraph one of this paragraph (d), shall, before attaining the age of seventy years, cease to hold any such position on such list, he or she shall, except as otherwise provided in paragraph (e) of this subdivision three, be retired on the first day of the calendar month next succeeding that in which he or she shall have ceased to hold any such position. Subject to the provisions of paragraph (e) of this subdivision three, if such member shall be continuously in city-service in any such position until he or she attains the age of seventy years, he or she shall, upon attaining the age of seventy years, be retired on the first day of the calendar month next succeeding that in which he or she shall have attained the age of seventy years.

(e) Any member whose retirement has become mandatory under the provisions of paragraph (a), (b) or (c) of this subdivision three, or whose retirement has become mandatory by reason of cessation of city-service in a position on the list of positions with a deferred mandatory retirement age, as provided in paragraph (d) of this subdivision, may, upon approval of the appropriate head of an agency, request of the board that he or she be continued in city-service for a period not exceeding one year. The board, where advantageous to the public service, may grant such request for a period not exceeding one year. At the termination of such additional period of service, such board may in like manner permit such member to continue in the public service for successive periods each not exceeding one year, provided that extensions granted under this paragraph (e) shall in no event aggregate more than five years.

(f) Nothing contained in this subdivision three shall apply to a justice or judge of any court or a surrogate or an official referee or any elected public officer.

4. Notwithstanding the foregoing provisions of this section, any such member whose total service credit does not exceed ten years, in lieu of other benefits provided by this chapter, shall receive upon his or her own application therefor, the refund of his or her accumulated deductions.

5. Notwithstanding any provisions of this section to the contrary, any person who was employed by the city, an authority or a public benefit corporation and who was previously denied membership in the New York city employees, retirement system based solely on the mandatory retirement provisions in effect at the time of commencing employment and who has met all the salary and service credit requirements for a service retirement benefit provided by the applicable provisions of this code shall be entitled to file for a service retirement benefit, notwithstanding the mandatory provisions in effect prior to the effective date of this subdivision, and shall be entitled to receive such retirement benefit commencing the day after his or her public employment ceased.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. 5 added chap 524/1988 § 2

**DERIVATION**

Formerly § B3-38.0 added chap 929/1937 § 1

Sub 2 added chap 679/1945 § 1

Amended chap 821/1968 § 11

Sub 2 amended chap 888/1973 § 5

**CASE NOTES FROM FORMER SECTION**

¶ 1. In proceeding by petitioner, who held position of Chief Clerk for County Court of Kings County, for an order

requiring the City Comptroller to audit a supplemental payroll and pay him his salary for the period from July 21 through July 31 1939, defense setting forth that petitioner had attained the age of 70 years on August 7, 1939, that his application for a continuance in service for an additional two-year period was denied and on June 15, 1938, a resolution was adopted retiring him as of September 1, 1939, that petitioner then resigned as Chief Clerk on July 15, and on July 17 filed an application with the Retirement System for his accumulated salary deductions, that on July 19 the Retirement System paid him $8,317.17 subject to approval of the Board of Estimate, that the approval had not yet been given, that the County Clerk then purported to appoint petitioner to the same position on July 21, 1939, and that the resignation and withdrawal of accumulated deductions and purported reappointment was a subterfuge and in violation of Administrative Code § B3-38.0, and that on information and belief petitioner would avail himself of the benefits of § B3-9.0 with reference to re-entry into membership in the Retirement System after withdrawal of contributions and thus perpetrate a fraud upon the city, **was held** sufficient as a matter of law by Special Term, and both the App. Div. and the Court of Appeals affirmed without opinion.-Tuomey v. McGoldrick, 258 App. Div. 873, 16 N.Y.S. 2d 1018 [1939], aff'd 282 N.Y. 762, 27 N.E. 2d 46 [1940].

¶ 2. Application for injunction restraining former Surrogate from hearing disciplinary charges against members of the Police Department on ground his appointment as Third Deputy Police Commissioner for purpose of hearing the charges was invalid as Admin. Code § B3-38.0 required the consent of the Board of Estimate to validate appointment to City service of a person over 70 years of age, was denied, where the Corporation Counsel, while not conceding that approval of the Board of Estimate was required, had nevertheless obtained the approval of the Board prior to final argument on the application.-Evans v. Monaghan, 115 N.Y.S. 2d 511 [1952].

¶ 3. A former Surrogate of New York County, retired in 1948, could properly be appointed as a 3rd Deputy Police Commissioner in 1952 at which time he was 73 years of age for the purpose of presiding at a police departmental trial.-In re Delehanty (Sullivan), 202 Misc. 33, 115 N.Y.S. 2d 602 [1952], aff'd 280 App. Div. 542, 115 N.Y.S. 2d 614 [1952], aff'd 304 N.Y. 725, 108 N.E. 2d 46 [1953].

¶ 4. Where a contract between the city and petitioner union provided that the mandatory retirement age for members of the Career Pension Plan shall be 65 and that for members in civil service titles which are certified by the city civil service commission as shortage area shall be 70, petition of union seeking judgment directing the Director of the Office of Labor Relations to certify those city service titles which are in shortage areas was denied as certifications are not frozen and under this section any list promulgated is not final. Baker v. Lindsay, 160 (63) N.Y.L.J. (9-27-68) 16, Col. 5 T.

¶ 5. The determination of Civil Service Commission in 1968 that there were then no titles of position for which it would be advantageous to the public service to permit the incumbents to remain in public service until age 70 was not arbitrary even though no hearing had been held and no inquiry made by it as to each title of position when its decision was based primarily upon consultation with the various department heads. Dollard v. Civil Service Commission, 29 N.Y. 2d 542, 272, N.E. 2d 580, 324 N.Y.S. 2d 89 [1971].



Administrative Code of the City of New York



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

*NYC Administrative Code 13-167*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-167 Retirement; for ordinary disability.

a. Medical examination of a member in city service for ordinary disability shall be made upon the application of the head of the agency in which such member is employed, or upon the application of such member or of a person acting in his or her behalf, stating that such member is physically or mentally incapacitated for the performance of duty and ought to be retired, provided:

(1) that such member has had ten or more years of city-service and was a member or otherwise in city-service in each of the ten years next preceding his or her retirement; or

(2) that such member (a) is a sanitation member at the time of his or her retirement, and (b) has had five or more years of allowable service as a sanitation member and (c) was a member or otherwise in city-service in each of the five years next preceding his or her retirement.

b. If such medical examination shows that any such member referred to in subdivision a of this section is physically or mentally incapacitated for the performance of duty and ought to be retired, the medical board shall so report and the board shall retire such member for ordinary disability not less than thirty nor more than ninety days after the execution and filing of application therefor with the retirement system.

c. Death of applicant before effective date of retirement. Upon the death of an applicant, other than an applicant whose city service was as a police officer or firefighter, who has had ten or more years of city service and was a member or otherwise in city service in each of the ten years next preceding the date of his application for ordinary disability retirement, and the medical board reports that at the time of the filing of the application such member was

physically or mentally incapacitated for the performance of duty and ought to be retired, and that such member's subsequent death in the interval between the filing of the application and the action of the board thereon was directly related to such physical or mental incapacity, the board shall retire such member effective not later than one day before the date of the applicant's death.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. c added chap 765/1989 § 1

**DERIVATION**

Formerly § B3-39.0 added chap 929/1937 § 1

Amended chap 331/1969 § 2

Amended chap 866/1969 § 14

**CASE NOTES FROM FORMER SECTION**

¶ 1. Board of Estimate could act on application for retirement within 30 days of the filing thereof and provide for the retirement to become effective after the 30 day period.-Zeiser v. N.Y. City Employees' Retirement System, 131 (114) N.Y.L.J. (6-15-54) 7, Col. 6 F.

¶ 2. An employee who was in City service for more than 10 years prior to his application for retirement but who was not a member of the retirement system for 10 years next preceding the retirement, was not entitled to be retired for ordinary disability.-Manieri v. Wagner, 33 Misc. 2d 163, 224 N.Y.S. 2d 152 [1961], aff'd 239 N.Y.S. 2d 1022 [1963].

¶ 3. Under this section, a City employee is eligible for ordinary disability retirement only if he has had 10 years of City service and has been a member of the retirement system for 10 years. An employee who was a City employee for more than 10 years but had not joined the retirement system until 1958 was not entitled to ordinary disability retirement.-Matter of Manieri, 33 Misc. 2d 163, 224 N.Y.S. 2d 152 [1961], aff'd 239 N.Y.S. 2d 1022 [1963].

**CASE NOTES**

¶ 1. Section 13-167(a) provides for ordinary disability retirement after 10 years of service with the City. This pension is payable without regard to when or how the employee became disabled. Since one must have accumulated 10 years of service with the City to qualify for an ordinary disability pension, payments thereunder are not solely compensation for injuries but are in part an award for length of service. Thus, although compensation for personal injuries constitutes separate property not subject to equitable distribution in divorce cases, the pension payments in question here are subject to equitable distribution. Dolan v. Dolan, 167 A.D.2d 654, 562 N.Y.S.2d 875 (3rd Dept. 1990), aff'd 78 N.Y.2d 463, 577 N.Y.S.2d 195 (1991).

¶ 2. The Medical Board of the New York City Employees Retirement System (NYCERS) determines whether a member is disabled. The Board of Trustees of NYCERS is bound by the Medical Board's determination that an applicant is or is not disabled. Thus, the Medical Board's determination is conclusive if it is supported by some credible evidence and is not irrational. Even if the medical conclusions of the member's treating physicians differ from those of the Medical Board, the resolution of those conflicts is the sole province of the Medical Board. Drew v. New York City Employees' Retirement System, 758 N.Y.S.2d 500 (App.Div. 2d Dept. 2003).



Administrative Code of the City of New York



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

*NYC Administrative Code 13-168*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-168 Retirement; for accident disability.

a. Medical examination of a member in city-service for accident disability and investigation of all statements and certifications by him or her or on his behalf in connection therewith shall be made upon the application of the head of the agency in which the member is employed, or upon the application of a member or of a person acting in his or her behalf, stating that such member is physically or mentally incapacitated for the performance of city-service, as a natural and proximate result of such city-service, and certifying the time, place and conditions of such city-service performed by such member resulting in such alleged disability and that such alleged disability was not the result of wilful negligence on the part of such member and that such member should, therefore, be retired. Such application shall be filed within two years from the happening of such accident, except, however, that such requirement as to time of filing shall not apply to any such application which (1) is filed by or with respect to a member who is a member of the uniformed force of the department of sanitation (as such force is defined in subdivision a of section 13-154 of this chapter) and is based on an accident occurring wholly on or after July first, nineteen hundred sixty-three, or (2) if filed by a vested member incapacitated as a result of a qualifying World trade Center condition as defined in section two of the retirement and social security law. If such medical examination and investigation shows that any member, by whom or with respect to whom an application is filed under this section, is physically or mentally incapacitated for the performance of city-service as a natural and proximate result of an accidental injury received in such city-service while a member, and that such disability was not the result of wilful negligence on the part of such member and that such member should be retired, the medical board shall so certify to the board stating the time, place and conditions of such city-service performed by such member resulting in such disability. The board shall review such certification with respect to any issues other than the existence or non-existence of physical or mental incapacitation and shall determine the member's eligibility with respect to any such issues. Upon such certification by the medical board of the member's

physical or mental incapacitation and a determination by the board finding the member otherwise eligible, such member shall be retired for accident disability effective the date the application is filed or the date immediately following the last date the member was on the payroll, whichever is later.

b. 1. If such application is denied solely on the ground that such member is not, at the time of such examination, physically or mentally incapacitated for the performance of city-service, such application may thereafter be renewed during such member's city-service at any time within five years from the happening of the accident but preceding the date on which such member shall have reached his or her minimum service retirement age, provided he or she submits himself or herself to such further examinations as the medical board may require.

2. Such further application or applications shall be considered on the same basis as the original application.

3. The medical board may at any time within five years of the happening of the accident, upon findings that such member is eligible for and should be retired for accident disability in accordance with the provisions of this section, certify to the board said fact. The board shall review such certification with respect to any issues other than the existence or non-existence of physical or mental incapacitation and shall determine the member's eligibility with respect to any such issues. Upon such certification by the medical board of the member's physical or mental incapacitation and a determination by the board finding the member otherwise eligible, such member shall be retired for accident disability forthwith.

4. The provisions of paragraphs one, two and three of this subdivision b shall not apply in the case of (1) any member who is a member of the uniformed force of the department of sanitation and who files an application under subdivision a of this section based on an accident occurring wholly on or after July first, nineteen hundred sixty-three, or (2) any vested member incapacitated as a result of a qualifying World Trade Center condition as defined in section two of the retirement and social security law.

5. (a) (1) Notwithstanding any provisions of this code or of any general, special or local law, charter or rule or regulation to the contrary, if any condition or impairment of health is caused by a qualifying World Trade Center condition as defined in section two of the retirement and social security law, it shall be presumptive evidence that it was incurred in the performance and discharge of duty and the natural and proximate result of an accident not caused by such member's own willful negligence, unless the contrary be proved by competent evidence.

(2) The NYCERS board of trustees is hereby authorized to promulgate rules and regulations to implement the provisions of this paragraph.

(b) (1) Notwithstanding the provisions of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a member who participated in World Trade Center rescue, recovery or cleanup operations as defined in section two of the retirement and social security law, and subsequently retired on a service retirement, an ordinary disability retirement, an accidental disability retirement, or a performance of duty disability retirement and subsequent to such retirement is determined by the board of trustees to have a qualifying World Trade Center condition as defined by section two of the retirement and social security law, upon such determination by the NYCERS board of trustees, it shall be presumed that such disability was incurred in the performance and discharge of duty as the natural and proximate result of an accident not caused by such member's own willful negligence, and that the member would have been physically or mentally incapacitated for the performance and discharge of duty of the position from which he or she retired had the condition been known and fully developed at the time of the member's retirement, unless the contrary is proven by competent evidence.

(2) The NYCERS board of trustees shall consider a reclassification of the member's retirement as an accidental disability retirement effective as of the date of such reclassification.

(3) Such member's retirement option shall not be changed as a result of such reclassification.

(4) The member's former employer at the time of the member's retirement shall have an opportunity to be heard on the member's application for reclassification by the NYCERS board of trustees according to procedures developed by the retirement system.

(c) The NYCERS board of trustees is hereby authorized to promulgate rules and regulations to implement the provisions of this paragraph.

c. Notwithstanding any other provision of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a retiree who: (1) has met the criteria of subdivision b of this section and retired on a service or disability retirement, or would have met the criteria if not already retired on an accidental disability; and (2) has not been retired for more than twenty-five years; and (3) dies from a qualifying World Trade Center condition as defined in section two of the retirement and social security law, as determined by the applicable head of the retirement system or applicable medical board, then unless the contrary be proven by competent evidence, such retiree shall be deemed to have died as a natural and proximate result of an accident sustained in the performance of duty and not as a result of willful negligence on his or her part. Such retiree's eligible beneficiary, as set forth in section 13-149 of this chapter, shall be entitled to an accidental death benefit as provided by section 13-149 of this chapter, however, for the purposes of determining the salary base upon which the accidental death benefit is calculated, the retiree shall be deemed to have died on the date of his or her retirement. Upon the retiree's death, the eligible beneficiary shall make a written application to the head of the retirement system within the time for filing an application for an accidental death benefit as set forth in section 13-149 of this chapter requesting conversion of such retiree's service or disability retirement benefit to an accidental death benefit. At the time of such conversion, the eligible beneficiary shall relinquish all rights to the prospective benefits payable under the service or disability retirement benefit, including any post-retirement death benefits, since the retiree's death. If the eligible beneficiary is not the only beneficiary receiving or entitled to receive a benefit under the service or disability retirement benefit (including, but not limited to, post-retirement death benefits or benefits paid or payable pursuant to the retiree's option selection), the accidental death benefit payments to the eligible beneficiary will be reduced by any amounts paid or payable to any other beneficiary.

d. Notwithstanding any other provision of this code or of any general, special or local law, charter, or rule or regulation to the contrary, if a member who: (1) has met the criteria of subdivision b of this section; and (2) dies in active service from a qualifying World Trade Center condition as defined in section two of the retirement and social security law, as determined by the applicable head of the retirement system or applicable medical board, then unless the contrary be proven by competent evidence, such member shall be deemed to have died as a natural and proximate result of an accident sustained in the performance of duty and not as a result of willful negligence on his or her part. Such member's eligible beneficiary, as set forth in section 13-149 of this chapter, shall be entitled to an accidental death benefit provided he or she makes written application to the head of the retirement system within the time for filing an application for an accidental death benefit as set forth in section 13-149 of this chapter.

**HISTORICAL NOTE**

Section amended chap 489/2008 § 17, eff. Aug. 5, 2008 and deemed to

have been in full force and effect Sept. 11, 2001.

**DERIVATION**

Formerly § Section amended ch. 785/1986 § 4

Section added chap 907/1985 § 1

Subd. a amended ch. 271/1989 § 1

Subd. b par 5 amended chap 93/2005 § 13, eff. June 14, 2005 and deemed to have been in full force and effect on and after Sept. 11, 2001 per chap 93/2005 § 14 and chap 104/2005 § A14 of § 1.

Subd. b par 5 added chap 104/2005 § 13, eff. June 14, 2005 and deemed to have been in full force and effect on and after Sept. 11, 2001.

Subd. b par 5 subpar (a) clause (4) amended chap 214/2007 § 1, eff. July 3, 2007.

Subd. b par 5 subpar (a) clause (5) amended chap 495/2007 § 27, eff. Aug. 1, 2007 and deemed to have been in full force and effect on and after June 14, 2007.

Subd. b par 5 subpar (b) clause (2) item (A) amended chap 495/2007 § 28, eff. Aug. 1, 2007 and deemed to have been in full force and effect on and after June 14, 2007.

Subd. b par 5 subpar (b) clause (2) item (A) amended chap 444/2006 § 13, eff. Aug. 14, 2006.

Subd. c amended chap 5/2007 § 21, eff. Mar. 13, 2007 and deemed to have been in full force and effect on and after Sept.11, 2001.

Subd. c added chap 445/2006 § 14, eff. Aug. 14, 2006 and deemed to have been in full force and effect on and after Sept. 11, 2001.

Subd. d added chap 5/2007 § 21, eff. Mar. 13, 2007 and deemed to have been in full force and effect on and after Sept.11, 2001.

**DERIVATION**

Formerly § B3-40.0 added chap 929/1937 § 1

Amended chap 373/1940 § 1

Amended chap 637/1946 § 1

Amended chap 380/1965 § 1

Amended chap 785/1986 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Member of Employees' Retirement System was not obliged to await a confirmation by the Board of Estimate of the determination of the Medical Board denying her application for accident disability retirement before suing for an order annulling the Medical Board's determination, and declaring her entitled to accident disability retirement.-Rosenberg v. Bd. of Estimate, 170 Misc. 800, 10 N.Y.S. 124 [1938]; rev'd 257 App. Div. 839, 12 N.Y.S. 2d 215 [1939] on ground the Medical Board was not shown to have abused its discretion and therefore no issue was presented for the jury; aff'd without opinion 281 N.Y. 835, 24 N.E. 2d 493 [1939].

¶ 2. Plaintiff applied for accidental disability retirement as the result of an alleged heart attack induced by his work. Upon recommendation of the Medical Board, the Board of Estimate rejected the application. Petitioner made successive applications for reconsideration and offered new evidence, which was considered; but in each case the application was rejected. Within four months after the last rejection, but over 17 months after the first determination, petitioner commenced an Article 78 proceeding to review the last determination of the Board of Estimate. His petition was held timely over the contention that he was really seeking to review the original determination.-Matter of Feller v. Wagner, 7 A.D. 2d 126, 180 N.Y.S. 2d 748 [1958].

¶ 3. Application for retirement must be made within two years from the date of the accident, and this is not affected by the provision allowing the Medical Board to certify eligibility for retirement at any time within five years. The City was in no way estopped by the fact that its compensation doctor advised plaintiff that her health had improved, which may have induced her to neglect filing her application.-Neary v. Wagner, 155 N.Y.S. 2d 259 [1956].

¶ 4. Under Admin. Code § B3-40.0, an application for accident disability must be filed within two years after the accident, and court was without power to extend time for filing of claim by petitioner whose application indicated that the accident occurred over seven years ago.-Bross v. N.Y. City Employees' Retirement System, 120 (29) N.Y.L.J. (8-11-48) 232, Col. 6 F.

¶ 5. Petitioner, who was injured on April 1, 1942, and first applied on April 5, 1945, for retirement on basis of an injury which was neither a recurrence nor reoccurrence of the original injury, **held** entitled to a trial, pursuant to C.P.A. § 1295, in connection with his application for an order requiring respondents to retire him for accident disability. Even though the application was not filed within two years of the injury as allegedly required by Admin. Code § B3-40.0, the incapacity obviously may not come to pass until over two years have elapsed since the accident and this was apparently contemplated by a provision in the statute for examination by the Medical Board within five years after the accident. Furthermore, petitioner allegedly had been assured by respondent's doctors that he would not be incapacitated and if he was thus lulled into delaying his action beyond the statutory period respondent should not be permitted to interpose the bar of the statute.-In re Schaffer (O'Dwyer), 117 (15) N.Y.L.J. (1-18-47) 242, Col. 6 M.

¶ 6. Where conclusion of Medical Board that member of Employees' Retirement System was not disabled as result of an accidental injury received in the City's service was amply supported by competent evidence adduced before that Board, the determination of the Board of Estimate based upon the Medical Board's report might not be disturbed by the court. A mere difference in medical opinion among physicians produced by the member on the one hand, and physicians of the Medical Board on the other, as to the nature and cause of the member's disability, did not justify a conclusion that the decision made by the Board of Estimate acting on advice of its own Medical Board was arbitrary or unreasonable.-Nilsson v. La Guardia, 259 App. Div. 145, 18 N.Y.S. 2d 502 [1940].

¶ 7. The statutory provisions governing accidental disability retirements are radically different from the provisions controlling an application for accidental death benefits and decisions under Admin. Code § B3-40.0 relative to disability retirement applications may not be regarded as prescribing the effect to be given to a certification made by the Medical Board as to a death benefit claim.-Daley v. Board of Estimate, 267 App. Div. 592, 49 N.Y.S. 2d 139 [1944].

¶ 7.1. Because Board of Estimate is bound by determination of its own medical board its adoption of that board's opinion in regard to petitioner's application for accident disability retirement was not arbitrary or illegal.-Albano v. Wagner, 155 (43) N.Y.L.J. (3-3-66) 16, Col. 1 F.

¶ 8. Where the papers disclosed that the Medical Board of the N.Y.C. Employees' Retirement System disregarded the finding of the hospital where petitioner had been confined and treated, and that their determination denying petitioner's application for accidental disability retirement was not predicated upon all the available records, petitioner **held** entitled to an opportunity to establish that there was ample evidence to sustain the conclusion that he was disabled as result of the accident or that there was insufficient basis for the adverse findings of the Medical Board. The conclusion of the hospital and the attending doctors should not have been brushed aside by the Medical Board merely because petitioner failed to make a prompt complaint.-Epstein v. Board of Estimate, 128 (109) N.Y.L.J. (12-8-52) 1411, Col. 2 F.

¶ 9. A denial of accident retirement disability was affirmed where there was no proof of a heart ailment causally related to petitioner's employment, notwithstanding the contrary evidence of petitioner's doctors.-In re Milchman, 31 Misc. 2d 483, 221 N.Y.S. 2d 591 [1961].

¶ 10. A disability retirement retroactive to a date prior to his discharge could not be granted to petitioner who was dismissed from his job by the Transit Authority because of absence from duty. Such a retirement can only be granted to an employee in the City's service at the time the request is made. Reinstatement can only be effected by a direct attack on the dismissal in an Article 78 proceeding but such action would have to be taken within four months of the dismissal.-Matter of Smith (New York City Employees' Retirement System), 145 (11) N.Y.L.J. (1-7-61) 12, Col. 4 M.

¶ 11. Petitioner was not precluded from claiming accident disability retirement although she had previously applied for and been awarded ordinary retirement disability.-In re Milchman, 31 Misc. 2d 483, 221 N.Y.S. 2d 591 [1961].

¶ 12. A policewoman who had entered the city's service in 1918 and had joined the retirement system in 1934, having at that time applied for and received "prior service" credit for the period from 1918 to 1934 and having paid into the annuity fund a sum equivalent to the amount she would have been required to pay had she been a member since 1918 was vested with all rights of membership, including the right to apply for accidental disability retirement even though her injury was received in 1924.-Rosenberg v. Board of Estimate, 170 Misc. 800, 10 N.Y.S. 2d 124 [1938], rev'd on other grounds, 257 App. Div. 839, 12 N.Y.S. 2d 215 [1939], aff'd 281 N.Y. 835, 24 N.E. 2d 493 [1939].

¶ 13. Trustee of New York City Employees' Retirement System **held** to have properly started employee's accident disability retirement payments at a date 30 days after filing of application for retirement, rather than at date of the accident (Greater New York Charter §§ 1710, 1712). Greater New York Charter § 1714, providing that retirement allowance should be paid as soon as the medical board should have found that total disability resulted from an accident, was inapplicable, since in present case the board had not approved the retirement.-Matter of Wargo (La Guardia), 100 (1) N.Y.L.J. (7-1-38) 5, Col. 7 F.

¶ 14. Plaintiff, a civil service employee of the City of New York attached to the Department of Sanitation, who had applied for and received workmen's compensation for a long period of time, **held** not entitled, upon the City finally dismissing him on ground he was permanently physically incapacitated, to then insist that during such period he was able to work and had tendered his services, and was therefore entitled to receive the difference between the compensation payments and his regular salary. Plaintiff, if he believed he could perform his duties, should not have accepted compensation but should have taken the unequivocal position that he wished to work and would have no workmen's compensation benefits.-Gress v. City of N.Y., 100 (101) N.Y.L.J. (10-29-38) 1374, Col. 2 F.

¶ 15. Denial of service-connected accident disability resulting from alleged personal injuries sustained by falling down stairs of subway station while employed as a transit patrolman was not arbitrary where medical board found that accident did not contribute to recurrence of petitioner's chronic ulcerative colitis. Lambardio v. N.Y.C. Employees' Retirement System, 167 (71) N.Y.L.J. (4-12-72) 17, Col. 3 M.

¶ 16. Fact that petitioner seeking retirement on ground of accidental disability submitted conflicting medical

evidence did not suffice for judicial interference in respondent's determination where record contained medical evidence and opinion to support the administrative determination attacked. Banigan v. N.Y.C. Employees' Retirement System, 166 (39) N.Y.L.J. (8-25-71) 2, Col. 5 T.

¶ 17. City was not liable in damages for terminal leave and accrued vacation allowance to former city sanitation worker who was involuntarily retired for accident disability and who because he was notified of his retirement just before its effective date was unable to use the time owed him for vacation and terminal leave since this would violate the constitutional requirement against gifts of public funds and the collective bargaining agreement did not provide for payment of a substitute in the form of cash.-Coates v. City of N.Y., 49 A.D. 2d 565, 370 N.Y.S. 2d 628 [1975].

¶ 18. Petitioner who worked for Sanitation Department for 7 years was entitled to an opportunity through oral testimony to attempt to establish that his cancerous lung condition resulted from continuous exposure to fumes from the incineration of garbage and waste materials at the facility where he worked.-Gibbs v. N.Y.C. Employees' Retirement System, 176 (96) N.Y.L.J. (11-18-76) 10, Col. 47.

¶ 19. Application to retire on accident disability benefits was properly denied where petitioner, a caseworker for the department of social services, was assaulted on the job by a public assistance client where application had not been filed within two years after the accident as required by statute and petitioner could not rely on general equity principles to cure the defect.-Matter of Randall (N.Y.C. Employees' Retirement System), 178 (13) N.Y.L.J. (7-20-77) 11, Col. 2 T.

¶ 20. To qualify for accident disability under this section it is not necessary that an accident in fact has occurred, but the disability may result from continuous use of toxic chemicals.-Matter of Rinaldi (Board of Trustees of the New York City Employees' Retirement System), 180 (89) N.Y.L.J. (11-8-78) 10, Col. 4 M.

¶ 21. Application of new narrower definition of accident rather than definition in effect on January 11, 1979 and September 18, 1979, the respective dates of accident and petitioner's application for accident disability retirement was arbitrary, capricious and contrary to law since retroactive revision of the definition of accident might have impaired petitioner's constitutionally vested interest.-Matter of Menna v. N.Y.C. Employees' Retirement System, 110 Misc. 2d 1065 [1981].

¶ 22. Where nervous breakdown of petitioner, a uniformed transit police officer, was the natural and proximate result of an emotional trauma caused by uncertainty regarding the compensability of a job-related hearing loss, and denial of petitioner's claim, court would not dismiss his petition since petitioner could be entitled to compensation under the concept of "compensation neurosis".-Goode v. N.Y.C. Transit Police Dept., 115 Misc. 2d 541 [1982].

¶ 23. Petitioner who hurt his back while lifting a heavy can of garbage was not entitled to accident disability retirement because his injury was not caused by an "accident" which requires the intervention of an "external, unexpected and unusual fortuitous event".-Shannon v. Bd. of Trustees of N.Y.C. Employees' Retirement System, 92 App. Div. 2d 528 [1983].

¶ 24. An accident which precipitates the development of a latent condition or aggravates a preexisting condition is a cause of disability within the meaning of this section.-Matter of Tobin v. Steisel, 64 N.Y. 2d 254 [1985].

**CASE NOTES**

¶ 1. Petitioner, a Rikers Island correction officer, who was injured in the process of leaving the premises on a Correction Department bus which transported employees to and from Rikers Island control building, was not entitled to accident disability retirement pension pursuant to Ad Code § 13-168 because his injuries had not occured in the actual performance of city service. Further, petitioner's eligibility for worker's compensation benefits was not dispositive of his eligibility for accident retirement benefits because section 13-176(c) of the Ad Code specifically provides that a decision of the Workers' Compensation Board is not binding on the Medical Board of the NY City Employees'

Retirement System in determining the eligibility of a claimant for accident disability benefits. Towes v. NYC Employees' Retirement System, 160 AD2d 578, 554 N.Y.S.2d 222 (1st Dept. 1988).

¶ 2. A claimant under this section has the burden of establishing proximate cause between the accident and the specific injuries. The city is entitled to rely on its medical board's findings in a matter of pure medical judgment. Carney v. New York City Employees Retirement System, 162 A.D.2d 382, 557 N.Y.S.2d 38 (1st Dept. 1990).

¶ 3. The cleaning of the hopper of a truck was part of a sanitation worker's routine duties. Thus, an injury sustained during the course of this work was not deemed a "sudden and unpexpected event," and the worker was not entitled to accidental disability retirement. Matter of Kehoe v. City of New York, 186 A.D.2d 376, 588 N.Y.S.2d 172 (1st Dept. 1992).

¶ 4. A police officer who slipped and fell on an icy surface in front of his precinct house was held to have suffered an injury on the way to work and thus was not entitled to accidental disability retirement based on an incurred sustained during City service. Alessio v. New York City Employees' Retirement System, 67 N.Y.2d 978, 502 N.Y.S.2d 992 (1986).

¶ 5. A former emergency medical technician (EMT), who allegedly contracted HIV in the course of his duties, applied for accidental disability retirement. He relied upon General Municipal Law §207-o, which creates a presumption that a former EMT who contracts HIV will be presumed to have contracted such disease as a natural and proximate result of an accidental injury, unless the contrary is proved by competent evidence. The court held that once an applicant for accidental disability retirement submitted evidence that the presumption was applicable, the Medical Board either had to accept the presumption or engage in fact finding to disprove the presumption. The Medical Board could not arbitrarily conclude that the applicant did not contract HIV in the course of his duties. Collins v. New York City Employees Retirement System, 1 Misc.3d 677, 767 N.Y.S.2d 767 (Sup.Ct. Kings Co. 2003).

¶ 6. In one case, a 48-year-old carpenter, who was involved in the World Trade Center rescue efforts as a result of Sept. 11, 2001, worked in 12 hour shifts for over six weeks, digging through debris, building support structures, and doing other heavy duty construction work. He developed respiratory problems, including burning eyes, congestion and other symptoms that led him to see a physician experienced in treating illnesses associated with Ground Zero. The doctor stated that the carpenter should stop working around dust and fumes, which led to his breathing problems. The petitioner said that he has to avoid dusty or smoky settings if he is to breathe normally. If not, he must use an inhaler in order to breathe. In addition, petitioner had eleven on-the-job accidents, which affected his back, fingers and other parts of his body. He brought a claim for disability retirement. The Medical Board conducted its own examination of petitioner, which included palpating his extremities and having him perform such tasks as lifting his leg and opposing and flexing his thumb. However, the Medical Board spent only 15 minutes on the examination, and took no tests relating to petitioner's respiratory problems. It then came out with a finding that petitioner was not disabled, and the Commissioner adopted that finding. However, the court granted an Article 78 petition, and directed the Medical Board to reconsider the case. The court found that the examination was so cursory and limited in its breadth that it could not predict whether petitioner was able to continue his job as a carpenter, in which he was required to crawl under roadways and bridges, work over his head, climb dangerous heights, and operate heavy tools. Moreover, the Medical Board report, upon which the Bureau of Transportation relied in denying the application, did not set forth the reasons for concluding that petitioner was not disabled from working as a carpenter. An agency's failure to set forth an adequate statement of the factual basis for the determination forecloses the possibility of judicial review and deprives petitioner of his statutory right to such review. Application of Demetrius Samadjopoulos v. NYC Employees Retirement System et al. 2008 NY Slip Op. 50828U, 19 Misc. 3d 1123A, 2008 NY Mis. Lexis 2358 (Sup. Ct. NY County 2008).



Administrative Code of the City of New York



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

*NYC Administrative Code 13-169*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-169 Medical review in member disability cases.

a. As used in this section, the following terms shall mean and include:

(1) "Bargaining representative". The public employee organization which is authorized to represent a member for purposes of collective bargaining with the city.

(2) "Panel of medical experts". Those physicians whose names are set forth in a list of medical experts prepared annually by the commissioner of health and filed in his or her office and with the executive director of the retirement system on or before July first. The experts so designated shall be physicians having qualifications as specialists in such fields of medicine as such commissioner deems an essential background (i) for ascertaining, in cases where an application for disability retirement is filed by or with respect to a member, whether such member is physically or mentally incapacitated for the performance of city-service, and (ii) for rendering of reports or certifications as to diagnosis and issues of causal relationship with respect to such applications. Each of such physicians shall have had, prior to his or her designation, at least ten years of practice in the field with respect to which he or she is designated. The names of such physicians shall be separately grouped in such list, according to the fields of medicine in which they are expert, and the names in each group shall be consecutively numbered.

(3) "Party entitled to review". Either of the following:

(i) the bargaining representative of such member; or

(ii) the appropriate agency head.

b. (1) In any case where an application for retirement of a member for disability has been filed pursuant to section 13-167 or 13-168 of this chapter, the executive director of the retirement system, promptly after the board constituting the head of the retirement system acts on the report or certification of the medical board with respect to such application, shall give notice of such action by the board constituting such head to such member and to the appropriate agency head. Within fifteen days after such notification, any party entitled to review may file with the executive director a written request that a special medical committee, as provided for in this section, shall review the conclusions and recommendations of the medical board set forth in its report or certification and the determination of the board of trustees made pursuant to section 13-168 of this chapter.

(2) (i) Any request for review filed by a bargaining representative with respect to such application for disability retirement shall be void and of no effect unless such request includes a waiver, as hereinafter provided, duly executed and acknowledged by the member or by a person acting in his or her behalf as hereinafter provided. Such waiver may be executed by a person acting in behalf of such member in any case where, at the time of the execution of such waiver by such person, the circumstances are such that if such application for disability retirement had not been previously filed by or with respect to such member, such person would at such time of execution be authorized under the provisions of section 13-167 or 13-168 of this chapter, as the case may be, to file, as a person acting in behalf of such member, an application for disability retirement of such member.

(ii) Such waiver shall provide that the execution thereof by such member or by a person acting in his or her behalf as hereinabove authorized shall constitute an agreement by such member that his or her application for disability retirement under section 13-167 or 13-168 of this chapter, as the case may be, shall be disposed of by action of the board constituting the head of the retirement system pursuant to the provisions of this section, that such action shall be final and conclusive, and that he or she waives any and all rights which he or she might otherwise have to seek or obtain any other disposition of such application for disability retirement by court or administrative proceedings or otherwise. A waiver so executed and filed shall be effective and binding upon such member, in accordance with its terms.

c. Promptly after the filing of a request for review to be made by a special medical committee, the executive director shall transmit a copy of such request and of the report or certification of the medical board to the commissioner of health.

d. The commissioner, upon receipt of such report or certification and request, shall promptly designate three of the physicians on the panel of medical experts as a special medical committee for the purpose of reviewing the recommendations and conclusions of the medical board in such case. Such physicians shall be selected by him or her from the panel group possessing the specialist qualifications deemed essential by him or her for such review. All selections of physicians pursuant to this subdivision d shall be made in order of numerical standing in the group from which selection is to be made, and on the basis of continuous rotation within the group.

e. (1) Promptly after making the selection prescribed by subdivision d of this section, the commissioner of health shall notify the selected physicians and the executive director thereof.

(2) Such special medical committee shall, within thirty days after such notification to the physicians constituting such committee is completed, perform, with respect to the application for retirement of such member for disability, the same functions of medical examination or otherwise as are prescribed by applicable provisions of law for performance by the medical board with respect to such application, and shall within such period adopt by majority vote and file with the executive director a report or certification, as the case may be, stating the conclusions and recommendations of such committee concerning the matters required to be reported on or certified by the medical board, pursuant to such applicable provisions of law, with respect to such application.

f. The conclusions and recommendations of the special medical committee shall supersede those of the medical board.

g. (1) Each physician who serves as a member of a special medical committee shall receive a fee for such service, to be determined by the comptroller of the city.

(2) With respect to each case in which a special medical committee acts, one-half of the fees of the members of such committee shall be paid by the city. The other half of such fees shall be paid by the bargaining representative of the member concerned in such case.

h. (1) Within forty-five days after the filing of the report or certification of the special medical committee, the board constituting the head of the retirement system shall act on such report or certification as hereinafter provided in this subdivision h.

(2) If the application is for retirement of the member pursuant to section 13-167 of this chapter, and if the medical examination by the special medical committee shows that such member is physically or mentally incapacitated for the performance of duty and ought to be retired, such committee shall so report and such board constituting such head shall retire such member for ordinary disability as of the date on which such board constituting such head acted on the report of the medical board with respect to such application, or as of the date ninety days after the filing of such application for such retirement, whichever is earlier.

(3) If the application is for retirement of the member pursuant to section 13-168 of this chapter and if the medical examination and investigation of the special medical committee shows that such member is physically or mentally incapacitated for the performance of city-service as a natural and proximate result of an accidental injury received in such city-service while a member, and that such disability was not the result of wilful negligence on the part of such member and that such member should be retired, the special medical committee shall so certify to such board constituting such head stating the time, place and conditions of such city-service performed by such member resulting in such disability, and such board constituting such head shall retire such member for accident dis- ability as of the date on which such board acted on the report of the medical board with respect to such application.

i. In any case where a request for review by a special medical committee is filed pursuant to the provisions of this section, the provisions of sections 13-167 and 13-168 of this chapter shall be superseded by the provisions of this section to the extent that the provisions of this section are inconsistent therewith.

j. (1) In any case where the provisions of this section require the executive director to give notice to a member, the executive director may give such notice by delivery to such member personally or by mailing same to his or her last known address, as shown by the records of the department of sanitation.

(2) In any case where the provisions of this section require the giving of notice or the transmission of papers to any other person, such notice may be given or transmission effected by delivery to such person, by delivery at his or her office to any of his or her employees, or by mailing to the office address of such person.

(3) In any case where notice is given by mail pursuant to this subdivision j, such notice shall be deemed to be given on the date of mailing.

k. Notwithstanding any other provision of law to the contrary, the board of trustees may adopt rules and regulations to provide that the executive director, rather than the commissioner of health, shall establish the list of the panel of medical experts, designate physicians as special medical committees and administer the medical review process. Any rules and regulations so adopted shall be substantially similar to the provisions set forth in this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b par 1 amended chap 785/1986 § 5

Subd. k added chap 607/1998 § 2, eff. Sept. 30, 1998

**DERIVATION**

Formerly § B3-40.1 added chap 986/1969 § 2

Sub b par 1 amended chap 888/1973 § 6

Sub c amended chap 888/1973 § 6

Sub e pars 1, 2 amended chap 888/1973 § 7

Sub j par 1 amended chap 888/1973 § 8

Section heading, subs a, b amended chap 855/1980 § 1

Sub g par 2 amended chap 855/1980 § 1

Sub j par 1 amended chap 855/1980 § 1

Sub b par 1 amended chap 785/1986 § 2

**CASE NOTES**

¶ 1. Upon the Board of Trustee's denial of petitioner's application for accidental disability retirement, petitioner had the choice of accpeting that determination, commencing an Article 78 proceeding or requesting a review of the conclusions and recommendations of the Medical Board by a special medical committee, as provided in § 13-169(b)(1). this latter choice is, in effect, a form of binding arbitration, which is void and of no effect unless it includes a waiver of the right to any further administrative or judicial review. Thus, where the waiver was freely and knowingly made, petitioner was now precluded from obtaining judicial review of the determination. McEwan v. New York City Employees Retirement System, 159 A.D.2d 238 (1st Dept. 1990).

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-170*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-170 Medical review in housing police member disability cases.

a. As used in this section, the following terms shall mean and include:

(1) "Bargaining representative". The public employee organization which is authorized to represent a housing police member for purposes of collective bargaining with the New York city housing authority.

(2) "Panel of medical experts". Those physicians whose names are set forth in a list of medical experts prepared annually by the commissioner of health and filed in his or her office and with the executive director of the retirement system on or before July first. The experts so designated shall be physicians having qualifications as specialists in such fields of medicine as such commissioner deems an essential background (i) for ascertaining, in cases where an application for disability retirement is filed by or with respect to a housing police member, whether such member is physically or mentally incapacitated for the performance of city-service, and (ii) for rendering of reports or certifications as to diagnosis and issues of causal relationship with respect to such applications. Each of such physicians shall have had, prior to his or her designation, at least ten years of practice in the field with respect to which he or she is designated. The names of such physicians shall be separately grouped in such list, according to the fields of medicine in which they are expert, and the names in each group shall be consecutively numbered.

(3) "Party entitled to review". Either of the following:

(i) the bargaining representative of such member; or

(ii) the chief of the housing police department of the New York city housing authority.

b. (1) In any case where an application for retirement of a housing police member for disability has been filed pursuant to section 13-167 or 13-168 of this chapter, the secretary of the retirement system, promptly after the retirement board acts on the report or certification of the medical board with respect to such application, shall give notice of such action by the board constituting such head to such member and to the chief of the housing police department. Within fifteen days after such notification, any party entitled to review may file with the secretary a written request that a special medical committee, as provided for in this section, shall review the conclusions and recommendations of the medical board set forth in its report or certification and the determination of the board of trustees made pursuant to section 13-168 of this chapter.

(2) (i) Any request for review filed by a bargaining representative with respect to such application for disability retirement shall be void and of no effect unless such request includes a waiver, as hereinafter provided, duly executed and acknowledged by the housing police member or by a person acting in his or her behalf as hereinafter provided. Such waiver may be executed by a person acting in behalf of such member in any case where, at the time of the execution of such waiver by such person, the circumstances are such that if such application for disability retirement had not been previously filed by or with respect to such member, such person would at such time of execution be authorized under the provisions of section 13-167 or 13-168 of this chapter to file, as a person acting in behalf of such member, an application for disability retirement of such member.

(ii) Such waiver shall provide that the execution thereof by such member or by a person acting in his or her behalf as hereinabove authorized shall constitute an agreement by such member that his or her application for disability retirement under section 13-167 or 13-168 of this chapter shall be disposed of by action of the board constituting the head of the retirement system pursuant to the provisions of this section, that such action shall be final and conclusive, and that he or she waives any and all rights which he or she might otherwise have to seek or obtain any other disposition of such application for disability retirement by court or administrative proceedings or otherwise. A waiver so executed and filed shall be effective and binding upon such member, in accordance with its terms.

c. Promptly after the filing of a request for review to be made by a special medical committee, the secretary shall transmit a copy of such request and of the report or certification of the medical board to the commissioner of health.

d. The commissioner, upon receipt of such report or certification and request, shall promptly designate three of the physicians on the panel of medical experts as a special medical committee for the purpose of reviewing the recommendations and conclusions of the medical board in such case. Such physicians shall be selected by him or her from the panel group possessing the specialist qualifications deemed essential by him or her for such review. All selections of physicians pursuant to this subdivision d shall be made in order of numerical standing in the group from which selection is to be made, and on the basis of continuous rotation within the group.

e. (1) Promptly after making the selection prescribed by subdivision d of this section, the commissioner of health shall notify the selected physicians and the secretary thereof.

(2) Such special medical committee shall, within thirty days after such notification to the physicians constituting such committee is completed, perform, with respect to the application for retirement of such member for disability, the same functions of medical examination or otherwise as are prescribed by applicable provisions of law for performance by the medical board with respect to such application, and shall within such period adopt by majority vote and file with the secretary a report or certification, as the case may be, stating the conclusions and recommendations of such committee concerning the matters required to be reported on or certified by the medical board, pursuant to such applicable provisions of law, with respect to such application.

f. The conclusions and recommendations of the special medical committee shall supersede those of the medical board.

g. (1) Each physician who serves as a member of a special medical committee shall receive a fee for such

service, to be determined by the comptroller of the city.

(2) With respect to each case in which a special medical committee acts, one-half of the fees of the members of such committee shall be paid by the New York city housing authority. The other half of such fees shall be paid by the bargaining representative of the housing police member concerned in such case.

h. (1) Within forty-five days after the filing of the report or certification of the special medical committee, the board constituting the head of the retirement system shall act on such report or certification as hereinafter provided in subdivision h hereof.

(2) If the application is for ordinary disability retirement of the member pursuant to section 13-167 of this chapter, and if the medical examination by the special medical committee shows that such member is physically or mentally incapacitated for the performance of duty and ought to be retired, such committee shall so report and such board constituting such head shall retire such member for ordinary disability as of the date on which such board constituting such head acted on the report of the medical board with respect to such application, or as of the date ninety days after the filing of such application for such retirement, whichever is earlier.

(3) If the application is for accident disability retirement of the member pursuant to section 13-168 of this chapter and if the medical examination and investigation of the special medical committee shows that such member is physically or mentally incapacitated for the performance of city-service as a natural and proximate result of an accidental injury received in such city-service while a member, and that such disability was not the result of wilful negligence on the part of such member and that such member should be retired, the special medical committee shall so certify to such board constituting such head stating the time, place and conditions of such city-service performed by such member resulting in such disability, and such board constituting such head shall retire such member for accident disability as of the date on which such board acted on the report of the medical board with respect to such application.

i. In any case where a request for review by a special medical committee is filed pursuant to the provisions of this section, the provisions of section 13-167 or 13-168 of this chapter shall be superseded by the provisions of this section to the extent that the provisions of this section are inconsistent therewith.

j. (1) In any case where the provisions of this section require the secretary to give notice to a housing police member, the secretary may give such notice by delivery to such member personally or by mailing same to his or her last known address, as shown by the records of the housing police department of the New York city housing authority.

(2) In any case where the provisions of this section require the giving of notice or the transmission of papers to any other person, such notice may be given or transmission effected by delivery to such person, by delivery at his or her office to any of his or her employees, or by mailing to the office address of such person.

(3) In any case where notice is given by mail pursuant to this subdivision j, such notice shall be deemed to be given on the date of mailing.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b par 1 amended chap 785/1986 § 6

**DERIVATION**

Formerly § B3-40.2 added chap 654/1978 § 1

Sub b par 1 amended chap 785/1986 § 3



Administrative Code of the City of New York



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

*NYC Administrative Code 13-171*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-171 Safeguards on disability retirement.

a. Once each year the board may, and upon his or her application shall, require any disability pensioner, under the minimum age for service retirement for the group from which he or she was retired to undergo medical examination. Such examination shall be made at the place of residence of such beneficiary or other place mutually agreed upon. Upon the completion of such examination the medical board shall report and certify to the board whether such beneficiary is or is not totally or partially incapacitated physically or mentally and whether he or she is or is not engaged in or able to engage in a gainful occupation. If the board concur in a report by the medical board that such beneficiary is able to engage in a gainful occupation, it shall certify the name of such beneficiary to the appropriate civil service commission, state or city, and such commission shall place his or her name as a preferred eligible on such appropriate lists of candidates as are prepared for appointment to positions for which he or she is stated to be qualified.

Should such beneficiary be engaged in a gainful occupation, or should he or she be offered city-service as a result of the placing of his or her name on a civil service list, such board shall reduce the amount of his or her disability pension and his or her pension-for-increased-take-home-pay, if any, to an amount which, when added to that then earned by him or her, or earnable by him or her in city-service so offered him or her, shall not exceed the current maximum salary for the title next higher than that held by him or her when he or she was retired. Should the earning capacity of such beneficiary be further altered, such board may further alter his or her pension and his or her pension-for-increased-take-home-pay, if any, to an amount which shall not exceed the rate of pension and pension-for-increased-take-home-pay, if any, upon which he or she was originally retired but which, subject to such limitation, shall equal, when added to that earnable by him or her, the current maximum salary for the title next higher than that held by him or her when he or she was retired.

The provisions of this section shall be executed, any provision of the charter or the code to the contrary notwithstanding.

b. Should any disability pensioner, under the minimum age for service retirement for the group from which he or she was retired, refuse to submit to one medical examination in any year by a physician or physicians designated by the medical board, his or her pension and his or her pension-for-increased-take-home-pay, if any, may be discontinued until his or her withdrawal of such refusal. Should such refusal continue for one year, all his or her rights in and to such pension and pension-for-increased-take-home-pay, if any, may be revoked by such board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 438/1986 § 1

**DERIVATION**

Formerly § B3-41.0 added chap 929/1937 § 1

Amended chap 509/1960 § 18

Sub a amended chap 100/1963 § 38

Sub a amended chap 866/1969 § 15

Sub a amended chap 274/1977 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. A determination by the Medical Board and the Board of Estimate made on the eve of his attainment of the minimum service retirement age, that petitioner, who had been retired for accident disability, was no longer totally physically disabled, did not entitle the Employees' Retirement System to reduce his pension upon his refusal to report for work, where petitioner had not actually been assigned to work prior to his 55th birthday and his payments had not been suspended until after such date (Admin. Code § B3-41.0).-Roche v. N.Y. City Employees' Retirement System, 173 Misc. 708, 18 N.Y.S. 2d 736 [1939].

¶ 2. Admin. Code § B3-41.0 is clearly for the protection of the Retirement System in cases where a pensioner retired for ordinary disability has a limited earning capacity. It does not undertake to specify the salary at which an employee shall be reinstated, but serves the purpose of crediting the Retirement System with the employee's earning capacity, whatever it may be. It provides not for the payment of salary but for the reduction of pension payments.-Stewart v. O'Dwyer, 271 App. Div. 485, 66 N.Y.S. 2d 551 [1946].

¶ 3. Admin. Code § B3-41.0 would appear not to contemplate cases where the employee has fully recovered from his disability, is restored to his original or a similar position, and is performing the same work that he performed before retirement. However, the section might cover a case where an employee has been restored to his original title but is prevented by budgetary limitation from receiving his former pay.-Stewart v. O'Dwyer, 271 App. Div. 485, 66 N.Y.S. 2d 551 [1946].

¶ 4. Full force may be given to both Civil Service Law § 31b and Admin. Code § B3-41.0 if the latter is confined to cases where an employee retired for disability may not be able to do his former work or is unable to find a vacancy in his former position. Where he is reinstated from a preferred list to his former or a similar position he should receive the protection afforded by § 31b. Accordingly, employees restored to their original status would be restored to membership in the Employees' Retirement System and would, if within the specified grades, receive the benefit of annual increments

provided by § B40-6.0.-Stewart v. O'Dwyer, 271 App. Div. 485, 66 N.Y.S. 2d 551 [1946].

¶ 5. Petitioner who retired in May, 1948, indefinitely for ordinary disability, and two months later attained the age of 65, which was her selected minimum retirement age, but now felt that she had recovered and was able to engage in gainful occupation, **held** entitled to secure a physical examination with a view to reinstatement in the Civil Service. Admin. Code § B3-41.0 did not preclude right of petitioner to reexamination after attaining the age selected by her for retirement. Such statute is exclusively for the benefit of the Retirement System and deals only with the period up to selected age of retirement.-Lorber v. O'Dwyer, 198 Misc. 310, 101 N.Y.S. 2d 686 [1950], aff'd 277 App. Div. 1035, 100 N.Y.S. 2d 1017 [1950], aff'd 302 N.Y. 829, 100 N.E. 2d 35 [1951].

¶ 6. Employee retired on account of disability applied for reinstatement to the equivalent of former position. Medical board found he was suffering from 50% impairment of right ear and recommended denial of application. In the absence of fraud, accident or mistake the court could not substitute its judgment for that of the medical board. Greco v. Comm. of Sanitation, 20 App. Div. 2d 405, 247 N.Y.S. 2d 546 [1964].



Administrative Code of the City of New York



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

*NYC Administrative Code 13-172*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-172 Retirement allowances; for service.

a. Upon retirement for service a member shall receive a retirement allowance which shall consist of:

1. An annuity which shall be the actuarial equivalent of his or her accumulated deductions, if any, at the time of his or her retirement; and

2. A pension, in addition to his or her annuity, if any, which shall be equal to one service-fraction of his or her final compensation, as enumerated he or she rein for his or her group, multiplied by the number of years of city-service since he or she last became a member credited to him or her; and

2-a. A pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

3. An additional pension which shall be equal to two such service-fractions of his or her final compensation multiplied by the number of years of his or her prior service; and

4. An additional pension, equal to the difference between each such service-fraction and one one-hundred-twentieth, provided that

(a) On or before the thirtieth day of June, nineteen hundred thirty, by his or her written election duly acknowledged and filed with the board, the member consented to the necessary deductions from his or her compensation therefor; or

(b) On or after July first, nineteen hundred thirty, he or she elected age fifty-five pursuant to section 13-164 of this chapter; and

5. An additional pension which shall be the actuarial equivalent of any and all contributions by him or her to any other retirement system or pension fund

(a) Which have not been and cannot be lawfully refunded to him or her, and

(b) Which are offset by reduction of the amount payable to such other retirement system or pension fund directly or indirectly by the city, provided such member shall have paid deductions from his or her compensation for so much of such period on or after the first day of October, nineteen hundred twenty, as he or she may receive credit for in this retirement system.

(c) The amount of pension liability of the city on account of such additional pension shall be appropriated by the city in the budget for the second year succeeding the determination of such liability and paid into the appropriate fund of the retirement system.

6. A pension, in lieu of any other pension provided for the years allowable service rendered on or after the first day of October, nineteen hundred twenty, of one per centum of his or her final compensation multiplied by the number of such years, provided that, if the member shall have duly executed and filed his or her written application, with the board, on or before the thirty-first day of August, nineteen hundred sixty-two, or, after such date, before any deduction shall have been made from his or her compensation for annuity purposes, the member shall have consented to the necessary deductions from his or her compensation for a like annuity, and for the right to retire at age fifty-five. The method of computation and deductions prescribed by this paragraph shall be appropriately modified in the case of a member for whom a rate is otherwise fixed pursuant to section 13-152 of this chapter.

7. (a) A pension computed pursuant to the provisions of this paragraph seven, in lieu of any other pension provided for the years of allowable service rendered on or after the first day of October, nineteen hundred twenty, in the case of any member whose minimum service retirement age, under the applicable provisions of this chapter, is fifty-five years and who is entitled, under the applicable provisions of this chapter, to payment of a pension pursuant to this paragraph seven upon his or her retirement for service.

(b) Such pension computed pursuant to this paragraph seven shall, subject to the provisions of paragraph two of subdivision e of section 13-638.4 of this title, consist of the following:

(i) for the years of such member's allowable service rendered on or after the first day of October, nineteen hundred twenty and prior to July first, nineteen hundred sixty-eight, a pension equal to the product obtained by multiplying the number of such years by one and two-tenths per centum of such member's annual salary or compensation earnable by him or her for city-service in the year prior to his or her retirement; provided, however, that if such member shall elect, pursuant to subdivision fifty-eight of section 13-101 of this chapter, that such pension be computed on the basis of his or her three-year-average compensation, then such pension for such years shall instead be equal to the product obtained by multiplying the number of such years by one and two-tenths per centum of such member's three-year-average compensation; and

(ii) for the years of such member's allowable service rendered after June thirtieth, nineteen hundred sixty-eight, a pension equal to the product obtained by multiplying the number of such years by one and fifty-three one-hundredths per centum of such member's annual salary or compensation earnable by him or her for city-service in the year prior to his or her retirement; provided, however, that if such member shall elect, pursuant to subdivision fifty-eight of section 13-101 of this chapter, that such pension be computed on the basis of his or her three-year-average compensation, then such pension for such years shall instead be equal to the product obtained by multiplying the number of such years by one and fifty-three one-hundredths per centum of such member's three-year-average compensation.

8. (a) As used in this paragraph eight, the following terms shall mean and include:

(1) "Career pension plan beneficiary." A beneficiary entitled to recomputation of his or her retirement allowance pursuant to item one of subparagraph (b) of this paragraph eight.

(2) "Fifty-five-year-increased-service-fraction beneficiary". A beneficiary entitled to recomputation of his or her retirement allowance pursuant to item two of subparagraph (b) of this paragraph eight.

(b) Notwithstanding any other provision of law to the contrary, the benefits payable by reason of the retirement of a member for service shall be recomputed pursuant to the provisions of this paragraph eight and payment of such recomputed benefits shall be made in the manner and to the extent prescribed in this paragraph, in lieu of the benefits which would otherwise be payable by reason of such retirement, in the following cases:

(1) With respect to any beneficiary:

(i) whose retirement for service became effective during the period beginning on January first, nineteen hundred sixty-eight and ending on June thirtieth, nineteen hundred sixty-eight; and

(ii) who, immediately prior to the effective date of his or her retirement, held a career pension plan position; and

(iii) who, at the time of his or her retirement, had attained the age of fifty-five years and had completed twenty-five years of allowable service in one or more career pension plan positions; and

(iv) who, on July first, nineteen hundred sixty-eight, is a retired former member entitled to receive a retirement allowance from the retirement system; and

(2) With respect to any beneficiary:

(i) whose retirement for service became effective during the period beginning on January first, nineteen hundred sixty-eight and ending on June thirtieth, nineteen hundred sixty-eight; and

(ii) who, immediately prior to the effective date of his or her retirement, held a career pension plan position; and

(iii) who, at the time of his or her retirement, had attained the age of fifty-five years, but had completed less than twenty-five years of allowable service in one or more career pension plan positions; and

(iv) who, on July first, nineteen hundred sixty-eight, is a retired former member entitled to receive a retirement allowance from the retirement system.

(c) There shall be computed, with respect to the retirement of each career pension plan beneficiary, the retirement allowance to which such beneficiary would be entitled under the provisions of section 13-162 of this chapter, relating to the career pension plan, if (1) such section had been in effect prior to the effective date of his or her retirement, and (2) he or she had elected the benefits thereof prior to such effective date, and (3) he or she had retired as a career pension plan member on such effective date.

(d) There shall be computed, with respect to the retirement of each fifty-five-year-increased-service-fraction beneficiary, the retirement allowance to which such beneficiary would be entitled under the foregoing provisions of this section, if (1) the provisions of paragraph seven of subdivision a of this section had been in effect prior to the effective date of his or her retirement, and (2) such beneficiary had been entitled to computation of a pension pursuant to such paragraph seven for the years of his or her allowable service mentioned in such paragraph.

(e) Subject to the provisions of paragraph two of subdivision e of section 13-638.4 of this title, the retirement allowances provided for by paragraphs (c) and (d) of this paragraph eight shall be computed on the basis of the retired

member's salary or compensation earnable by him or her for city-service in the year prior to his or her retirement.

(f) (1) If, with respect to the retirement of any career pension plan beneficiary or fifty-five-year-increased-service-fraction beneficiary, the period during which selection of an option was authorized under section 13-177 of this chapter expired on a date prior to July first, nineteen hundred sixty-eight, under the applicable provisions of law in effect prior to such July first, no re-election of or change of an option with respect to such retirement shall be made after such date of expiration.

(2) If such period for selection of an option did not expire prior to July first, nineteen hundred sixty-eight, under the applicable provisions of law in effect prior to such July first, then the period for the selection of an option with respect to such retirement shall expire on the date on which the first payment on account of any benefit is made in relation to such retirement, whether such payment is made under the applicable provisions of law in effect prior to July first, nineteen hundred sixty-eight or under the provisions of this paragraph eight.

(g) (1) The retirement allowance to which any career pension plan beneficiary or fifty-five-year-increased-service-fraction beneficiary became entitled as of the effective date of his or her retirement, under the applicable provisions of law then in effect, shall be paid to such beneficiary for the period from such effective date up to and including June thirtieth, nineteen hundred sixty-eight.

(2) For any period beginning on or after July first, nineteen hundred sixty-eight, there shall be paid to each such career pension plan beneficiary, in lieu of such retirement allowance to which he or she became entitled as of the effective date of his or her retirement, the retirement allowance computed pursuant to subparagraph (c) of this paragraph eight, and for any period beginning on or after July first, nineteen hundred sixty-eight, there shall be paid to each such fifty-five-year-increased-service-fraction beneficiary, in lieu of the retirement allowance to which he or she became entitled as of the effective date of his or her retirement, the retirement allowance computed pursuant to subparagraph (d) of this paragraph.

(h) (1) Except as otherwise provided in item two of this subparagraph (h), if, by reason of the death of a career pension plan beneficiary or fifty-five-year-increased-service-fraction beneficiary occurring on or after July first, nineteen hundred sixty-eight, any benefits become payable, such benefits shall be computed and paid so as to equal the benefits which would be payable upon such death if the retirement of such beneficiary had occurred under the conditions and assumptions set forth in items one, two and three of subparagraph (c) of this paragraph eight or items one and two of subparagraph (d) of this paragraph, as the case may be, as applicable to the recomputation of the retirement allowance of such beneficiary.

(2) If benefits payable pursuant to item one of this subparagraph (h) include payment of the unexhausted portion of the present value of any such beneficiary's annuity, pension or retirement allowance, as the case may be, such portion shall consist of the amount obtained by subtracting from the present value of such annuity, pension or retirement allowance, as the case may be, calculated as of the effective date of retirement pursuant to the provisions of item one of this subparagraph, the sum obtained by adding together:

(i) a sum equal to the total of all installments on account of such annuity, pension or retirement allowance, as the case may be, which would have been due and payable to such beneficiary, prior to his or her death, with respect to the period prior to July first, nineteen hundred sixty-eight, if such installments had been computed at the applicable rate prescribed by item two of subparagraph (g) of this paragraph eight; and

(ii) a sum equal to the total of all installments on account of such annuity, pension or retirement allowance, as the case may be, which became due and payable to such beneficiary, prior to his or her death, with respect to the period commencing on July first, nineteen hundred sixty-eight, under the provisions of item two of such subparagraph (g).

(i) Nothing contained in this paragraph eight shall be construed as applying to any benefit payable pursuant to subdivision four of section 13-151 of this chapter by reason of the death of any member occurring prior to July first,

nineteen hundred sixty-eight.

(j) For the purposes of this paragraph eight, a member who retired for service prior to January first, nineteen hundred sixty-eight shall be deemed to have retired on such January first, if (1) such member's retirement became effective on the Sunday next preceding such January first, or (2) if every day intervening between the effective date of such member's retirement and such January first was a Saturday or Sunday.

9. (a) As used in this paragraph nine, the following terms shall mean and include:

(1) "College assistant beneficiary." Any beneficiary:

(i) whose retirement for service became effective on or after July first, nineteen hundred sixty-eight and prior to July first, nineteen hundred sixty-nine; and

(ii) who, immediately prior to the effective date of his or her retirement was employed by the city university of New York or in any institution of higher learning under its jurisdiction, including any community college, as a college office assistant A, college secretarial assistant A, college office assistant B, college secretarial assistant B or college administrative assistant; and

(iii) who, at the time of his or her retirement, had attained the age of fifty-five years; and

(iv) who, on July first, nineteen hundred sixty-nine, is a retired former member entitled to receive a retirement allowance from the retirement system.

(2) "Extended coverage career pension plan beneficiary." Any beneficiary who:

(i) retired for service on or after July first, nineteen hundred sixty-eight and prior to July first, nineteen hundred sixty-nine, as a fifty-five-year-increased-service-fraction member; and

(ii) at the time of his or her retirement, was credited with twenty-five or more years of career pension plan qualifying service, but with less than twenty-five years of allowable service in one or more career pension plan positions; and

(iii) on July first, nineteen hundred sixty-nine, is a retired former member entitled to receive a retirement allowance from the retirement system.

(b) (1) Subject to the provisions of subparagraph (e) of this paragraph nine, there shall be computed, with respect to the retirement of each extended coverage career pension plan beneficiary, the benefits which would have been payable by reason of such retirement if (i) the amendments to sections 13-101 and 13-162 of this chapter made by the act which enacts this paragraph nine had been in effect on the effective date of such retirement, and (ii) such member had elected the benefits of section 13-162 of this chapter prior to his or her retirement and (iii) he or she had retired as a career pension plan member on the effective date of his or her retirement.

(2) If such benefits computed pursuant to item one of this subparagraph (b) are greater than the benefits otherwise payable by reason of such retirement, then notwithstanding any provision of law to the contrary, the beneficiary or beneficiaries entitled to receive benefits by reason of such retirement shall be paid such greater benefits with respect to all periods on and after the effective date of such retirement, in lieu of the benefits which would otherwise be payable by reason of such retirement.

(c) (1) Subject to the provisions of subparagraph (e) of this paragraph nine, there shall be computed, with respect to the retirement of each college assistant beneficiary who, at the time of his or her retirement, was credited with twenty-five or more years of career pension plan qualifying service, the benefits which would have been payable with respect to such retirement if (i) the amendments to sections 13-101 and 13-162 of this chapter made by the act which

enacts this paragraph nine had been in effect on the effective date of such retirement, and (ii) such member had elected the benefits of such section 13-162 of this chapter prior to his or her retirement and (iii) he or she had retired as a career pension plan member on the effective date of his or her retirement.

(2) Notwithstanding any provision of law to the contrary, the beneficiary or beneficiaries entitled to receive benefits by reason of such retirement shall be paid, with respect to all periods on and after the effective date of such retirement, the benefits computed pursuant to item one of this subparagraph (c), and shall receive such recomputed benefits in lieu of the benefits which would otherwise be payable by reason of such retirement.

(d) (1) There shall be computed, with respect to the retirement of each college assistant beneficiary, who, at the time of his or her retirement, was credited with less than twenty-five years of career pension plan qualifying service, the benefits which would have been payable with respect to such retirement if (i) the amendments to sections 13-101 and 13-165 of this chapter made by the act which enacts this paragraph nine had been in effect on the effective date of such retirement, and (ii) such member had elected the benefits provided for by subdivision a of section 13-165 of this chapter prior to his or her retirement and

(iii) he or she had retired as a fifty-five-year-increased-service-fraction member on the effective date of his or her retirement.

(2) Notwithstanding any provision of law to the contrary, the beneficiary or beneficiaries entitled to receive benefits by reason of such retirement shall be paid, with respect to all periods on and after the effective date of such retirement, the benefits computed pursuant to item one of this subparagraph (d), and shall receive such recomputed benefits in lieu of the benefits which would otherwise be payable by reason of such retirement.

(e) In the computation of benefits with respect to an extended coverage career pension plan beneficiary pursuant to item one of subparagraph (b) of this paragraph nine, or with respect to a college assistant beneficiary pursuant to item one of subparagraph (c) of this paragraph, the twenty-five years of career pension plan qualifying service of such member next preceding the effective date of his or her retirement shall be deemed to be the first twenty-five years of career pension plan qualifying service of such beneficiary and all rights to benefits conferred by such subparagraphs (b) and (c) shall be subject to and governed by the provisions of this subparagraph nine.

(f) Nothing contained in this paragraph nine shall be construed as applying to any benefit payable pursuant to subdivision four of section 13-151 of this chapter by reason of the death of any member occurring prior to July first, nineteen hundred sixty-nine.

b. The service-fractions of final compensation shall be as follows:

**[See tabular material in printed version]**

For any other group established under the provisions of section 13-106 of this chapter, a service-fraction shall be determined by using a numerator of one and a denominator of four times the difference between the number twenty-five and the number which corresponds to the age determined for such group as the minimum age for service retirement.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par 7 subpar (b) amended chap 749/1992 § 8 eff. July 31, 1992 par 8 subpar (e) amended chap 749/1992 § 9 eff. July 31, 1992

**DERIVATION**

Formerly § B3-42.0 added chap 929/1937 § 1

Sub a par 4 amended chap 460/1938 § 1

Sub a par 6 added chap 810/1949 § 1

Sub a par 6 amended chap 463/1950 § 1

Sub a par 5 amended chap 139/1951 § 1

Sub a par 2-a added chap 509/1960 § 19

Sub a par 6 amended chap 509/1960 § 20

Sub a par 6 amended chap 943/1962 § 1

Sub a par 6 amended chap 916/1963 § 1

Sub a pars 7, 8 added chap 821/1968 § 12

Sub a par 8 subpar j added chap 817/1969 § 19

Sub a par 9 added chap 817/1969 § 20

Sub a pars 1, 2 amended chap 870/1970 § 15

**NOTE**

Provisions of Chap 678/1995, eff. Aug. 9, 1995.

AN ACT in relation to the reduction to retirement benefits received by long-term New York city employees who retired upon separation from service without fault or delinquency.

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Notwithstanding any other provision of law, a member of the New York city employees' retirement system who retired in 1991 pursuant to section 13-150 of the administrative code of the city of New York, and who, at the time of retirement, was serving in a title certified to be represented in collective bargaining by the public employee organization with the largest number of employees who are members of the retirement system or its affiliated local public employee organizations, shall have his or her retirement allowance recomputed as follows:

(a) If his retirement allowance was determined pursuant to the provisions of subdivision a of section 13-150 of the administrative code of the city of New York, it shall be recomputed pursuant to the provisions of subdivisions e, f and g of section 13-162 of such code, as though he had satisfied the eligibility requirements set forth in para graph 2 of subdivision d of such section 13-162.

(b) If his retirement allowance was determined pursuant to the provisions of paragraph 7 of subdivision a of section 13-172 of such code, it shall be recomputed pursuant to the provisions of subdivisions e, f and g of section 13-162 of such code, as though he had satisfied the eligibility requirements set forth in paragraph 2 of subdivision d of such section 13-162.

(c) The recomputations set forth above shall be performed as of the date of the member's retirement.

§ 2. The recomputed retirement allowance shall be payable as of July 1, 1995.

§ 3. This act shall take effect immediately.

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where decedent designated defendant, his then wife, as his beneficiary at the time of his employment and thereafter never revoked such designation, even though he was divorced and remarried, the payment of the death benefit to the named beneficiary was proper.-Cruze v. Keleher, 146 (82) N.Y.L.J. (10-27-61) 17, Col. 2 M.

¶ 2. An oral agreement whereby a deceased employee agreed to make plaintiff the irrevocable beneficiary of his interest in the Retirement System was unenforceable under the statute of frauds.-Fennell v. Employees' Retirement System, 147 (121) N.Y.L.J. (6-22-62) 9, Col. 4 M.

¶ 3. Lump sum payment made to a retired city employee of the Housing Authority on the basis of unused annual leave and overtime and for retirement terminal leave can not be included in determining retirement benefits since they accrued on retirement and were not earned in the year prior thereto.-Hessel v. N.Y.C. Employees' Retirement System, 33 N.Y. 2d 381, 308 N.E. 2d 688, 353 N.Y.S. 2d 169 [1974].



Administrative Code of the City of New York



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

*NYC Administrative Code 13-173*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-173 Vested retirement rights.

a. Any member who:

(1) discontinues city-service on or after July first, nineteen hundred sixty-eight, other than by death, retirement or dismissal; and

(2) is a fifty-five-year-increased-service-fraction member at the time of such discontinuance; and

(3) prior to such discontinuance, completed five years of allowable service; and

(4) does not withdraw his or her accumulated deductions in whole or in part;

shall have a vested right to receive a deferred retirement allowance as provided in this section.

b. (1) Such deferred retirement allowance shall vest automatically upon such discontinuance.

(2) Such retirement allowance shall become payable on the date on which such discontinued member shall attain the age of fifty-five years, provided he or she files with the board, within the period of ninety days ending on such date, a duly executed application for such payment.

(3) If a discontinued member shall, at any time after he or she attains the age of fifty-five years, file with the board a duly executed application for payment of such retirement allowance, it shall become payable upon the filing of such application.

c. (1) Except as otherwise provided in paragraphs two and three of this subdivision c, such deferred retirement allowance shall be determined in accordance with the provisions of section 13-172 of this chapter governing the retirement allowance of a fifty-five-year-increased-service-fraction member, in the same manner as if such discontinued member had retired for service on the date on which he or she attained the age of fifty-five years, or on the date on which he or she filed an application for payment of his or her retirement allowance pursuant to subdivision b of this section, whichever is later.

(2) Subject to the provisions of paragraph three of subdivision e of section 13-638.4 of this title, the pension of such member under paragraph seven of subdivision a of section 13-172 of this chapter shall be computed on the basis of his or her annual salary or compensation earnable by him or her for city-service in the year prior to his or her discontinuance of city-service, except as otherwise provided in paragraph three of this subdivision c.

(3) Such pension shall be computed on the basis of his or her three-year-average compensation, if he or she shall so elect pursuant to subdivision fifty-eight of section 13-101 of this chapter.

d. Regular interest on the accumulated deductions of a discontinued member and on his or her reserve-for-increased-take-home-pay shall be credited after discontinuance of city-service at the rate which would be applicable if he or she had not discontinued service.

e. If a discontinued member dies before attaining the age of fifty-five years, his or her accumulated deductions shall be paid (1) to the beneficiary designated by him or her pursuant to section 13-148 of this chapter to receive his or her accumulated deductions in the event that such deductions become payable under such section, or (2) if such member has made no such designation, to his or her estate.

f. A discontinued member may elect any option under section 13-177 of this chapter at any time prior to the first payment on account of his or her retirement allowance under this section.

g. Withdrawal of accumulated deductions, in whole or in part, after discontinuance of city-service, shall terminate the right to a deferred retirement allowance under this section.

h. (1) If a discontinued member who has not withdrawn his or her accumulated deductions in whole or in part shall subsequently re-enter city-service before attaining the age of fifty-five years, he or she shall be entitled to the service credit and status to which he or she was entitled immediately prior to his or her discontinuance of city-service and shall be credited with regular interest on his or her accumulated deductions and his or her reserve-for-increased-take-home-pay from the time of such discontinuance to the time of his or her re-entry into service, at the rate which would have been applicable if he or she had not discontinued service.

(2) If a discontinued member who has not withdrawn his or her accumulated deductions in whole or in part shall subsequently and on or after the date on which he or she attains the age of fifty-five years, re-enter city-service, his or her rights, privileges and benefits shall be as provided for in section 13-178 of this chapter.

i. Notwithstanding any other provision of law, a discontinued member with ten or more years of credited service in the retirement system who dies before a retirement benefit becomes payable and who is otherwise not entitled to a death benefit from the retirement system shall be deemed to have died on the last day that he or she was in service upon which his or her membership was based for purposes of eligibility for the payment of a death benefit pursuant to the provisions of section 13-148 of this title. The death benefit payable in such case shall be one-half of that which would have been payable had such member died on the last day that service was rendered.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 659/1999 § 1, eff. Feb. 4, 2000 and deemed in effect on and after July 17, 1998.

Subd. c par (2) amended chap 749/1992 § 10 eff. July 31, 1992

Subd. i added chap 659/1999 § 2, eff. Feb. 4, 2000 and applicable to the death of any member occurring on or after Jan. 1, 1997.

**DERIVATION**

Formerly § B3-42.1 added chap 821/1968 § 13

Sub b par 2 amended chap 866/1969 § 16

Sub a amended chap 892/1973 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-173.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-173.1 Vested retirement rights; sanitation members.

a. Any member, other than a member who is subject to article fifteen of the retirement and social security law, who:

(1) on or after July first, nineteen hundred eighty-four, discontinues sanitation service other than by death, retirement or dismissal; and

(2) is a sanitation member at the time of such discontinuance; and

(3) prior to such discontinuance, completed five or more years of allowable sanitation service; and

(4) at least thirty days prior to the date of such discontinuance, files with the board a duly executed application for a deferred retirement allowance hereunder, which filing shall be made not earlier than December eighteenth, nineteen hundred eighty-four; and

(5) does not withdraw his or her accumulated deductions in whole or in part;

shall have a vested right to receive a deferred retirement allowance as provided in this section.

b. (1) Such deferred retirement allowance shall vest automatically upon such discontinuance.

(2) Such retirement allowance shall become payable on the earliest date on which such discontinued sanitation member could have retired for service as a sanitation member if discontinuance had not occurred.

c. (1) Such deferred retirement allowance for a discontinued sanitation member shall consist of:

(a) an annuity which is the actuarial equivalent of an amount equal to the member's accumulated deductions for the period of his or her sanitation service, plus any accumulated contributions transferred to his or her credit pursuant to section forty-three of the retirement and social security law, as the total of such accumulated deductions and contributions is on the earliest date on which such member could have retired for service as a sanitation member; and

(b) a pension, which together with his or her annuity shall be equal to:

(i) in the case of any discontinued sanitation member whose minimum period for service retirement as a sanitation member is twenty years, two and one-half percent of his or her annual earnable compensation on the date of his or her discontinuance of service, multiplied by a number equal to the number of years of allowable sanitation service not in excess of twenty years credited to him or her on the date of such discontinuance, plus the amount produced by multiplying one per centum of his or her final compensation (as defined in subdivision nine of section 13-101 of this chapter) by the number of his or her years of allowable service, other than the first twenty years of allowable sanitation service, plus the amount produced by multiplying one-half of one per centum of his or her final compensation (as defined in such subdivision nine) by the number of his or her years of allowable sanitation service rendered both (A) after completion of twenty years of allowable sanitation service and (B) after July second, nineteen hundred sixty-five; or

(ii) in the case of a discontinued sanitation member whose minimum period for service retirement as a sanitation member is twenty-five years, one service fraction (as defined by paragraph two of subdivision d of section 13-154 of this chapter) of his or her final compensation (as defined in subdivision nine of section 13-101 of this chapter) multiplied by the number of years of his or her allowable service, plus the amount produced by multiplying one-half of one service fraction of his or her final compensation (as defined in such subdivision nine) by the number of his or her years of allowable sanitation service rendered after July second, nineteen hundred sixty-five.

(2) For the purpose only of determining the pension portion of such retirement allowance pursuant to subparagraphs (a) and (b) of paragraph one of this subdivision, the annuity referred to in such subparagraph (a) shall be computed as it would be (i) if it were not reduced by the actuarial equivalent of any outstanding loan, (ii) if it were not increased by the actuarial equivalent of any additional contributions, (iii) if it were not reduced by reason of the member's election to decrease his or her annuity contributions in order to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage and (iv) as it would be without any optional modification.

d. Regular interest on the accumulated deductions of a discontinued sanitation member and on his or her reserve-for-increased-take-home-pay shall be credited after discontinuance of sanitation service at the rate which would be applicable if he or she had not discontinued service.

e. If a discontinued sanitation member dies before the earliest date on which such discontinued sanitation member could have retired for service as a sanitation member if discontinuance had not occurred, his or her accumulated deductions shall be paid (1) to the beneficiary designated by him or her pursuant to section 13-148 of this chapter to receive his or her accumulated deductions in the event that such deductions become payable under such section, or (2) if such member has made no such designation, to his or her estate.

f. A discontinued sanitation member may elect any option under section 13-177 of this chapter at any time prior to the first payment of his or her retirement allowance under this section.

g. Withdrawal of accumulated deductions, in whole or in part, after discontinuance of city-service, shall terminate the right to a deferred retirement allowance under this section.

h. If a discontinued sanitation member who has not withdrawn his or her accumulated deductions in whole or in

part shall subsequently re-enter city-service before the earliest date on which such discontinued sanitation member could have retired for service as a sanitation member if discontinuance had not occurred:

(i) he or she shall be credited with regular interest on his or her accumulated deductions and his or her reserve-for-increased-take-home-pay from the time of such discontinuance to the time of his or her re-entry into service, at the rate which would have been applicable if he or she had not discontinued sanitation service; and

(ii) if such re-entry into city-service is in a position in the uniformed force of the department of sanitation, he or she shall be entitled to the service credit and status to which he or she was entitled immediately prior to his or her discontinuance of sanitation service; and

(iii) if such re-entry into city-service is in a position which is not in the uniformed force of the department of sanitation, he or she shall be entitled to the service credit and status to which he or she was entitled immediately prior to his or her discontinuance of sanitation service, subject to and not inconsistent with the provisions of law governing the new retirement plan of which he or she becomes a member upon such re-entry into city-service.

i. (1) If a discontinued sanitation member who has not withdrawn his or her accumulated deductions in whole or in part shall subsequently and on or after the earliest date on which such discontinued sanitation member could have retired for service as a sanitation member if discontinuance had not occurred, re-enter service in the uniformed force of the department of sanitation, the payment of his or her pension only shall be suspended and forfeited during the period of such service, except as herein otherwise provided.

(2) Such member may again become a member of the retirement system if, within ninety days after his or her return to such service, he or she files a duly executed and acknowledged application for such membership.

(3) If such beneficiary shall again become a member of the retirement system, the payment of his or her annuity shall also be suspended and forfeited and his or her annuity reserve shall be transferred to his or her credit in the annuity savings fund and he or she shall become such member as a new entrant, subject to the rights of such beneficiary under subdivision b of section six hundred fourteen of the retirement and social security law; provided, however, that he or she shall contribute to the retirement system at the rate (before modification, if any, to which such member may be entitled under any program for increased-take-home-pay) at which he or she would have been contributing if he or she had not discontinued sanitation service. Upon his or her subsequent retirement as a sanitation member, he or she shall be credited with all of his or her service as a member subsequent to his or her last restoration to membership and he or she shall receive therefor a retirement allowance, payable in such form as he or she shall select under section 13-177 of this chapter, consisting of:

(i) an annuity which is the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

(ii) a pension equal to the amount produced by multiplying one per centum of his or her final compensation (as defined in subdivision nine of section 13-101 of this chapter) by the number of his or her years of allowable service credited to him or her from such date of re-entry; and

(iii) a pension equal to the amount produced by multiplying one-half of one per centum of his or her final compensation (as defined in such subdivision nine) by the number of his or her years of allowable sanitation service rendered by him or her from such date of re-entry; and

(iv) a pension-providing-for-increased-take-home-pay which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may be entitled, if any, for the period of his or her allowable sanitation service rendered by him or her from such date of re-entry.

(4) In addition, upon his or her subsequent retirement, he or she shall receive the pension which he or she was

receiving or entitled to receive immediately prior to his or her last restoration.

(5) In lieu of suspension, during restoration to city-service as a sanitation member, of any benefits payable in the event of his or her death by reason of any optional selection in respect to his or her pension, any such beneficiary may pay to the fund or funds from which his or her ordinary pension was payable, the amount by which his or her ordinary pension exceeded the optional pension heretofore granted to him or her, in which event such optional benefit shall continue and be payable in the event of his or her death as though no payment was suspended.

j. If a discontinued sanitation member who has not withdrawn his or her accumulated deductions in whole or in part shall subsequently and on or after the earliest date on which such discontinued sanitation member could have retired for service as a sanitation member if discontinuance had not occurred, re-enter city-service in a position other than a position in the uniformed force of the department of sanitation, the rights, privileges and benefits of such re-entered beneficiary shall be as provided for in section 13-178 of this chapter, provided, however, that if such a re-entered beneficiary, upon re-entering city-service, becomes a member of the uniformed transit police force and a transit police member or becomes a member of the housing police service and a housing police member, or becomes a member of the uniformed correction force and a correction member, his or her rights, privileges and benefits shall be as prescribed by applicable provisions of law in a case where a discontinued member of the same force re-enters city-service in the same force after his or her retirement allowance as a discontinued member has become payable and again becomes a member of a retirement plan provided by sections 13-155, 13-156 and 13-157 of this chapter for such force.

k. As used in this section, the following terms shall have the following meanings:

(1) "Sanitation service." Service in the uniformed force of the department of sanitation, as such force is defined in subdivision sixtytwo of section 13-101 of this chapter and such term shall not include service credit acquired by transfer or otherwise under any provision of law; provided, however, that such term shall include service credited to a sanitation member for retirement and pension purposes pursuant to section 13-153 of this chapter.

(2) "Discontinued sanitation member." A sanitation member who has discontinued sanitation service and has a vested right to a deferred retirement allowance under this section.

l. Notwithstanding any other provision of law, a discontinued member with ten or more years of credited service in the retirement system who dies before a retirement benefit becomes payable and who is otherwise not entitled to a death benefit from the retirement system shall be deemed to have died on the last day that he or she was in service upon which his or her membership was based for purposes of eligibility for the payment of a death benefit pursuant to the provisions of section 13-148 of this title. The death benefit payable in such case shall be one-half of that which would have been payable had such member died on the last day that service was rendered.

m. Nothing contained in this section shall be construed as making article eleven of the retirement and social security law inapplicable to the entitlement and rights, under this section, of any member or beneficiary who is subject to the provisions of such article eleven.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 659/1999 § 3, eff. Feb. 4, 2000 and applicable

only to members who discontinue service on or after Feb. 4, 2000.

Subd. l added chap 659/1999 § 5, eff. Feb. 4, 2000 and applicable to

the death of any member occurring on or after Jan. 1, 1997.

Subd. m relettered chap 659/1999 § 4, eff. Feb. 4, 2000. (Formerly subd. l)

**DERIVATION**

Formerly § B3-42.2 added chap 1003/1984 § 1

**CASE NOTES**

¶ 1. Two NY City sanitation workers were effectively discharged, for the purpose of determining the vesting of a deferred retirement allowance under the Admin. Code § 13-173.1 on the date when the government serves a copy of the Administrative decision in the manner required to commence the time running for an Administrative appeal. Barbaro v. NYC Employees' Retirement System, 147 Misc. 2d 226.

¶ 2. There is no legislative requirement for notice affecting the effective date of discharge for purposes of determining whether a pension has vested under Admin. Code § 13-173.1 Waldeck v. NYC Ret Sys, 81 NY2d 804 [1992]; Waldeck v. NYC ret sys, 181 AD2d 412 Affirmed; Barbaro v. NYC ret sys, 181 AD2d 437 Affirmed.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-174*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-174 Retirement allowances; for ordinary disability.

a. Upon retirement for ordinary disability, a member shall receive a retirement allowance which shall consist of:

1. An annuity which shall be the actuarial equivalent of his or her accumulated deductions, if any, at the time of his or her retirement; and

2. A pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any, and

3. A pension, which, together with his or her annuity, if any, and the pension-providing-for-increased-take-home-pay, if any, shall be equal to

a. the retirement allowance that would be payable to him or her after a like amount of total-service and final compensation had he or she attained his or her minimum age for service retirement if such retirement allowance exceeds one-quarter of his or her final compensation; otherwise,

b. one-quarter of his or her final compensation.

b. (1) Notwithstanding the provisions of subdivision a of this section, a member who is a sanitation man when retired for ordinary disability, shall, except as otherwise provided in subdivision c of this section, receive, in lieu of any other retirement allowance for such disability, a retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or

her retirement; and

b. A pension-providing-for-increased-take-home-pay which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

c. A pension which, together with his or her annuity and the pension-providing-for-increased-take-home-pay, if any, shall be, subject to the provisions of paragraph two of this subdivision b, equal to two per cent of his or her final compensation multiplied by the number of years of allowable service credited to him or her at the time of such retirement.

(2) The pension provided for by subparagraph c of paragraph one of this subdivision b shall in no event be less than an amount which, together with the annuity and pension-providing-for-increased-take-home-pay, if any, of such member, shall equal one-fourth of his or her final compensation.

c. Notwithstanding any other provisions of this chapter to the contrary, upon retirement for ordinary disability, a career pension plan member or a fifty-five-year-increased-service-fraction member shall receive a retirement allowance which shall consist of:

(1) an annuity which shall be the actuarial equivalent of his or her accumulated deductions; and

(2) a pension-providing-for-increased-take-home-pay which is the actuarial equivalent of his or her reserve-for-increased-take-home-pay; and

(3) (a) subject to the provisions of paragraph two of subdivision e of section 13-638.4 of this title, a pension which shall be equal to the product obtained by multiplying the number of years of such member's allowable service rendered prior to July first, nineteen hundred sixty-eight, by one and two-tenths per centum of such member's salary or compensation earnable by him or her for city-service in the year prior to his or her retirement, unless such pension is required to be determined pursuant to subparagraph (b) of this paragraph three;

(b) if such member shall elect, pursuant to subdivision fifty-eight of section 13-101 of this chapter, that such pension be computed on the basis of his or her three-year-average compensation, such pension shall instead be equal to the product obtained by multiplying the number of such years of allowable service by one and two-tenths per centum of such member's three-year-average compensation; and

(4) (a) subject to the provisions of paragraph two of subdivision e of section 13-638.4 of this title, a pension which shall be equal to the product obtained by multiplying the number of years of such member's allowable service rendered after June thirtieth, nineteen hundred sixty-eight by one and fifty-three one-hundredths per centum of such member's salary or compensation earnable by him or her for city-service in the year prior to his or her retirement, unless such pension is required to be determined pursuant to subparagraph (b) of this paragraph four;

(b) if such member shall elect, pursuant to subdivision fifty-eight of section 13-101 of this chapter, that such pension be computed on the basis of this three-year-average compensation, such pension shall instead be equal to the product obtained by multiplying the number of such years of allowable service by one and fifty-three one-hundredths per centum of such member's three-year-average compensation.

c. Notwithstanding the provisions of subdivisions a and b of this section, a member who, when retired for ordinary disability, is a sanitation member and has completed at least five years of allowable service as a sanitation member, shall receive, in lieu of any lesser retirement allowance for such disability, a retirement allowance which shall consist of:

(1) An annuity which is the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

(2) A pension-providing-for-increased-take-home-pay which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

(3) A pension which, together with his or her annuity and pension-providing-for-increased-take-home-pay, if any, shall equal a retirement allowance consisting of:

(a) one-third of his or her annual salary or compensation when so retired, in any case where the years of allowable service credited to him or her as a sanitation member are less than ten; or

(b) one-half of his or her annual salary or compensation when so retired, in any case where the years of allowable service credited to him or her as a sanitation member equal or exceed ten.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par 3 subpar b amended chap 601/1997 § 2, eff. Sept. 17, 1997

and deemed in force and effect on and after Oct. 16, 1992 and not

applying to disability or death benefit prior to Oct. 16, 1992.

Subd. c par 3 subpar (a) amended chap 749/1992 § 11 eff. July 31, 1992

Subd. c par 4 subpar (a) amended chap 749/1992 § 12 eff. July 31, 1992

**DERIVATION**

Formerly § B3-43.0 added chap 929/1937 § 1

Amended chap 509/1960 § 21

Sub a designated chap 172/1967 § 1

Sub b added chap 172/1967 § 1

Sub c added chap 821/1968 § 14

Sub b amended chap 331/1969 § 3

Sub c added chap 331/1969 § 4

Sub c open par amended chap 817/1969 § 21

(sub c added chap 821/1968)

Sub a amended chap 870/1970 § 16

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-175*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-175 Retirement allowances; for accident disability.

a. Upon retirement for accident disability, a member shall receive a retirement allowance which shall consist of:

1. An annuity, which shall be the actuarial equivalent of his or her accumulated deductions, if any, at the time of his or her retirement; and

2. A pension-providing-for-increased-take-home-pay which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

3. A pension of three-quarters of his or her final compensation, in addition to the annuity, if any, and pension, if any, provided for by paragraphs one and two of this subdivision a.

b. Notwithstanding the provisions of subdivision a of this section, a sanitation member, when retired for accident disability, shall receive, in lieu of the retirement allowance provided for by subdivision a of this section, a retirement allowance consisting of:

1. An annuity which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

2. A pension-providing-for-increased-take-home-pay which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

3. A pension equal to three-fourths of his or her annual salary or compensation when so retired; and

4. If such member is eligible to retire for service when so retired, then in addition to the annuity, pension-providing-for-increased-take-home-pay and pension provided for in paragraphs one, two and three of this subdivision b:

(a) A pension equal to one per cent of his or her average annual compensation or salary from the date of eligibility for service retirement to the date of his or her retirement for accident disability, multiplied by the number of years of city-service credited to him or her in excess of the number of such years credited as of the date of his or her eligibility for service retirement; and

(b) For city-service rendered by him or her as a sanitation member both after eligibility for service retirement and on and after July first, nineteen hundred sixty-seven, which is credited to him or her, a pension equal to one-half per cent of his or her average annual compensation or salary from the date of eligibility for service retirement to the date of his or her retirement for accident disability, multiplied by the number of such years of city-service rendered as a sanitation member both after eligibility for service retirement and after July first, nineteen hundred sixty-seven.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-44.0 added chap 929/1937 § 1

Amended chap 509/1960 § 22

Amended chap 331/1969 § 5

Sub a amended chap 870/1970 § 17

**CASE NOTES FROM FORMER SECTION**

¶ 1. Although petitioner who had been employed as a county clerk and retired for accident disability could not receive payments from both Employees' Retirement System and the city as Workmen's Compensation in excess of the amount to which he would have been entitled under this section, respondent could not withhold payment of retirement allowance until petitioner filed claim with the Workmen's Compensation Board.-In re Sloane (N.Y.C. Employees' Retirement System) 163 (84) N.Y.L.J. (5-1-70) S 15, Col. 1 M.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-176*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-176 Retirement allowances; restrictions on.

a. If a lump sum which has been paid or which is payable under the provisions of the workers' compensation law equals or exceeds the present value of all amounts otherwise payable out of moneys provided or to be provided by the city under the provisions of this chapter on account of the same disability of the same person, no payment shall be made to such person under the provisions of this chapter. If such lump sum be a percentage less than one hundred per cent of the present value of all such amounts, there shall be paid as it becomes due under the provisions of this chapter, in lieu of each amount otherwise payable, an amount equal to the percentage thereof which is the difference between such lesser per cent and one hundred per cent.

b. If an amount which is payable throughout a period under the provisions of the workers' compensation law equals or exceeds the amounts otherwise payable during the same period out of the moneys provided or to be provided by the city under the provisions of this chapter on account of the same disability of the same person, no payment shall be made to such person under the provisions of this chapter during such period nor thereafter, until the total amount of such omitted payments, together with the regular interest which they would have accumulated, equals the amount paid under the workers' compensation law, together with the regular interest which it would have accumulated. If an amount which is payable throughout a period under the provisions of the workers' compensation law be a percentage less than one hundred per cent of the amounts otherwise payable during the same period out of moneys provided or to be provided by the city under the provisions of this chapter on account of the same disability of the same person, there shall be paid during such period as it becomes due under the provisions of this chapter, in lieu of each amount otherwise payable, the percentage thereof which is the difference between such lesser per cent and one hundred per cent.

c. No decision of the workers' compensation board shall be binding on the medical board or on the board of

estimate in the determination of eligibility of a claimant for an accident disability or an accidental death benefit.

d. Notwithstanding any of the foregoing provisions of this section or any other law to the contrary, pending the final determination of a claim for workers' compensation benefits, the board may authorize payment of all or any part of the benefits which are payable under this title and to which any of the foregoing provisions of this section apply, and in that event the retirement system shall be entitled to reimbursement out of the unpaid installment or installments of compensation due under the workers' compensation law provided that claim therefor is filed with the workers' compensation board, together with proof of the fact and amount of payment.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-45.0 added chap 929/1937 § 1

Sub d added chap 1007/1972 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Whether petitioner's disability was a natural and proximate result of an accident incurred in the line of his duty was for the medical board to determine, and its determination could not be disturbed merely because a court might arrive at a different conclusion (Admin. Code § B3-45.0c).-In re Kelly (Board of Estimate of N.Y.C.), 108 (131) N.Y.L.J. (12-7-42) 1782, Col. 4 F.

¶ 2. In granting widow's application for pension benefits in an accidental death case involving a city employee, trustees of the N.Y.C. Employees' Retirement System, **held** properly to have deducted therefrom as an offset the amounts paid and to be paid by the City as a self-insurer pursuant to an award of the Workmen's Compensation Board made by reason of such accidental death, and in such deduction to have included the amounts payable on account of an infant daughter and deceased dependent father as well as to the widow.-Ferraiolo v. O'Dwyer, 302 N.Y. 371, 98 N.E. 2d 563 [1951].

¶ 3. The widow of a deceased City employee entitled to receive an accidental death pension was entitled to receive only one-half of the final compensation of her deceased husband less any amounts payable on any award made under the Workmen's Compensation Law. Widow's contention that compensation benefits were not deductible from the accidental death pension was rejected.-Matter of Daley, 298 N.Y. 890, 84 N.E. 2d 805 [1949].

¶ 4. This section does not require an injured employee to invoke or exhaust his workmen's compensation remedy; especially where the employee had tried without success on three separate occasions to get compensation for the injury.-Matter of Lewis (Board of Estimate), 142 (123) N.Y.L.J. (12-28-59) 6, Col. 3 F.

¶ 5. Petitioner was not entitled to a lump sum payment in lieu of terminal leave where petitioner failed to keep adequate time records until the last year of his service as required by the applicable regulations.-Matter of Goldberg (Dudley) 176 (27) N.Y.L.J. (8-9-76) 8, Col. 5 T.

¶ 6. The New York City Employees' Retirement System is not bound by a determination of the Workers' Compensation Board that found the surgery of petitioner to have been caused by a specific accident.-Belton v. Herkommer, 84 App. Div. 2d 713 [1981].

**CASE NOTES**

¶ 1. No decision of Workers' Compensation Board binding in determination of eligibility for accident disability.

See § 13-168, case note ¶ 1.

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

*NYC Administrative Code 13-177*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-177 Retirement; options in which retirement allowances may be taken.

Until the first payment on account of any benefit is made, the beneficiary, or, if such beneficiary is an incompetent, then the husband or wife of such beneficiary or, if there be no husband or wife, a committee of the estate, may elect to receive such benefit in a retirement allowance payable throughout life, or the beneficiary or the husband or wife or committee so electing may then elect to receive the actuarial equivalent at that time of his or her annuity, if any, his or her pension, or his or her retirement allowance in a lesser annuity, if any, or a lesser pension or a lesser retirement allowance, payable throughout life with the provision that:

Option 1. a. If he or she die before he or she has received in payments the present value of his or her annuity, if any, his or her pension, or his or her retirement allowance, as it was at the time of his or her retirement, the balance shall be paid, in the form of a lump sum or the actuarial equivalent in the form of an annuity, to his or her legal representatives or to such person as the beneficiary, or the husband or wife or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board.

b. A retired member, or upon the death of a retired member, the person nominated by him or her as his or her beneficiary, may provide by written designation duly executed and filed with such board that the actuarial equivalent of a benefit otherwise payable in a lump sum shall be paid to the person designated in the form of an annuity payable in installments not more than once a month.

Option 2. Upon his or her death, his or her annuity, if any, his or her pension, or his or her retirement allowance, shall be continued throughout the life of and paid to such person as the beneficiary, or the husband or wife or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board at the

time of his or her retirement.

Option 3. Upon his or her death, one-half of his or her annuity, if any, his or her pension, or his or her retirement allowance, shall be continued throughout the life of and paid to such person as the beneficiary, or the husband or wife or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board at the time of his or her retirement.

Option 4. Upon his or her death, some other benefit or benefits shall be paid to such other person or persons as the beneficiary, or the husband or wife or committee so electing, has nominated or shall nominate, provided such other benefit or benefits, together with such lesser annuity, if any, or lesser pension, or lesser retirement allowance, shall be certified by the actuary of the board to be of equivalent actuarial value to his or her annuity, if any, his or her pension or his or her retirement allowance, and shall be approved by such board.

For purposes of this section, the words "pension" and "retirement allowance" shall be deemed to include the pension-providing-for-increased-take-home-pay, if any.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-46.0 added chap 929/1937 § 1

Amended chap 509/1960 § 23

Option 1 amended chap 945/1962 § 1

Amended chap 870/1970 § 18

**CASE NOTES FROM FORMER SECTION**

¶ 1. Under provisions of Greater New York Charter § 1700 et seq., whereby under a certain option the nominee of a member of the City Employees' Retirement System was entitled to receive, upon death of the beneficiary before retirement, the total amount, with interest, which had been deducted from the beneficiary's salary for retirement purposes, together with an amount equal to a year's salary, the amount consisting of the beneficiary's salary deductions plus interest, received by beneficiary's widow as his nominee upon his death prior to retirement, **held** not to be insurance, but to be the result of a transfer made to take effect at or after decedent's death, and hence such amounts were subject to the federal estate tax as part of the gross estate of the deceased beneficiary. However, the amount equivalent to a year's salary was properly treated as insurance.-Kernochan v. United States, 29 F. Supp. 860 [1939].

¶ 2. Upon his retirement from employment by the City of New York in 1947, the decedent pursuant to the statute which is now § B3-46.0 made an irrevocable election of "Option 3". Under this option decedent received a lesser annuity during his life than under other options he could have selected but under that option his wife, if she survived him would also receive an annuity for her life. The decedent predeceased his widow. **Held:** the value of the widow's annuity was a transfer intended to take effect at death and was subject to the estate tax. The taxation of this annuity was not prohibited by Article XVI, section 5 of the State Constitution. The value of the annuity was correctly determined by the use of actuarial tables based upon the fact of survivorship and the age of the widow.-Matter of Endemann, 307 N.Y. 100, 120 N.E. 2d 514 [1954], modifying 282 App. Div. 768, 122 N.Y.S. 2d [1953].

¶ 3. Retired City employee who selected optional method of payment of her pension whereby she received less annually during her life and upon her death the unexpended balance was payable to a designated beneficiary, effected a transfer at death, so as to require the unexpended balance to be included in her estate.-In re Boyd's Estate, 139 N.Y.S.

2d 443 [1954].

¶ 4. A City employee who elects to retire at a time when he is entitled to retirement benefits is not compelled to make any election as to the disposition of the fund on hand; if he does not do so the rules determine the amount due him and it will be payable to his estate and disbursed to next of kin and creditors.-Callahan v. Mooney, 190 Misc. 736, 72 N.Y.S. 2d 924 [1947].

¶ 5. That the application under "option 1" was mailed by the petitioner did not preclude the obtaining by her of the benefits of the option if the application was received by the board during the lifetime of the applicant, since the requirement of the statute is merely that the written application, duly acknowledged, be filed with the board (distinguishing-247 App. Div. 111; 255 N.Y. 364; 249 N.Y. 414).-Farmer v. N.Y. Employees' Retirement System, 100 (115) N.Y.L.J. (11-17-38) 1670, Col. 6 F.

¶ 6. Where plaintiff member of City Employees' Retirement System, upon his attainment of the constitutional age limit of 70 years, had retired and filed a selection of Option Four benefits but 26 days prior to receipt of his first payment thereunder and four days prior to resolution of Board of Estimate granting plaintiff his selection of Option Four he had written to the secretary of the Retirement System asking that action on his application for retirement be deferred as his wife was seriously ill and if she failed to recover he wished to change his selection of option, such request of the plaintiff should not have been ignored, and upon the subsequent death of his wife plaintiff would be permitted to have the sum payable annually to his wife if she survived him added to the sum payable as a death benefit. As the allowance of benefits under Option Four was discretionary with the Board of Estimate the plaintiff's selection was not irrevocable before the Board had acted upon it.-Hetherington v. La Guardia, 186 Misc. 316, 59 N.Y.S. 2d 218 [1945], reversed, 272 App. Div. 919, 70 N.Y.S. 2d 845 [1947] on ground that fact that plaintiff was not aware of his wife's condition at time of making the selection for her was no basis for setting aside option selected, and that there was no unjust enrichment on part of defendants. Plaintiff's letter was deemed a request for deferment of action by the Board of Estimate, and not a cancellation of the option selected nor a request for a change in the option which was selected.

¶ 7. Plaintiff's acceptance without protest of the benefits payable as provided in the resolution of the Board of Estimate did not constitute an accord and satisfaction and a waiver of all rights to a change of option, where the amount of his reserve entitled him to maximum annual retirement allowance in a sum about $5000 per year in excess of that which he received.-Id.

¶ 8. Failure of plaintiff to institute the action for a period of two years did not constitute laches in the absence of any injury, change of position or other disadvantage resulting from the delay.-Id.

¶ 9. Where decedent-employee had filed on September 15, 1952 an application for retirement effective December 1, 1952, on September 15 and on October 23, 1952 he filed a selection of benefits under Option 4, on November 20, 1952 the Board of Estimate retired him as of December 1, 1952, subject to the fixation of the amount of his retirement allowance, on January 27, 1953 decedent died without having received any retirement payments and seven months after his death the Board of Estimate fixed his retirement allowance and under Option 4 awarded the lump sum of $500 to his sister, such resolution fixing the retirement allowance was annulled, as the selection made by decedent was merely in the nature of a continuing offer subject to withdrawal at any time prior to acceptance, and death operated to revoke such offer. Hence, in view of the absence of an effective optional selection and a first payment on account of the retirement benefit, defendants were required to process petitioner's claim under subd. b of § B3-32.0.-Wank v. Board of Estimate, 131 (55) N.Y.L.J. (3-23-54) 7, Col. 1. T.

¶ 10. Plaintiff who as a member of the New York City Employees' Retirement System applied for retirement to take effect April 22, 1952 and on March 19, 1952 had selected the benefits under Option 2 of Admin. Code § B3-46.0, with the retirement being approved on May 31, 1952, **held** entitled on May 31, 1952, prior to receipt of any payment in connection with the retirement allowance, to revoke his selection under Option 2 and in lieu thereof elect Option 1.-Kruger v. New York City Employees' Retirement System, 130 (77) N.Y.L.J. (10-19-53) 793, Col. 6 M.

¶ 11. An employee, having selected Option 2 and retired, could still change her selection to Option 1 prior to the date of the first payment.-In re Jaslow (New York City Employees' Retirement System), 9 Misc. 2d 754, 167 N.Y.S. 2d 721 [1957], aff'd 6 A.D. 2d 1010, 178 N.Y.S. 2d 612 [1958], aff'd 7 N.Y. 2d 858, 196 N.Y.S. 2d 993, 164 N.E. 2d 865 [1959].

¶ 12. Where an employee's widow, his named beneficiary, died before receiving any payments, her administrator had no right to change the option selected.-McManus v. New York City Employees' Retirement System, 135 (18) N.Y.L.J. (1-26-56) 7, Col. 3 F.

¶ 13. Where decedent elected "Option 1" upon retirement, under which he would receive monthly payments for life and any balance in his retirement account would go to his designees, three uncashed checks received by him prior to death did not constitute payment. The balance in his account was not part of his estate but belonged to his designees, but the three uncashed checks were part of his testamentary estate.-Connolly v. Connolly, 9 N.Y. 2d 272, 213 N.Y.S. 2d 438, 173 N.E. 2d 874 [1961].

¶ 14. Widow and administratrix of deceased employee of the Department of Sanitation who had been retired for ordinary disability prior to his minimum retirement age after request therefor by the Commissioner of Sanitation and a finding that he was physically disabled from performing his duties, **held** not to have established that decedent was insane at time of his retirement and selection of his option, or that delusions induced his acceptance of the benefits of retirement in preference to a withdrawal of his accumulations. The proof was insufficient to establish any connection between defendant's alleged incompetency the year before his acceptance of the benefits under the Code, and he appeared not to have believed death was imminent.-Di Roberto v. N.Y. City Retirement System, 128 (45) N.Y.L.J. (9-3-52) 363, Col. 7 F.

¶ 15. Evidence **held** insufficient to establish that the deceased's sister had exerted any undue influence or fraud upon decedent in inducing him to name her, as equal beneficiary with his wife, of his pension under the City Employees' Retirement System.-Cassidy v. Cassidy, 129 (59) N.Y.L.J. (3-27-53) 1030, Col. 7 F.

¶ 16. Widow of retired City employee, charging that his designation of defendant as his beneficiary under a retirement system option was procured by defendant's fraud and coercion might sue to declare the designation invalid, as in the absence of a valid designation the retirement benefits became assets of the husband's estate, collectible by the administrator and disbursable by him to the next of kin, subject to payment of debts, and his widow would be entitled to share in the estate and moreover would be presumptively entitled to all of the money as she was allegedly the assignee of the rights of the other next of kin who would benefit. The remedy was not limited to an action by the administrator of the husband's estate.-Callahan v. Mooney, 190 Misc. 736, 72 N.Y.S. 2d 924 [1947].

¶ 17. Where deceased, upon his retirement as justice of the Municipal Court, had elected pursuant to Greater New York Charter § 1720 to receive an annual retirement allowance consisting of an annuity and an annual pension but upon day of his retirement he had been appointed an Official Referee and had continued to act in such capacity until his death, with no part of his retirement allowance being paid him in the meantime, deceased, under § 1560 of the Greater New York Charter prohibiting pensioners from holding office, **held** to have forfeited, during his term in office as Official Referee, that portion of his retirement allowance falling within classification of a pension. However, deceased's estate was entitled to recover from the trustees of the Retirement System the value of the annuity, including payments the right to which accrued more than six years prior to commencement of the present proceeding, since the Retirement System occupied a relationship to the retired member akin to that of a depositary, and Statute of Limitations did not commence to run until demand was made for payment.-In re Furgueson (La Guardia), 171 Misc. 270, 11 N.Y.S. 2d 598 [1939], aff'd to extent appealed from 257 App. Div. 1048, 13 N.Y.S. 2d 647 [1939], aff'd 281 N.Y. 678, 23 N.E. 2d 14 [1939].

¶ 18. Where decedent died without filing an application for presumed retirement and failed to designate a beneficiary of "death gamble benefits" pursuant to this section, benefits consisting of accumulated deductions plus

accumulated contributions made by City were payable to legal representative and not named beneficiary of ordinary death benefits. Iaquinta v. Iaquinta, 51 Misc. 2d 492, 273 N.Y.S. 2d 358 [1966], aff'd 279 N.Y.S. 2d 150 [1967].

¶ 19. A "first payment on account" precluding an election to take under Option 1 was made where a check had been mailed on August 25, 1969 on account of the retirement allowance to the retiree who had left the country on August 12th and died on September 2nd even though the check was never cashed and not actually received by the retiree.-O'Connor v. N.Y. City Employees' Retirement System, 42 A.D. 2d 70, 345 N.Y.S. 2d 33 [1973].

¶ 20. Where petitioner's husband had applied for retirement nearly two years before retirement system mailed check and he died after check was mailed but before it reached him he died before "first payment" was made and hence was entitled to a death benefit in a lump sum under option 1a.-Guzman v. N.Y.C. Employees' Retirement System, 56 A.D. 2d 823 [1977], aff'd 45 N.Y. 2d 186 [1978].

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

*NYC Administrative Code 13-177.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-177.1 Modified Option 1 pension computation formula.

a. The board may by resolution direct that under such circumstances as are designated in such resolution, benefits under Option 1 which consist of or are derived from the pension component of a retirement allowance and which are payable to or on account of Tier I members who:

(1) became members prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this section; and

(2) retired or retire, on or after August first, nineteen hundred eighty-three, for service or superannuation or for ordinary or accident disability or pursuant to section 13-150 of the code, or on or after such August first, discontinued or discontinue service so as to become discontinued members or discontinued sanitation members; shall be determined under the modified Option 1 pension computation formula (as defined in subdivision seventy-seven of section 13-101 of the code).

b. If the board makes a direction, pursuant to the provisions of subdivision a of this section, for use of such formula, it may also direct by resolution:

(1) that any member who is subject to the modified Option 1 pension computation formula may elect, at such time and in accordance with such procedures as are prescribed in such resolution, that such formula shall not apply to such member and that the initial reserve determined for the purpose of providing the benefits payable by reason of his or her selection of Option 1 and the pension component of his or her Option 1 retirement allowance shall be determined on the basis of gender-neutral mortality tables and regular interest of seven per centum per annum, compounded annually;

and

(2) that the benefit payable, upon the death of the member making such election, to his or her beneficiary or estate shall be the difference between such Option 1 initial reserve and the total of the payments of such pension component received by or payable to such member for the period prior to his or her death; and

(3) that if such Option 1 beneficiary's benefit is payable to such beneficiary in the form of an annuity payable in installments, such annuity shall be determined to be the greatest of three annuities computed for such beneficiary in accordance with the methods of computation set forth in subparagraph (ii) of paragraph (e) of subdivision seventy-seven of section 13-101 of the code; and

(4) that where any member subject to the modified Option 1 pension computation formula retired before the effective date of a board resolution adopted pursuant to subdivision a of this section, and where first payment on account of the retirement allowance of a discontinued member or discontinued sanitation member who is subject to such formula was made before the effective date of such resolution, such retiree or discontinued member or discontinued sanitation member, within such period of time after such effective date and in accordance with such procedures as are prescribed in such resolution, may elect the method of Option 1 benefit determination set forth in the preceding paragraphs of this subdivision b.

c. In any case where, pursuant to board resolution, a benefit is required to be determined under the modified Option 1 pension computation formula and the determination of such benefit is also required by a board resolution adopted pursuant to sub-item (3) of item (A) of subparagraph (ii) of paragraph (g) of subdivision twelve of section 13-101 of the code to reflect different computations of separate portions of such benefit, the methods of computation under the modified Option 1 pension computation formula shall be appropriately adjusted so as to give effect to the provisions of such resolution adopted pursuant to such sub-item (3).

**HISTORICAL NOTE**

Section added chap 910/1985 § 8, section number supplied by the

Legislative Bill Drafting Commission

**DERIVATION**

Formerly § B3-46.1 added chap 910/1985 § 8



Administrative Code of the City of New York



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

*NYC Administrative Code 13-178*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-178 Benefits upon re-entry into membership; after retirement.

a. (1) Should a beneficiary receiving or entitled to receive a retirement allowance under the provisions of section 13-150 of this chapter, or under sections 13-166, 13-151, 13-154, 13-159, 13-160, 13-161, 13-162, 13-164 and 13-178 of this chapter, or a beneficiary whose retirement allowance under section 13-173 of this chapter has become payable pursuant to subdivision b of such section, re-enter city-service, the payment of his or her pension, his or her additional or further pension and his or her pension-providing-for-increased-take-home-pay, if any, only shall be suspended and forfeited during the period of such city-service except as herein otherwise provided. If he or she is under his or her minimum service retirement age, he or she shall again become a member of the retirement system.

(2) If:

(a) he or she has attained his or her minimum service retirement age but has not attained the age of seventy years and his or her mandatory retirement age, if he or she became a member, would be prescribed by subdivision one of section 13-166 of this chapter; or

(b) his or her re-entry into service occurred on or after July first, nineteen hundred sixty-eight and he or she has attained his or her minimum service retirement age but has not attained the mandatory retirement age of sixty-five or seventy years, as the case may be, which would be applicable to him or her under subdivision three of such section 13-166 of this chapter if he or she became a member; or

(c) if he or she be, or become, an official referee after attaining the age of seventy years; he may file a duly executed and acknowledged application therefor within ninety days after his or her return to service or in the case of an

official referee, at any time after his or her return to service, and thereupon again become a member of such system.

(3) (a) Upon the re-entry into membership of any beneficiary, the payment of his or her annuity, if any, shall also be suspended and forfeited and the annuity reserve, if any, of such member shall be transferred to his or her credit in the annuity savings fund. Any such beneficiary shall contribute to such fund as if he or she were a new entrant; provided however, that if, upon such re-entry, he or she became a transit twenty-year plan member (as defined in subdivision sixty-one of section 13-101 of this chapter) who, pursuant to subdivision 1 of section 13-161 of this chapter is relieved of making contributions, he or she shall be a new-entrant but shall be relieved of making contributions so long as he or she is entitled to be so relieved pursuant to such subdivision l. Any discontinued member who has attained the age of fifty-five years and who re-enters into membership at a time when his or her retirement allowance under section 13-173 of this chapter has not become payable, shall also contribute to such fund as if he or she were a new entrant.

(b) Upon the subsequent retirement of any such member who was such a beneficiary or discontinued member, he or she shall be credited with all his or her service as a member subsequent to his or her last restoration to membership, and shall receive a retirement allowance therefor as if he or she were a new entrant, payable in such form as he or she shall select under section 13-177 of this chapter.

(4) In addition, upon the subsequent retirement of any such beneficiary mentioned in paragraph three of this subdivision a, he or she shall receive the pension, the additional or further pension and the pension-providing-for-increased-take-home-pay, if any, which he or she was receiving or entitled to receive immediately prior to his or her last restoration.

(5) If any such discontinued member mentioned in paragraph three of this subdivision a, whose retirement allowance under section 13-173 of this chapter was not payable at the time of his or her re-entry into membership, shall, after such re-entry, file an application for payment of such retirement allowance pursuant to such section 13-173 of this chapter, he or she shall, upon his or her subsequent retirement, be entitled to receive such retirement allowance, in addition to any retirement allowance to which he or she may be entitled under the provisions of paragraph three of this subdivision a.

(6) (i) Subject to the provisions of subparagraph (ii) of this paragraph six, where any beneficiary mentioned in paragraph one of this subdivision a shall have earned at least three years of member service credit after restoration to active service, the total service credit to which he or she was entitled at the time of his or her earlier retirement may, at his or her election, again be credited to him or her and upon his or her subsequent retirement he or she shall be credited in addition with all member service earned by him or her subsequent to his or her last restoration to membership.

(ii) Such total-service credit to which he or she was entitled at the time of his or her earlier retirement shall be credited as provided in subparagraph one of this paragraph six only in the event that he or she returns to the retirement system with regular interest the actuarial equivalent of the amount of the retirement allowance he or she received; provided, however, that in the event that such amount is not so repaid, the actuarial equivalent thereof shall be deducted from his or her subsequent retirement allowance.

b. Under this section or section eleven hundred seventeen of the charter, during restoration to city-service or service under the state of New York or any municipal corporation or political subdivision of the state, any benefits payable in the event of his or her death by reason of any optional selection in respect to his or her pension and his or her pension-for-increased-take-home-pay, if any, shall be suspended unless the beneficiary shall pay to the fund or funds from which his or her ordinary pension and his or her pension-for-increased-take-home-pay, if any, were payable, the amount by which his or her ordinary pension and his or her pension-for-increased-take-home-pay, if any, exceeded the optional pension and his or her pension-for-increased-take-home-pay, if any, theretofore granted to him or her. In the event of his or her death during any period covered by such contribution, such optional benefit shall be payable. The provisions of this subdivision b shall not apply to any such beneficiary to whom the provisions of subdivision four of

section 13-151 of this chapter are applicable.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-47.0 added chap 929/1937 § 1

Amended chap 515/1939 § 2

Amended chap 702/1948 § 1

Sub b amended chap 463/1951 § 1

Amended chap 509/1960 § 24

Sub b amended chap 100/1963 § 39

Sub a amended chap 387/1965 § 4

Amended chap 860/1965 § 2

Amended chap 861/1965 § 1

Sub a amended chap 171/1967 § 5

Sub a amended chap 584/1967 § 5

Sub a amended chap 290/1968 § 4

Sub a amended chap 821/1968 § 15

Sub a par 6 added chap 735/1969 § 1

Sub a amended chap 870/1970 § 19

Sub a par 6 subpar i amended chap 1025/1970 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where petitioner, upon his retirement in 1928 as a Municipal Court Justice, had availed himself of Option 2 under Greater New York Charter § 1720, and thereby became entitled to annual annuity and pension payments which, on his death, would be paid to his daughter, as named beneficiary, during her life, but on day of his retirement he had become an official referee, resulting in suspension of the pension part of his retirement allowance by virtue of § 1560 of such Charter, contention that the subsequent re-entry of the Justice into the Retirement System resulted in the relinquishment of his entire retirement allowance, including his own annuity payments and the benefits for his daughter, was overruled.-Matter of Marks, 286 N.Y. 625, 36 N.E. 2d 460 [1941].

¶ 2. It would be unconstitutional to apply the amendment to this section which lowered the maximum age at which a person could again become a member of the Retirement System upon reemployment by the city from 70 to 65 to petitioner who became a member of the N.Y.C. Employees' Retirement System in 1941 when this section provided that a member who had retired could again become a member of the Retirement System if he were reemployed by the city

before he was 70 and petitioner retired in 1955 but reentered city service in 1968 at the age of 67, 15 days after the amendment lowering the age of re-entry.-Donner v. N.Y.C. Employees' Retirement System, 33 N.Y. 2d 413, 308 N.E. 2d 896, 353 N.Y.S. 2d 428 [1974].

¶ 3. Where plaintiff who had instituted an article 78 proceeding in April 1976 directing defendants to allow him to retire as of January 1, 1976 after 25 years employment in a "physically taxing" position with the N.Y.C. Housing Authority which petition was granted in September 1976 and the judgment resettled so that his pension was based on his 1975 earnings, and plaintiff had continued to work during the period of litigation he could not recover pension benefits for January 1, 1976 to January 6, 1977 the period in which he was still employed even though he did not actually re-enter service since his continued employment must be viewed as if he had in fact retired on January 1, 1976 and then re-entered city service.-Viola v. N.Y.C. Housing Authority, 179 (121) N.Y.L.J. (6-23-78) 6, Col. 5 T.

¶ 4. A retired employee who re-enters city service and subsequently retires with an additional pension is not unconditionally entitled upon retirement to additional benefits enacted between his two periods of service and hence where employee had re-retired after only 4 years of employment he was not entitled to additional add-on benefits enacted between his two periods of services, the right to merge the two periods of service and to receive a pension based upon the combined periods of service being subject to the 5 year employment requirement.-Carroll v. N.Y.C. Employees' Retirement System, 101 Misc. 2d 938 [1979].

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*NYC Administrative Code 13-179*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-179 Benefits upon re-entry into membership; after disability.

a. (1) A disability beneficiary who has been or shall be reinstated to active service, as provided in section 13-171 of this chapter, at a compensation not less than the final compensation on the basis of which he or she was retired, shall from the date of such restoration again become a member of the retirement system.

(2) His or her retirement allowance shall thereupon be suspended, and, subject to the provisions of paragraph three of this subdivision a, he or she shall contribute to such system thereafter in the same manner and at the same rate as he or she paid prior to his or her disability retirement, subject to the provisions of section 13-152 of this chapter.

(3) In any case where any such beneficiary reinstated under the circumstances specified in paragraph one of this subdivision a, is reinstated as a transit twenty-year plan member (as defined in subdivision sixty-one of section 13-101 of this chapter) and he or she is relieved, pursuant to subdivision l of section 13-161 of this chapter, of making contributions, such member shall not be required to make contributions so long as he or she is entitled, under such subdivision l, to be relieved of making contributions.

b. A disability beneficiary who has been or shall be reinstated to active service as provided in section 13-171 of this chapter at a compensation less than the final compensation on the basis of which he or she was retired, or who has been otherwise re-employed in city-service at such a lesser compensation, may at his or her election again become a member of the retirement system, provided he or she waives the right to receive any disability retirement allowance during the entire period of such resumed membership.

c. When any disability beneficiary has again become a member of the retirement system pursuant to the

provisions of subdivision a or b of this section, any prior-service and member-service on the basis of which his or her service was computed at the time of his or her retirement shall be restored to full force and effect, and, in addition, upon his or her subsequent retirement, he or she shall be credited with all of his or her service as a member subsequent to his or her last restoration to membership.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-48.0 added chap 929/1937 § 1

Amended chap 434/1951 § 1

Amended chap 509/1960 § 25

Sub a amended chap 870/1970 § 20



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

*NYC Administrative Code 13-180*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-180 Monthly payments.

A pension, a pension-providing-for-increased-take-home-pay, an annuity or a retirement allowance granted under the provisions of this chapter, shall be paid in equal monthly instalments or in ratably smaller amounts when the benefit begins after the first day of the month or ends before the last day of the month.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-49.0 added chap 929/1937 § 1

Amended chap 509/1960 § 26

**CASE NOTES FROM FORMER SECTION**

¶ 1. Withdrawal of funds by plaintiff was properly taken into account when computing plaintiff's pension, since fact that withdrawals were made with the consent of the Board of Estimate and the Mayor did not prevent the N.Y.C. Employees' Retirement System from subtracting the actuarial equivalent of the deficiency caused thereby from the amount due plaintiff.-McLaughlin v. N.Y.C. Employees' Retirement System, 96 Misc. 2d 56 [1977].



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

*NYC Administrative Code 13-181*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-181 Exemption from tax, execution, etc.

The right of a person to a pension, a pension-providing-for-increased-take-home-pay, an annuity, or a retirement allowance, to the return of contributions, the pension, pension-providing-for-increased-take-home-pay, annuity, or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter and the moneys in the various funds provided for by this chapter, are hereby exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this chapter specifically provided.

Notwithstanding the foregoing provisions of this section, a retired member shall have the right, at any time after the retired member's retirement, to execute and file a dues deduction authorization card or an authorization in writing with the New York city employees' retirement system authorizing the deduction from the retired member's retirement allowance of membership dues or premiums for employee organization sponsored group insurance plans and the payment thereof to a retiree organization of which the retired member certifies he or she is then a member and which the retired member certifies is then affiliated with either an employee organization certified or recognized as the collective bargaining representative of all employees in the negotiating unit of which the retired member was a part prior to his retirement or an employee organization with which such employee organization is then affiliated. The comptroller shall thereafter deduct from the retirement allowance of such retired member the amount of membership dues required to be paid by such retired member or premiums for employee organization sponsored group insurance plans and shall transmit the sum so deducted to said retiree organization. Such authorization shall continue in effect until revoked in writing by such retired member. The board shall determine the cost of administering deductions for premiums for employee organization sponsored group insurance plans and the cost incurred by the retirement system and the

comptroller in administering the same shall be paid by the employee organization.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Closing par amended chap 146/1992 § 1, eff. Jan. 1, 1992 added chap 207/1988 § 1

**DERIVATION**

Formerly § B3-50.0 added chap 929/1937 § 1

Amended chap 509/1960 § 27

**CASE NOTES FROM FORMER SECTION**

¶ 1. The judgment debtor's only income, which consisted of a pension exempt from execution (Admin. Code § B3-50.0), might not be reached by indirection for payment of the judgment in installments pursuant to Civil Practice Act § 793.-McDonald v. Brosnan, 106 (86) N.Y.L.J. (10-10-41) 997, Col. 3 F, also Sheffield Farms Co. v. Gallagher, 105 (15) N.Y.L.J. (1-18-41) 288, Col. 7 M.

¶ 2. Admin. Code § B3-50.0, exempting from execution or other process the right of the employee to the return of contributions paid into the New York City Retirement System by a City employee, makes no distinction between an employee who retires while in good standing and one who is dismissed from the service.-Feeley v. O'Kelly, 113 (2) N.Y.L.J. (1-3-45) 25, Col. 6 M.

¶ 3. A wife holding a judgment of support may in sequestration proceedings reach her husband's interest in his pension fund. But counsel fees incurred in the sequestration may not be collected in this manner.-Epstein v. Epstein, 10 Misc. 2d 572, 169 N.Y.S. 2d 946 [1957].

¶ 4. Under the provisions of this section an employee's contributions to the New York City Employees' Retirement System are not subject to execution, garnishment, attachment or other process. However, such exemption did not apply to a sequestration proceeding brought by a wife of an employee-member of the pension system to enforce payment of an alimony decree by the Court.-Fox v. Fox, 9 Misc. 2d 1092, 168 N.Y.S. 2d 815 [1957], appeal dismissed 5 A.D. 2d 770, 169 N.Y.S. 1014 [1959].

¶ 5. A wife who was awarded alimony and support of infant issue was entitled to sequester the funds in defendant-husband's pension fund when he resigned about six months after the judgment was obtained.-Mascaro v. Mascaro, 155 (26) N.Y.L.J. (2-7-66) 17, Col. 1 F.

¶ 6. Wife who obtained a number of unsatisfied money judgments against her husband for non-payment of alimony and child support was entitled to have sequestered New York City Employees' Retirement System pension monies due or to become due and payable to her husband.-Maxwell v. N.Y.C. Employees Retirement System, 163 (67) N.Y.L.J. (4-8-70) 17, Col. 4 F.



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

*NYC Administrative Code 13-181.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-181.1 Eligible rollover distributions.

a. Notwithstanding anything to the contrary contained in section 13-181 of this chapter, in the event that, under the terms of this chapter, a person becomes entitled to a distribution from the retirement system which constitutes an "eligible rollover distribution" within the meaning of paragraph thirty-one of subsection a of section four hundred one of the internal revenue code, such distributee may elect, subject to any rules and regulations adopted pursuant to subdivision b of this section, to have such distribution, or a portion thereof, paid directly to an "eligible retirement plan" within the meaning of paragraph thirty-one of subsection a of section four hundred one of the internal revenue code.

b. The board of trustees is authorized to adopt such rules and regulations as it finds to be necessary in administering the provisions of this section, provided that they are not inconsistent with the applicable provisions of the internal revenue code and the rules and regulations thereunder.

**HISTORICAL NOTE**

Section added chap 510/1993 § 1 retro. to Jan. 1, 1993

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*NYC Administrative Code 13-181.2*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-181.2 Payments to political committees.

Notwithstanding any other provision of law to the contrary, a retired member shall have the right, at any time after his or her retirement, to execute and file a deduction authorization card with the retirement system authorizing the payment of voluntary contributions to the political committee, as defined in section 14-100 of the election law, of such member's employee organization; provided, such organization is certified or recognized pursuant to either this chapter or article fourteen of the civil service law as the representative of employees in the title in which such member was employed. Such authorization shall continue in effect until revoked in writing by such member. The comptroller shall determine the cost of administering deductions for voluntary contributions to the political committee and the costs incurred by the retirement system in administering such contributions shall be paid from the funds of the political committee.

**HISTORICAL NOTE**

Section added chap 723/2004 § 1, eff. Nov. 24, 2004.



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

*NYC Administrative Code 13-182*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-182 Protection against fraud or mistake.

Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of this retirement system, shall be guilty of a misdemeanor. Should any change or error in records result in any member or beneficiary receiving from the retirement system more or less than he or she would have been entitled to receive otherwise, on the discovery of any such error such board shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which he or she was entitled shall be paid.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-51.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where board of trustees erroneously placed petitioner on an advanced payroll which resulted in an overpayment to her of $7284 it was entitled to recoup the overpayment by a monthly deduction from her retirement pay.-Creasy v. Roche, 72 A.D. 2d 681, 421 N.Y.S. 2d 217 [1979].

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*NYC Administrative Code 13-183*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-183 State supervision.

The retirement system shall be subject to the supervision of the department of insurance in accordance with the provisions of sections three hundred seven, three hundred eight, three hundred nine, three hundred ten, three hundred eleven and three hundred twelve of the insurance law, so far as the same are applicable thereto, and are not inconsistent with the provisions of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-52.0 added chap 929/1937 § 1

Amended chap 100/1963 § 40

Amended chap 805/1984 § 100



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

*NYC Administrative Code 13-184*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-184 Limitation on other statutes; application of chapter.

No other provision of law which provides wholly or partly at the expense of the city for pensions or retirement benefits for employees in the city-service, shall apply to such employees who become members or beneficiaries of the retirement system provided for by this chapter, their widows or their other dependents. This chapter shall not apply to any person who is, or may be, entitled to share in the police pension fund, or in the fire department relief fund, or in the teachers' retirement system, or in the Hunter College retirement system, or in the department of street cleaning relief and pension fund (except as provided in section 13-614 of this title), or in the board of education retirement system, by reason of service of such person as an employee under provisions of law applicable to such funds. Notwithstanding the foregoing provisions of this section, nothing therein contained shall prevent a member of this retirement system whose membership is authorized by subdivision three of section 13-104 of this chapter, upon his or her retirement from this retirement system, or his or her widow, dependents, or beneficiaries, upon his or her death, from receiving benefits from this retirement system, as well as benefits to which they may be entitled from any other retirement system or pension fund maintained by the city.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-53.0 added chap 929/1937 § 1

Amended chap 462/1951 § 3

Amended chap 100/1963 § 41

Amended chap 837/1964 § 3

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*NYC Administrative Code 13-185*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-185 Transfer of certain employees to board of education.

Notwithstanding other provisions of this code, any employee having completed continuous city-service in excess of thirty years and having transferred as a civil employee and or as a regular teacher after September first, nineteen hundred sixty to the board of education, the retirement system of which is supported by funds appropriated by the city of New York, may continue membership in the New York city employees retirement system, and shall be permitted to contribute to such system and receive credit for service rendered to the board of education as if such service were city-service.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-54.0 added chap 696/1953 § 1

Amended chap 948/1962 § 1

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

*NYC Administrative Code 13-186*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-186 Transfer of certain employees of the board of education.

Notwithstanding any other provision of this code or other provision of law, any officer or employee, formerly a member of this system, who has completed in excess of twenty years of service in the classified civil service prior to January first, nineteen hundred sixty and who was transferred as an officer or employee from the board of education to employment in another agency of the city prior to such date and who, upon such transfer, again became a member before July first, nineteen hundred sixty, shall be entitled to the same regular interest rate on and after July first, nineteen hundred sixty as he or she received in his or her former membership.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-55.0 added chap 1051/1960 § 1



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

*NYC Administrative Code 13-187*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-187 Retirement of members who are justices of the supreme court, judges of the surrogate's courts, judges of the civil court of the city of New York, judges of the criminal court of the city of New York, judges of the family court within the city of New York or officers or employees of any such court and who die while in service after becoming eligible for retirement.

Notwithstanding other provisions of this code, any rules or regulations adopted by the board, or any provisions of law to the contrary, a member, who is a justice of the supreme court, a judge of the surrogate's court, a judge of the civil court of the city of New York, a judge of the criminal court of the city of New York, a judge of the family court within the city of New York, or an officer or employee of any such court who is eligible for retirement by reason of service and/or superannuation, may execute and file with such board a written application for retirement in the form required for such application, electing an option or options in accordance with section 13-177 of this chapter but requesting that such retirement under said option or options shall become effective on the date immediately preceding his or her death. The application shall be held by such board until the member shall file a later application for retirement, or his or her retirement in pursuance of section 13-166 of this chapter shall become effective, or until his or her death, whichever of such events shall first occur; and in the event of such member's death while such application shall continue to be so held by such board, his or her said retirement shall become effective with the same benefits to the designated beneficiary as if such member had retired and had become entitled to retirement allowance on the day immediately preceding his or her death.

In the event that a member, who would be eligible for retirement by reason of service and/or superannuation, dies while in service before filing with such board an application for retirement in the form required for such application, or who, having filed an application for retirement in the form required, dies on or after the effective date of his or her

retirement but before becoming entitled to retirement allowance, he or she shall nevertheless be deemed to have been retired and to have become entitled to a retirement allowance effective on the day immediately preceding his or her death; and if he or she had not indicated his or her election of an option under which he or she desired to be retired, he or she shall be considered as having elected to retire under the option designated as option one of section 13-177 of this chapter.

If the beneficiary nominated should predecease the member prior to his or her retirement, the member may name a new beneficiary. If the member fails to nominate a new beneficiary or if the member has failed to file a form selecting an option under which he or she desires to be retired as provided by section 13-177 of this chapter, he or she shall be considered as having elected to retire under option one as set forth in section 13-177 of this chapter and the benefits payable hereunder shall be paid to the beneficiary nominated by the member under the provisions of section 13-148 of this chapter. Alternately, the beneficiary hereunder may elect to receive the ordinary death benefit provided by section 13-148 of this chapter.

The provisions of this section and the privileges accorded hereunder shall apply only in those cases where death occurs on or after July first, nineteen hundred sixty-three except that as to judges of the civil court of the city of New York, judges of the criminal court of the city of New York, judges of the family court within the city of New York and officers and employees of such courts they shall apply only in those cases where death occurs on or after July first, nineteen hundred sixty-four.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-56.0 added chap 1021/1963 § 1

Amended chap 968/1964 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Estate of decedent, a judge of the Civil Court who died after retirement, was not entitled to retirement allowance under Option 1 of § B3-46.0 where decedent prior to his retirement selected Option 4 and had received retirement benefits prior to his death. Zucker v. N.Y.C. Employees' Retirement System, 27 A.D. 2d 207, 277 N.Y.S. 2d 978 [1967], aff'd 21 N.Y. 2d 904, 236 N.E. 2d 856, 289 N.Y.S. 2d 623 [1968].



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

*NYC Administrative Code 13-188*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-188 Transferred contributors.

a. Any contributor who resigns his or her position to accept and who, within sixty days thereafter, does accept another position in the city-service shall continue to be a contributor while in such city-service and shall be known as a transferred-contributor provided he or she executes and files with the retirement board a statement in writing that he or she elects to leave with the annuity savings fund his or her accumulated deductions and to continue to contribute to such fund at a rate of salary deduction not less than the rate of deduction theretofore required from his or her salary, and further provided that he or she shall waive and renounce any present or prospective benefit from any other retirement system or association supported wholly or in part by the city. Where an election is made pursuant to the provisions of this section, the salary deductions required by such provisions shall be appropriately modified, if a rate of deduction is otherwise fixed, pursuant to section 13-152 of this chapter for the transferred-contributor making such election.

b. Notwithstanding the provisions of subdivision a of this section, any transferred-contributor who had been eligible to transfer to the New York city board of education retirement system on or after January first, nineteen hundred ninety shall be eligible to transfer to such system provided that he or she applies to transfer within ninety days of the effective date of this subdivision. Should such a transfer be effected, the member shall be deemed to have been a member of the New York city board of education retirement system since the commencement of his or her employment by the New York city board of education.

**HISTORICAL NOTE**

Section amended chap 570/2005 § 1, eff. Aug. 23, 2005 and deemed to

be in full force and effect on or after June 30, 2005.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-57.0 added chap 685/1964 § 1

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*NYC Administrative Code 13-189*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-189 Optional retirement program.

Notwithstanding any other law to the contrary, certain employees of the city university of New York shall be permitted to participate in an optional retirement program pursuant to article one hundred twenty-five-A of the education law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-58.0 added chap 1028/1965 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-190*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (IN PART) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-190 Members having service as council members; special expense payments included in compensation.

a. For the purpose of determining the rights, benefits, privileges and obligations, under this chapter, of any person who is, on or after the effective date of this section, a member, the compensation of such member with respect to any period of time heretofore or hereafter occurring during which he or she served or shall serve as a council member in the city council, or the compensation earnable by such member during any such period, shall be deemed to include the amount of any payments made to such member by the city during such period for councilmanic special expenses, subject to the provisions of subdivision b of this section.

b. Member contributions to the retirement system shall be made on the basis of compensation as determined pursuant to the proviGsions of subdivision a of this section; provided, however, that no additional member contributions, by reason of such determination, shall be required to be made with respect to any period prior to the effective date of this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B3-59.0 added chap 933/1968 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-191*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-191 Transit12 police officer's variable supplements fund.

1. As used in this section, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

(a) "Association". The New York city transit police patrolmen's benevolent association.

(b) "Variable supplements board". The board of trustees provided for in subdivision three of this section.

(c) "Beneficiary". Any person who receives a retirement allowance by reason of having retired, on or after July first, nineteen hundred eighty-seven for service (with credit for twenty or more years of service toward the minimum period) as a transit police officer; provided, that no person who held a rank or position as a transit police superior officer, as defined in subdivision eighty-four of section 13-101 of this title who, on or after May first, nineteen hundred ninety-two, subsequently became a transit police officer shall be considered a beneficiary unless such person (1) subsequently performed at least three years of service as a transit police officer or (2) returned to service, from the position of sergeant, as a transit police officer during the eighteen month probationary period, or such other probationary period as may be applicable or (3) returned to service as a transit police officer during the three year period specified in paragraph (e) of subdivision one of section seventy-five of the civil service law, or (4) returned to service as a transit police officer as the result of a hearing conducted pursuant to applicable law.

(d) "Variable supplement". Any sum authorized to be paid to a beneficiary pursuant to the provisions of this section.

(e) "Minimum period". The minimum period of credited service which a transit police member is required by law to perform in order to be eligible to retire for service with immediate payability of retirement allowance.

(f) "Transit police officer". (1) As used in the opening clause of paragraph (c) of this subdivision, such term shall mean a transit police member who, at the time of retirement for service by reason of fulfillment of the minimum period of service, was not a transit police superior officer, as defined in subdivision eighty-four of section 13-101 of this title.

(2) Where used elsewhere in this section, such term shall mean a transit police member who, at the time as of which his or her status is to be determined, is not a transit police superior officer, as so defined.

(g) "Guarantee obligor". (1) With respect to any TPOVSF calendar year covered by a payment guarantee (as defined in paragraph (i) of this subdivision) or part of such a calendar year, for which calendar year or part thereof payment of variable supplements is an obligation of and guaranteed by the city pursuant to the applicable provisions of paragraphs (f), (g) and (h) of subdivision three of this section, the term "guarantee obligor" shall mean the city.

(2) With respect to any TPOVSF calendar year covered by a payment guarantee or part of such a calendar year, for which calendar year or part thereof payment of variable supplements is an obligation of and guaranteed by a governmental entity pursuant to the applicable provisions of paragraphs (f), (g) and (h) of subdivision three of this section, the term "guarantee obligor" shall mean such governmental entity.

(h) "TPOVSF calendar year not covered by a payment guarantee". Any calendar year beginning on or after January first, nineteen hundred ninety-two, which year precedes the first calendar year in which a guarantee, by a guarantee obligor (as defined in paragraph (g) of this subdivision), of payment of variable supplements takes effect pursuant to the provisions of paragraph (f) or paragraph (g) of subdivision three of this section.

(i) "TPOVSF calendar year covered by a payment guarantee". The calendar year in which a guarantee, by a guarantee obligor (as defined in paragraph (g) of this subdivision), of payment of variable supplements first takes effect pursuant to paragraph (f) or paragraph (g) of subdivision three of this section, and any succeeding calendar year.

2. (a) There is hereby established a fund, to be known as the transit police officer's variable supplements fund. Such fund shall consist of such monies as may be paid thereto from the retirement system pursuant to the provisions of sections 13-193 and 13-193.2 of this chapter and all other monies received by such fund from any other source pursuant to law.

(b) It is hereby declared by the legislature that the transit police officer's variable supplements fund shall not be, and shall not be construed to constitute, a pension or retirement system or fund, and that it shall function as a means whereby payments, not constituting a pension or retirement allowance, may be made in accordance with the provisions of this section, to eligible beneficiaries as a supplement to benefits received by them pursuant to this title. The legislature hereby reserves to the state and itself the right and power to amend, modify or repeal any or all of the provisions of this section.

3. (a) The transit police officer's variable supplements fund shall be administered by a board of trustees which shall, subject to applicable provisions of law, from time to time establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof.

(b) Such variable supplements board shall consist of:

(1) The representative of the mayor who is a member of the board of trustees of the retirement system, who shall be entitled to cast one vote. The mayor may, by instrument in writing filed in his or her office and with the variable supplements board, designate one or more members of his or her office to act in the place of such representative at meetings of the board, in the event of such representative's absence therefrom.

(2) The comptroller of the city, who shall be entitled to cast one vote. Any deputy comptroller authorized pursuant to subdivision b of section ninety-four of the New York city charter, to act in the place of the comptroller as a member of the board of trustees of the retirement system, may be authorized by the comptroller, in accordance with the provisions of such subdivision, to act in the place of the comptroller as a member of the variable supplements board.

(2-a) The commissioner of finance, who shall be entitled to cast one vote. Such commissioner may, by instrument in writing filed in his or her office and with the variable supplements board, designate one or more members of his or her office to act in his or her place at meetings of such board, in the event of such commissioner's absence therefrom.

(3) Two members of the association designated by it, who shall each be entitled to cast one vote. The members so designated shall be officers of the association. Each such designee may at any time, by written authorization filed with the variable supplements board, authorize any other officer of the association to act in his or her place as a member of the board in the event of such designee's absence from any meeting thereof; provided that the by-laws or constitution of the association provide for the designation of a representative for such purpose.

(c) Every act of the variable supplements board shall be by resolution which shall be adopted only by a vote of at least three-fifths of the whole number of votes authorized to be cast by all of the members of such board.

(d) The actuary appointed by the board of the retirement system shall be the technical advisor of the variable supplements board.

(d-1) The retirement system shall assign to the variable supplements board such number of clerical and other assistants as may be necessary for the performance of its functions.

(e) (1) As of October thirty-first, nineteen hundred ninety-two and as of October thirty-first of each succeeding TPOVSF calendar year not covered by a payment guarantee (as defined in paragraph (h) of subdivision one of this section), the actuary referred to in paragraph (d) of this subdivision shall value the assets of the variable supplements fund, subject to the provisions of paragraph (j) of this subdivision, and make an estimate of the total amount of variable supplements which would be payable, pursuant to subdivision four of this section and subparagraph two of this paragraph, to beneficiaries on or about December fifteenth of such calendar year for which such valuation and estimate are made, if such actuary determines that the value of such assets, as of October thirty-first of such calendar year, is equal to or greater than such total amount of variable supplements.

(2) If such actuary determines that the value of such assets, as of October thirty-first of any such calendar year for which a valuation and estimate are required by subparagraph one of this paragraph, is equal to or greater than such estimated total amount of variable supplements which would be payable on or about December fifteenth of such calendar year, then the variable supplements which, upon a favorable determination of the actuary under this paragraph (e), are declared by subdivision four of this section to be payable to beneficiaries for such calendar year or a part thereof shall be paid by the variable supplements fund, in the applicable amounts prescribed by such subdivision four, to beneficiaries on or about December fifteenth of such calendar year.

(3) If such actuary determines that the value of such assets, as of October thirty-first of any such calendar year for which a valuation and estimate are required by subparagraph one of this paragraph, is less than such estimated total amount of variable supplements which would be payable on or about December fifteenth of such calendar year pursuant to a favorable determination of the actuary, then no beneficiary shall be entitled to receive any variable supplement for such calendar year or any part thereof and no variable supplement shall be paid to any beneficiary for such calendar year or any part thereof.

(4) In any case where, pursuant to the provisions of subparagraphs one and three of this paragraph, no variable supplements are payable for a calendar year or part thereof to any beneficiary, no variable supplements for such calendar year or part thereof shall at any time thereafter be payable and no beneficiary shall at any time thereafter be

entitled to receive a variable supplement for such calendar year or part thereof.

(f) (1) As of October thirty-first, nineteen hundred ninety-two and as of October thirty-first of each succeeding calendar year up to and including the earlier of (i) the first TPOVSF calendar year covered by a payment guarantee (as defined in paragraph (i) of subdivision one of this section) or (ii) the calendar year two thousand six, the actuary referred to in paragraph (d) of this subdivision shall value the assets of the variable supplements fund, subject to the provisions of paragraph (j) of this subdivision, and shall estimate the present value, as of such October thirty-first, of all variable supplements which the variable supplements fund, under the provisions of subdivision four of this section, would be obligated to pay to beneficiaries with respect to the calendar year in which such October thirty-first occurs and all succeeding calendar years up to and including the calendar year two thousand six, if it were assumed that such variable supplements were payable with respect to all such calendar years occurring during the period beginning with the calendar year in which such October thirty-first occurs and extending to and including the calendar year two thousand six.

(2) If the value of such assets as of any such October thirty-first is equal to or greater than the sum obtained by adding together such estimated present value of variable supplements as of such October thirty-first and a sum equal to fifteen per centum of the assets of the variable supplements fund as of such October thirty-first:

(i) variable supplements, as provided for in subdivision four of this section, shall be paid to beneficiaries for the calendar year in which such October thirty-first occurs and for each subsequent calendar year; and

(ii) paragraph (e) of this subdivision shall be inapplicable with respect to entitlement of beneficiaries to variable supplements for the calendar years referred to in item (i) of this subparagraph; and

(iii) subject to the provisions of paragraph (h) of this subdivision, payment of all variable supplements payable for the calendar years referred to in item (i) of this subparagraph is hereby made an obligation of the guarantee obligor (as defined in paragraph (g) of subdivision one of this section) and the guarantee obligor hereby guarantees that such supplements shall be paid to all beneficiaries for such calendar years.

(g) If a guarantee of payment of variable supplements, pursuant to paragraph (f) of this subdivision, does not take effect prior to the calendar year two thousand seven, variable supplements, as provided for in subdivision four of this section, shall be paid pursuant to such subdivision four for the calendar year two thousand seven and each subsequent calendar year. Subject to the provisions of paragraph (h) of this subdivision, such payment is hereby made an obligation of the guarantee obligor (as defined in paragraph (g) of subdivision one of this section) and the guarantee obligor hereby guarantees that such variable supplements shall be paid to all beneficiaries for such calendar years.

(h) (1) Subject to the provisions of subparagraph three of this paragraph, if, as of January first of the first TPOVSF calendar year covered by a payment guarantee (as defined in paragraph (i) of subdivision one of this section), the city is legally obligated to pay (including payment by way of reimbursement) the salaries of the members of the uniformed transit police force, the city shall be the guarantee obligor referred to in the applicable provisions of paragraph (f) or paragraph (g) of this subdivision with respect to such first calendar year and all succeeding calendar years.

(2) If, as of January first of the first TPOVSF calendar year covered by a payment guarantee (as defined in paragraph (i) of subdivision one of this section), the city is not legally obligated to pay (or reimburse for) the salaries of the members of the uniformed transit police force, the governmental entity which is legally obligated to pay such salaries as of such January first shall be the guarantee obligor referred to in the applicable provisions of paragraph (f) or paragraph (g) of this subdivision with respect to such first calendar year and all succeeding calendar years.

(3) If, after becoming a guarantee obligor pursuant to subparagraph one of this paragraph, the city ceases to be legally obligated to pay (or reimburse for) the salaries of the members of the uniformed transit police force:

(i) any obligation and guarantee of the city, under the provisions of paragraph (f) or paragraph (g) of this subdivision, with respect to variable supplements payable for calendar years preceding the calendar year in which the city ceased to be so obligated to pay (or reimburse for) such salaries, shall continue in effect; and

(ii) any such obligation and guarantee of the city with respect to such variable supplements payable for the calendar year in which such obligation of the city to pay (or reimburse for) such salaries ceased shall be prorated as provided for in subparagraph four of this paragraph; and

(iii) the city shall have no obligation and shall make no guarantee with respect to payment of any such variable supplements payable for calendar years succeeding the calendar year in which such obligation of the city to pay (or reimburse for) such salaries ceased; and

(iv) there is hereby imposed on the governmental entity which, on the date on which the city ceases to be legally obligated to pay (or reimburse for) such salaries, becomes legally obligated to pay such salaries, a prorated obligation and guarantee, as provided for in subparagraph four of this paragraph, with respect to payment of such variable supplements payable for the calendar year in which such obligations of the city to pay (or reimburse for) such salaries ceased; and

(v) payment of such variable supplements payable for calendar years succeeding the calendar year in which such obligation of the city to pay (or reimburse for) such salaries ceased is hereby made the obligation of the governmental entity referred to in item (iv) of this subparagraph and such governmental entity hereby guarantees that such variable supplements shall be paid to all beneficiaries for such succeeding calendar years.

(4) Prorating of the obligation and guarantee of the city and such governmental entity, as provided for in items (ii) and (iv) of subparagraph three of this paragraph, for the calendar year referred to in such items, shall be in the ratio that the number of days of such calendar year during which the obligation and guarantee of each such obligor is in effect bears to the whole number of days in such calendar year.

(i) (1) Subject to the provisions of paragraph (j) of this subdivision, as of June thirtieth next succeeding the first TPOVSF calendar year covered by a payment guarantee (as defined in paragraph (i) of subdivision one of this section) and as of each succeeding June thirtieth, the actuary referred to in paragraph (d) of this subdivision shall make a valuation of the assets and liabilities of the variable supplements fund in accordance with the requirements of the succeeding subparagraphs of this paragraph. For the purposes of paragraph (i) of subdivision three of section 13-193.2 of this chapter, such valuation as of any such June thirtieth shall be the valuation for the TPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of subdivision three of such section 13-193.2) in which such June thirtieth occurs.

(2) The actuary shall base such annual valuation of liabilities only (i) upon the persons who, as of each such June thirtieth, are beneficiaries and (ii) upon the persons who, being transit police officers in service as of such June thirtieth, may be actuarially expected to retire thereafter as transit police officers for service with twenty or more years of service creditable toward the minimum period.

(3) The liabilities determined in such valuation shall be equal to the actuarial present value of accumulated plan benefits. The actuarial assumptions used by the actuary in making such annual valuation of liabilities, including assumptions as to interest rate, mortality of beneficiaries and number of transit police officers in service as of June thirtieth who will retire for service with twenty or more years of service creditable toward the minimum period, shall be adopted by the variable supplements board on the recommendation of the actuary.

(j) For the purposes of the valuation of the assets of the variable supplements fund pursuant to paragraphs (e), (f) and (i) of this subdivision, such assets shall be valued at their fair market value as of the applicable date with respect to which such assets are required to be valued under the applicable provisions of such paragraphs.

(k) Whenever variable supplements are payable to beneficiaries of the transit police officer's variable supplements fund pursuant to the provisions of this section, such payment, except as provided in paragraphs (f), (g) and (h) of this subdivision, shall not be an obligation of the city or the New York city transit authority or any other governmental entity described in such paragraph (h) and neither the city, nor the transit authority nor any such other governmental entity, except as provided for in such paragraphs (f), (g) and (h), shall guarantee such payment.

4. (a) The variable supplements fund shall pay variable supplements to beneficiaries in accordance with the succeeding paragraphs of this subdivision.

(b) No variable supplements shall be payable to any beneficiary for any calendar year or part thereof preceding January first, nineteen hundred ninety-two.

(c) For calendar years succeeding December thirty-first, nineteen hundred ninety-one, the variable supplements fund, subject to the provisions of paragraphs (e), (f), (g) and (h) of subdivision three of this section, and provided any applicable conditions precedent to payability as prescribed by such provisions are satisfied, and subject to the provisions of paragraph (f) of this subdivision, shall pay to each beneficiary, who retired on or after July first, nineteen hundred eighty-seven and prior to July first, nineteen hundred eighty-eight, or who, having been in service as a member of the uniformed transit police force and as a member of the retirement system on June thirtieth, nineteen hundred eighty-eight, retired for service prior to January first, nineteen hundred ninety-two, variable supplements payments as follows:

(1) for each calendar year following calendar year nineteen hundred ninety-one, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about December fifteenth of such year, as follows:

| Calendar Year | Supplement |
|---|---|
| 1992 | $ 4,500 |
| 1993 | $ 5,000 |
| 1994 | $ 5,500 |
| 1995 | $ 6,000 |
| 1996 | $ 6,500 |
| 1997 | $ 7,000 |
| 1998 | $ 7,500 |
| 1999 | $ 8,000 |
| 2000 | $ 8,500 |
| 2001 | $ 9,000 |
| 2002 | $ 9,500 |
| 2003 | $10,000 |
| 2004 | $10,500 |
| 2005 | $11,000 |
| 2006 | $11,500 |
| 2007 and each calendar year thereafter | $12,000 |

(2) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, nineteen hundred ninety-two), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided in the chart set forth in subparagraph one of this paragraph (c), by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death.

(d) For calendar years succeeding December thirty-first, nineteen ninety-one, the variable supplements fund, subject to the provisions of paragraphs (e), (f), (g) and (h) of subdivision three of this section and provided any applicable conditions precedent to payability under such provisions are satisfied, and subject to the provisions of

paragraph (f) of this subdivision, shall pay to each person who, on June thirtieth, nineteen hundred eighty-eight, was actually employed as a member of the uniformed transit police force and as a member of the retirement system and who retired from service on or after January first, nineteen hundred ninety-two so as to become a beneficiary, variable supplements payments as follows:

(1) for the calendar year of retirement, an amount calculated by multiplying one-twelfth times the supplement applicable to the year of retirement, as provided for in the chart set forth in subparagraph one of paragraph (c) of this subdivision, by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(2) for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment equal to the supplement provided for with respect to each such calendar year as set forth in the chart in subparagraph one of such paragraph (c), which payment shall be made on or about December fifteenth of such year;

(3) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, nineteen hundred ninety-two), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided for in the chart set forth in subparagraph one of such paragraph (c), by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death; and

(4) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs one and three of this paragraph shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(e) The variable supplements fund, subject to the provisions of paragraphs (e), (f), (g) and (h) of subdivision three of this section and provided any applicable conditions precedent to payability under such provisions are satisfied, and subject to the provisions of paragraph (f) of this subdivision, shall pay to each person who became or becomes actually employed as a member of the uniformed transit police force and a member of the retirement system on or after July first, nineteen hundred eighty-eight, and who retires for service so as to become a beneficiary, variable supplements payments as follows:

(1) for the calendar year of retirement, an amount calculated by multiplying one-twelfth times the sum of twenty-five hundred dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(2) for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about December fifteenth of such year, as follows:

CALENDAR YEAR OF ANNIVERSARY OF RETIREMENT (references hereinafter to "anniversary year" mean calendar year of anniversary) SUPPLEMENT

First anniversary year The sum of (1) a lower-based component equal to one-twelfth of the base sum of $2500 multiplied by the number of whole calendar months from and including the first month of such calendar year to and including the month in which the anniversary of the date of retirement occurs, and (2) a higher-based component equal to one-twelfth of the base sum of $3000 multiplied by the number of months remaining in such calendar year

Second anniversary year and each succeeding anniversary year to and including the nineteenth anniversary year The sum of a lower-based component and a higher-based component computed pursuant to the formula, above, for the first anniversary year, except that for each such anniversary year succeeding the first, the lower-based component shall be computed on a base sum $500 higher that the base sum required to be used in computing the lower-based component

for the next preceding anniversary year and the higher-based component shall be computed on a base sum $500 higher than the base sum required to be used in computing the higher-based component for such next preceding anniversary year

Twentieth anniversary year and each succeeding anniversary year $12,000

(3) for the calendar year of the beneficiary's death, an amount calculated in accordance with the formula for that year set forth in subparagraph two of this paragraph (e) but prorated on the basis of the number of full calendar months the beneficiary lived during that year prior to the month of his or her death; and

(4) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs one and three above shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(f) (1) (i) Subject to the provisions of items (ii), (iii) and (iv) of this subparagraph one, on or after January first, nineteen hundred ninety-two, where a beneficiary is entitled to receive variable supplements payments pursuant to paragraph (c), paragraph (d) or paragraph (e) of this subdivision, and that beneficiary is also entitled to receive a supplemental retirement allowance or cost-of-living adjustment pursuant to any other provision of law enacted on or after January first, nineteen hundred ninety-two (hereinafter referred to as "other supplemental retirement allowance"), the amount of such variable supplement payable for a calendar year or a part of such calendar year to such beneficiary shall be reduced by the amount of such other supplemental retirement allowance that is payable to such beneficiary to the extent that such other supplemental retirement allowance is attributable to the same calendar year or part of such calendar year.

(ii) For any beneficiary referred to in paragraph (c) or paragraph (d) of this subdivision, whose variable supplements payments are being reduced pursuant to item (i) of this subparagraph one because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such item (i) shall cease as to such beneficiary on the later of (A) the first day of the month next following the month in which such beneficiary attains age sixty-two; or (B) January first, two thousand seven.

(iii) For any beneficiary referred to in paragraph (e) of this subdivision, whose variable supplements payments are being reduced pursuant to item (i) of this subparagraph one because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such item (i) shall cease as to such beneficiary on the later of (A) the first day of the month following the month in which such beneficiary attains age sixty-two; or (B) the first day of the month next following the month in which the nineteenth anniversary of the retirement of such beneficiary occurs.

(iv) In any case where the reduction of variable supplements payments to a beneficiary has ceased pursuant to item (ii) or item (iii) of this subparagraph one, that beneficiary, for the purpose of determining his or her eligibility for and the amount of any other supplemental retirement allowance, shall be deemed to have retired on the date of the cessation of such reduction specified in the applicable provisions of such item (ii) or item (iii).

(2) The legislature hereby declares that the variable supplements authorized by this section and the granting and receipt thereof:

(i) shall not create or constitute membership in a pension or retirement system and shall not create or constitute a contract with any beneficiary or with any transit police member; and

(ii) shall not constitute a pension or retirement allowance or benefit under the retirement system or otherwise.

(3) Except as otherwise provided in subdivision eleven of this section and in sections 13-193, 13-193.1 and 13-193.2 of this chapter, nothing contained in this section shall create or impose any obligation on the part of the

retirement system, or the funds or monies thereof, or authorize such funds or monies to be appropriated or used for any payment under this section or for any purpose thereof.

(g) Beneficiaries shall be eligible to receive variable supplements pursuant to this section, notwithstanding any other provision of law to the contrary.

(h) The monies or assets of the variable supplements fund shall not be used for any purpose, other than payment of variable supplements pursuant to the provisions of this section, except that they may be invested as authorized by subdivision six of this section.

5. The transit police officer's variable supplements fund shall have the powers and privileges of a corporation and by its name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property held.

6. (a) The members of the variable supplements board shall be the trustees of the monies received by or belonging to the transit police officer's variable supplements fund pursuant to this section and, subject to the provisions of paragraph (b) of this subdivision, shall have full power to invest same, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of such monies shall have been invested as well as of the proceeds of such investments and of any monies belonging to such fund.

(b) The members of the variable supplements board shall have the same investment powers and power to delegate such powers as are vested by the code and the retirement and social security law in the members of the board of trustees of the retirement system.

7. The variable supplements board shall publish annually in the City Record a report for the preceding year showing the assets of the transit police officer's variable supplements fund and a statement as to the accumulated cash and securities of such fund as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as the board may deem pertinent.

8. The comptroller shall be custodian of the monies and assets of the transit police officer's variable supplements fund. All such monies and assets included in such fund or which shall hereafter accrue to such fund shall be in his or her custody for the purposes of this section subject to the direction, control and approval of such board as to disposition, investment, management and report. All payments from such fund shall be made by the comptroller upon a voucher signed by the secretary of the variable supplements board.

9. Except as provided in this section, the trustees and employees assigned to the variable supplements board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment of the transit police officer's variable supplements fund or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board.

10. The superintendent of insurance may examine the affairs of the transit police officer's variable supplements fund with the same powers and jurisdiction as are applicable in the case of an examination of a life insurance company by the superintendent under article three of the insurance law. The transit police officer's variable supplements fund shall be subject to assessment for expenses pursuant to the provisions of section three hundred thirteen of the insurance law, but shall not be subject to assessment for expenses under any of the provisions of section three hundred thirty-two of the insurance law.

11. In the event that, for any calendar year covered by a payment guarantee, the assets of the variable

supplements fund are not sufficient to pay benefits under this section for such year, an amount sufficient to pay such benefits shall be appropriated from the contingent reserve fund of the retirement system and transferred to the transit police officer's variable supplements fund.

**HISTORICAL NOTE**

Section added chap 844/1987 § 2

Subd. 1 pars (c), (d) amended chap 577/1992 § 1, eff. July 1, 1992

Subd. 1 par (e) added chap 577/1992 § 2, eff. July 1., 1992.

Subd. 1 par (f) amended chap 720/1994 § 1, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 1 par (f) added chap 577/1992 § 2, eff. July 1., 1992.

Subd. 1 par (g) amended chap 720/1994 § 1, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 1 par (g) added chap 577/1992 § 2, eff. July 1., 1992.

Subd. 1 par (h) amended chap 720/1994 § 1, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 1 par (h) added chap 577/1992 § 2, eff. July 1., 1992.

Subd. 1 par (i) amended chap 720/1994 § 1, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 1 par (i) added chap 577/1992 § 2, eff. July 1., 1992.

Subd. 2 amended chap 577/1992 § 3, eff. July 1, 1992

Subd. 3 par (a) amended chap 577/1992 § 4, eff. July 1, 1992

Subd. 3 par (b) subpar (2-a) added chap 577/1992 § 5, eff. July 1,

1992

Subd. 3 par (c) amended chap 577/1992 § 6, eff. July 1, 1992

Subd. 3 parpar (d) relettered chap 577/1992 § 8, eff. July 1, 1992

Subd. 3 par (d) (formerly par (e)) repealed chap 577/1992 § 7, eff. July 1, 1992

Subd. 3 par (d-1) relettered chap 577/1992 § 8, eff. July 1, 1992 (formerly par (f))

Subd. 3 par (e) added chap 577/1992 § 9, eff. July 1, 1992*

Subd. 3 par (e) subpar (1) amended chap 720/1994 § 2, eff. Aug. 2, 1994

and retroactive to Jan 1, 1993.

Subd. 3 par (f) added chap 577/1992 § 9, eff. July 1, 1992

Subd. 3 par (f) subpar (1) amended chap 720/1994 § 3, eff. Aug. 2, 1994

and retroactive to Jan 1, 1993.

Subd. 3 par (g) added chap 577/1992 § 9, eff. July 1, 1992

Subd. 3 par (h) added chap 577/1992 § 9, eff. July 1, 1992

Subd. 3 par (h) subpars (1), (2) amended chap 720/1994 § 4, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 3 par (i) added chap 577/1992 § 9, eff. July 1, 1992

Subd. 3 par (i) subpar (1) amended chap 720/1994 § 34, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 3 par (j) added chap 577/1992 § 9, eff. July 1, 1992

Subd. 3 par (k) added chap 577/1992 § 9, eff. July 1, 1992

Subd. 4 amended chap 577/1992 § 10, eff. July 1, 1992

Subd. 4 par (f) subpar (1) item (i) amended chap 125/2000 § 9, eff. July 11, 2000.

Subd. 4 par (f) subpar (3) amended chap 255/2000 § 19, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 6 amended chap 577/1992 § 11, eff. July 1, 1992

Subd. 6 par (a) amended chap 720/1994 § 32, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 10 amended chap 577/1992 § 12, eff. July 1, 1992

Subd. 11 added chap 255/2000 § 20, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

**NOTE**

Provisions of chap 577/1992 § 18

§ 18. (a) The legislature hereby finds that the provisions of this act remedy certain inequities which operate to the disadvantage of the city of New York and remedy certain other inequities which operate to the disadvantage of the persons eligible to receive variable supplements from the transit police officer's variable supplements fund provided for by section 13-191 of the administrative code of the city of New York. The provisions of subdivision (b) of this section constitute a part of the remedies for such inequities.

(b) On or before December first of the calendar year in which a guarantee of payment of variable supplements first takes effect pursuant to the applicable provisions of paragraph (f) or paragraph (g) of subdivision three of section 13-191 of such code, as added by section nine of this act, an amount equal to fifteen per centum of the assets of such variable supplements fund as of October thirty-first of such calendar year shall be transferred to and become the

property of the city of New York.

**FOOTNOTES**

12

[Footnote 12]: * There are 2 sections 13-191.

104 of 120 DOCUMENTS

Administrative Code of the City of New York



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

*NYC Administrative Code 13-191*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-191 Housing13 police officer's variable supplements fund.

1. As used in this section, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

(a) "Association". The New York city housing police patrolmen's benevolent association.

(b) "Variable supplements board". The board of trustees provided for in subdivision three of this section.

(c) "Beneficiary". Any person who receives a retirement allowance by reason of having retired, on or after July first, nineteen hundred eighty-seven for service (with credit for twenty or more years of service toward the minimum period) as a housing police officer; provided, that no person who held a rank or position as a housing police superior officer, as defined in subdivision eighty-four of section 13-101 of this chapter who, on or after May first, nineteen hundred ninety-two, subsequently became a housing police officer shall be considered a beneficiary unless such person (1) subsequently performed at least three years of service as a housing police officer or (2) returned to service, from the position of sergeant, as a housing police officer during the eighteen month probationary period, or such other probationary period as may be applicable or (3) returned to service as a housing police officer during the three year period specified in paragraph (e) of subdivision one of section seventy-five of the civil service law, or (4) returned to service as a housing police officer as the result of a hearing conducted pursuant to applicable law.

(d) "Variable supplement". Any sum authorized to be paid to a beneficiary pursuant to the provisions of this section.

(e) "Minimum period". The minimum period of credited service which a housing police member is required by law to perform in order to be eligible to retire for service with immediate payability of retirement allowance.

(f) "Housing police officer". (1) As used in the opening clause of paragraph (c) of this subdivision, such term shall mean a housing police member who, at the time of retirement for service by reason of fulfillment of the minimum period of service, was not a housing police superior officer, as defined in subdivision eighty-four of section 13-101 of this chapter.

(2) Where used elsewhere in this section, such term shall mean a housing police member who, at the time as of which his or her status is to be determined, is not a housing police superior officer, as so defined.

(g) "HPOVSF calendar year not covered by a payment guarantee". Any calendar year included in the period beginning on January first, nineteen hundred ninety-two and ending on December thirty-first, nineteen hundred ninety-three.

(h) "HPOVSF calendar year covered by a payment guarantee". The calendar year nineteen hundred ninety-four and any succeeding calendar year.

(i) "December fifteenth payment date". If variable supplements are payable pursuant to paragraph (e) of subdivision three of this section and subdivision four thereof with respect to the calendar year nineteen hundred ninety-two, such date shall be December fifteenth, nineteen hundred ninety-three. If variable supplements are payable pursuant to the provisions of paragraph (e) or paragraph (f) of such subdivision three and such subdivision four with respect to any calendar year subsequent to the calendar year nineteen hundred ninety-two, such date shall be December fifteenth of such calendar year with respect to which such variable supplements are payable.

2. (a) There is hereby established a fund, to be known as the housing police officer's variable supplements fund. Such fund shall consist of such monies as may be paid thereto from the retirement system pursuant to the provisions of sections 13-193 and 13-193.4 of this chapter and all other monies received by such fund from any other source pursuant to law.

(b) It is hereby declared by the legislature that the housing police officer's variable supplements fund shall not be, and shall not be construed to constitute, a pension or retirement system or fund, and that it shall function as a means whereby payments, not constituting a pension or retirement allowance, may be made in accordance with the provisions of this section, to eligible beneficiaries as a supplement to benefits received by them pursuant to this title. The legislature hereby reserves to the state and itself the right and power to amend, modify or repeal any or all of the provisions of this section.

3. (a) The housing police officer's variable supplements fund shall be administered by a board of trustees which shall, subject to applicable provisions of law, from time to time establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof.

(b) Such variable supplements board shall consist of:

(1) The representative of the mayor who is a member of the board of trustees of the retirement system, who shall be entitled to cast one vote. The mayor may, by instrument in writing filed in his office and with the variable supplements board, designate one or more members of his office to act in the place of such representative at meetings of the board, in the event of such representative's absence therefrom.

(2) The comptroller of the city, who shall be entitled to cast one vote. Any deputy comptroller authorized pursuant to subdivision b of section ninety-four of the New York city charter, to act in the place of the comptroller as a member of the board of trustees of the retirement system, may be authorized by the comptroller, in accordance with the provisions of such subdivision, to act in the place of the comptroller as a member of the variable supplements board.

(2-a) The commissioner of finance, who shall be entitled to cast one vote. Such commissioner may, by instrument in writing filed in his or her office and with the variable supplements board, designate one or more members of his or her office to act in his or her place at meetings of such board, in the event of such commissioner's absence therefrom.

(3) Two members of the association designated by it, who shall each be entitled to cast one vote. The members so designated shall be officers of the association. Each such designee may at any time, by written authorization filed with the variable supplements board, authorize any other officer of the association to act in his place as a member of the board in the event of such designee's absence from any meeting thereof; provided that the by-laws or constitution of the association provide for the designation of a representative for such purpose.

(c) Every act of the variable supplements board shall be by resolution which shall be adopted only by a vote of at least three-fifths of the whole number of votes authorized to be cast by all of the members of such board.

(d) The actuary appointed by the board of the retirement system shall be the technical advisor of the variable supplements board.

(d-1) The retirement system shall assign to the variable supplements board such number of clerical and other assistants as may be necessary for the performance of its functions.

(e) (1) (1) As of October thirty-first, nineteen hundred ninety-two and as of October thirty-first nineteen hundred ninety-three, the actuary referred to in paragraph (d) of this subdivision shall value the assets of the variable supplements fund, subject to the provisions of paragraph (h) of this subdivision, and make an estimate of the total amount of variable supplements which would be payable, pursuant to subdivision four of this section and subparagraph two of this paragraph, to beneficiaries for such calendar year for which such valuation and estimate are made, if such actuary determines that the value of such assets, as of October thirty-first of such calendar year, is equal to or greater than such total amount of variable supplements.

(2) If such actuary determines that the value of such assets, as of October thirty-first of any such calendar year for which a valuation and estimate are required by subparagraph one of this paragraph, is equal to or greater than such estimated total amount of variable supplements which would be payable for such calendar year, then the variable supplements which, supon a favorable determination of the actuary under this paragraph, are declared by subdivision four of this section to be payable to beneficiaries for such calendar year or a part thereof shall be paid by the variable supplements fund, in the applicable amounts prescribed by such subdivision four, to beneficiaries on or about the applicable December fifteenth payment date (as defined in paragraph (i) of subdivision one of this section).

(3) If such actuary determines that the value of such assets, as of October thirty-first of any such calendar year for which a valuation and estimate are required by subparagraph one of this paragraph, is less than such estimated total amount of variable supplements which would be payable for such calendar year pursuant to a favorable determination of the actuary, then no beneficiary shall be entitled to receive any variable supplement for such calendar year or any part thereof and no variable supplement shall be paid to any beneficiary for such calendar year or any part thereof.

(4) In any case where, pursuant to the provisions of subparagraphs one and three of this paragraph, no variable supplements are payable for a calendar year or part thereof to any beneficiary, no variable supplements for such calendar year or part thereof shall at any time thereafter be payable and no beneficiary shall at any time thereafter be entitled to receive a variable supplement for such calendar year or part thereof.

(f) (1) Variable supplements, as provided for in subdivision four of this section, shall be paid to beneficiaries for the calendar year nineteen hundred ninety-four and for each subsequent calendar year.

(2) Paragraph (e) of this subdivision shall be inapplicable with respect to entitlement of beneficiaries to variable supplements for the calendar years referred to in subparagraph one of this paragraph.

(3) Payment of all variable supplements payable for the calendar years referred to in subparagraph one of this paragraph is hereby made an obligation of the city and the city hereby guarantees that such variable supplements shall be paid to all beneficiaries for such calendar years.

(g) (1) Subject to the provisions of paragraph (h) of this subdivision, as of June thirtieth next succeeding the first HPOVSF calendar year covered by a payment guarantee (as defined in paragraph (h) of subdivision one of this section) and as of each succeeding June thirtieth, the actuary referred to in paragraph (d) of this subdivision shall make a valuation of the assets and liabilities of the variable supplements fund in accordance with the requirements of the succeeding subparagraphs of this paragraph. For the purposes of paragraph (i) of subdivision three of section 13-193.4 of this chapter, such valuation as of any such June thirtieth shall be the valuation for the HPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of subdivision three of such section 13-193.4) in which such June thirtieth occurs.

(2) The actuary shall base such annual valuation of liabilities only (i) upon the persons who, as of each such June thirtieth, are beneficiaries and (ii) upon the persons who, being housing police officers in service as of such June thirtieth, may be actuarially expected to retire thereafter as housing police officers for service with twenty or more years of service creditable toward the minimum period.

(3) The liabilities determined in such valuation shall be equal to the actuarial present value of accumulated plan benefits. The actuarial assumptions used by the actuary in making such annual valuation of liabilities, including assumptions as to interest rate, mortality of beneficiaries and number of housing police officers in service as of June thirtieth who will retire as housing police officers for service with twenty or more years of service creditable toward the minimum period, shall be adopted by the variable supplements board on the recommendation of the actuary.

(h) For the purposes of the valuation of the assets of the variable supplements fund pursuant to paragraphs (e) and (g) of this subdivision, such assets shall be valued at their fair market value as of the applicable date with respect to which such assets are required to be valued under the applicable provisions of such paragraphs.

(i) Whenever variable supplements are payable to beneficiaries of the housing police officer's variable supplements fund pursuant to the provisions of this section, such payment, except as provided in paragraph (f) of this subdivision, shall not be an obligation of the city and the city, except as provided for in such paragraph (f), shall not guarantee such payment.

4. (a) The variable supplements fund shall pay varible supplements to beneficiaries in accordance with the succeeding paragraphs of this subdivision.

(b) No variable supplements shall be payable to any beneficiary for any calendar year or part thereof preceding January first, nineteen hundred ninety-two.

(c) For calendar years succeeding December thirty-first, nineteen hundred ninety-one, the variable supplements fund, subject to the provisions of paragraphs (e) and (f) of subdivision three of this section, and provided any applicable conditions precedent to payability as prescribed by the provisions of such paragraph (e) are satisfied as to any calendar year to which the provisions of such paragraph (e) apply, and subject to the provisions of paragraph (f) of this subdivision, shall pay to each beneficiary, who retired on or after July first, nineteen hundred eighty-seven and prior to July first, nineteen hundred eighty-eight, or who, having been in service as a member of the housing police service and as a member of the retirement system on June thirtieth, nineteen hundred eighty-eight, retired for service prior to January first, nineteen hundred ninety-two, variable supplements payments as follows:

(1) for each calendar year following calendar year nineteen hun- dred ninety-one, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about the applicable December fifteenth payment date (as defined in paragraph (i) of subdivision one of this section), as follows:

| Calendar Year | Supplement |
|---|---|
| 1992 | $ 4,500 |
| 1993 | $ 5,000 |
| 1994 | $ 5,500 |
| 1995 | $ 6,000 |
| 1996 | $ 6,500 |
| 1997 | $ 7,000 |
| 1998 | $ 7,500 |
| 1999 | $ 8,000 |
| 2000 | $ 8,500 |
| 2001 | $ 9,000 |
| 2002 | $ 9,500 |
| 2003 | $10,000 |
| 2004 | $10,500 |
| 2005 | $11,000 |
| 2006 | $11,500 |
| 2007 and each calendar year thereafter | $12,000 |

(2) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, nineteen hundred ninety-two), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided in the chart set forth in subparagraph one of this paragraph, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death.

(d) For calendar years succeeding December thirty-first, nineteen hundred ninety-one, the variable supplements fund, subject to the provisions of paragraphs (e) and (f) of subdivision three of this section and provided any applicable conditions precedent to payability under the provisions of such paragraph (e) are satisfied as to any calendar year to which the provisions of such paragraph (e) apply, and subject to the provisions of paragraph (f) of this subdivision, shall pay to each person who, on June thirtieth, nineteen hundred eighty-eight, was actually employed as a member of the housing police service and as a member of the retirement system and who retired for service on or after January first, nineteen hundred ninety-two so as to become a beneficiary, variable supplements payments as follows:

(1) for the calendar year of retirement, an amount calculated by multiplying one-twelfth times the supplement applicable to the year of retirement, as provided for in the chart set forth in subparagraph one of paragraph (c) of this subdivision, by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about the applicable December fifteenth payment date (as defined in paragraph (i) of subdivision one of this section);

(2) for each calendar year following the year of retirement, but not including the calendar year of the

beneficiary's death, a single annual payment equal to the supplement provided for with respect to each such calendar year as set forth in the chart in subpara- graph one of paragraph (c) of this subdivision, which payment shall be made on or about the applicable December fifteenth payment date (as defined in paragraph (i) of subdivision one of this sec- tion);

(3) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, nineteen hundred ninety-two), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided for in the chart set forth in subparagraph one of paragraph (c) of this subdivision, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death; and

(4) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs one and three of this paragraph shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(e) The variable supplements fund, subject to the provisions of paragraphs (e) and (f) of subdivision three of this section and provided any applicable conditions precedent to payability under the provisions of such paragraph (e) are satisfied as to any calendar year to which the provisions of such paragraph (e) apply, and subject to the provisions of paragraph (f) of this subdivision, shall pay to each person who became or becomes actually employed as a member of the housing police service and a member of the retirement system on or after July first, nineteen hundred eighty-eight, and who retires for service so as to become a beneficiary, variable supplements payments as follows:

(1) (i) subject to the provisions of subparagraph four of this paragraph, for the calendar year of retirement, where such retirement occurs before January first, two thousand eight, an amount calculated by multiplying one-twelfth times the sum of twenty-five hundred dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(ii) subject to the provisions of subparagraph four of this paragraph, for the calendar year of retirement, where such retirement occurs on or after January first, two thousand eight, an amount calculated by multiplying one-twelfth times the sum of twelve thousand dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(2) subject to the provisions of subparagraph two-a of this paragraph, for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about December fifteenth of such year, as follows:

CALENDAR YEAR OF ANNIVERSARY OF RETIREMENT (references hereinafter to "anniversary year" mean calendar year of anniversary) SUPPLEMENT

First anniversary year The sum of (1) a lower-based component equal to one-twelfth of the base sum of $2,500 multiplied by the number of whole calendar months from and including the first month of such calendar year to and including the month in which the anniversary of the date of retirement occurs, and (2) a higher-based component equal to one-twelfth of the base sum of $3,000 multiplied by the number of months remaining in such calendar year

Second anniversary year and each succeeding anniversary year to and including the nineteenth anniversary year The sum of a lower-based com- ponent and a higher-based component computed pursuant to the formula, above, for the first anniversary year, except that for each such anniversary year succeeding the first, the lower-based component shall be computed on a base sum $500 higher than the base sum required to be used in computing the lower-based component for the next preceding anniversary year and the higher-based component shall be computed on a base sum $500 higher than the base sum required to be used in computing the higher-based component for such next preceding anniversary

year

Twentieth anniversary year and each succeeding anniversary year $12,000

(2-a) for each calendar year which occurs both after the year of retirement and after December thirty-first, two thousand seven (but not including the calendar year of the beneficiary's death), notwithstanding any provision of subparagraph two of this paragraph which would otherwise be applicable, a single annual payment of twelve thousand dollars, which payment (i) shall be in lieu of any other amount which would otherwise be payable under subparagraph two of this paragraph for such calendar year and (ii) shall be made on or about December fifteenth of such year; (3) (i) for the calendar year of the beneficiary's death, where such death occurs both after the year of retirement and prior to January first, two thousand eight, an amount calculated in accordance with the formula which would apply to the year of death under subparagraph two of this paragraph if such death had not occurred, but prorated on the basis of the number of full calendar months the beneficiary lived during the year of death prior to the month of his or her death; and

(ii) for the calendar year of the beneficiary's death, where such death occurs both after the year of retirement and in the calendar year two thousand eight or thereafter, an amount calculated by multiplying one-twelfth of twelve thousand dollars by the number of months the beneficiary lived during the year of death prior to the month of his or her death.

(4) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs one and three above shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(f) (1) (i) Subject to the provisions of items (ii), (iii) and (iv) of this subparagraph, on or after January first, nineteen hundred ninety-two, where a beneficiary is entitled to receive variable supplements payments pursuant to paragraph (c), (d) or (e) of this subdivision, and that beneficiary is also entitled to receive a supplemental retirement allowance or cost-of-living adjustment pursuant to any other provision of law enacted on or after January first, nineteen hundred ninety-three (hereinafter referred to as "other supplemental retirement allowance"), the amount of such variable supplement payable for a calendar year or a part of such calendar year to such beneficiary shall be reduced by the amount of such other supplemental retirement allowance that is payable to such beneficiary to the extent that such other supplemental retirement allowance is attributable to the same calendar year or part of such calendar year.

(ii) For any beneficiary referred to in paragraph (c) or (d) of this subdivision, whose variable supplements payments are being reduced pursuant to item (i) of this subparagraph because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such item (i) shall cease as to such beneficiary on the later of (A) the first day of the month next following the month in which such beneficiary attains age sixty-two; or (B) January first, two thousand seven.

(iii) For any beneficiary referred to in paragraph (e) of this subdivision, whose variable supplements payments are being reduced pursuant to item (i) of this subparagraph because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such item (i) shall cease as to such beneficiary on the later of (A) the first day of the month following the month in which such beneficiary attains age sixty-two; or (B) the earlier of (1) the first day of the month next following the month in which the nineteenth anniversary of the retirement of such beneficiary occurs or (2) January first, two thousand eight.

(iv) In any case where the reduction of variable supplements payments to a beneficiary has ceased pursuant to item (ii) or (iii) of this subparagraph, that beneficiary, for the purpose of determining his or her eligibility for and the amount of any other supplemental retirement allowance, shall be deemed to have retired on the date of the cessation of such reduction specified in the applicable provisions of such item (ii) or (iii).

(2) The legislature hereby declares that the variable supplements authorized by this section and the granting and receipt thereof:

(i) shall not create or constitute membership in a pension or retirement system and shall not create or constitute a contract with any beneficiary or with any housing police member; and

(ii) shall not constitute a pension or retirement allowance or benefit under the retirement system or otherwise.

(3) Except as otherwise provided in subdivision eleven of this section and in sections 13-193, 13-193.1 and 13-193.4 of this chapter, nothing contained in this section shall create or impose any obligation on the part of the retirement system, or the funds or monies thereof, or authorize such funds or monies to be appropriated or used for any payment under this section or for any purpose thereof.

(g) Beneficiaries shall be eligible to receive variable supplements pursuant to this section, notwithstanding any other provision of law to the contrary.

(h) The monies or assets of the variable supplements fund shall not be used for any purpose, other than payment of variable supplements pursuant to the provisions of this section, except that they may be invested as authorized by subdivision six of this section.

5. The housing police officer's variable supplements fund shall have the powers and privileges of a corporation and by its name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property held.

6. (a) The members of the variable supplements board shall be the trustees of the monies received by or belonging to the housing police officer's variable supplements fund pursuant to this section and, subject to the provisions of paragraph (b) of this subdivision, shall have full power to invest same, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of such monies shall have been invested as well as of the proceeds of such investments and of any monies belonging to such fund.

(b) The members of the variable supplements board shall have the same investment powers and power to delegate such powers as are vested by the code and the retirement and social security law in the members of the board of trustees of the retirement system.

7. The variable supplements board shall publish annually in the City Record a report for the preceding year showing the assets of the housing police officer's variable supplements fund and a statement as to the accumulated cash and securities of such fund as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as the board may deem pertinent.

8. The comptroller shall be custodian of the monies and assets of the housing police officer's variable supplements fund. All such monies and assets included in such fund or which shall hereafter accrue to such fund shall be in his custody for the purposes of this section subject to the direction, control and approval of such board as to disposition, investment, management and report. All payments from such fund shall be made by the comptroller upon a voucher signed by the secretary of the variable supplements board.

9. Except as provided in this section, the trustees and employees assigned to the variable supplements board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment of the housing police officer's variable supplements

fund or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board.

10. The superintendent of insurance may examine the affairs of the housing police officer's variable supplements fund with the same powers and jurisdiction as are applicable in the case of an examination of a life insurance company by the superintendent under article three of the insurance law. The housing police officer's variable supplements fund shall be subject to assessment for expenses pursuant to the provisions of section three hundred thirteen of the insurance law, but shall not be subject to assessment for expenses under any of the provisions of section three hundred thirty-two of the insurance law.

11. In the event that, for any calendar year covered by a payment guarantee, the assets of the variable supplements fund are not sufficient to pay benefits under this section for such year, an amount sufficient to pay such benefits shall be appropriated from the contingent reserve fund of the retirement system and transferred to the housing police officer's variable supplements fund.

**HISTORICAL NOTE**

Section added chap 846/1987 § 2

Subd. 1 pars (c), (d) amended chap 375/1993 § 1 retro. to Jan. 1, 1992

Subd. 1 par (e) added chap 375/1993 § 2 retro. to Jan. 1, 1992

Subd. 1 par (f) amended chap 917/1994 § 1, eff. Aug. 2, 1994 and retro. to Jan. 1, 1993.

Subd. 1 par (f) added chap 375/1993 § 2 retro. to Jan. 1, 1992

Subd. 1 par (g) amended chap 917/1994 § 1, eff. Aug. 2, 1994 and retro. to Jan. 1, 1993.

Subd. 1 par (g) added chap 375/1993 § 2 retro. to Jan. 1, 1992

Subd. 1 par (h) amended chap 917/1994 § 1, eff. Aug. 2, 1994 and retro. to Jan. 1, 1993.

Subd. 1 par (h) added chap 375/1993 § 2 retro. to Jan. 1, 1992

Subd. 1 par (i) amended chap 917/1994 § 1, eff. Aug. 2, 1994 and retro. to Jan. 1, 1993.

Subd. 1 par (i) added chap 375/1993 § 2 retro. to Jan. 1, 1992

Subd. 2 amended chap 375/1993 § 3 retro. to Jan. 1, 1992

Subd. 3 par (a) amended chap 375/1993 § 4 retro. to Jan. 1, 1992

Subd. 3 par (b) subpar 2-a added chap 375/1993 § 5 retro. to Jan. 1, 1992

Subd. 3 par (c) amended chap 375/1993 § 6 retro. to Jan. 1, 1992

Subd. 3 par (d) relettered chap 375/1993 § 8 retro. to Jan. 1, 1992. (formerly par (e))

Subd. 3 par (d) repealed chap 375/1993 § 7 retro. to Jan. 1, 1992

Subd. 3 par (d-1) relettered chap 375/1993 § 8 retro. to Jan. 1, 1992

Subd. 3 par (e) added chap 375/1993 § 9 retro. to Jan. 1, 1992.

Subd. 3 par (e) subpar. (1) amended chap 719/1994 § 2, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 3 par (f) amended chap 719/1994 § 3, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 3 par (f) added chap 375/1993 § 9 retro. to Jan. 1, 1992.

Subd. 3 par (g) so designated and amended chap 719/1994 § 40 eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993. [formerly par (h)]

Subd. 3 par (g) repealed chap 719/1994 § 4, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 3 par (g) added chap 375/1993 § 9 retro. to Jan. 1, 1992.

Subd. 3 par (h) so designated and amended chap 719/1994 § 5 eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993. [formerly par (i)]

Subd. 3 par (h) added chap 375/1993 § 9 retro. to Jan. 1, 1992.

Subd. 3 par (i) so designated and amended chap 719/1994 § 5 eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993. [formerly par (j)]

Subd. 3 par (i) added chap 375/1993 § 9 retro. to Jan. 1, 1992.

Subd. 3 par (j) added chap 375/1993 § 9 retro. to Jan. 1, 1992.

Subd. 4 amended chap 375/1993 § 10 retro. to Jan. 1, 1992

Subd. 4 par (c) open par amended chap 719/1994 § 6, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 4 par (d) open par amended chap 719/1994 § 7, eff. Aug. 2, 1994

and retroactive to Jan. 1, 1993.

Subd. 4 par (e) amended chap 719/1994 § 8, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 4 par (f) subpar (1) item (i) amended chap 125/2000 § 10, eff. July 11, 2000.

Subd. 4 par (f) subpar (1) item (iii) amended chap 719/1994 § 9, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 4 par (f) subpar (3) amended chap 255/2000 § 21, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 6 amended chap 375/1993 § 11 retro. to Jan. 1, 1992

Subd. 6 par (a) amended by chap 719/1994 § 38, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 10 amended chap 375/1993 § 12 retro. to Jan. 1, 1992

Subd. 11 added chap 255/2000 § 22, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

**FOOTNOTES**

13

[Footnote 13]: * There are 2 sections 13-191.

105 of 120 DOCUMENTS

Administrative Code of the City of New York



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

*NYC Administrative Code 13-192*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-192 Transit police14 superior officers' variable supplements fund.

1. As used in this section, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

(a) "Variable supplements board". The board of trustees provided for in subdivision three of this section.

(b) "Beneficiary". Any person who receives a retirement allowance by reason of having retired, on or after July first, nineteen hundred eighty-seven, for service (with credit for twenty or more years of service toward the minimum period) as a transit police member and as a transit police superior officer; provided, however, that where a person who held or holds a rank or position as a transit police superior officer, subsequently and on or after May first, nineteen hundred ninety-two became or becomes a transit police officer, and while a transit police officer, retired or retires for service under such circumstances that he or she would have qualified as a beneficiary under the provisions of paragraph (c) of subdivision one of section 13-191 of this title (other than the proviso thereof), but did not or does not qualify as a beneficiary under such paragraph (c) because he or she was or is disqualified by the terms of such proviso, such retiree shall nevertheless be deemed to be a beneficiary under the provisions of this section.

(c) "Variable supplement". Any sum authorized to be paid to a beneficiary pursuant to the provisions of this section.

(d) "Minimum period". The minimum period of credited service which a transit police member is required by law to perform in order to be eligible to retire for service with immediate payability of retirement allowance.

(e) "Transit police officer". A transit police member who, at the time as of which his or her status is to be determined, is not a transit police superior officer, as defined in subdivision eighty-four of section 13-101 of this title.

(f) "Guarantee obligor". (1) With respect to any TPSOVSF calendar year covered by a payment guarantee (as defined in paragraph (h) of this subdivision) or part of such a calendar year, for which calendar year or part thereof payment of variable supplements is an obligation of and guaranteed by the city pursuant to the applicable provisions of paragraphs (f), (g) and (h) of subdivision three of this section, the term "guarantee obligor" shall mean the city.

(2) With respect to any TPSOVSF calendar year covered by a payment guarantee or part of such a calendar year, for which calendar year or part thereof payment of variable supplements is an obligation of and guaranteed by a governmental entity pursuant to the applicable provisions of paragraphs (f), (g) and (h) of subdivision three of this section, the term "guarantee obligor" shall mean such governmental entity.

(g) "TPSOVSF calendar year not covered by a payment guarantee". Any calendar year beginning on or after January first, nineteen hundred ninety-three which year precedes the first calendar year in which a guarantee, by a guarantee obligor (as defined in paragraph (f) of this subdivision), of payment of variable supplements takes effect pursuant to the provisions of paragraph (f) or paragraph (g) of subdivision three of this section.

(h) "TPSOVSF calendar year covered by a payment guarantee". The calendar year in which a guarantee, by a guarantee obligor (as defined in paragraph (f) of this subdivision), of payment of variable supplements first takes effect pursuant to paragraph (f) or paragraph (g) of subdivision three of this section, and any succeeding calendar year.

2. (a) There is hereby established a fund, to be known as the transit police superior officers' variable supplements fund. Such fund shall consist of such monies as may be paid thereto by the retirement system, pursuant to the provisions of sections 13-193, 13-193.3 and 13-193.6 of this chapter and all other monies received by such fund from any other source pursuant to law.

(b) It is hereby declared by the legislature that the transit police superior officers' variable supplements fund shall not be, and shall not be construed to constitute, a pension or retirement system or fund, and that it shall function as a means whereby payments, not constituting a pension or retirement allowance, may be made in accordance with the provisions of this section, to eligible beneficiaries as a supplement to benefits received by them pursuant to this title. The legislature hereby reserves to the state and itself the right and power to amend, modify or repeal any or all of the provisions of this section.

3. (a) The transit police superior officers' variable supplements fund shall be administered by a board of trustees which shall, subject to applicable provisions of law, from time to time establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof.

(b) Such variable supplements board shall consist of:

(1) The representative of the mayor who is a member of the board of trustees of the retirement system, who shall be entitled to cast one vote. The mayor may, by instrument in writing filed in his or her office and with the variable supplements board, designate one or more members of his or her office to act in the place of such representative at meetings of the board, in the event of such representative's absence therefrom.

(2) The comptroller of the city, who shall be entitled to cast one vote. Any deputy comptroller authorized, pursuant to subdivision b of section ninety-four of the New York city charter, to act in the place of the comptroller as a member of the board of trustees of the retirement system, may be authorized by the comptroller, in accordance with the provisions of such subdivision, to act in the place of the comptroller as a member of the variable supplements board.

(2-a) The commissioner of finance, who shall be entitled to cast one vote. Such commissioner may, by instrument in writing filed in his or her office and with the variable supplements board, designate one or more members

of his or her office to act in his or her place at meetings of such board, in the event of such commissioner's absence therefrom.

(3) Two representatives of the transit police superior officers, designated by the recognized employee organizations representing such superior officers. Each such representative shall be entitled to cast one vote. Each such representative may at any time, by written authorization filed with the variable supplements board, authorize any other officer of such organizations to act in his or her place as a member of the board in the event of such designee's absence from any meeting thereof.

(c) Every act of the variable supplements board shall be by resolution which shall be adopted only by a vote of at least three-fifths of the whole number of votes authorized to be cast by all of the members of such board.

(d) The actuary appointed by the board of the retirement system shall be the technical advisor of the variable supplements board.

(d-1) The retirement system shall assign to the variable supplements board such number of clerical and other assistants as may be necessary for the performance of its functions.

(e) (1) As of October thirty-first, nineteen hundred ninety-four and as of October thirty-first of each succeeding TPSOVSF calendar year not covered by a payment guarantee (as defined in paragraph (g) of subdivision one of this section), the actuary referred to in paragraph (d) of this subdivision shall value the assets of the variable supplements fund, subject to the provisions of paragraph (j) of this subdivision, and make an estimate of the total amount of variable supplements which would be payable, pursuant to subdivision four of this section and sub-paragraph two of this paragraph, to beneficiaries on or about December fifteenth of such calendar year for which such valuation and estimate are made, if such actuary determines that the value of such assets, as of October thirty-first of such calendar year, is equal to or greater than such total amount of variable supplements.

(2) If such actuary determines that the value of such assets, as of October thirty-first of any such calendar year for which a valuation and estimate are required by subparagraph one of this paragraph, is equal to or greater than such estimated total amount of variable supplements which would be payable on or about December fifteenth of such calendar year, then the variable supplements which, upon a favorable determination of the actuary under this paragraph, are declared by subdivision four of this section to be payable to beneficiaries for such calendar year or a part thereof shall be paid by the variable supplements fund, in the applicable amounts prescribed by such subdivision four, to beneficiaries on or about December fifteenth of such calendar year.

(3) If such actuary determines that the value of such assets, as of October thirty-first of any such calendar year for which a valuation and estimate are required by subparagraph one of this paragraph, is less than such estimated total amount of variable supplements which would be payable on or about December fifteenth of such calendar year pursuant to a favorable determination of the actuary, then no beneficiary shall be entitled to receive any variable supplement for such calendar year or any part thereof and no variable supplement shall be paid to any beneficiary for such calendar year or any part thereof.

(4) In any case where, pursuant to the provisions of subparagraphs one and three of this paragraph, no variable supplements are payable for a calendar year or part thereof to any beneficiary, no variable supplements for such calendar year or part thereof shall at any time thereafter be payable and no beneficiary shall at any time thereafter be entitled to receive a variable supplement for such calendar year or part thereof.

(f) (1) As of October thirty-first, nineteen hundred ninety-four and as of October thirty-first of each succeeding calendar year up to and including the earlier of (i) the first TPSOVSF calendar year covered by a payment guarantee (as defined in paragraph (h) of subdivision one of this section) or (ii) the calendar year two thousand six, the actuary referred to in paragraph (d) of this subdivision shall value the assets of the variable supplements fund, subject to the provisions of paragraph (j) of this subdivision, and shall estimate the present value, as of such October thirty-first, of all

variable supplements which the variable supplements fund, under the provisions of subdivision four of this section, would be obligated to pay to beneficiaries with respect to the calendar year in which such October thirty-first occurs and all succeeding calendar years up to and including the calendar year two thousand six, if it were assumed that such variable supplements were payable with respect to all such calendar years occurring during the period beginning with the calendar year in which such October thirty-first occurs and extending to and including the calendar year two thousand six.

(2) If the value of such assets as of any October thirty-first is equal to or greater than the sum obtained by adding together such estimated present value of variable supplements as of such October thirty-first and a sum equal to fifteen per centum of the assets of the variable supplements fund as of such October thirty-first:

(i) variable supplements, as provided for in subdivision four of this section, shall be paid to beneficiaries for the calendar year in which such October thirty-first occurs and for each subsequent calendar year; and

(ii) paragraph (e) of this subdivision shall be inapplicable with respect to entitlement of beneficiaries to variable supplements for the calendar years referred to in item (i) of this subparagraph; and

(iii) subject to the provisions of paragraph (h) of this subdivision, payment of all variable supplements payable for the calendar years referred to in item (i) of this subparagraph is hereby made an obligation of the guarantee obligor (as defined in paragraph (f) of subdivision one of this section) and the guarantee obligor hereby guarantees that such supplements shall be paid to all beneficiaries for such calendar years.

(g) If a guarantee of payment of variable supplements, pursuant to paragraph (f) of this subdivision, does not take effect prior to the calendar year two thousand one, variable supplements, as provided for in subdivision four of this section, shall be paid pursuant to such subdivision four for the calendar year two thousand one and each subsequent calendar year. Subject to the provisions of paragraph (h) of this subdivision, such payment is hereby made an obligation of the guarantee obligor (as defined in paragraph (f) of subdivision one of this section) and the guarantee obligor hereby guarantees that such variable supplements shall be paid to all beneficiaries for such calendar years.

(h) (1) Subject to the provisions of subparagraph three of this paragraph, if, as of January first of the first TPSOVSF calendar year covered by a payment guarantee (as defined in paragraph (h) of subdivision one of this section), the city is legally obligated to pay (including payment by way of reimbursement) the salaries of the members of the uniformed transit police force, the city shall be the guarantee obligor referred to in the applicable provisions of paragraph (f) or paragraph (g) of this subdivision with respect to such first calendar year and all succeeding calendar years.

(2) If, as of January first of the first TPSOVSF calendar year covered by a payment guarantee (as defined in paragraph (h) of subdivision one of this section), the city is not legally obligated to pay (or reimburse for) the salaries of the members of the uniformed transit police force, the governmental entity which is legally obligated to pay such salaries as of such January first shall be the guarantee obligor referred to in the applicable provisions of paragraph (f) or paragraph (g) of this subdivision with respect to such first calendar year and all succeeding calendar years.

(3) If, after becoming a guarantee obligor pursuant to subparagraph one of this paragraph, the city ceases to be legally obligated to pay (or reimburse for) the salaries of the members of the uniformed transit police force: (i) any obligation and guarantee of the city, under the provisions of paragraph (f) or paragraph (g) of this subdivision, with respect to variable supplements payable for calendar years preceding the calendar year in which the city ceased to be so obligated to pay (or reimburse for) such salaries, shall continue in effect; and

(ii) any such obligation and guarantee of the city with respect to such variable supplements payable for the calendar year in which such obligation of the city to pay (or reimburse for) such salaries ceased shall be prorated as provided for in subparagraph four of this paragraph; and

(iii) the city shall have no obligation and shall make no guarantee with respect to payment of any such variable supplements payable for calendar years succeeding the calendar year in which such obligation of the city to pay (or reimburse for) such salaries ceased; and

(iv) there is hereby imposed on the governmental entity which, on the date on which the city ceases to be legally obligated to pay (or reimburse for) such salaries, becomes legally obligated to pay such salaries, a prorated obligation and guarantee, as provided for in subparagraph four of this paragraph, with respect to payment of such variable supplements payable for the calendar year in which such obligations of the city to pay (or reimburse for) such salaries ceased; and

(v) payment of such variable supplements payable for calendar years succeeding the calendar year in which such obligation of the city to pay (or reimburse for) such salaries ceased is hereby made the obligation of the governmental entity referred to in item (iv) of this subparagraph and such governmental entity hereby guarantees that such variable supplements shall be paid to all beneficiaries for such succeeding calendar years.

(4) Prorating of the obligation and guarantee of the city and such governmental entity, as provided for in items (ii) and (iv) of subparagraph three of this paragraph, for the calendar year referred to in such items, shall be in the ratio that the number of days of such calendar year during which the obligation and guarantee of each such obligor is in effect bears to the whole number of days in such calendar year.

(i) (1) Subject to the provisions of paragraph (j) of this subdivision, as of June thirtieth next succeeding the first TPSOVSF calendar year covered by a payment guarantee (as defined in paragraph (h) of subdivision one of this section) and as of each succeeding June thirtieth, the actuary referred to in paragraph (d) of subdivision one of this section shall make a valuation of the assets and liabilities of the variable supplements fund in accordance with the requirements of the succeeding subparagraphs of this paragraph. For the purposes of paragraph (i) of subdivision three of section 13-193.6 of this chapter, such valuation as of any such June thirtieth shall be the valuation for the TPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of subdivision three of such section 13-193.6) in which such June thirtieth occurs.

(2) The actuary shall base such annual valuation of liabilities only (i) upon the persons who, as of each June thirtieth, are beneficiaries and (ii) upon the persons who, being transit police officers and transit police superior officers in service as of such June thirtieth, may be actuarially expected to retire thereafter as transit police superior officers for service with twenty or more years of service creditable toward the minimum period.

(3) The liabilities determined in such valuation shall be equal to the actuarial present value of accumulated plan benefits. The actuarial assumptions used by the actuary in making such annual valuation of liabilities, including assumptions as to interest rate, mortality of beneficiaries and number of transit police officers and transit police superior officers in service as of June thirtieth who will retire for service as transit police superior officers with twenty or more years of service creditable toward the minimum period, shall be adopted by the variable supplements board on the recommendation of the actuary.

(j) For the purposes of the valuation of the assets of the variable supplements fund pursuant to paragraphs (e), (f) and (i) of this subdivision, such assets shall be valued at their fair market value as of the applicable date with respect to which such assets are required to be valued under the applicable provisions of such paragraphs.

(k) whenever variable supplements are payable to beneficiaries of the transit police superior officer's variable supplements fund pursuant to the provisions of this section, such payment, except as provided in paragraphs (f), (g) and (h) of this subdivision, shall not be an obligation of the city or the New York city transit authority or any other governmental entity described in such paragraph (h) and neither the city, nor the transit authority nor any such other governmental entity, except as provided for in such paragraphs (f), (g) and (h), shall guarantee such payment.

4. (a) The variable supplements fund shall pay variable supplements to beneficiaries in accordance with the

succeeding paragraphs of this subdivision.

(b) No variable supplements shall be payable to any beneficiary for any calendar year or part thereof preceding January first, nineteen hundred ninety-three.

(b-1) (1) Subject to the provisions of subparagraph two of this paragraph and paragraph (f) of this subdivision, the variable supplements fund shall pay, for the calendar year nineteen hundred ninety-three, to each beneficiary who retired on or after July first, nineteen hundred eighty-seven and prior to July first, nineteen hundred eighty-eight, or who, having been in service as a member of the uniformed transit police force and as a member of the retirement system on June thirtieth, nineteen hundred eighty-eight, retired for service prior to January first, nineteen hundred ninety-three, a variable supplement of five thousand dollars.

(2) Where any beneficiary referred to in subparagraph one of this paragraph died in such nineteen hundred ninety-three calendar year on or after February first thereof, the amount of variable supplement payable for that calendar year with respect to such deceased beneficiary shall be the product obtained by multiplying one-twelfth of five thousand dollars by the number of full calendar months such beneficiary lived in that calendar year prior to the month of his or her death.

(3) Payment of variable supplements as provided for in subparagraphs one and two of this paragraph shall be made within thirty days after the enactment of the act which added this paragraph.

(4) No variable supplements shall be payable by the variable supplements fund to any person for the nineteen hundred ninety-three calendar year other than the payments provided for by the preceding provisions of this subdivision.

(c) For calendar years succeeding December thirty-first, nineteen hundred ninety-three, the variable supplements fund, subject to the provisions of paragraphs (e), (f), (g) and (h) of subdivision three of this section, and provided any applicable conditions precedent to payability as prescribed by such provisions are satisfied, and subject to the provisions of paragraph (f) of this subdivision, shall pay to each beneficiary, who retired on or after July first, nineteen hundred eighty-seven and prior to July first, nineteen hundred eighty-eight, or who, having been in service as a member of the uniformed transit police force and as a member of the retirement system on June thirtieth, nineteen hundred eighty-eight, retired for service prior to January first, nineteen hundred ninety-four, variable supplements payments as follows:

(1) for each calendar year following calendar year nineteen hundred ninety-three, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about December fifteenth of such year as follows:

**[See tabular material in printed version]**

(2) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, nineteen hundred ninety-four), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided in the chart set forth in subparagraph one of this paragraph, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death.

(d) For calendar years succeeding December thirty-first, nineteen hundred ninety-three, the variable supplements fund, subject to the provisions of paragraphs (e), (f), (g) and (h) of subdivision three of this section and provided any applicable conditions precedent to payability under such provisions are satisfied, and subject to the provisions of paragraph (f) of this subdivision, shall pay to each person who, on June thirtieth, nineteen hundred eighty-eight, was actually employed as a member of the uniformed transit police force and as a member of the retirement system and who retired for service on or after January first, nineteen hundred ninety-four so as to become a beneficiary, variable supplements payments as follows: (1) for the calendar year of retirement, an amount calculated by multiplying

one-twelfth times the supplement applicable to the year of retirement, as provided for in the chart set forth in subparagraph one of paragraph (c) of this subdivision, by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(2) for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment equal to the supplement provided for with respect to each such calendar year as set forth in the chart in subparagraph one of paragraph (c) of this subdivision, which payment shall be made on or about December fifteenth of such year;

(3) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, nineteen hundred ninety-four), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided for in the chart set forth in subparagraph one of paragraph (c) of this subdivision, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death; and

(4) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs one and three of this paragraph shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(e) The variable supplements fund, subject to the provisions of paragraphs (e), (f), (g) and (h) of subdivision three of this section and provided any applicable conditions precedent to payability under such provisions are satisfied, and subject to the provisions of paragraph (f) of this subdivision, shall pay to each person who became or becomes actually employed as a member of the uniformed transit police force and a member of the retirement system on or after July first, nineteen hundred eighty-eight, and who retires for service so as to become a beneficiary, variable supplements payments as follows:

(1) for the calendar year of retirement, an amount calculated by multiplying one-twelfth times the sum of twenty-five hundred dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year.

(2) for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about December fifteenth of such year, as follows:

| CALENDAR YEAR OF ANNIVERSARY OF RETIREMENT (references hereinafter to "anniversary year" mean calendar year of anniversary) | SUPPLEMENT |
|---|---|
| First anniversary year | The sum of (1) a lower-based component equal to one-twelfth of the base sum of $2500 multiplied by the number of whole calendar months from and including the first month of such calendar year to and including the month in which the anniversary of the date of retirement occurs, and (2) a higher-based component equal to one-twelfth of the base sum of $3000 multiplied by the number of months remaining in such calendar year |
| Second anniversary year and each succeeding anniversary year to and including the nineteenth anniversary year | The sum of a lower-based com- ponent and a higher-based component computed pursuant to the formula, above for the first anniversary year, except that for each such anniversary year succeeding the first, the lower-based component shall be computed on a base sum $500 higher than the base sum required to be used in computing the lower-based component for the next preceding anniversary year and the higher-based component shall be computed on a base sum $500 higher than the base sum required to be used in computing the higher-based component for such next preceding anniversary year |

| | |
|---|---|
| Twentieth anniversary year and each succeeding anniversary year | $12,000 |

(3) for the calendar year of the beneficiary's death, an amount calculated in accordance with the formula for that year set forth in subparagraph two of this paragraph but prorated on the basis of the number of full calendar months the beneficiary lived during that year prior to the month of his or her death; and

(4) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs one and three of this paragraph shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(f) (1) (i) Subject to the provisions of items (ii), (iii) and (iv) of this subparagraph, on or after January first, nineteen hundred ninety-three, where a beneficiary is entitled to receive variable supplements payments pursuant to paragraph (b-1), paragraph (c), paragraph (d) or paragraph (e) of this subdivision, and that beneficiary is also entitled to receive a supplemental retirement allowance or cost-of-living adjustment pursuant to any other provision of law enacted on or after January first, nineteen hundred ninety-four (hereinafter referred to as "other supplemental retirement allowance"), the amount of such variable supplement payable for a calendar year or a part of such calendar year to such beneficiary shall be reduced by the amount of such other supplemental retirement allowance that is payable to such beneficiary to the extent that such other supplemental retirement allowance is attributable to the same calendar year or part of such calendar year.

(ii) For any beneficiary referred to in paragraph (b-1) or paragraph (c) or paragraph (d) of this subdivision, whose variable supplements payments are being reduced pursuant to item (i) of this subparagraph because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such item (i) shall cease as to such beneficiary on the later of (A) the first day of the month next following the month in which such beneficiary attains age sixty-two; or (B) January first, two thousand seven.

(iii) For any beneficiary referred to in paragraph (e) of this subdivision, whose variable supplements payments are being reduced pursuant to item (i) of this subparagraph because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such item (i) shall cease as to such beneficiary on the later of (A) the first day of the month following the month in which such beneficiary attains age sixty-two; or (B) the first day of the month next following the month in which the nineteenth anniversary of the retirement of such beneficiary occurs.

(iv) In any case where the reduction of variable supplements payments to a beneficiary has ceased pursuant to item (ii) or item (iii) of this subparagraph, that beneficiary, for the purpose of determining his or her eligibility for and the amount of any other supplemental retirement allowance, shall be deemed to have retired on the date of the cessation of such reduction specified in the applicable provisions of such item (ii) or item (iii).

(2) The legislature hereby declares that the variable supplements authorized by this section and the granting and receipt thereof:

(i) shall not create or constitute membership in a pension or retirement system and shall not create or constitute a contract with any beneficiary or with any transit police member; and

(ii) shall not constitute a pension or retirement allowance or benefit under the retirement system or otherwise.

(3) Except as otherwise provided in subdivision eleven of this section and in sections 13-193, 13-193.3 and 13-193.6 of this chapter, nothing contained in this section shall create or impose any obligation on the part of the retirement system, or the funds or monies thereof, or authorize such funds or monies to be appropriated or used for any payment under this section or for any purpose thereof.

(g) Beneficiaries shall be eligible to receive variable supplements pursuant to this section, notwithstanding any other provision of law to the contrary.

5. The transit police superior officers' variable supplements fund shall have the powers and privileges of a corporation and by its name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property held.

6. (a) (a) The members of the variable supplements board shall be the trustees of the monies received by or belonging to the transit police superior officers' variable supplements fund pursuant to this section and, subject to the provisions of paragraph (b) of this subdivision, shall have full power to invest same, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of such monies shall have been invested as well as of the proceeds of such investments and of any monies belonging to such fund.

(b) The members of the variable supplements board shall have the same investment powers and power to delegate such powers as are vested by the code and the retirement and social security law in the members of the board of trustees of the retirement system.

7. The variable supplements board shall publish annually in the City Record a report for the preceding year showing the assets of the transit police superior officers' variable supplements fund and a statement as to the accumulated cash and securities of such fund as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as the board may deem pertinent.

8. The comptroller shall be custodian of the monies and assets of the transit police superior officers' variable supplements fund. All such monies and assets included in such fund or which shall hereafter accrue to such fund shall be in his or her custody for the purposes of this section subject to the direction, control and approval of such board as to disposition, investment, management and report. All payments from such fund shall be made by the comptroller upon a voucher signed by the secretary of the variable supplements board.

9. Except as provided in this section, the trustees and employees assigned to the variable supplements board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment of the transit police superior officers' variable supplements fund or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board.

10. The superintendent of insurance may examine the affairs of the transit police superior officers' variable supplements fund with the same powers and jurisdiction as are applicable in the case of an examination of a life insurance company by the superintendent under article three of the insurance law. The transit police superior officers' variable supplements fund shall be subject to assessment for expenses pursuant to the provisions of section three hundred thirteen of the insurance law, but shall not be subject to assessment for expenses under any of the provisions of section three hundred thirty-two of the insurance law.

11. In the event that, for any calendar year covered by a payment guarantee, the assets of the variable supplements fund are not sufficient to pay benefits under this section for such year, an amount sufficient to pay such benefits shall be appropriated from the contingent reserve fund of the retirement system and transferred to the transit police superior officers' variable supplements fund.

**HISTORICAL NOTE**

Section added chap 844/1987 § 3

Subd. 1 pars (b), (c) amended chap 720/1994 § 5, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993

Subd. 1 pars (d)-(h) added chap 720/1994 § 6, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 2 amended chap 720/1994 § 7, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 2 par (a) amended chap 577/1992 § 19, eff. July 1, 1992

Subd. 3 par (a) amended chap 720/1994 § 8, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 3 par (b) subpar (2-a) added chap 720/1994 § 9, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 3 par (c) amended chap 720/1994 § 10, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 3 par (d) relettered chap 720/1994 § 12, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993. [formerly par (e)]

Subd. 3 par (d) repealed chap 720/1994 § 11, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 3 par (d-1) relettered chap 720/1994 § 12, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993. [formerly par (f)]

Subd. 3 pars (e), (f) added chap 720/1994 § 13, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 3 par (f) added chap 550/1989 § 1

Subd. 3 par (g) amended chap 255/2000 § 23, eff. eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 3 par (g) added chap 720/1999 § 13, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 3 pars (h)-(k) added chap 720/1994 § 13, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 4 amended chap 720/1994 § 14, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 4 par (b) subpar (3) amended chap 577/1992 § 20, eff. July 1, 1992

Subd. 4 par (f) subpar (1) item (i) amended chap 125/2000 § 11, eff. July 11, 2000.

Subd. 4 par (f) subpar (3) amended chap 255/2000 § 24, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 6 amended chap 577/1992 § 21, eff. July 1, 1992

Subd. 6 par (a) amended chap 720/1994 § 33, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 10 amended chap 720/1994 § 15, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 11 added chap 255/2000 § 25, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

**FOOTNOTES**

14

[Footnote 14]: * There are 2 sections 13-192.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-192*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-192 Housing police15 superior officers' variable supplements fund.

1. As used in this section, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

(a) "Variable supplements board". The board of trustees provided for in subdivision three of this section.

(b) "Beneficiary". Any person who receives a retirement allowance by reason of having retired, on or after July first, nineteen hundred eighty-seven, for service (with credit for twenty or more years of service toward the minimum period) as a housing police member and as a housing police superior officer, provided, however, that where a person who held or holds a rank of position as a housing police superior officer, subsequently and on or after May first, nineteen hundred ninety-two became or becomes a housing police officer, and while a housing police officer, retired or retires for service under such circumstances that he or she would have qualified as a beneficiary under the provisions of paragraph (c) of subdivision one of section 13-191 of this title (other than the proviso thereof), but did not or does not qualify as a beneficiary under such paragraph (c) because he or she was or is disqualified by the terms of such proviso, such retiree shall nevertheless be deemed to be a beneficiary under the provisions of this section.

(c) "Variable supplement". Any sum authorized to be paid to a beneficiary pursuant to the provisions of this section.

(d) "Minimum period". The minimum period of credited service which a housing police member is required by law to perform in order to be eligible to retire for service with immediate payability of retirement allowance.

(e) "Housing police officer". A housing police member who, at the time as of which his or her status is to be determined, is not a housing police superior officer, as defined in subdivision eighty-four of section 13-101 of this chapter.

(f) "HPSOVSF calendar year not covered by a payment guarantee". Any calendar year beginning on or after January first, nineteen hundred ninety-three, which year precedes the first calendar year in which a guarantee of payment of variable supplements takes effect pursuant to the provisions of paragraph (f) or paragraph (g) of subdivision three of this section.

(g) "HPSOVSF calendar year covered by a payment guarantee". The calendar year in which a guarantee of payment of variable supplements first takes effect pursuant to paragraph (f) or paragraph (g) of subdivision three of this section, and any succeeding calendar year.

2. (a) There is hereby established a fund, to be known as the housing police superior officers' variable supplements fund. Such fund shall consist of such monies as may be paid thereto by the retirement system, pursuant to the provisions of sections 13-193, 13-193.5 and 13-193.7 of this chapter and all other monies received by such fund from any other source pursuant to law.

(b) It is hereby declared by the legislature that the housing police superior officers' variable supplements fund shall not be, and shall not be construed to constitute, a pension or retirement system or fund, and that it shall function as a means whereby payments, not constituting a pension or retirement allowance, may be made in accordance with the provisions of this section, to eligible beneficiaries as a supplement to benefits received by them pursuant to this title. The legislature hereby reserves to the state and itself the right and power to amend, modify or repeal any or all of the provisions of this section.

3. (a) The housing police superior officers' variable supplements fund shall be administered by a board of trustees which shall, subject to applicable provisions of law, from time to time establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof.

(b) Such variable supplements board shall consist of:

(1) The representative of the mayor who is a member of the board of trustees of the retirement system, who shall be entitled to cast one vote. The mayor may, by instrument in writing filed in his office and with the variable supplements board, designate one or more members of his office to act in the place of such representative at meetings of the board, in the event of such representative's absence therefrom.

(2) The comptroller of the city, who shall be entitled to cast one vote. Any deputy comptroller authorized, pursuant to subdivision b of section ninety-four of the New York city charter, to act in the place of the comptroller as a member of the board of trustees of the retirement system, may be authorized by the comptroller, in accordance with the provisions of such subdivision, to act in the place of the comptroller as a member of the variable supplements board.

(2-a) The commissioner of finance, who shall be entitled to cast one vote. Such commissioner may, by instrument in writing filed in his or her office and with the variable supplements board, designate one or more members of his or her office to act in his or her place at meetings of such board, in the event of such commissioner's absence therefrom.

(3) Two representatives of the housing police superior officers, designated by the recognized employee organizations representing such superior officers. Each such representative shall be entitled to cast one vote. Each such representative may at any time, by written authorization filed with the variable supplements board, authorize any other officer of such organizations to act in his place as a member of the board in the event of such designee's absence from any meeting thereof.

(c) Every act of the variable supplements board shall be by resolution which shall be adopted only by a vote of at least three-fifths of the whole number of votes authorized to be cast by all of the members of such board.

(d) The actuary appointed by the board of the retirement system shall be the technical advisor of the variable supplements board.

(d-1) The retirement system shall assign to the variable supplements board such number of clerical and other assistants as may be necessary for the performance of its functions.

(e) (1) As of October thirty-first, nineteen hundred ninety-four and as of October thirty-first of each succeeding HPSOVSF calendar year not covered by a payment guarantee (as defined in paragraph (f) of subdivision one of this section), the actuary referred to in paragraph (d) of this subdivision shall value the assets of the variable supplements fund, subject to the provisions of paragraph (i) of this subdivision, and make an estimate of the total amount of variable supplements which would be payable, pursuant to subdivision four of this section and subparagraph two of this paragraph, to beneficiaries on or about December fifteenth of such calendar year for which such valuation and estimate are made, if such actuary determines that the value of such assets, as of October thirty-first of such calendar year, is equal to or greater than such total amount of variable supplements.

(2) If such actuary determines that the value of such assets, as of October thirty-first of any such calendar year for which a valuation and estimate are required by subparagraph one of this paragraph, is equal to or greater than such estimated total amount of variable supplements which would be payable on or about December fifteenth of such calendar year, then the variable supplements which, upon a favorable determination of the actuary under this paragraph (e), are declared by subdivision four of this section to be payable to beneficiaries for such calendar year or a part thereof shall be paid by the variable supplements fund, in the applicable amounts prescribed by such subdivision four, to beneficiaries on or about December fifteenth of such calendar year.

(3) If such actuary determines that the value of such assets, as of October thirty-first of any such calendar year for which a valuation and estimate are required by subparagraph one of this paragraph, is less than such estimated total amount of variable supplements which would be payable on or about December fifteenth of such calendar year pursuant to a favorable determination of the actuary, then no beneficiary shall be entitled to receive any variable supplement for such calendar year or any part thereof and no variable supplement shall be paid to any beneficiary for such calendar year or any part thereof.

(4) In any case where, pursuant to the provisions of subparagraphs one and three of this paragraph, no variable supplements are payable for a calendar year or part thereof to any beneficiary, no variable supplements for such calendar year or part thereof shall at any time thereafter be payable and no beneficiary shall at any time thereafter be entitled to receive a variable supplement for such calendar year or part thereof.

(f) (1) As of October thirty-first, nineteen hundred ninety-four and as of October thirty-first of each succeeding calendar year up to and including the earlier of (i) the first HPSOVSF calendar year covered by a payment guarantee (as defined in paragraph (g) of subdivision one of this section) or (ii) the calendar year two thousand six, the actuary referred to in paragraph (d) of this subdivision shall value the assets of the variable supplements fund, subject to the provisions of paragraph (i) of this subdivision, and shall estimate the present value, as of such October thirty-first, of all variable supplements which the variable supplements fund, under the provisions of subdivision four of this section, would be obligated to pay to beneficiaries with respect to the calendar year in which such October thirty-first occurs and all succeeding calendar years up to and including the calendar year two thousand six, if it were assumed that such variable supplements were payable with respect to all such calendar years occurring during the period beginning with the calendar year in which such October thirty-first occurs and extending to and including the calendar year two thousand six.

(2) If the value of such assets as of any October thirty-first is equal to or greater than the sum obtained by adding

together such estimated present value of variable supplements as of such October thirty-first and a sum equal to fifteen per centum of the assets of the variable supplements fund as of such October thirty-first:

(i) variable supplements, as provided for in subdivision four of this section, shall be paid to beneficiaries for the calendar year in which such October thirty-first occurs and for each subsequent calendar year; and

(ii) paragraph (e) of this subdivision shall be inapplicable with respect to entitlement of beneficiaries to variable supplements for the calendar years referred to in item (i) of this subparagraph; and

(iii) payment of all variable supplements payable for the calendar years referred to in item (i) of this subparagraph is hereby made an obligation of the city and the city hereby guarantees that such supplements shall be paid to all beneficiaries for such calendar years.

(g) If a guarantee of payment of variable supplements, pursuant to paragraph (f) of this subdivision, does not take effect prior to the calendar year two thousand one, variable supplements, as provided for in subdivision four of this section, shall be paid pursuant to such subdivision four for the calendar year two thousand one and each subsequent calendar year. Such payment is hereby made an obligation of the city and the city hereby guarantees that such variable supplements shall be paid to all beneficiaries for such calendar years.

(h) (1) Subject to the provisions of paragraph (i) of this subdivision, as of June thirtieth next succeeding the first HPSOVSF calendar year covered by a payment guarantee (as defined in paragraph (g) of subdivision one of this section) and as of each succeeding June thirtieth, the actuary referred to in paragraph (d) of subdivision three of this section shall make a valuation of the assets and liabilities of the variable supplements fund in accordance with the requirements of the succeeding subparagraphs of this paragraph. For the purposes of paragraph (i) of subdivision three of section 13-193.7 of this chapter, such valuation as of any such June thirtieth shall be the valuation for the HPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of subdivision three of such section 13-193.7) in which such June thirtieth occurs.

(2) The actuary shall base such annual valuation of liabilities only (i) upon the persons who, as of each June thirtieth, are beneficiaries and (ii) upon the persons who, being housing police officers and housing police superior officers in service as of such June thirtieth, may be actuarially expected to retire thereafter as housing police superior officers for service with twenty or more years of service creditable toward the minimum period.

(3) The liabilities determined in such valuation shall be equal to the actuarial present value of accumulated plan benefits. The actuarial assumptions used by the actuary in making such annual valuation of liabilities, including assumptions as to interest rate, mortality of beneficiaries and number of housing police officers and housing police superior officers in service as of June thirtieth who will retire for service as housing police superior officers with twenty or more years of service creditable toward the minimum period, shall be adopted by the variable supplements board on the recommendation of the actuary.

(i) For the purposes of the valuation of the assets of the variable supplements fund pursuant to paragraphs (e), (f) and (h) of this subdivision, such assets shall be valued at their fair market value as of the applicable date with respect to which such assets are required to be valued under the applicable provisions of such paragraphs.

(j) Whenever variable supplements are payable to beneficiaries of the housing police superior officers' variable supplements fund pursuant to the provisions of this section, such payment, except as provided in paragraphs (f) and (g) of this subdivision, shall not be an obligation of the city and the city, except as provided for in such paragraphs (f) and (g), shall not guarantee such payment.

4. (a) The variable supplements fund shall pay variable supplements to beneficiaries in accordance with the succeeding paragraphs of this subdivision.

(b) No variable supplements shall be payable to any beneficiary for any calendar year or part thereof preceding January first, nineteen hundred ninety-three.

(b-1) (1) Subject to the provisions of subparagraph two of this paragraph and paragraph (f) of this subdivision, the variable supplements fund shall pay, for the calendar year nineteen hundred ninety-three, to each beneficiary who retired on or after July first, nineteen hundred eighty-seven and prior to July first, nineteen hundred eighty-eight, or who, having been in service as a member of the uniformed housing police force and as a member of the retirement system on June thirtieth, nineteen hundred eighty-eight, retired for service prior to January first, nineteen hundred ninety-three, a variable supplement of five thousand dollars.

(2) Where any beneficiary referred to in subparagraph one of this paragraph died in such nineteen hundred ninety-three calendar year on or after February first thereof, the amount of variable supplement payable for that calendar year with respect to such deceased beneficiary shall be the product obtained by multiplying one-twelfth of five thousand dollars by the number of full calendar months such beneficiary lived in that calendar year prior to the month of his or her death.

(3) Payment of variable supplements as provided for in subparagraphs one and two of this paragraph shall be made within thirty days after the date of enactment of the act which added this paragraph (b-1).

(4) No variable supplements shall be payable by the variable supplements fund to any person for the nineteen hundred ninety-three calendar year other than the payments provided for by the preceding provisions of this paragraph.

(c) For calendar years succeeding December thirty-first, nineteen hundred ninety-three, the variable supplements fund, subject to the provisions of paragraphs (e), (f) and (g) of subdivision three of this section, and provided any applicable conditions precedent to payability as prescribed by such provisions are satisfied, and subject to the provisions of paragraph (f) of this subdivision, shall pay to each beneficiary, who retired on or after July first, nineteen hundred eighty-seven and prior to July first, nineteen hundred eighty-eight, or who, having been in service as a member of the housing police service and as a member of the retirement system on June thirtieth, nineteen hundred eighty-eight, retired for service prior to January first, nineteen hundred ninety-four, variable supplements payments as follows:

(1) for each calendar year following calendar year nineteen hundred ninety-three, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about December fifteenth of such year, as follows:

**[See tabular material in printed version]**

(2) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, nineteen hundred ninety-four), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided in the chart set forth in subparagraph one of this paragraph (c), by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death.

(d) for calendar years succeeding December thirty-first, nineteen hundred ninety-three, the variable supplements fund, subject to the provisions of paragraphs (e), (f) and (g) of subdivision three of this section and provided any applicable conditions precedent to payability under such provisions are satisfied, and subject to the provisions of paragraph (f) of this subdivision, shall pay to each person who, on June thirtieth, nineteen hundred eighty-eight, was actually employed as a member of the housing police service and as a member of the retirement system and who retired for service on or after January first, nineteen hundred ninety-four so as to become a beneficiary, variable supplements payments as follows:

(1) for the calendar year of retirement, an amount calculated by multiplying one-twelfth times the supplement applicable to the year of retirement, as provided for in the chart set forth in subparagraph one of paragraph (c) of this subdivision, by the number of calendar months elapsing from and including the month next following the month of

retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(2) for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment equal to the supplement provided for with respect to each such calendar year as set forth in the chart in subparagraph one of such paragraph (c), which payment shall be made on or about December fifteenth of such year;

(3) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, nineteen hundred ninety-four), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided for in the chart set forth in subparagraph one of such paragraph (c), by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death; and

(4) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs one and three of this paragraph shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(e) The variable supplements fund, subject to the provisions of paragraphs (e), (f) and (g) of subdivision three of this section and provided any applicable conditions precedent to payability under such provisions are satisfied, and subject to the provisions of paragraph (f) of this subdivision, shall pay to each person who became or becomes actually employed as a member of the housing police service and a member of the retirement system on or after July first, nineteen hundred eighty-eight, and who retires for service so as to become a beneficiary, variable supplements payments as follows:

(1) for the calendar year of retirement, an amount calculated by multiplying one-twelfth times the sum of twenty-five hundred dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(2) for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about December fifteenth of such year, as follows:

| CALENDAR YEAR OF ANNIVERSARY OF RETIREMENT (references hereinafter to "anniversary year" mean calendar year of anniversary) | SUPPLEMENT |
|---|---|
| First anniversary year | The sum of (1) a lower-based component equal to one-twelfth of the base sum of $2,500 multiplied by the number of whole calendar months from and including the first month of such calendar year to and including the month in which the anniversary of the date of retirement occurs, and (2) a higher-based component equal to one-twelfth of the base sum of $3,000 multiplied by the number of months remaining in such calendar year |
| Second anniversary year and each succeeding anniversary year to and including the nineteenth anniversary year | The sum of a lower-based com- ponent and higher-based component computed pursuant to the formula, above, for the first anniversary year, except that for each such anniversary year succeeding the first, the lower-based component shall be computed on a base sum $500 higher than the base sum required to be used in computing the lower-based component for the next preceding anniversary year and the higher-based component shall be computed on a base sum $500 higher than the base sum required to be used in computing the higher-based component for such next preceding anniversary year |
| Twentieth anniversary year and each succeeding anniversary year | $12,000 |

(3) for the calendar year of the beneficiary's death, an amount calculated in accordance with the formula for that year set forth in subparagraph two of this paragraph (e) but prorated on the basis of the number of full calendar months the beneficiary lived during that year prior to the month of his or her death; and

(4) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs one and three above shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(f) (1) (i) Subject to the provisions of items (ii), (iii) and (iv) of this subparagraph, on or after January first, nineteen hundred ninety-three, where a beneficiary is entitled to receive variable supplements payments pursuant to paragraph (b-1), paragraph (c), paragraph (d) or paragraph (e) of this subdivision, and that beneficiary is also entitled to receive a supplemental retirement allowance or cost-of-living adjustment pursuant to any other provision of law enacted on or after January first, nineteen hundred ninety-four (hereinafter referred to as "other supplemental retirement allowance"), the amount of such variable supplement payable for a calendar year or a part of such calendar year to such beneficiary shall be reduced by the amount of such other supplemental retirement allowance that is payable to such beneficiary to the extent that such other supplemental retirement allowance is attributable to the same calendar year or part of such calendar year.

(ii) For any beneficiary referred to in paragraph (b-1) or paragraph (c) or paragraph (d) of this subdivision, whose variable supplements payments are being reduced pursuant to item (i) of this subparagraph one because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such item (i) shall cease as to such beneficiary on the later of (A) the first day of the month next following the month in which such beneficiary attains age sixty-two; or (B) January first, two thousand seven.

(iii) For any beneficiary referred to in paragraph (e) of this subdivision, whose variable supplements payments are being reduced pursuant to item (i) of this subparagraph one because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such item (i) shall cease as to such beneficiary on the later of (A) the first day of the month following the month in which such beneficiary attains age sixty-two; or (B) the first day of the month next following the month in which the nineteenth anniversary of the retirement of such beneficiary occurs.

(iv) In any case where the reduction of variable supplements payments to a beneficiary has ceased pursuant to item (ii) or item (iii) of this subparagraph one, that beneficiary, for the purpose of determining his or her eligibility for and the amount of any other supplemental retirement allowance, shall be deemed to have retired on the date of the cessation of such reduction specified in the applicable provisions of such item (ii) or item (iii).

(2) The legislature hereby declares that the variable supplements authorized by this section and the granting and receipt thereof:

(i) shall not create or constitute membership in a pension or retirement system and shall not create or constitute a contract with any beneficiary or with any housing police member; and

(ii) shall not constitute a pension or retirement allowance or benefit under the retirement system or otherwise.

(3) Except as otherwise provided in subdivision eleven of this section and in sections 13-193, 13-193.5 and 13-193.7 of this chapter, nothing contained in this section shall create or impose any obligation on the part of the retirement system, or the funds or monies thereof, or authorize such funds or monies to be appropriated or used for any payment under this section or for any purpose thereof.

(g) Beneficiaries shall be eligible to receive variable supplements pursuant to this section, notwithstanding any other provision of law to the contrary.

5. The housing police superior officers' variable supplements fund shall have the powers and privileges of a corporation and by its name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property held.

6. (a) The members of the variable supplements board shall be the trustees of the monies received by or belonging to the housing police superior officers' variable supplements fund pursuant to this section and, subject to the provisions of paragraph (b) of this subdivision, shall have full power to invest same, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of such monies shall have been invested as well as of the proceeds of such investments and of any monies belonging to such fund.

(b) The members of the variable supplements board shall have the same investment powers and power to delegate such powers as are vested by the code and the retirement and social security law in the members of the board of trustees of the retirement system.

7. The variable supplements board shall publish annually in the City Record a report for the preceding year showing the assets of the housing police superior officers' variable supplements fund and a statement as to the accumulated cash and securities of such fund as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as the board may deem pertinent.

8. The comptroller shall be custodian of the monies and assets of the housing police superior officers' variable supplements fund. All such monies and assets included in such fund or which shall hereafter accrue to such fund shall be in his custody for the purposes of this section subject to the direction, control and approval of such board as to disposition, investment, management and report. All payments from such fund shall be made by the comptroller upon a voucher signed by the secretary of the variable supplements board.

9. Except as provided in this section, the trustees and employees assigned to the variable supplements board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment of the housing police superior officers' variable supplements fund or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board.

10. The superintendent of insurance may examine the affairs of the housing police superior officers' variable supplements fund with the same powers and jurisdiction as are applicable in the case of an examination of a life insurance company by the superintendent under article three of the insurance law. The housing police superior officers' variable supplements fund shall be subject to assessment for expenses pursuant to the provisions of section three hundred thirteen of the insurance law, but shall not be subject to assessment for expenses under any of the provisions of section three hundred thirty-two of the insurance law.

11. In the event that, for any calendar year covered by a payment guarantee, the assets of the variable supplements fund are not sufficient to pay benefits under this section for such year, an amount sufficient to pay such benefits shall be appropriated from the contingent reserve fund of the retirement system and transferred to the housing police superior officers' variable supplements fund.

**HISTORICAL NOTE**

Section added chap 846/1987 § 3

Subd. 1 pars (b), (c) amended chap 719/1994 § 10, eff. Aug. 2, 1994 and

retroactive to Jan 1, 1993.

Subd. 1 pars (d)-(g) added chap 719/1994 § 11, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 2 amended chap 719/1994 § 12, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 2 par (a) amended chap 375/1993 § 19 retro. to Jan. 1, 1992

Subd. 3 par (a) amended chap 719/1994 § 13, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 3 par (b) subpar (2-a) added chap 719/1994 § 14, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 3 par (c) amended chap 719/1994 § 15, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 3 par (d) relettered chap 719/1994 § 17, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993. [formerly par (e)]

Subd. 3 par (d) repealed chap 719/1994 § 16, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 3 par (d-1) relettered chap 719/1994 § 17, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993. [formerly par (f)]

Subd. 3 pars (e), (f) added chap 719/1994 § 18, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 3 par (g) amended chap 255/2000 § 26, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 3 par (g) added chap 719/1994 § 18, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 3 pars (h)-(j) added chap 719/1994 § 18, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 4 amended chap 719/1994 § 19, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 4 par (b) subpar (3) amended chap 375/1993 § 20 retro. to Jan. 1, 1992

Subd. 4 par (f) subpar (1) item (i) amended chap 125/2000 § 12, eff. July 11, 2000.

Subd. 4 par (f) subpar (3) amended chap 255/2000 § 27, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 6 amended chap 375/1993 § 21 retro. to Jan. 1, 1992

Subd. 6 par (a) amended chap 719/1994 § 39, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 10 amended chap 719/1994 § 20, eff. Aug. 2, 1994 and retroactive to Jan 1, 1993.

Subd. 10 par (b) amended chap 375/1993 § 22 retro. to Jan. 1, 1992

Subd. 11 added chap 255/2000 § 28, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

**FOOTNOTES**

15

[Footnote 15]: * There are 2 sections 13-192.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-193*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-193 Payments16 to transit police variable supplements funds.

1. As used in this section, the following terms shall mean and include:

(a) "Base fiscal year". Any fiscal year of the city beginning on or after July first, nineteen hundred eighty-seven and ending on or before June thirtieth of the first TPOVSF calendar year covered by a payment guarantee (as defined in paragraph (g) of this subdivision), with respect to which fiscal year a determination is required to be made as to whether the retirement system is required to make a payment, pursuant to the provisions of this section, to the transit police officer's variable supplements fund and the transit police superior officers' variable supplements fund.

(b) "Current fiscal year". The fiscal year of the city next succeeding the base fiscal year.

(c) "Transferable earnings". Subject to the provisions of section 13-193.1 of this chapter, the total amount obtained in a base fiscal year with respect to the New York city employees' retirement system by following the procedure described in paragraph twelve of subdivision a of section 13-232 of this title.

(d) "Amount of assets of the retirement system". With respect to any base fiscal year, the aggregate amount of all assets of the retirement system on June thirtieth of such fiscal year.

(e) "Amount of transit police assets". The amount obtained by multiplying the total assets of the retirement system as of June thirtieth of such base fiscal year; by (i) the total salaries of transit police members of the retirement system as of such June thirtieth and dividing the product by (ii) the total salaries of members of the retirement system as of such June thirtieth.

(f) "Allocation to the transit police variable supplements funds". With respect to any base fiscal year, the amount obtained: (i) by multiplying the transferable earnings, if any, with respect to such base fiscal year by the amount of transit police assets with respect to such base fiscal year; and

(ii) by dividing the amount computed pursuant to subparagraph (i) of this paragraph by the amount of assets of the retirement system with respect to such base fiscal year.

(g) "TPOVSF calendar year covered by a payment guarantee". The calendar year in which a guarantee, by a guarantee obligor (as defined in paragraph (g) of subdivision one of section 13-191 of this chapter (relating to the transit police officer's variable supplements fund)), of payment of variable supplements first takes effect pursuant to paragraph (f) or paragraph (g) of subdivision three of section 13-191 of this chapter, and any succeeding calendar year.

(h) "TPOVSF basis fiscal year related to a payment guarantee". Any fiscal year of the city beginning on or after July first of the first TPOVSF calendar year covered by a payment guarantee (as defined in paragraph (g) of this subdivision).

(i) "TPSOVSF calendar year covered by a payment guarantee". The calendar year in which a guarantee, by a guarantee obligor (as defined in paragraph (f) of subdivision one of section 13-192 of this chapter (relating to the transit police superior officers' variable supplements fund)**,20 of payment of variable supplements first take effect pursuant to paragraph (f) or paragraph (g) of subdivision three of section 13-192 of this chapter, and any succeeding calendar year.

(j) "TPSOVSF basis fiscal year related to a payment guarantee". Any fiscal year of the city beginning on or after July first of the first TPSOVSF calendar year covered by a payment guarantee (as defined in paragraph (i) of this subdivision).

2. As soon as practicable after the close of each base fiscal year, but not later than August thirty-first of the current fiscal year, the board of the retirement system shall:

(a) determine, in the manner provided in paragraph (f) of subdivision one of this section, whether there is an allocation to the transit police variable supplements funds with respect to such base fiscal year; and

(b) the total contributions made to the retirement system, with respect to such base fiscal year, on behalf of all transit police members who are police officers as of the last day of such base fiscal year; and

(c) the total contributions made to the retirement system, with respect to such base fiscal year, on behalf of all transit police members who are transit police superior officers, as of such last day.

3. (a) If there be an allocation to the transit police variable supplements funds with respect to the base fiscal year, determined as hereinabove provided, such allocation shall be divided into a transit police officer's variable supplements fund share and a transit police superior officers' variable supplements fund share in the ratio that the total contributions made to the retirement system with respect to such base fiscal year on behalf of transit police members who are transit police officers bears to the total contributions made to the retirement system with respect to such base fiscal year on behalf of transit police members who are transit police superior officers, as computed for such base fiscal year pursuant to the provisions of paragraphs (b) and (c) of subdivision two of this section.

(b) On or before August thirty-first of the current fiscal year, the retirement system shall pay from the contingent reserve fund to the transit police officer's variable supplements fund and the transit police superior officers' variable supplements fund their respective shares of such allocation to the transit police variable supplements funds, as such shares are computed pursuant to paragraph (a) of this subdivision.

4. The determination as to whether there are transferable earnings with respect to each base fiscal year (as

defined in paragraph (a) of subdivision one of this section), and if there are such transferable earnings, the amount thereof, shall be made as follows:

(a) for the nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year, such determination shall be made pursuant to the preceding subdivisions of this section;

(b) for the nineteen hundred eighty-eight-nineteen hundred eighty-nine and nineteen hundred eighty-nine-nineteen hundred ninety base fiscal years, such determination shall be made pursuant to the preceding subdivisions of this section, as modified by the provisions of subdivisions one through five, inclusive, of section 13-193.1 of this chapter, as such subdivisions one through five were in effect during such base fiscal years;

(c) for the nineteen hundred ninety-nineteen hundred ninety-one base fiscal year and each succeeding base fiscal year to and including the last base fiscal year (as defined in paragraph (a) of subdivision one of this section), such determination shall be made pursuant to the preceding subdivisions of this section and subdivision six of section 13-193.1 of this chapter; and

(d) for the purpose of applying subdivision six of such section 13-193.1 pursuant to the provisions of paragraph (c) of this subdivision, such subdivision six shall be deemed to refer only to the base fiscal years mentioned in such paragraph (c).

5. The preceding subdivisions of this section shall be inapplicable to determination of any and all rights of the transit police officer's variable supplements fund and of the transit police superior officers' variable supplements fund to any payments from the retirement system derived from or based on investment earnings of the retirement system in any fiscal year of the city commencing on or after July first of the first TPOVSF calendar year covered by a payment guarantee (as defined in paragraph (g) of subdivision one of this section).

6. The determination as to whether the retirement system is required to pay any monies to the transit police officer's variable supplements fund with respect to all TPOVSF basis fiscal years related to a payment guarantee (as defined in paragraph (h) of subdivision one of this section), and if any such monies are so payable, the amount thereof, shall be made pursuant to section 13-193.2 of this chapter.

7. (a) The determination as to whether the retirement system is required to pay any monies to the transit police superior officers' variable supplements fund with respect to the fiscal years of the city occurring during the period beginning on July first of the first TPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (h) of subdivision one of this section) and ending on June thirtieth next preceding the first TPSOVSF basis fiscal year related to a payment guarantee (as defined in such paragraph (j), and if any such monies are so payable, the amount thereof, shall be made pursuant to section 13-193.3 of this chapter.

(b) The determination as to whether the retirement system is required to pay any monies to the transit police superior officers' variable supplements fund with respect to all TPSOVSF basis fiscal years related to a payment guarantee (as defined in such paragraph (j)), and if any such monies are so payable, the amount thereof, shall be made pursuant to section 13-193.6 of this chapter.

**HISTORICAL NOTE**

Section added chap 844/1987 § 5

Subd. 1 par (a) amended chap 720/1994 § 16, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 1 par (a) amended chap 577/1992 § 13, eff. July 1, 1992

Subd. 1 par par (c) amended chap 581/1989 § 87

Subd. 1 par (e) amended chap 720/1994 § 16, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 1 par (g) amended chap 720/1994 § 16, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 1 par (g) added chap 577/1992 § 14, eff. July 1, 1992

Subd. 1 par (h) amended chap 720/1994 § 16, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 1 par (h) added chap 577/1992 § 14, eff. July 1, 1992

Subd. 1 par (i) amended chap 720/1994 § 17, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 1 par (j) amended chap 720/1994 § 17, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subds. 4-7 amended chap 720/1994 § 18 eff. Aug 2, 1994 and

retroactive to Jan. 1, 1993.

Subds. 4-7 added chap 577/1992 § 15, eff. July 1, 1992

**FOOTNOTES**

16

[Footnote 16]: * There are 2 sections 13-193.

20

[Footnote 20]: ** So in original. (closing parenthesis inadvertently omitted).



Administrative Code of the City of New York



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

*NYC Administrative Code 13-193*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-193 Payments17 to housing police variable supplements funds.

1. As used in this section, the following terms shall mean and include:

(a) "Base fiscal year". Any fiscal year of the city beginning on or after July first, nineteen hundred eighty-seven and ending on or before June thirtieth, nineteen hundred ninety-four.

(b) "Current fiscal year". The fiscal year of the city next succeeding the base fiscal year.

(c) "Transferable earnings". Subject to the provisions of section 13-193.1 of this chapter, the total amount obtained in a base fiscal year with respect to the New York city employees' retirement system by following the procedure described in paragraph twelve of subdivision a of section 13-232 of this title.

(d) "Amount of assets of the retirement system". With respect to any base fiscal year, the aggregate amount of all assets of the retirement system on June thirtieth of such fiscal year.

(e) "Amount of housing police assets". The amount obtained by multiplying the total assets of the retirement system as of June thirtieth of such base year; by (i) the total salaries of housing police members of the retirement system as of such June thirtieth and dividing the product by (ii) the total salaries of members of the retirement system as of such June thirtieth.

(f) "Allocation to the housing police variable supplements funds". With respect to any base fiscal year, the amount obtained: (i) by multiplying the transferable earnings, if any, with respect to such base fiscal year by the

amount of housing police assets with respect to such base fiscal year; and

(ii) by dividing the amount computed pursuant to subparagraph (i) of this paragraph by the amount of assets of the retirement system with respect to such base fiscal year.

(g) "HPOVSF calendar year covered by a payment guarantee". The calendar year nineteen hundred ninety-four and any succeeding calendar year.

(h) "HPOVSF basis fiscal year related to a payment guarantee". Any fiscal year of the city beginning on or after July first of the first HPOVSF calendar year covered by a payment guarantee (as defined in paragraph (g) of this subdivision).

(i) "HPSOVSF calendar year covered by a payment guarantee". The calendar year in which a guarantee by the city of payment of variable supplements first take effect pursuant to paragraph (f) or paragraph (g) of subdivision three of section 13-192 of this chapter, and any succeeding calendar year.

(j) "HPSOVSF basis fiscal year related to a payment guarantee". Any fiscal year of the city beginning on or after July first of the first HPSOVSF calendar year covered by a payment guarantee (as defined in paragraph (i) of this subdivision).

2. As soon as practicable after the close of each base fiscal year, but not later than August thirty-first of the current fiscal year, the board of the retirement system shall:

(a) determine, in the manner provided in paragraph (f) of subdivision one of this section, whether there is an allocation to the housing police variable supplements funds with respect to such base fiscal year; and

(b) the total contributions made to the retirement system, with respect to such base fiscal year, on behalf of all housing police members who are police officers as of the last day of such base fiscal year; and

(c) the total contributions made to the retirement system, with respect to such base fiscal year, on behalf of all housing police members who are housing police superior officers, as of such last day.

3. (a) If there be an allocation to the housing police variable supplements funds with respect to the base fiscal year, determined as hereinabove provided, such allocation shall be divided into a housing police officer's variable supplements fund share and a housing police superior officers' variable supplements fund share in the ratio that the total contributions made to the retirement system with respect to such base fiscal year on behalf of housing police members who are housing police officers bears to the total contributions made to the retirement system with respect to such base fiscal year on behalf of housing police members who are housing police superior officers, as computed for such base fiscal year pursuant to the provisions of paragraphs (b) and (c) of subdivision two of this section.

(b) On or before August thirty-first of the current fiscal year, the retirement system shall pay from the contingent reserve fund to the housing police officer's variable supplements fund and the housing police superior officers' variable supplements fund their respective shares of such allocation to the housing police variable supplements funds, as such shares are computed pursuant to paragraph (a) of this subdivision.

4. The determination as to whether there are transferable earnings with respect to each base fiscal year (as defined in paragraph (a) of subdivision one of this section), and if there are such transferable earnings, the amount thereof, shall be made as follows:

(a) for the nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year, such determination shall be made pursuant to the preceding subdivisions of this section;

(b) for the nineteen hundred eighty-eight-nineteen hundred eighty-nine and nineteen hundred

eighty-nine-nineteen hundred ninety base fiscal years, such determination shall be made pursuant to the preceding subdivisions of this section, as modified by the provisions of subdivisions one through five, inclusive, of section 13-193.1 of this chapter, as such subdivisions one through five were in effect during such base fiscal years;

(c) for the nineteen hundred ninety-nineteen hundred ninety-one base fiscal year and each succeeding base fiscal year to and including the last base fiscal year (as defined in paragraph (a) of subdivision one of this section), such determination shall be made pursuant to the preceding subdivisions of this section and subdivision six of section 13-193.1 of this chapter; and

(d) for the purpose of applying subdivision six of section 13-193.1 of this chapter pursuant to the provisions of paragraph (c) of this subdivision, such subdivision six shall be deemed to refer only to the base fiscal years mentioned in such paragraph (c).

5. The preceding subdivisions of this section shall be inapplicable to determination of any and all rights of the housing police officer's variable supplements fund and of the housing police superior officer's variable supplements fund to any payments from the retirement system derived from or based on investment earnings of the retirement system in any fiscal year of the city commencing on or after July first, nineteen hundred ninety-four.

6. The determination as to whether the retirement system is required to pay any monies to the housing police officer's variable supplements fund with respect to all HPOVSF basis fiscal years related to a payment guarantee (as defined in paragraph (h) of subdivision one of this section), and if any such monies are so payable, the amount thereof, shall be made pursuant to section 13-193.4 of this chapter.

7. (a) The determination as to whether the retirement system is required to pay any monies to the housing police superior officers' variable supplements fund with respect to all HPSOVSF basis fiscal years related to a payment guarantee (as defined in paragraph (j) of subdivision one of this section), and if any such monies are so payable, the amount thereof, shall be made pursuant to section 13-193.7 of this chapter.

(b) The determination as to whether the retirement system is required to pay any monies to the housing police superior officers' variable supplements fund with respect to any fiscal year of the city which is a*21 not a HPSOVSF basis fiscal year related to a payment guarantee (as defined in such paragraph (j)), but is a HPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (h) of subdivision one of this section), and if any such monies are so payable, the amount thereof, shall be made pursuant to section 13-193.5 of this chapter.

**HISTORICAL NOTE**

Section added chap 846/1987 § 5

Subd. 1 par (a) amended chap 719/1994 § 21, eff. Aug 2, 1994

and retroactive to Jan. 1, 1993.

Subd. 1 par (a) amended chap 375/1993 § 13 retro. to Jan. 1, 1992

Subd. 1 par (c) amended chap 581/1989 § 88

Subd. 1 par (g) amended chap 719/1994 § 21, eff. Aug 2, 1994

and retroactive to Jan. 1, 1993.

Subd. 1 par (g) added chap 375/1993 § 14 retro. to Jan. 1,

1992

Subd. 1 par (h) amended chap 719/1994 § 21, eff. Aug 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 1 par (h) added chap 375/1993 §14 retro. to Jan. 1, 1992

Subd. 1 pars (i), (j) added chap 719/1994 § 22, eff. Aug 2, 1994 and retroactive to Jan. 1, 1993.

Subds. 4, 5, 6, 7 amended chap 719/1994 § 23, eff. Aug 2, 1994 and retroactive to Jan. 1, 1993.

Subds. 4-7 added chap 375/1993 § 15 retro. to Jan. 1, 1992

**FOOTNOTES**

17

[Footnote 17]: * There are 2 sections 13-193.

21

[Footnote 21]: * So in original.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-193.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-193.1 Procedural modifications as to determination of payments to transit police and housing police variable supplements funds.

1. As used in this section, the following terms shall mean and include:

(a) "Transit police section 13-193." Section 13-193 of this chapter, as added by chapter eight hundred forty-four of the laws of nineteen hundred eighty-seven.

(b) "Housing police section 13-193." Section 13-193 of this chapter, as added by chapter eight hundred forty-six of the laws of nineteen hundred eighty-seven.

(c) "Base fiscal year." Where used in this section in relation to the transit police officer's variable supplements fund or the transit police superior officers' variable supplements fund, such term shall mean a fiscal year of the city included within the definition of the term "base fiscal year" in paragraph (a) of subdivision one of the transit police section 13-193. Where used in this section in relation to the housing police officer's variable supplements fund or the housing police superior officers' variable supplements fund, such term shall mean a fiscal year of the city included within the definition of the term "base fiscal year" in paragraph (a) of subdivision one of housing police section 13-193.

(d) "Board." The board of trustees of the New York city employees' retirement system.

2. For the purpose of determining the entitlement, with respect to any base fiscal year including*18 in the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety, of the transit police officer's variable supplements fund, the transit police superior officers' variable supplements fund, the

housing police officer's variable supplements fund or the housing police superior officers' variable supplements fund to receive payment of any sum from the retirement system pursuant to the transit police section 13-193 or the housing police section 13-193, the procedure described in paragraph twelve of subdivision a of section 13-232 of this title shall be modified as provided for in the succeeding subdivisions of this section.

3. For such purpose only, paragraph five of subdivision a of such section 13-232 shall be deemed to read as follows:

5. (a) "Equity experience factor." An amount (expressed as a positive or negative quantity) which shall be computed pursuant to the succeeding subparagraphs of this paragraph five. (b) There shall be computed an amount equal to (i) the income earned by the retirement system during the base fiscal year from its investments in equities, plus (ii) the capital gains, realized or unrealized, occurring during such fiscal year by reason of such investments, less (iii) the capital losses, realized or unrealized, occurring during such fiscal year by reason of such investments. (c) In the event that any equity is sold during the base fiscal year, the expense of such sale, including but not limited to broker's commissions, shall be deducted from capital gain or added to capital loss, in determining whether such sale produced a capital gain or capital loss and the amount thereof. (d) There shall be computed the sum which would be the equity experience factor for such base fiscal year if such factor were determined pursuant to paragraph five of subdivision a of section 13-232 of this title. (e) There shall be computed the amount which would have been the sum computed pursuant to subparagraph (d) of this paragraph (i) in the absence of the enactment of chapter five hundred eighty-one of the laws of nineteen hundred eighty-nine. (f) The amount required to be computed pursuant to the provisions of subparagraph (e) of this paragraph shall be computed pursuant to a scientific method recommended to the board by the actuary and approved by the board; provided that if the board is unable to approve, by the required vote, any such formula recommended by the actuary, such amount shall be computed pursuant to a scientific formula recommended by the actuary and approved by an arbitrator designated by the board. If the board is unable to designate an arbitrator by the required vote, such amount shall be computed pursuant to a scientific formula recommended by the actuary and approved by an arbitrator appointed by the supreme court, on the application of any member of the board. (g) The equity experience factor for such base fiscal year shall be the amount computed pursuant to the provisions of subparagraph (e) of this paragraph.

4. For such purpose only, subparagraph (a) of paragraph seven of subdivision a of section 13-232 of this title shall be deemed to read as follows:

(a) Subject to the provisions of subparagraph (e) of this paragraph seven, the aggregate of the hypothetical interest yields computed pursuant to subparagraphs (b), (c) and (d) of this paragraph.

5. For such purpose only, paragraph seven of subdivision a of section 13-232 of this title shall be deemed to include a subparagraph (e) reading as follows:

(e) (i) The hypothetical fixed income securities earnings for any base fiscal year included in the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety shall be determined pursuant to the provisions of this subparagraph (e). (ii) There shall be computed the amount which the hypothetical fixed income securities earnings for such base fiscal year would be, if determined pursuant to the provisions of subparagraphs (a), (b), (c) and (d) of this paragraph seven. (iii) The amount computed pursuant to item (ii) of this subparagraph shall be multiplied by a fraction; the numerator of which is the equity experience factor for such base fiscal year prescribed by subparagraph (g) of paragraph five of subdivision a of section 13-232 of this title, as such paragraph is deemed to read under the provisions of subdivision three of this section 13-193.1 and the denominator of which is the amount computed pursuant to subparagraph (d) of such paragraph five, as such paragraph is so deemed to read. (iv) The hypothetical fixed income securities earnings for such base fiscal year shall be the product of the multiplication prescribed by item (iii) of this subparagraph.

6. For the purpose of determining the entitlement, with respect to any base fiscal year beginning on or after July

first, nineteen hundred ninety, of any variable supplements fund referred to in subdivision two of this section to receive payment of any sum from the retirement system pursuant to transit police section 13-193 or housing police section 13-193 of this title, the cumulative earnings differential for the base fiscal year (as defined in paragraph eleven of subdivision a of section 13-232 of this title) and the cumulative distributions of transferable earnings for prior base fiscal years (as defined in paragraph thirteen of such subdivision) shall be calculated in the same manner as if this section 13-193.1 and the amendment made by section twenty-eight of chapter eight hundred seventy-eight of the laws of nineteen hundred ninety had never been enacted.

**HISTORICAL NOTE**

Section added chap 581/1989 § 89

Subd. 1 par (c) separately amended chap 719/1994 § 24, and chap

720/1994 § 19 both eff. Aug 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 2 amended chap 607/1991 § 14, retro. to July 1, 1990

Subd. 3 par 5 subpar (e) amended chap 607/1991 § 15, retro. to July 1, 1990

Subd. 3 par 5 subpar (e) amended chap 878/1990 § 28 eff. July 25, 1990 applying on and after July 1, 1989

Subd. 5 par (e) subpar (i) amended chap 607/1991 § 16 retro to July 1,

1990

Subd. 6 added chap 607/1991 § 17, retro. to July 1, 1990

**FOOTNOTES**

18

[Footnote 18]: * So in original. ("including" s.b. "included").

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

*NYC Administrative Code 13-193.2*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-193.2 Payments to transit police officer's variable supplements fund for TPOVSF basis fiscal years related to a payment guarantee.

1. (a) Subject to the provisions of paragraph (b) of this subdivision, for the purposes of this section, the definitions of terms set forth in paragraphs (d), (e) and (f) of subdivision one of transit police section 13-193 shall apply to this section 13-193.2 with the same force and effect as if such definitions were specifically set forth in this section.

(b) For the purpose of any determination, calculation or allocation under this section with respect to any TPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of subdivision three of this section):

(i) the term "TPOVSF basis fiscal year related to a payment guarantee" shall be deemed to be substituted for the term "base fiscal year" used in such paragraphs (d), (e) and (f);

(ii) the term "transferable earnings", as used in such paragraph (f), shall be deemed to refer to a cumulative earnings factor (as defined in paragraph (g) of subdivision three of this section), whether such factor is a positive or a negative quantity.

2. For the purposes of this section, the definitions set forth in paragraphs five, six, seven and eight of subdivision a of section 13-232 of this title shall apply to this section 13-193.2 with the same force and effect as if such definitions were specifically set forth in this section; provided, however, that for the purpose of any determination, calculation or allocation under this section with respect to any TPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of subdivision three of this section):

(a) the term "TPOVSF basis fiscal year related to a payment guarantee" shall be deemed to be substituted for the term "base fiscal year" set forth in such paragraphs;

(b) the words "retirement system" shall be deemed to be substituted for the words "pension fund" or "fund" set forth in subparagraph (a) of such paragraph five and in such paragraphs seven and eight;

(c) the board referred to in subparagraph b of such paragraph eight shall be deemed to mean the board of trustees of the retirement system and the term "tie vote" shall be deemed to refer to a circumstance where a resolution is not adopted because of the provisions of subparagraph (d) of paragraph five of subdivision b of section 13-103 of this chapter; and

(d) the term "transferable earnings" set forth in subparagraph (b) of such paragraph eight shall be deemed to mean any TPOVSF cumulative earnings factor (as defined in paragraph (h) of subdivision three of this section) which is a positive quantity.

3. For the purposes of this section the following terms shall mean and include:

(a) "Transit police officers section 13-191". Section 13-191 of this chapter, which relates to the transit police officer's variable supplements fund.

(b) "Transit police section 13-193". Section 13-193 of this chapter, which relates to the transit police variable supplements funds.

(c) "TPOVSF basis fiscal year related to a payment guarantee". Any fiscal year of the city commencing on or after July first of the first TPOVSF calendar year covered by a payment guarantee (as defined in paragraph (j) of this subdivision).

(d) "Prior TPOVSF basis fiscal year related to a payment guarantee". Any fiscal year of the city which begins on or after the July first referred to in paragraph (c) of this subdivision and which also precedes a TPOVSF basis fiscal year related to a payment guarantee.

(e) "Earnings differential". The amount (expressed as a positive or negative quantity) by which the equity experience factor (expressed as a positive or negative quantity) with respect to the TPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision) differs from the hypothetical fixed income securities earnings with respect to such TPOVSF basis fiscal year. If such equity experience factor is greater than such hypothetical fixed income securities earnings, the difference between the two shall be expressed as a positive quantity. If such hypothetical fixed income securities earnings are greater than such equity experience factor, the difference between the two shall be expressed as a negative quantity.

(f) "Cumulative earnings factor as of June thirtieth in the first TPOVSF calendar year covered by a payment guarantee". (i) An amount, expressed as a positive or negative quantity, as the case may be, which shall be determined in accordance with the method set forth in the succeeding subparagraphs of this paragraph.

(ii) (A) Subject to the provisions of item (B) of this subparagraph, the cumulative earnings differential for the base fiscal year (as defined in paragraph eleven of subdivision a of section 13-232 of this title), as made applicable by paragraph (c) of subdivision one of transit police section 13-193 to the base fiscal years defined in paragraph (a) of such subdivision one, shall be computed pursuant to such section 13-193 for the base fiscal year (as so defined by such paragraph (a)) next preceding July first of the first TPOVSF calendar year covered by a payment guarantee (as defined in paragraph (j) of this subdivision).

(B) In the computation of the cumulative earnings differential for such next preceding base fiscal year as provided for in item (A) of this subparagraph, computations for such next preceding base fiscal year and each preceding

base fiscal year shall be made in compliance with the applicable provisions of subdivision four of transit police section 13-193.

(iii) The cumulative distributions of transferable earnings for prior base fiscal years (as defined in paragraph thirteen of subdivision a of such section 13-232) shall be computed pursuant to such section 13-232 and transit police section 13-193 with respect to such base fiscal year next preceding July first of the first TPOVSF calendar year covered by a payment guarantee.

(iv) The amount of transferable earnings (as defined in paragraph (c) of subdivision one of transit police section 13-193), if any, for such base fiscal year next preceding such July first, determined in accordance with the applicable provisions of subdivision four of such section 13-193, shall be added to the cumulative distributions of transferable earnings computed pursuant to subparagraph (iii) of this paragraph.

(v) The sum resulting from the addition prescribed by subparagraph (iv) of this paragraph (f) shall be subtracted from the amount computed pursuant to subparagraph (ii) of this paragraph. The remainder resulting from the subtraction shall be the cumulative earnings factor as of June thirtieth in the first TPOVSF calendar year covered by a payment guarantee.

(g) "Cumulative earnings factor". (i) The cumulative earnings factor for any TPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision) shall be determined as follows: (A) If the cumulative earnings factor for the immediately preceding TPOVSF basis fiscal year related to a payment guarantee was a positive quantity, the cumulative earnings factor for the TPOVSF basis fiscal year related to a payment guarantee shall be equal to the earnings differential for such TPOVSF basis fiscal year related to a payment guarantee.

(B) If the cumulative earnings factor for the immediately preceding TPOVSF basis fiscal year related to a payment guarantee was a negative quantity, the cumulative earnings factor for the TPOVSF basis fiscal year related to a payment guarantee shall be equal to the sum of:

(1) the earnings differential for the TPOVSF basis fiscal year related to a payment guarantee; and

(2) the cumulative earnings factor for the immediately preceding TPOVSF basis fiscal year related to a payment guarantee, increased with interest at a rate equal to the assumed rate of interest (as defined in paragraph eight of subdivision a of section 13-232 of this title, as made applicable to this section by subdivision two of this section) fixed with respect to such TPOVSF basis fiscal year related to a payment guarantee for which a cumulative earnings factor is being determined pursuant to this paragraph (g).

(ii) In applying the provisions of this paragraph (g) for the first TPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision), the term defined in paragraph (f) of this subdivision three as "cumulative earnings factor as of June thirtieth in the first TPOVSF calendar year covered by a payment guarantee" shall be substituted for the term "cumulative earnings factor for the immediately preceding TPOVSF basis fiscal year related to a payment guarantee."

(h) "TPOVSF cumulative earnings factor". With respect to any TPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision), the amount obtained by multiplying the allocation to the transit police variable supplements funds (as defined in paragraph (f) of subdivision one of transit police section 13-193 of this chapter, as made applicable to this section 13-193.2 by subdivision one thereof), for such TPOVSF basis fiscal year related to a payment guarantee by a fraction, the numerator of which shall be the total contributions made to the retirement system with respect to such TPOVSF basis fiscal year related to a payment guarantee on behalf of all transit police members who are transit police officers (as defined in subparagraph two of paragraph (f) of subdivision one of transit police officers section 13-191), as of the last day of such TPOVSF basis fiscal year and the denominator of which shall be the total contributions made to the retirement system with respect to such TPOVSF basis fiscal year related to a payment guarantee on behalf of all transit police members who are members of the uniformed transit police

force as of the last day of such TPOVSF basis fiscal year.

(i) "TPOVSF unfunded accrued liability". In any case where the valuation of assets and liabilities of the transit police officer's variable supplements fund by the actuary pursuant to paragraph (i) of subdivision three of transit police officers section 13-191 shows that for any TPOVSF basis fiscal year related to a payment guarantee, such liabilities exceed such assets, the term "TPOVSF unfunded accrued liability" shall mean the amount of the excess of such liabilities over the amount of such assets for such TPOVSF basis fiscal year.

(j) "TPOVSF calendar year covered by a payment guarantee". The calendar year in which a guarantee, by a guarantee obligor (as defined in paragraph (g) of subdivision one of transit police officers section 13-191 of this title), of payment of variable supplements first takes effect pursuant to paragraph (f) or paragraph (g) of subdivision three of such section, and any succeeding calendar year.

(k) "Current TPOVSF fiscal year related to a payment guarantee". The fiscal year of the city next succeeding a TPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision).

4. As soon as practicable after the close of each TPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of subdivision three of this section), but not later than December thirty-first of the current TPOVSF fiscal year related to a payment guarantee (as defined in paragraph (k) of subdivision three of this section), the board of trustees of the retirement system shall compute the TPOVSF cumulative earnings factor (as defined in paragraph (h) of subdivision three of this section) with respect to such TPOVSF basis fiscal year.

5. If the TPOVSF cumulative earnings factor for such TPOVSF basis fiscal year is a positive quantity, the retirement system, on or before December thirty-first of the current TPOVSF fiscal year related to a payment guarantee, shall pay from its contingent reserve fund to the transit police officer's variable supplements fund, as the payment due for such TPOVSF basis fiscal year under this section, an amount determined pursuant to the provisions of subdivision six of this section.

6. The amount payable for such TPOVSF basis fiscal year as provided for in subdivision five of this section shall be the lesser of (a) the TPOVSF cumulative earnings factor for such TPOVSF basis fiscal year referred to in such subdivision five or (b) the TPOVSF unfunded accrued liability (as defined in paragraph (i) of subdivision three of this section) for such TPOVSF basis fiscal year.

7. No amount shall be due from or payable by the retirement system to such variable supplements fund under this section for any TPOVSF basis fiscal year related to a payment guarantee which shall exceed the TPOVSF unfunded accrued liability for such TPOVSF basis fiscal year, regardless of the amount and character of the TPOVSF cumulative earnings factor for such TPOVSF basis fiscal year.

8. The comptroller shall furnish to the board of trustees of the retirement system such information and data as it may request for the purpose of carrying out the provisions of this section.

**HISTORICAL NOTE**

Section added chap 577/1992 § 16, eff. July 1, 1992

Section heading amended chap 720/1994 § 20, eff. Aug 2, 1994 and

retroactive to Jan. 1, 1993.

Subd. 1 par (b) open par amended chap 720/1994 § 21, eff. Aug 2, 1994

and retroactive to Jan. 1, 1993.

Subd. 1 par (b) subpar. (i) amended chap 720/1994 § 21, eff. Aug 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 2 open par amended chap 720/1994 § 22, eff. Aug 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 2 par. (a) amended chap 720/1994 § 22, eff. Aug 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 3 pars (c)-(k) added chap 720/1994 § 23, eff. Aug 2, 1994 and retroactive to Jan. 1, 1993.

Subds. 4, 5, 6, 7 amended chap 720/1994 § 24, eff. Aug 2, 1994 and retroactive to Jan. 1, 1993.

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

*NYC Administrative Code 13-193.3*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-193.3 Payments to transit police superior officers' variable supplements fund for TPSOVSF transition fiscal years.

1. (a) Subject to the provisions of paragraph (b) of this subdivision, for the purposes of this section, the definitions of terms set forth in paragraphs (d), (e) and (f) of subdivision one of transit police section 13-193 shall apply to this section 13-193.3 with the same force and effect as if such definitions were specifically set forth in this section.

(b) For the purpose of any determination, calculation or allocation under this section with respect to any TPSOVSF transition fiscal year (as defined in paragraph (d) of subdivision three of this section):

(i) the term "base fiscal year" used in such paragraphs (d), (e) and (f) shall be deemed to refer to a TPSOVSF transition fiscal year;

(ii) the term "transferable earnings", as used in such paragraph (f), shall be deemed to refer to a cumulative earnings factor (as defined in paragraph (i) of subdivision three of this section), whether such factor is a positive or a negative quantity.

2. For the purposes of this section, the definitions of terms set forth in paragraphs four, six, eight, nine and ten of subdivision a of section 13-232 of this title shall apply to this section 13-193.3 with the same force and effect as if such definitions were specifically set forth in this section; provided, however, that for the purpose of any determination, calculation or allocation under this section with respect to any TPSOVSF transition fiscal year (as defined in paragraph (d) of subdivision three of this section):

(a) the term "TPSOVSF transition fiscal year" shall be deemed to be substituted for the term "base fiscal year"

set forth in such paragraphs;

(b) the words "retirement system" shall be deemed to be substituted for the words "pension fund" set forth in such paragraph eight and the term "tie vote" shall be deemed to refer to a circumstannce where a resolution is not adopted because of the provisions of subparagraph (d) of paragraph five of subdivision b of section 13-103 of this chapter; and

(c) the board referred to in subparagraph (b) of such paragraph eight shall be deemed to mean the board of trustees of the retirement system; and

(d) the term "transferable earnings" set forth in subparagraph (b) of such paragraph eight shall be deemed to mean any TPSOVSF cumulative earnings factor (as defined in paragraph (j) of subdivision three of this section) which is a positive quantity.

3. For the purposes of this section, the following terms shall mean and include:

(a) "Transit police superior officers section 13-192". Section 13-192 of this chapter, which relates to the transit police superior officers' variable supplements fund.

(b) "Transit police section 13-193". Section 13-193 of this chapter, which relates to the transit police variable supplements funds.

(c) "TPSOVSF calendar year covered by a payment guarantee". The calendar year in which a guarantee, by a guarantee obligor (as defined in paragraph (f) of subdivision one of transit police superior officers section 13-192 of this title), of payment of variable supplements first takes effect pursuant to paragraph (f) or paragraph (g) of subdivision three of such section, and any succeeding calendar year.

(d) "TPSOVSF transition fiscal year". Any fiscal year of the city which occurs during the period commencing on July first of the first TPOVSF calendar year covered by a payment guarantee (as defined in paragraph (i) of subdivision one of section 13-191 of this chapter) and ending on June thirtieth of the first TPSOVSF calendar year covered by a payment guarantee (as defined in paragraph (h) of subdivision one of section 13-192 of this chapter).

(e) "Prior TPSOVSF transition fiscal year". Any fiscal year of the city which begins on or after the July first referred to in paragraph (d) of this subdivision and which also precedes a TPSOVSF transition fiscal year.

(f) "Cumulative earnings factor as of June thirtieth next preceding the first TPSOVSF transition fiscal year". (1) An amount, expressed as a positive or negative quantity, as the case may be, which shall be determined in accordance with the method set forth in the succeeding subparagraphs of this paragraph.

(2) (A) Subject to the provisions of item (B) of this subparagraph, the cumulative earnings differential for the base fiscal year (as defined in paragraph eleven of subdivision a of section 13-232 of this title), as made applicable by paragraph (c) of subdivision one of transit police section 13-193 to the base fiscal years defined in paragraph (a) of such subdivision one, shall be computed pursuant to such section 13-193 for the base fiscal year (as so defined by such paragraph (a)) next preceding July first of the first TPSOVSF transition fiscal year (as defined in paragraph (d) of this subdivision).

(B) In the computation of the cumulative earnings differential for such next preceding base fiscal year as provided for in item (A) of this subparagraph, computations for such next preceding base fiscal year and each preceding base fiscal year shall be made in compliance with the applicable provisions of subdivision four of transit police section 13-193.

(3) The cumulative distributions of transferable earnings for prior base fiscal years (as defined in paragraph

thirteen of subdivision a of such section 13-232) shall be computed pursuant to such section 13-232 and transit police section 13-193 with respect to such base fiscal year next preceding July first of the first TPSOVSF transition fiscal year.

(4) The amount of transferable earnings (as defined in paragraph (c) of subdivision one of transit police section 13-193), if any, for such base fiscal year next preceding such July first, determined in accordance with the applicable provisions of subdivision four of such section 13-193, shall be added to the cumulative distributions of transferable earnings computed pursuant to subparagraph three of this paragraph.

(5) The sum resulting from the addition prescribed by subparagraph four of this paragraph (f) shall be subtracted from the amount computed pursuant to subparagraph two of this paragraph. The remainder resulting from the subtraction shall be the cumulative earnings factor as of June thirtieth next preceding the first TPSOVSF transition fiscal year.

(g) "Equity experience factor". (1) An amount (expressed as a positive or negative quantity) which shall be determined for each TPSOVSF transition fiscal year (as defined in paragraph (d) of this subdivision) in accordance with the method of computation set forth in the succeeding subparagraphs of this paragraph (g).

(2) The amount of income earned by the retirement system during the TPSOVSF transition fiscal year from its investment in equities shall be computed.

(3) To each such amount of income for each such TPSOVSF transition fiscal year there shall be added the capital gains, realized and unrealized, occurring during such TPSOVSF transition fiscal year by reason of such investments.

(4) From the sums resulting from the addition prescribed by subparagraph three of this paragraph there shall be subtracted the capital losses, realized or unrealized, occurring during such TPSOVSF transition fiscal year by reason of such investment.

(5) In the event that any equity is sold during any such TPSOVSF transition fiscal year, the expense of such sale, including but not limited to broker's commissions, shall be deducted from capital gain or added to capital loss, in determining whether such sale produced a capital gain or a capital loss and the amount thereof.

(6) The remainder resulting from the subtraction prescribed by subparagraph four of this paragraph shall be adjusted so that it equals the amount which it would have been in the absence of the enactment of chapter five hundred seventy-seven of the laws of nineteen hundred ninety-two.

(7) Any adjustment required to be made pursuant to the provisions of subparagraph six of this paragraph shall be computed pursuant to a scientific method recommended to the board of trustees of the retirement system by the actuary and approved by such board; provided that if such board is unable to approve, by the required vote, any such formula recommended by the actuary, such adjustment shall be computed pursuant to a scientific formula recommended by the actuary and approved by an arbitrator designated pursuant to the procedure set forth in subparagraph (b) of paragraph eight of subdivision a of section 13-232 of this title, as made applicable to this section 13-193.3 by subdivision two thereof. For the purposes of this paragraph, the term "transferable earnings" set forth in such subparagraph (b) shall be deemed to mean a TPSOVSF transition cumulative earnings factor (as defined in paragraph (j) of this subdivision) which is a positive quantity.

(8) The equity experience factor for such TPSOVSF transition fiscal year shall be the amount remaining after the adjustment prescribed by subparagraphs six and seven of this paragraph has been made.

(h) "Hypothetical fixed income securities earnings". (1) The aggregate of the hypothetical interest yields computed pursuant to subparagraphs two, three and four of this paragraph (h).

(2) The board of trustees of the retirement system shall compute with respect to each investment made or

maintained by the retirement system in an equity during the TPSOVSF transition fiscal year (as defined in paragraph (d) of this subdivision), the amount of interest which would have been hypothetically earned during such fiscal year, under the methods of calculation prescribed in this paragraph (h), if an amount equal to such investment had instead been hypothetically invested in fixed income securities and such securities had been held by the retirement system for a period (in the TPSOVSF transition fiscal year) co-extensive with the period during which such equity was held by the retirement system in the TPSOVSF transition fiscal year.

(3) For the purposes of this section, the amount of any such investment in an equity during the TPSOVSF transition fiscal year shall be deemed to be:

(i) the market value of the equity on the first day of the TPSOVSF transition fiscal year, in the case of any such equity acquired by the retirement system prior to the commencement of such fiscal year and held by the retirement system on the first day of such fiscal year; and

(ii) the total amount paid by the retirement system to acquire the equity, including but not limited to broker's commissions and other expenses of such acquisition, in the case of any such equity which is acquired by the retirement system during the TPSOVSF transition fiscal year.

(4) For the purposes of this section, the amount of interest which would have been earned by the retirement system on such hypothetical fixed income securities during the TPSOVSF transition fiscal year shall be deemed to be the amount obtained:

(i) by multiplying the amount of the investment in such equity, determined as prescribed by subparagraph three of this paragraph (h), by the assumed rate of interest for the TPSOVSF transition fiscal year; and

(ii) by prorating the interest so computed, in any case where the investment in such equity was maintained by the retirement system for a part of the TPSOVSF transition fiscal year; and

(iii) by multiplying the amount of interest computed for the full TPSOVSF transition fiscal year pursuant to items (i) and (ii) of this subparagraph by a fraction, the numerator of which is the amount designated as the equity experience factor with respect to such TPSOVSF transition fiscal year by subparagraph eight of paragraph (g) of this subdivision three and the denominator of which is the remainder produced by the subtraction prescribed by subparagraph four of such paragraph (g) with respect to such TPSOVSF transition fiscal year; and

(iv) by adding together the products of all such multiplications performed pursuant to item (iii) of this subparagraph in relation to all such equities held by the retirement system during such fiscal year.

(i) "Cumulative earnings factor". (1) The cumulative earnings factor for any TPSOVSF transition fiscal year (as defined in paragraph (d) of this subdivision) shall be determined as follows:

(i) If the cumulative earnings factor for the immediately preceding TPSOVSF transition fiscal year was a positive quantity, the cumulative earnings factor for the TPSOVSF transition fiscal year shall be equal to the earnings differential for the TPSOVSF transition fiscal year.

(ii) If the cumulative earnings factor for the immediately preceding TPSOVSF transition fiscal year was a negative quantity, the cumulative earnings factor for the TPSOVSF transition fiscal year shall be equal to the sum of:

(A) the earnings differential for the TPSOVSF transition fiscal year; and

(B) the cumulative earnings factor for the immediately preceding TPSOVSF transition fiscal year.

(2) In applying the provisions of this paragraph (i) for the first TPSOVSF transition fiscal year, the term defined in paragraph (f) of this subdivision as "cumulative earnings factor as of June thirtieth next preceding the first TPSOVSF

transition fiscal year" shall be substituted for the term "cumulative earnings factor for the immediately preceding TPSOVSF transition fiscal year."

(j) "TPSOVSF transition cumulative earnings factor". With respect to any TPSOVSF transition fiscal year (as defined in paragraph (d) of this subdivision), the amount obtained by multiplying the allocation to the transit police variable supplements funds (as defined in paragraph (f) of subdivision one of transit police section 13-193 of this chapter, as made applicable to this section 13-193.3 by subdivision one thereof), for such TPSOVSF transition fiscal year by a fraction, the numerator of which shall be the total contributions made to the retirement system with respect to such TPSOVSF transition fiscal year on behalf of all transit police members who are transit police superior officers (as defined in subdivision eighty-four of section 13-101 of this title) as of the last day of such TPSOVSF transition fiscal year, and the denominator of which shall be the total contributions made to the retirement system with respect to such TPSOVSF transition fiscal year on behalf of all transit police members who are members of the uniformed transit police force as of the last day of such TPSOVSF transition fiscal year.

(k) "Current TPSOVSF transition fiscal year". The fiscal year of the city next succeeding a TPSOVSF transition fiscal year (as defined in paragraph (d) of this subdivision).

4. As soon as practicable after the close of each TPSOVSF transition fiscal year (as defined in paragraph (d) of subdivision three of this section), but not later than August thirty-first of the current TPSOVSF transition fiscal year (as defined in paragraph (k) of subdivision three of this section), the board shall compute the TPSOVSF transition cumulative earnings factor (as defined in paragraph (j) of subdivision three of this section) with respect to such TPSOVSF transition fiscal year.

5. If the TPSOVSF transition cumulative earnings factor for the TPSOVSF transition fiscal year is a positive quantity, the retirement system, on or before August thirty-first of the current TPSOVSF transition fiscal year, shall pay from its contingent reserve fund to the transit police superior officers' variable supplements fund a sum equal to the amount of such factor.

6. The comptroller shall furnish to the board of trustees of the retirement system such information and data as it may request for the purpose of carrying out the provisions of this section.

**HISTORICAL NOTE**

Section added chap 577/1992 § 17, eff. July 1, 1992

Section heading amended chap 720/1994 § 25, eff. Aug. 2, 1994 and

retroactive to Jan. 1, 1993.

Subd. 1 par (b) open par amended chap 720/1994 § 26, eff. Aug. 2, 1994

and retroactive to Jan. 1, 1993.

Subd. 1 par (b) subpar (i) amended chap 720/1994 § 26, eff. Aug. 2, 1994

and retroactive to Jan. 1, 1993.

Subd. 2 open par amended chap 720/1994 § 27, eff. Aug. 2, 1994 and

retroactive to Jan. 1, 1993.

Subd. 2 par (a) amended chap 720/1994 § 27 eff. Aug. 2, 1994 and

retroactive to Jan. 1, 1993.

Subds. 3, 4, 5 amended chap 720/1994 § 28, eff. Aug. 2, 1994 and

retroactive to Jan. 1, 1993.

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-193.4*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-193.4 Payments to housing police officer's variable supplements fund for HPOVSF basis fiscal years related to a payment guarantee.

1. (a) Subject to the provisions of paragraph (b) of this subdivision, the definitions of terms set forth in paragraphs (d), (e) and (f) of subdivision one of housing police section 13-193 shall apply to this section with the same force and effect as if such definitions were specifically set forth in this section.

(b) For the purpose of any determination, calculation or allocation under this section with respect to any HPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of subdivision three of this section):

(i) the term "HPOVSF basis fiscal year related to a payment guarantee" shall be deemed to be substituted for the term "base fiscal year" used in paragraphs (d), (e) and (f) of subdivision one of housing police section 13-193 of this chapter;

(ii) the term "transferable earnings", as used in paragraph (f) of subdivision one of housing police section 13-193 of this chapter, shall be deemed to refer to a cumulative earnings factor (as defined in paragraph (g) of subdivision three of this section), whether such factor is a positive or a negative quantity.

2. For the purposes of this section, the definitions set forth in paragraphs five, six, seven and eight of subdivision a of section 13-232 of this title shall apply to this section 13-193.4 with the same force and effect as if such definitions were specifically set forth in this section; provided, however, that for the purpose of any determination, calculation or allocation under this section with respect to any HPOVSF basis fiscal year related to a payment guarantee (as defined in

paragraph (c) of subdivision three of this section):

(a) the term "HPOVSF basis fiscal year related to a payment guarantee" shall be deemed to be substituted for the term "base fiscal year" set forth in paragraphs five, six, seven and eight of subdivision a of section 13-232 of this title;

(b) the words "retirement system" shall be deemed to be substituted for the words "pension fund" or "fund" set forth in subparagraph (a) of paragraph five and in paragraphs seven and eight of subdivision a of section 13-232 of this chapter;

(c) the board referred to in subparagraph b of paragraph eight of subdivision a of section 13-232 of this chapter shall be deemed to mean the board of trustees of the retirement system and the term "tie vote" shall be deemed to refer to a circumstance where a resolution is not adopted because of the provisions of subparagraph (d) of paragraph five of subdivision b of section 13-103 of this chapter; and

(d) the term "transferable earnings" set forth in subparagraph (b) of paragraph eight of subdivision a of section 13-232 of this chapter shall be deemed to mean any HPOVSF cumulative earnings factor (as defined in paragraph (h) of subdivision three of this section) which is a positive quantity.

3. For the purposes of this section the following terms shall mean and include:

(a) "Housing police officers section 13-191". Section 13-191 of this chapter, which relates to the housing police officer's variable supplements fund.

(b) "Housing police section 13-193". Section 13-193 of this chapter, which relates to the housing police variable supplements funds.

(c) "HPOVSF basis fiscal year related to a payment guarantee". Any fiscal year of the city commencing on or after July first of the first HPOVSF calendar year covered by a payment guarantee (as defined in paragraph (j) of this subdivision).

(d) "Prior HPOVSF basis fiscal year related to a payment guarantee". Any fiscal year of the city which begins on or after the July first referred to in paragraph (c) of this subdivision and which also precedes a HPOVSF basis fiscal year related to a payment guarantee.

(e) "Earnings differential". The amount (expressed as a positive or negative quantity) by which the equity experience factor (expressed as a positive or negative quantity) with respect to the HPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision) differs from the hypothetical fixed income securities earnings with respect to such HPOVSF basis fiscal year. If such equity experience factor is greater than such hypothetical fixed income securities earnings, the difference between the two shall be expressed as a positive quantity. If such hypothetical fixed income securities earnings are greater than such equity experience factor, the difference between the two shall be expressed as a negative quantity.

(f) "Cumulative earnings factor as of June thirtieth in the first HPOVSF calendar year covered by a payment guarantee". (i) An amount, expressed as a positive or negative quantity, as the case may be, which shall be determined in accordance with the method set forth in the succeeding subparagraphs of this paragraph.

(ii) (A) Subject to the provisions of item (B) of this subparagraph, the cumulative earnings differential for the base fiscal year (as defined in paragraph eleven of subdivision a of section 13-232 of this title), as made applicable by paragraph (c) of subdivision one of housing police section 13-193 to the base fiscal years defined in paragraph (a) of such subdivision one, shall be computed pursuant to such section 13-193 for the base fiscal year (as so defined by such paragraph (a)) next preceding July first of the first calendar year covered by a payment guarantee (as defined in paragraph (j) of this subdivision).

(B) In the computation of the cumulative earnings differential for such next preceding base fiscal year as provided for in item (A) of this subparagraph, computations for such next preceding base fiscal year and each preceding base fiscal year shall be made in compliance with the applicable provisions of subdivision four of housing police section 13-193.

(iii) The cumulative distributions of transferable earnings for prior base fiscal years (as defined in paragraph thirteen of subdivision a of section 13-232 of this title) shall be computed pursuant to such section 13-232 and housing police section 13-193 with respect to such base fiscal year next preceding July first of the first HPOVSF calendar year covered by a payment guarantee.

(iv) The amount of transferable earnings (as defined in paragraph (c) of subdivision one of housing police section 13-193), if any, for such base fiscal year next preceding such July first, determined in accordance with the applicable provisions of subdivision four of such section 13-193, shall be added to the cumulative distributions of transferrable earnings computed pursuant to subparagraph (iii) of this paragraph.

(v) The sum resulting from the addition prescribed by subparagraph (iv) of this paragraph shall be subtracted from the amount computed pursuant to subparagraph (ii) of this paragraph. The remainder resulting from the subtraction shall be the cumulative earnings factor as of June thirtieth in the first HPOVSF calendar year covered by a payment guarantee.

(g) "Cumulative earnings factor". (i) The cumulative earnings factor for any HPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision) shall be determined as follows:

(A) If the cumulative earnings factor for the immediately preceding HPOVSF basis fiscal year related to a payment guarantee was a positive quantity, the cumulative earnings factor for the HPOVSF basis fiscal year related to a payment guarantee shall be equal to the earnings differential for such HPOVSF basis fiscal year related to a payment guarantee.

(B) If the cumulative earnings factor for the immediately preceding HPOVSF basis fiscal year related to a payment guarantee was a negative quantity, the cumulative earnings factor for the HPOVSF basis fiscal year related to a payment guarantee shall be equal to the sum of:

(1) the earnings differential for the HPOVSF basis fiscal year related to a payment guarantee; and

(2) the cumulative earnings factor for the immediately preceding HPOVSF basis fiscal year related to payment guarantee, increased with interest at a rate equal to the assumed rate of interest (as defined in paragraph eight of subdivision a of section 13-232 of this title, as made applicable to this section by subdivision two of this section) fixed with respect to such HPOVSF basis fiscal year related to a payment guarantee for which a cumulative earnings factor is being determined pursuant to this paragraph.

(ii) In applying the provisions of this paragraph for the first HPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision), the term defined in paragraph (f) of this subdivision as "cumulative earnings factor as of June thirtieth in the first HPOVSF calendar year covered by a payment guarantee" shall be substituted for the term "cumulative earnings factor for the immediately preceding HPOVSF basis fiscal year related to a payment guarantee".

(h) "HPOVSF cumulative earnings factor". With respect to any HPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision), the amount obtained by multiplying the allocation to the housing police variable supplements funds (as defined in paragraph (f) of subdivision one of housing police section 13-193, as made applicable to this section by subdivision one of this section), for such HPOVSF basis fiscal year related to a payment guarantee by a fraction, the numerator of which shall be the total contributions made to the retirement system with respect to such HPOVSF basis fiscal year related to a payment guarantee on behalf of all housing police

members who are housing police officers (as defined in subparagraph two of paragraph (f) of subdivision one of housing police officers section 13-191), as of the last day of such HPOVSF basis fiscal year and the denominator of which shall be the total contributions made to the retirement system with respect to such HPOVSF basis fiscal year related to a payment guarantee on behalf of all housing police members who are members of the housing police service as of the last day of such HPOVSF basis fiscal year.

(i) "HPOVSF unfunded accrued liability". In any case where the valuation of assets and liabilities of the housing police officer's variable supplements fund by the actuary pursuant to paragraph (g) of subdivision three of housing police officers section 13-191 shows that for any HPOVSF basis fiscal year related to a payment guarantee, such liabilities exceed such assets, the term "HPOVSF unfunded accrued liability" shall mean the amount of the excess of such liabilities over the amount of such assets for such HPOVSF basis fiscal year.

(j) "HPOVSF calendar year covered by a payment guarantee". The calendar year nineteen hundred ninety-four and any succeeding calendar year.

(k) "Current HPOVSF fiscal year related to a payment guarantee". The fiscal year of the city next succeeding a HPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision).

4. As soon as practicable after the close of each HPOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of subdivision three of this section), but not later than December thirty-first of the current HPOVSF fiscal year related to a payment guarantee (as defined in paragraph (k) of subdivision three of this section), the board of trustees of the retirement system shall compute the HPOVSF cumulative earnings factor (as defined in paragraph (h) of subdivision three of this section) with respect to such HPOVSF basis fiscal year.

5. If the HPOVSF cumulative earnings factor for such HPOVSF basis fiscal year is a positive quantity, the retirement system, on or before December thirty-first of the current HPOVSF fiscal year related to a payment guarantee, shall pay from its contingent reserve fund to the housing police officer's variable supplements fund, as the payment due for such HPOVSF basis fiscal year under this section, an amount determined pursuant to the provisions of subdivision six of this section.

6. The amount payable for such HPOVSF basis fiscal year as provided for in subdivision five of this section shall be the lesser of (a) the HPOVSF cumulative earnings factor for such HPOVSF basis fiscal year referred to in such subdivision five or (b) the HPOVSF unfunded accrued liability (as defined in paragraph (i) of subdivision three of this section) for such HPOVSF basis fiscal year.

7. No amount shall be due from or payable by the retirement system to such variable supplements fund under this section for any HPOVSF basis fiscal year related to a payment guarantee which shall exceed the HPOVSF unfunded accrued liability for such HPOVSF basis fiscal year, regardless of the amount and character of the HPOVSF cumulative earnings factor for such HPOVSF basis fiscal year.

8. The comptroller shall furnish to the board of trustees of the retirement system such information and data as it may request for the purpose of carrying out the provisions of this section.

**HISTORICAL NOTE**

Section added chap 375/1993 § 16 retro. to Jan. 1, 1992

Section heading amended chap 719/1994 § 25, eff. Aug. 2, 1994 and

retroactive to Jan. 1, 1993.

Subd. 1 par (b) open par amended chap 719/1994 § 26, eff. Aug. 2, 1994

and retroactive to Jan. 1, 1993.

Subd. 1 par (b) subpar (i) amended chap 719/1994 § 26, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 2 open par amended chap 719/1994 § 27, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 2 par (a) amended chap 719/1994 § 27, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subd. 3 pars (c)-(k) amended chap 719/1994 § 28, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.

Subds. 4, 5, 6, 7 amended chap 719/1994 § 29, eff. Aug. 2, 1994 and retroactive to Jan. 1, 1993.



*NYC Administrative Code 13-193.5*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-193.5 Payments to housing police superior officers' variable supplements fund for HPSOVSF transition fiscal years.

1. (a) Subject to the provisions of paragraph (b) of this subdivision, the definition of terms set forth in paragraphs (d), (e) and (f) of subdivision one of housing police section 13-193 shall apply to this section with the same force and effect as if such definitions were specifically set forth in this section.

(b) For the purpose of any determination, calculation or allocation under this section with respect to any HPSOVSF transition fiscal year (as defined in paragraph (d) of subdivision three of this section):

(i) the term "base fiscal year" used in paragraphs (d), (e) and (f) of subdivision one of housing police section 13-193 shall be deemed to refer to a HPSOVSF transition fiscal year;

(ii) the term "transferable earnings", as used in paragraph (f) of subdivision one of housing police section 13-193, shall be deemed to refer to a cumulative earnings factor (as defined in paragraph (i) of subdivision three of this section), whether such factor is a positive or a negative quantity.

2. For the purposes of this section, the definitions of terms set forth in paragraphs four, six, eight, nine and ten of subdivision a of section 13-232 of this title shall apply to this section 13-193.5 with the same force and effect as if such definitions were specifically set forth in this section; provided, however, that for the purpose of any determination, calculation or allocation under this section with respect to any HPSOVSF transition fiscal year (as defined in paragraph (d) of subdivision three of this section):

(a) the term "HPSOVSF transition fiscal year" shall be deemed to be substituted for the term "base fiscal year" set forth in paragraphs four, eight, nine and ten of subdivision a of section 13-232 of this title;

(b) the words "retirement system" shall be deemed to be substituted for the words "pension fund" set forth in paragraph eight of subdivision a of section 13-232 of this chapter and the term "tie vote" shall be deemed to refer to a circumstance where a resolution is not adopted because of the provisions of subparagraph (d) of paragraph five of subdivision b of section 13-103 of this chapter;

(c) the board referred to in subparagraph (b) of paragraph eight of subdivision a of section 13-232 of this chapter shall be deemed to mean the board of trustees of the retirement system; and

(d) the term "transferable earnings" set forth in subparagraph (b) of paragraph eight of subdivision a of section 13-232 of this chapter shall be deemed to mean any HPSOVSF cumulative earnings factor (as defined in paragraph (j) of subdivision three of this section) which is a position quantity.

3. For the purposes of this section, the following terms shall mean and include:

(a) "HPOVSF basis fiscal year related to a payment guarantee". Any fiscal year which is a HPOVSF basis fiscal year related to a payment guarantee, as defined in paragraph (c) of subdivision three of section 13-193.4 of this chapter.

(b) "Housing police section 13-193". Section 13-193 of this chapter, which relates to the housing police variable supplements funds.

(c) "HPSOVSF basis fiscal year related to a payment guarantee". Any fiscal year which is a HPSOVSF basis fiscal year related to a payment guarantee, as defined in paragraph (c) of subdivision three of section 13-193.7 of this chapter.

(d) "HPSOVSF transition fiscal year". Any fiscal year of the city which is a HPOVSF*22 basis fiscal year related to a payment guarantee (as defined in paragraph (a) of this subdivision) but is not a HPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision).

(e) "Prior HPSOVSF transition fiscal year". Any fiscal year of the city which is a HPSOVSF transition fiscal year (as defined in paragraph (d) of this subdivision) and which also precedes a HPSOVSF transition fiscal year for which a computation is being made pursuant to this section to determine whether a payment is due from the retirement system to the housing police superior officers' variable supplements fund.

(f) "Cumulative earnings factor as of June thirtieth next preceding the first HPSOVSF transition fiscal year". (1) An amount, expressed as a positive or negative quantity, as the case may be, which shall be determined in accordance with the method set forth in the succeeding subparagraphs of this paragraph.

(2) (A) Subject to the provisions of item (B) of this subparagraph, the cumulative earnings differential for the base fiscal year (as defined in paragraph eleven of subdivision a of section 13-232 of this chapter), as made applicable by paragraph (c) of subdivision one of housing police section 13-193 to the base fiscal years defined in paragraph (a) of such subdivision one, shall be computed pursuant to such section 13-193 for the base fiscal year (as so defined by such paragraph (a)) next preceding July first of the first HPSOVSF transition fiscal year (as defined in paragraph (d) of this subdivision).

(B) In the computation of the cumulative earnings differential for such next preceding base fiscal year as provided for in item (A) of this subparagraph, computations for such next preceding base fiscal year and each preceding base fiscal year shall be made in compliance with the applicable provisions of subdivision four of housing police section 13-193 of this chapter.

(3) The cumulative distributions of transferable earnings for prior base fiscal years (as defined in paragraph thirteen of subdivision a of section 13-232 of this title) shall be computed pursuant to such section and housing police section 13-193 with respect to such base fiscal year next preceding July first of the first HPSOVSF transition fiscal year.

(4) The amount of transferable earnings (as defined in paragraph (c) of subdivision one of housing police section 13-193), if any, for such base fiscal year next preceding such July first, determined in accordance with the applicable provisions of subdivision four of such section, shall be added to the cumulative distributions of transferable earnings computed pursuant to subparagraph three of this paragraph.

(5) The sum resulting from the addition prescribed by subparagraph four of this paragraph shall be subtracted from the amount computed pursuant to subparagraph two of this paragraph. The remainder resulting from the subtraction shall be the cumulative earnings factor as of June thirtieth next preceding the first HPSOVSF transition fiscal year.

(g) "Equity experience factor". (1) An amount (expressed as a positive or negative quantity) which shall be determined for each HPSOVSF transition fiscal year (as defined in paragraph (d) of this subdivision) in accordance with the method of computation set forth in the succeeding subparagraphs of this paragraph.

(2) The amount of income earned by the retirement system during the HPSOVSF transition fiscal year from its investment in equities shall be computed.

(3) To each such amount of income for each such HPSOVSF transition fiscal year there shall be added the capital gains, realized and unrealized, occurring during such HPSOVSF transition fiscal year by reason of such investments.

(4) From the sums resulting from the addition prescribed by subparagraph three of this paragraph there shall be subtracted the capital losses, realized or unrealized, occurring during such HPSOVSF transition fiscal year by reason of such investment.

(5) In the event that any equity is sold during any such HPSOVSF transition fiscal year, the expense of such sale, including but not limited to broker's commissions, shall be deducted from capital gain or added to capital loss, in determining whether such sale produced a capital gain or a capital loss and the amount thereof.

(6) The remainder resulting from the subtraction prescribed by subparagraph four of this paragraph shall be adjusted so that it equals the amount which it would have been in the absence of the enactment of chapter three hundred seventy-five of the laws of nineteen hundred ninety-three.

(7) Any adjustment required to be made pursuant to the provisions of subparagraph six of this paragraph shall be computed pursuant to a scientific method recommended to the board of trustees of the retirement system by the actuary and approved by such board; provided that if such board is unable to approve, by the required vote, any such formula recommended by the actuary, such adjustment shall be computed pursuant to a scientific formula recommended by the actuary and approved by an arbitrator designated pursuant to the procedure set forth in subparagraph (b) of paragraph eight of subdivision a of section 13-232 of this title, as made applicable to this section by subdivision two of this section. For the purposes of this paragraph, the term "transferable earnings" set forth in such subparagraph (b) shall be deemed to mean a HPSOVSF transition cumulative earnings factor (as defined in paragraph (j) of this subdivision) which is a positive quantity.

(8) The equity experience factor for such HPSOVSF transition fiscal year shall be the amount remaining after the adjustment prescribed by subparagraphs six and seven of this paragraph has been made.

(h) "Hypothetical fixed income securities earnings". (1) The aggregate of the hypothetical interest yields computed pursuant to subparagraphs two, three and four of this paragraph.

(2) The board of trustees of the retirement systems shall compute with respect to each investment made or maintained by the retirement system in an equity during the HPSOVSF transition fiscal year (as defined in paragraph (d) of this subdivision), the amount of interest which would have been hypothetically earned during such fiscal year, under the methods of calculation prescribed in this paragraph, if an amount equal to such investment had instead been hypothetically invested in fixed income securities and such securities had been held by the retirement system for a period (in the HPSOVSF transition fiscal year) co-extensive with the period during which such equity was held by the retirement system in the HPSOVSF transition fiscal year.

(3) For the purposes of this section, the amount or any such investment in an equity during the HPSOVSF transition fiscal year shall be deemed to be:

(i) the market value of the equity on the first day of the HPSOVSF transition fiscal year, in the case of any such equity acquired by the retirement system prior to the commencement of such fiscal year and held by the retirement system on the first day of such fiscal year; and

(ii) the total amount paid by the retirement system to acquire the equity, including but not limited to broker's commissions and other expenses of such acquisition, in the case of any such equity which is acquired by the retirement system during the HPSOVSF transition fiscal year.

(4) For the purposes of this section, the amount of interest which would have been earned by the retirement system on such hypothetical fixed income securities during the HPSOVSF transition fiscal year shall be deemed to be the amount obtained:

(i) by multiplying the amount of the investment in such equity, determined as prescribed by subparagraph three of this paragraph, by the assumed rate of interest for the HPSOVSF transition fiscal year; and

(ii) by prorating the interest so computed, in any case where the investment in such equity was maintained by the retirement system for a part of the HPSOVSF transition fiscal year; and

(iii) by multiplying the amount of interest computed for the full HPSOVSF transition fiscal year pursuant to items (i) and (ii) of this subparagraph by a fraction, the numerator of which is the amount designated as the equity experience factor with respect to such HPSOVSF transition fiscal year by subparagraph eight of paragraph (g) of this subdivision and the denominator of which is the remainder produced by the subtraction prescribed by subparagraph four of such paragraph with respect to such HPSOVSF transition fiscal year; and

(iv) by adding together the products of all such multiplications performed pursuant to item (iii) of this subparagraph in relation to all such equities held by the retirement system during such fiscal year.

(i) "Cumulative earnings factor." (1) The cumulative earnings factor for any HPSOVSF transition fiscal year (as defined in paragraph (d) of this subdivision) shall be determined as follows:

(i) If the cumulative earnings factor for the immediately preceding HPSOVSF transition fiscal year was a positive quantity, the cumulative earnings factor for the HPSOVSF transition fiscal year shall be equal to the earnings differential for the HPSOVSF transition fiscal year.

(ii) If the cumulative earnings factor for the immediately preceding HPSOVSF transition fiscal year was a negative quantity, the cumulative earnings factor for the HPSOVSF transition fiscal year shall be equal to the sum of:

(A) the earnings differential for the HPSOVSF transition fiscal year; and

(B) the cumulative earnings factor for the immediately preceding HPSOVSF transition fiscal year.

(2) In applying the provisions of this paragraph (i) for the first HPSOVSF transition fiscal year, the term defined

in paragraph (f) of this subdivision as "cumulative earnings factor as of June thirtieth next preceding the first HPSOVSF transition fiscal year" shall be substituted for the term "cumulative earnings factor for the immediately preceding HPSOVSF transition fiscal year".

(j) "HPSOVSF transition cumulative earnings factor". With respect to any HPSOVSF transition fiscal year (as defined in paragraph (d) of this subdivision), the amount obtained by multiplying the allocation to the housing police variable supplements funds (as defined in paragraph (f) of subdivision one of housing police section 13-193), as made applicable to this section by subdivision one of this section, for such HPSOVSF transition fiscal year by a fraction, the numerator of which shall be the total contributions made to the retirement system with respect to such HPSOVSF transition fiscal year on behalf of all housing police members who are housing police superior officers (as defined in subdivision eighty-four of section 13-101 of this title) as of the last day of such HPSOVSF transition fiscal year, and the denominator of which shall be the total contributions made to the retirement system with respect to such HPSOVSF transition fiscal year on behalf of all housing police members who are members of the housing police service as of the last day of such HPSOVSF transition fiscal year.

(k) "Current HPSOVSF transition fiscal year". The fiscal year of the city next succeeding a HPSOVSF transition fiscal year (as defined in paragraph (d) of this subdivision).

4. As soon as practicable after the close of each HPSOVSF transition fiscal year (as defined in paragraph (d) of subdivision three of this section), but not later than August thirty-first of the current HPSOVSF transition fiscal year related to a payment guarantee (as defined in paragraph (k) of subdivision three of this section), the board shall compute the HPSOVSF transition cumulative earnings factor (as defined in paragraph (j) of subdivision three of this section) with respect to such HPSOVSF transition fiscal year.

5. If the HPSOVSF transition cumulative earnings factor for the HPSOVSF transition fiscal year is a positive quantity, the retirement system, on or before August thirty-first of the current HPSOVSF transition fiscal year, shall pay from its contingent reserve fund to the housing police superior officers' variable supplements fund a sum equal to the amount of such factor.

6. The comptroller shall furnish to the board of trustees of the retirement system such information and data as it may request for the purpose of carrying out the provisions of this section.

**HISTORICAL NOTE**

Section added chap 375/1993 § 17 retro. to Jan. 1, 1992

Section heading amended chap 719/1994§ 30, eff. Aug. 2, 1994 and

retroactive to Jan. 1, 1993.

Subd. 1 par (b) open par amended chap 719/1994 § 31, eff. Aug. 2, 1994

and retroactive to Jan. 1, 1993.

Subd. 1 par (b) subpar (i) amended chap 719/1994 § 31, eff. Aug. 2, 1994

and retroactive to Jan. 1, 1993.

Subd. 2 open par amended chap 719/1994 § 32, eff. Aug. 2, 1994 and

retroactive to Jan. 1, 1993.

Subd. 2 par (a) amended chap 719/1994 § 32, eff. Aug. 2, 1994 and

retroactive to Jan. 1, 1993.

Subds. 3, 4, 5 amended chap 719/1994 § 33, eff. Aug. 2, 1994 and

retroactive to Jan. 1, 1993.

**FOOTNOTES**

22

[Footnote 22]: * So in original. ("HPOVSF" s.b. "HPSOVSF")



Administrative Code of the City of New York



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

*NYC Administrative Code 13-193.6*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-193.6 Payments to transit police superior officers' variable supplements fund for TPSOVSF basis fiscal years related to a payment guarantee.

1. (a) Subject to the provisions of paragraph (b) of this subdivision, for the purpose of this section, the definitions of terms set forth in paragraphs (d), (e) and (f) of subdivision one of transit police section 13-193 shall apply to this section with the same force and effect as if such definitions were specifically set forth in this section.

(b) For the purpose of any determination, calculation or allocation under this section with respect to any TPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of subdivision three of this section):

(i) the term TPSOVSF basis fiscal year related to a payment guarantee shall be deemed to be substituted for the term "base fiscal year" used in such paragraphs (d), (e) and (f);

(ii) the term "transferable earnings", as used in such paragraph (f), shall be deemed to refer to a cumulative earnings factor (as defined in paragraph (g) of subdivision three of this section), whether such factor is a positive or a negative quantity.

2. For the purposes of this section, the definitions set forth in paragraphs five, six, seven and eight of subdivision a of section 13-232 of this title shall apply to this section with the same force and effect as if such definitions were specifically set forth in this section; provided, however, that for the purpose of any determination, calculation or allocation under this section with respect to any TPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of subdivision three of this section):

(a) the term "TPSOVSF basis fiscal year related to a payment guarantee" shall be deemed to be substituted for the term "base fiscal year" set forth in such paragraphs;

(b) the words "retirement system" shall be deemed to be substituted for the words "pension fund" or "fund" set forth in subparagraph (a) of such paragraph five and in such paragraphs seven and eight;

(c) the board referred to in subparagraph (b) of such paragraph eight shall be deemed to mean the board of trustees of the retirement system and the term "tie vote" shall be deemed to refer to a circumstance where a resolution is not adopted because of the provisions of subparagraph (d) of paragraph five of subdivision b of section 13-103 of this chapter; and

(d) the term "transferable earnings" set forth in subparagraph (b) of such paragraph eight shall be deemed to mean any TPSOVSF cumulative earnings factor (as defined in paragraph (h) of subdivision three of this section) which is a positive quantity.

3. For the purposes of this section the following terms shall mean and include:

(a) "Transit police superior officers section 13-192". Section 13-192 of this chapter, which relates to the transit police superior officers' variable supplements fund.

(b) "Transit police section 13-193". Section 13-193 of this chapter, which relates to the transit police variable supplements funds.

(c) "TPSOVSF basis fiscal year related to a payment guarantee". Any fiscal year of the city commencing on or after July first of the first TPSOVSF calendar year covered by a payment guarantee (as defined in paragraph (j) of this subdivision).

(d) "Prior TPSOVSF basis fiscal year related to a payment guarantee". Any fiscal year of the city which begins on or after the July first referred to in paragraph (c) of this subdivision and which also precedes a TPSOVSF basis fiscal year related to a payment guarantee.

(e) "Earnings differential". The amount (expressed as a positive or negative quantity) by which the equity experience factor (expressed as a positive or negative quantity) with respect to the TPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision) differs from the hypothetical fixed income securities earnings with respect to such TPSOVSF basis fiscal year. If such equity experience factor is greater than such hypothetical fixed income securities earnings, the difference between the two shall be expressed as a positive quantity. If such hypothetical fixed income securities earnings are greater than such equity experience factor, the difference between the two shall be expressed as a negative quantity.

(f) "Cumulative earnings factor as of June thirtieth in the first TPSOVSF calendar year covered by a payment guarantee". (i) An amount, expressed as a positive or negative quantity, as the case may be, which shall be determined in accordance with the method set forth in the succeeding subparagraphs of this paragraph.

(ii) Subject to the provisions of subparagraph (vi) of this paragraph, pursuant to the procedure set forth in paragraphs (c)*23 (d), (e) and (f) of transit police section 13-193, the cumulative earnings differential for the base fiscal year (as defined in paragraph eleven of subdivision a of section 13-232 of this title) shall be computed for the fiscal year of the city next preceding July first of the first TPSOVSF calendar year covered by a payment guarantee (as defined in paragraph (j) of this subdivision).

(iii) Subject to the provisions of subparagraph (vi) of this paragraph, the cumulative distributions of transferable earnings for prior base fiscal years (as defined in paragraph thirteen of subdivision a of such section 13-232) shall be computed pursuant to such section 13-232 and paragraphs (c), (d), (e) and (f) of transit police section 13-193 with

respect to such fiscal year next preceding July first of the first TPSOVSF calendar year covered by a payment guarantee.

(iv) Subject to the provisions of subparagraph (vi) of this paragraph, the amount of transferable earnings (as defined in paragraph (c) of subdivision one of transit police section 13-193), if any, for such fiscal year next preceding such July first, determined in accordance with the applicable provisions of subdivision four of such section 13-193, shall be added to the cumulative distributions of transferable earnings computed pursuant to subparagraph (iii) of this paragraph.

(v) The sum resulting from the addition prescribed by subparagraph (iv) of this paragraph shall be subtracted from the amount computed pursuant to subparagraph (ii) of this paragraph. The remainder resulting from the subtraction shall be the cumulative earnings factor as of June thirtieth in the first TPSOVSF calendar year covered by a payment guarantee.

(vi) For the purposes of the computations prescribed by the preceding subparagraphs of this paragraph:

(A) the term "base fiscal year" set forth in the provisions of such sections 13-193 and 13-232 mentioned in such subparagraphs shall be deemed to refer, as appropriate, to such fiscal year next preceding such July first and to any fiscal year of the city which both precedes such next preceding fiscal year and occurs after June thirtieth, nineteen hundred eighty-seven; and

(B) such computations shall be made in the same manner as if the provisions of section 13-193.1 of this chapter (other than subdivision six of such section) and the amendment made by section twenty-eight of chapter eight hundred seventy-eight of the laws of nineteen hundred ninety had never been enacted.

(g) "Cumulative earnings factor". (i) The cumulative earnings factor for any TPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision) shall be determined as follows:

(A) If the cumulative earnings factor for the immediately preceding TPSOVSF basis fiscal year related to a payment guarantee was a positive quantity, the cumulative earnings factor for the TPSOVSF basis fiscal year related to a payment guarantee shall be equal to the earnings differential for such basis TPSOVSF fiscal year related to a payment guarantee.

(B) If the cumulative earnings factor for the immediately preceding TPSOVSF basis fiscal year related to a payment guarantee was a negative quantity, the cumulative earnings factor for the TPSOVSF basis fiscal year related to a payment guarantee shall be equal to the sum of:

(1) the earnings differential for the TPSOVSF basis fiscal year related to a payment guarantee; and

(2) the cumulative earnings factor for the immediately preceding TPSOVSF basis fiscal year related to a payment guarantee, increased with interest at a rate equal to the assumed rate of interest (as defined in paragraph eight of subdivision a of section 13-232 of this title, as made applicable to this section by subdivision two of this section) fixed with respect to such TPSOVSF basis fiscal year related to a payment guarantee for which a cumulative earnings factor is being determined pursuant to this paragraph.

(ii) In applying the provisions of this paragraph for the first TPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision), the term defined in paragraph (f) of this subdivision as "cumulative earnings factor as of June thirtieth in the first TPSOVSF calendar year covered by a payment guarantee" shall be substituted for the term "cumulative earnings factor for the immediately preceding TPSOVSF basis fiscal year related to a payment guarantee".

(h) "TPSOVSF cumulative earnings factor". With respect to any TPSOVSF basis fiscal year related to a payment

guarantee (as defined in paragraph (c) of this subdivision), the amount obtained by multiplying the allocation to the transit police variable supplements funds (as defined in paragraph (f) of subdivision one of transit police section 13-193 of this chapter, as made applicable to this section by subdivision one thereof), for such TPSOVSF basis fiscal year related to a payment guarantee by a fraction, the numerator of which shall be the total contributions made to the retirement system with respect to such TPSOVSF basis fiscal year related to a payment guarantee on behalf of all transit police members who are transit police superior officers (as defined in subdivision eighty-four of section 13-101 of this chapter), as of the last day of such TPSOVSF basis fiscal year and the denominator of which shall be the total contributions made to the retirement system with respect to such TPSOVSF basis fiscal year related to a payment guarantee on behalf of all transit police members who are members of the uniformed transit police force as of the last day of such TPSOVSF basis fiscal year.

(i) "TPSOVSF unfunded accrued liability". In any case where the valuation of assets and liabilities of the transit police superior officers' variable supplements fund by the actuary pursuant to paragraph (i) of subdivision three of transit police superior officers section 13-192 shows that for any TPSOVSF basis fiscal year related to a payment guarantee, such liabilities exceed such assets, the term "TPSOVSF unfunded accrued liability" shall mean the amount of the excess of such liabilities over the amount of such assets for such TPSOVSF basis fiscal year.

(j) "TPSOVSF calendar year covered by a payment guarantee". The calendar year in which a guarantee, by a guarantee obligor (as defined in paragraph (f) of subdivision one of transit police superior officers section 13-192 of this title), of payment of variable supplements first takes effect pursuant to paragraph (f) or paragraph (g) of subdivision three of such section, and any succeeding calendar year.

(k) Current TPSOVSF fiscal year related to a payment guarantee". The fiscal year of the city next succeeding a TPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision).

4. As soon as practicable after the close of each TPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of subdivision three of this section), but not later than December thirty-first of the current TPSOVSF fiscal year related to a payment guarantee (as defined in paragraph (k) of subdivision three of this section), the board of trustees of the retirement system shall compute the TPSOVSF cumulative earnings factor (as defined in paragraph (h) of subdivision three of this section) with respect to such TPSOVSF basis fiscal year.

5. If the TPSOVSF cumulative earnings factor of such TPSOVSF basis fiscal year is a positive quantity, the retirement system, on or before December thirty-first of the current TPSOVSF fiscal year related to a payment guarantee, shall pay from its contingent reserve fund to the transit police superior officers' variable supplements fund, as the payment due for such TPSOVSF basis fiscal year under this section, an amount determined pursuant to the provisions of subdivision six of this section.

6. The amount payable for such TPSOVSF basis fiscal year as provided for in subdivision five of this section shall be the lesser of (a) the TPSOVSF cumulative earnings factor for such TPSOVSF basis fiscal year referred to in such subdivision five or (b) the TPSOVSF unfunded accrued liability (as defined in paragraph (i) of subdivision three of this section) for such TPSOVSF basis fiscal year.

7. No amount shall be due from or payable by the retirement system to such variable supplements fund under this section for any TPSOVSF basis fiscal year related to a payment guarantee which shall exceed the TPSOVSF unfunded accrued liability for such TPSOVSF basis fiscal year, regardless of the amount and character of the TPSOVSF cumulative earnings factor for such TPSOVSF basis fiscal year.

8. The comptroller shall furnish to the board of trustees of the retirement system such information and data as it may request for the purpose of carrying out the provisions of this section.

**HISTORICAL NOTE**

Section added chap 720/1994 § 29, eff. Aug 2, 1994 and retroactive to Jan. 1, 1993.

**FOOTNOTES**

23

[Footnote 23]: * So in original. ("comma" inadvertently omitted)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-193.7*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-193.7 Payments to housing police superior officers' variable supplements fund for HPSOVSF basis fiscal years related to a payment guarantee.

1. (a) Subject to the provisions of paragraph (b) of this subdivision, for the purpose of this section, the definitions of terms set forth in paragraphs (d), (e) and (f) of subdivision one of housing police section 13-193 shall apply to this section 13-193.7 with the same force and effect as if such definitions were specifically set forth in this section.

(b) For the purpose of any determination, calculation or allocation under this section with respect to any HPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of subdivision three of this section):

(i) the term HPSOVSF basis fiscal year related to a payment guarantee shall be deemed to be substituted for the term "base fiscal year" used in such paragraphs (d), (e) and (f);

(ii) the term "transferable earnings", as used in such paragraph (f), shall be deemed to refer to a cumulative earnings factor (as defined in paragraph (g) of subdivision three of this section), whether such factor is a positive or a negative quantity.

2. For the purpose of this section, the definitions set forth in paragraphs five, six, seven and eight of subdivision a of section 13-232 of this title shall apply to this section 13-193.7 with the same force and effect as if such definitions were specifically set forth in this section; provided, however, that for the purpose of any determination, calculation or allocation under this section with respect to any HPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of subdivision three of this section):

(a) the term "HPSOVSF basis fiscal year related to a payment guarantee" shall be deemed to be substituted for the term "base fiscal year" set forth in such paragraphs;

(b) the words "retirement system" shall be deemed to be substituted for the words "pension fund" or "fund" set forth in subparagraph (a) of such paragraph five and in such paragraphs seven and eight;

(c) the board referred to in subparagraph (b) of such paragraph eight shall be deemed to mean the board of trustees of the retirement system and the term "tie vote" shall be deemed to refer to a circumstance where a resolution is not adopted because of the provisions of subparagraph (d) of paragraph five of subdivision b of section 13-103 of this chapter; and

(d) the term "transferable earnings" set forth in subparagraph (b) of such paragraph eight shall be deemed to mean any HPSOVSF cumulative earnings factor (as defined in paragraph (h) of subdivision three of this section) which is a positive quantity.

3. For the purposes of this section the following terms shall mean and include:

(a) "Housing police superior officers section 13-192". Section 13-192 of this chapter, which relates to the housing police superior officers' variable supplements fund.

(b) "Housing police section 13-193". Section 13-193 of this chapter, which relates to the housing police variable supplements funds.

(c) "HPSOVSF basis fiscal year related to a payment guarantee". Any fiscal year of the city commencing on or after July first of the first HPSOVSF calendar year covered by a payment guarantee (as defined in paragraph (j) of this subdivision).

(d) "Prior HPSOVSF basis fiscal year related to a payment guarantee". Any fiscal year of the city which begins on or after the July first referred to in paragraph (c) of this subdivision and which also precedes a HPSOVSF basis fiscal year related to a payment guarantee.

(e) "Earnings differential". The amount (expressed as a positive or negative quantity) by which the equity experience factor (expressed as a positive or negative quantity) with respect to the HPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision) differs from the hypothetical fixed income securities earnings with respect to such HPSOVSF basis fiscal year. If such equity experience factor is greater than such hypothetical fixed income securities earnings, the difference between the two shall be expressed as a positive quantity. If such hypothetical fixed income securities earnings are greater than such equity experience factor, the difference between the two shall be expressed as a negative quantity.

(f) "Cumulative earnings factor as of June thirtieth in the first HPSOVSF calendar year covered by a payment guarantee". (i) An amount, expressed as a positive or negative quantity, as the case may be, which shall be determined in accordance with the method set forth in the succeeding subparagraphs of this paragraph.

(ii) Subject to the provisions of subparagraph (vi) of this paragraph, pursuant to the procedure set forth in paragraphs (c), (d), (e) and (f) of housing police section 13-193, the cumulative earnings differential for the base fiscal year (as defined in paragraph eleven of subdivision a of section 13-232 of this title) shall be computed for the fiscal year of the city next preceding July first of the first HPSOVSF calendar year covered by a payment guarantee (as defined in paragraph (j) of this subdivision).

(iii) Subject to the provisions of subparagraph (vi) of this paragraph, the cumulative distributions of transferable earnings for prior base fiscal years (as defined in paragraph thirteen of subdivision a of such section 13-232) shall be computed pursuant to such section 13-232 and paragraphs (c), (d), (e) and (f) of housing police section 13-193 with

respect to such fiscal year next preceding July first of the first HPSOVSF calendar year covered by a payment guarantee.

(iv) Subject to the provisions of subparagraph (vi) of this paragraph, the amount of transferable earnings (as defined in paragraph (c) of subdivision one of housing police section 13-193), if any, for such fiscal year next preceding such July first, determined in accordance with the applicable provisions of subdivision four of such section 13-193, shall be added to the cumulative distributions of transferable earnings computed pursuant to subparagraph (iii) of this paragraph.

(v) The sum resulting from the addition prescribed by subparagraph (iv) of this paragraph (f) shall be subtracted from the amount computed pursuant to subparagraph (ii) of this paragraph. The remainder resulting from the subtraction shall be the cumulative earnings factor as of June thirtieth in the first HPSOVSF calendar year covered by a payment guarantee.

(vi) For the purposes of the computations prescribed by the preceding subparagraphs of this paragraph:

(A) the term "base fiscal year" set forth in the provisions of such sections 13-193 and 13-232 mentioned in such subparagraphs shall be deemed to refer, as appropriate, to such fiscal year next preceding such July first and to any fiscal year of the city which both precedes such next preceding fiscal year and occurs after June thirtieth, nineteen hundred eighty-seven; and

(B) such computations shall be made in the same manner as if the provisions of section 13-193.1 of this chapter (other than subdivision six of such section) and the amendment made by section twenty-eight of chapter eight hundred seventy-eight of the laws of nineteen hundred ninety had never been enacted.

(g) "Cumulative earnings factor". (i) The cumulative earnings factor for any HPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision) shall be determined as follows:

(A) If the cumulative earnings factor for the immediately preceding HPSOVSF basis fiscal year related to a payment guarantee was a positive quantity, the cumulative earnings factor for the HPSOVSF basis fiscal year related to a payment guarantee shall be equal to the earnings differential for such basis HPSOVSF fiscal year related to a payment guarantee.

(B) If the cumulative earnings factor for the immediately preceding HPSOVSF basis fiscal year related to a payment guarantee was a negative quantity, the cumulative earnings factor for the HPSOVSF basis fiscal year related to a payment guarantee shall be equal to the sum of:

(1) the earnings differential for the HPSOVSF basis fiscal year related to a payment guarantee; and

(2) the cumulative earnings factor for the immediately preceding HPSOVSF basis fiscal year related to a payment guarantee, increased with interest at a rate equal to the assumed rate of interest (as defined in paragraph eight of subdivision a of section 13-232 of this title, as made applicable to this section by subdivision two of this section) fixed with respect to such HPSOVSF basis fiscal year related to a payment guarantee for which a cumulative earnings factor is being determined pursuant to this paragraph (g).

(ii) In applying the provisions of this paragraph (g) for the first HPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision), the term defined in paragraph (f) of this subdivision three as "cumulative earnings factor as of June thirtieth in the first HPSOVSF calendar year covered by a payment guarantee" shall be substituted for the term "cumulative earnings factor for the immediately preceding HPSOVSF basis fiscal year related to a payment guarantee".

(h) "HPSOVSF cumulative earnings factor". With respect to any HPSOVSF basis fiscal year related to a

payment guarantee (as defined in paragraph (c) of this subdivision), the amount obtained by multiplying the allocation to the housing police variable supplements funds (as defined in paragraph (f) of subdivision one of housing police section 13-193 of this chapter, as made applicable to this section 13-193.7 by subdivision one thereof), for such HPSOVSF basis fiscal year related to a payment guarantee by a fraction, the numerator of which shall be the total contributions made to the retirement system with respect to such HPSOVSF basis fiscal year related to a payment guarantee on behalf of all housing police members who are housing police superior officers (as defined in subdivision eighty-four of section 13-101 of this chapter), as of the last day of such HPSOVSF basis fiscal year and the denominator of which shall be the total contributions made to the retirement system with respect to such HPSOVSF basis fiscal year related to a payment guarantee on behalf of all housing police members who are members of the housing police service as of the last day of such HPSOVSF basis fiscal year.

(i) "HPSOVSF unfunded accrued liability". In any case where the valuation of assets and liabilities of the housing police superior officers' variable supplements fund by the actuary pursuant to paragraph (h) of subdivision three of housing police superior officers section 13-192 shows that for any HPSOVSF basis fiscal year related to a payment guarantee, such liabilities exceed such assets, the term "HPSOVSF unfunded accrued liability" shall mean the amount of the excess of such liabilities over the amount of such assets for such HPSOVSF basis fiscal year.

(j) "HPSOVSF calendar year covered by a payment guarantee". The calendar year in which a guarantee of payment of variable supplements first takes effect pursuant to paragraph (f) or paragraph (g) of subdivision three of housing police superior officers section 13-192, and any succeeding calendar year.

(k) "Current HPSOVSF fiscal year related to payment guarantee". The fiscal year of the city next succeeding a HPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of this subdivision).

4. As soon as practicable after the close of each HPSOVSF basis fiscal year related to a payment guarantee (as defined in paragraph (c) of subdivision three of this section), but not later than December thirty-first of the current HPSOVSF fiscal year related to a payment guarantee (as defined in paragraph (k) of subdivision three of this section,*24 the board of trustees of the retirement system shall compute the HPSOVSF cumulative earnings factor (as defined in paragraph (h) of subdivision three of this section) with respect to such HPSOVSF basis fiscal year.

5. If the HPSOVSF cumulative earnings factor of such HPSOVSF basis fiscal year is a positive quantity, the retirement system, on or before December thirty-first of the current HPSOVSF fiscal year related to a payment guarantee, shall pay from its contingent reserve fund to the housing police superior officers' variable supplements fund, as the payment due for such HPSOVSF basis fiscal year under this section, an amount determined pursuant to the provisions of subdivision six of this section.

6. The amount payable for such HPSOVSF basis fiscal year as provided for in subdivision five of this section shall be the lesser of (a) the HPSOVSF cumulative earnings factor for such HPSOVSF basis fiscal year referred to in such subdivision five or (b) the HPSOVSF unfunded accrued liability (as defined in paragraph (i) of subdivision three of this section) for such HPSOVSF basis fiscal year.

7. No amount shall be due from or payable by the retirement system to such variable supplements fund under this section for any HPSOVSF basis fiscal year related to a payment guarantee which shall exceed the HPSOVSF unfunded accrued liability for such HPSOVSF basis fiscal year, regardless of the amount and character of the HPSOVSF cumulative earnings factor for such HPSOVSF basis fiscal year.

8. The comptroller shall furnish to the board of trustees of the retirement system such information and data as it may request for the purpose of carrying out the provisions of this section.

**HISTORICAL NOTE**

Section added chap 719/1994 § 34, eff. Aug 2, 1994 and retroactive to

Jan. 1, 1993.

**FOOTNOTES**

24

[Footnote 24]: * So in original. ("section," s.b. "section)")



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

*NYC Administrative Code 13-194*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-194 Correction officers' variable supplements fund.

1. As used in this section, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

(a) "Association". The New York city correction officers' benevolent association.

(b) "Variable supplements board". The board of trustees provided for in subdivision three of this section.

(c) "Beneficiary". Any person who receives a retirement allowance by reason of having retired, on or after July first, nineteen hundred ninety-nine for service as a correction officer with immediate payability of a retirement allowance, and with credit for (1) twenty or more years of service, if such correction officer retires as a participant in and pursuant to the provisions of a twenty-year uniformed correction plan (as defined in paragraph (e) of this subdivision), or (2) twenty-five or more years of service, if such correction officer retires as a participant in and pursuant to the provisions of a retirement plan other than a twenty-year uniformed correction plan, provided, however, that nothing contained in this paragraph shall be construed as modifying any eligibility requirement for service retirement in any service retirement plan.

(d) "Variable supplement". Any sum authorized to be paid to a beneficiary pursuant to the provisions of this section.

(e) "Twenty-year uniformed correction plan". A service retirement plan in which any correction officer who has twenty or more years of service is eligible to retire for service at any age with immediate payability of a retirement

allowance.

(f) "Correction officer". A member of the uniformed force of the New York city department of correction who is a member of the retirement system (as defined in subdivision one of section 13-101 of this chapter).

(g) "Calendar year not covered by a payment guarantee". Any calendar year beginning on or after January first, two thousand, which year precedes the first calendar year in which a guarantee of payment of variable supplements takes effect pursuant to the provisions of paragraph (f) or paragraph (g) of subdivision three of this section.

(h) "Calendar year covered by a payment guarantee". The calendar year in which a guarantee of payment of variable supplements first takes effect pursuant to paragraph (f) or paragraph (g) of subdivision three of this section, and any succeeding calendar year.

2. (a) There is hereby established a fund, to be known as the correction officers' variable supplements fund. Such fund shall consist of such monies as may be paid thereto from the retirement system pursuant to the provisions of sections 13-195 and 13-195.1 of this chapter and all other monies received by such fund from any other source pursuant to law.

(b) It is hereby declared by the legislature that the correction officers' variable supplements fund shall not be, and shall not be construed to constitute, a pension or retirement system or fund, and that it shall function as a means whereby payments, not constituting a pension or retirement allowance, may be made in accordance with the provisions of this section, to eligible beneficiaries as a supplement to benefits received by them pursuant to this title. The legislature hereby reserves to the state and itself the right and power to amend, modify or repeal any or all of the provisions of this section.

3. (a) The correction officers' variable supplements fund shall be administered by a board of trustees which shall, subject to applicable provisions of law, from time to time establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof.

(b) Such variable supplements board shall consist of:

(1) The representative of the mayor who is a member of the board of trustees of the retirement system, who shall be entitled to cast one vote. The mayor may, by instrument in writing filed in his office and with the variable supplements board, designate one or more members of his office to act in the place of such representative at meetings of the board, in the event of such representative's absence therefrom.

(2) The comptroller of the city, who shall be entitled to cast one vote. Any deputy comptroller authorized pursuant to subdivision b of section ninety-four of the New York city charter, to act in the place of the comptroller as a member of the board of trustees of the retirement system, may be authorized by the comptroller, in accordance with the provisions of such subdivision, to act in the place of the comptroller as a member of the variable supplements board.

(2-a) The commissioner of finance, who shall be entitled to cast one vote. Such commissioner may, by instrument in writing filed in his or her office and with the variable supplements board, designate one or more members of his or her office to act in his or her place at meetings of such board, in the event of such commissioner's absence therefrom.

(3) One member of the association designated by it, who shall be entitled to cast one and one-half votes. The member so designated shall be an officer of the association. Such designee may at any time, by written authoriztion filed with the variable supplements board, authorize any other officer of the association to act in his place as a member of the board in the event of such designee's absence from any meeting thereof; provided that the bylaws or constitution of the association provide for the designation of a representative for such purpose.

(4) One representative of the correction captains, designated by the recognized employee organization representing such correction captains for collective bargaining purposes. Such representative shall be entitled to cast one-half vote. Such representative may at any time, by written authorization filed with the variable supplements board, authorize any other officer of such organization to act in his place as a member of the board in the event of such designee's absence from any meeting thereof.

(c) Every act of the variable supplements board shall be by resolution which shall be adopted only by a vote of at least three-fifths of the whole number of votes authorized to be cast by all of the members of such board.

(d) Repealed.

(d) The actuary appointed by the board of the retirement system shall be the technical advisor of the variable supplements board.

(d-1) The retirement system shall assign to the variable supplements board such number of clerical and other assistants as may be necessary for the performance of its functions.

(e)(1) As of October thirty-first, two thousand and as of October thirty-first of each succeeding calendar year not covered by a payment guarantee (as defined in paragraph (g) of subdivision one of this section), the actuary referred to in paragraph (d) of this subdivision shall value the assets of the variable supplements fund, subject to the provisions of paragraph (i) of this subdivision, and make an estimate of the total amount of variable supplements which would be payable, pursuant to subdivision four of this section and subparagraph two of this paragraph, to beneficiaries for such calendar year for which such valuation and estimate are made, if such actuary determines that the value of such assets, as of October thirty-first of such calendar year, is equal to or greater than such total amount of variable supplements.

(2) If such actuary determines that the value of such assets, as of October thirty-first of any such calendar year for which a valuation and estimate are required by subparagraph one of this paragraph, is equal to or greater than such estimated total amount of variable supplements which would be payable for such calendar year, then the variable supplements which, upon a favorable determination of the actuary under this paragraph, are declared by subdivision four of this section to be payable to beneficiaries for such calendar year or a part thereof shall be paid by the variable supplements fund, in the applicable amounts prescribed by such subdivision four, to beneficiaries on or about December fifteenth of such calendar year.

(3) If such actuary determines that the value of such assets, as of October thirty-first of any such calendar year for which a valuation and estimate are required by subparagraph one of this paragraph, is less than such estimated total amount of variable supplements which would be payable for such calendar year pursuant to a favorable determination of the actuary, then no beneficiary shall be entitled to receive any variable supplement for such calendar year or any part thereof and no variable supplement shall be paid to any beneficiary for such calendar year or any part thereof.

(4) In any case where, pursuant to the provisions of subparagraphs one and three of this paragraph, no variable supplements are payable for a calendar year or part thereof to any beneficiary, no variable supplements for such calendar year or part thereof shall at any time thereafter be payable and no beneficiary shall at any time thereafter be entitled to receive a variable supplement for such calendar year or part thereof.

(f)(1) As of October thirty-first, two thousand and as of October thirty-first of each succeeding calendar year up to and including the earlier of (i) the first calendar year covered by a payment guarantee (as defined in paragraph (h) of subdivision one of this section) or (ii) the calendar year two thousand eighteen, the actuary referred to in paragraph (d) of this subdivision shall value the assets of the variable supplements fund, subject to the provisions of paragraph (i) of this subdivision, and shall estimate the present value, as of such October thirty-first, of all variable supplements which the variable supplements fund, under the provisions of subdivision four of this section, would be obligated to pay to beneficiaries with the respect to the calendar year in which such October thirty-first occurs and all succeeding calendar years up to and including the calendar year two thousand eighteen, if it were assumed that such variable supplements

were payable with respect to all such calendar years occurring during the period beginning with the calendar year in which such October thirty-first occurs and extending to and including the calendar year two thousand eighteen.

(2) If the value of such assets as of any such October thirty-first is equal to or greater than such estimated present value of variable supplements as of such October thirty-first:

(i) variable supplements, as provided for in subdivision four of this section, shall be paid to beneficiaries for the calendar year in which such October thirty-first occurs and for each subsequent calendar year; and

(ii) paragraph (e) of this subdivision shall be inapplicable with respect to entitlement of beneficiaries to variable supplements for the calendar years referred to in item (i) of this subparagraph; and

(iii) payment of all variable supplements payable for the calendar years referred to in item (i) of this subparagraph is hereby made an obligation of the city and the city hereby guarantees that such variable supplements shall be paid to all beneficiaries for such calendar years.

(g) If a guarantee of payment of variable supplements, pursuant to paragraph (f) of this subdivision does not take effect prior to the calendar year two thousand nineteen, variable supplements, as provided for in subdivision four of this section, shall be paid pursuant to such subdivision four for the calendar year two thousand nineteen and each subsequent calendar year. Such payment is hereby made an obligation of the city and the city hereby guarantees that such variable supplements shall be paid to all beneficiaries for such calendar years.

(h)(1) Subject to the provisions of paragraph (i) of this subdivision, as of June thirtieth next succeeding the first calendar year covered by a payment guarantee (as defined in paragraph (h) of subdivision one of this section) and as of each succeeding June thirtieth, the actuary referred to in paragraph (d) of this subdivision shall make a valuation of the assets and liabilities of the variable supplements fund in accordance with the requirements of the succeeding subparagraphs of this paragraph. For the purposes of paragraph (g) of subdivision three of section 13-195.1 of this chapter, such valuation as of any such June thirtieth shall be the valuation for the basis fiscal year related to a payment guarantee (as defined in paragraph (a) of subdivision three of such section 13-195.1) in which such June thirtieth occurs.

(2) The actuary shall base such annual valuation of liabilities only (i) upon the persons who, as of each such June thirtieth, are beneficiaries and (ii) upon the persons who, being correction officers in service as of such June thirtieth, may be actuarially expected to retire thereafter as correction officers for service with the number of years of service required to become beneficiaries (as defined in paragraph (c) of subdivision one of this section).

(3) The liabilities determined in such valuation shall be equal to the actuarial present value of accumulated plan benefits. The actuarial assumptions used by the actuary in making such annual valuation of liabilities, including assumptions as to interest rate, mortality of beneficiaries and number of correction officers in service as of June thirtieth who will retire as correction officers for service with the number of years of service required to become beneficiaries (as defined in paragraph (c) of subdivision one of this section), shall be adopted by the variable supplements board on the recommendation of the actuary.

(i) For the purposes of the valuation of the assets of the variable supplements fund pursuant to paragraphs (e), (f) and (h) of this subdivision, such assets shall be valued at their fair market value as of the applicable date with respect to which such assets are required to be valued under the applicable provisions of such paragraphs.

(j) Whenever variable supplements are payable to beneficiaries of the correction officers' variable supplements fund pursuant to the provisions of this section, such payment, except as provided in paragraphs (f) and (g) of this subdivision, shall not be an obligation of the city and the city, except as provided for in such paragraphs (f) and (g), shall not guarantee such payment.

4. (a) The variable supplements fund shall pay variable supplements to beneficiaries in accordance with the

succeeding paragraphs of this subdivision.

(b) No variable supplements shall be payable to any beneficiary for any calendar year or part thereof preceding January first, two thousand.

(c) For calendar years succeeding December thirty-first, nineteen hundred ninety-nine, the variable supplements fund, subject to the provisions of paragraphs (e), (f) and (g) of subdivision three of this section, and provided any applicable conditions precedent to payability as prescribed by such provisions are satisfied, and subject to the provisions of paragraph (e) of this subdivision, shall pay to each beneficiary, who retired on or after July first, nineteen hundred ninety-nine and prior to January first, two thousand, variable supplements payments as follows:

(1) for each calendar year following calendar year nineteen hundred ninety-nine, but not including the calendar year of beneficiary's death, a single annual payment to be paid on or about December fifteenth of such year, as follows:

| CALENDAR YEAR | SUPPLEMENT |
|---|---|
| 2000 | $ 8,500 |
| 2001 | $ 9,000 |
| 2002 | $ 9,500 |
| 2003 | $10,000 |
| 2004 | $10,500 |
| 2005 | $11,000 |
| 2006 | $11,500 |
| 2007 | $12,000 |
| 2008 | $12,000 |
| 2009 | $12,000 |
| 2010 | $12,000 |
| 2011 | $12,000 |
| 2012 | $12,000 |
| 2013 | $12,000 |
| 2014 | $12,000 |
| 2015 | $12,000 |
| 2016 | $12,000 |
| 2017 | $12,000 |
| 2018 | $12,000 |
| 2019 and each calendar year thereafter | $12,000 |

(2) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, two thousand), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided in the chart set forth in subparagraph one of this paragraph, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death.

(d) For calendar years succeeding December thirty-first, nineteen hundred ninety-nine, the variable supplements fund, subject to the provisions of paragraphs (e), (f) and (g) of subdivision three of this section and provided any applicable conditions precedent to payability under such provisions are satisfied, and subject to the provisions of paragraph (e) of this subdivision, shall pay to each person who retired for service on or after January first, two thousand so as to become a beneficiary, variable supplements payments as follows:

(1) for the calendar year of retirement, an amount calculated by multiplying one-twelfth times the supplement applicable to the year of retirement, as provided for in the chart set forth in subparagraph one of paragraph (c) of this subdivision, by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(2) for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment equal to the supplement provided for with respect to each such calendar year as set forth in the chart in subparagraph one of paragraph (c) of this subdivision, which payment shall be made on or about December fifteenth of such year;

(3) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, two thousand), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided for in the chart set forth in subparagraph one of paragraph (c) of this subdivision, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death; and

(4) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs one and three of this paragraph shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(e) (1) (i) Subject to the provisions of items (ii) and (iii) of this subparagraph, on or after January first, two thousand, where a beneficiary is entitled to receive variable supplements payments pursuant to paragraph (c) or (d) of this subdivision, and that beneficiary is also entitled to receive a supplemental retirement allowance or cost-of-living adjustment pursuant to any other provision of law enacted on or after the effective date of the chapter which amended this subdivision (hereinafter referred to as "other supplemental retirement allowance"), the amount of such variable supplement payable for a calendar year or a part of such calendar year to such beneficiary shall be reduced by the amount of such other supplemental retirement allowance that is payable to such beneficiary to the extent that such other supplemental retirement allowance is attributable to the same calendar year or part of such calendar year.

(ii) For any beneficiary referred to in paragraph (c) or (d) of this subdivision, whose variable supplements payments are being reduced pursuant to item (i) of this subparagraph because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such item (i) shall cease as to such beneficiary on the later of (A) the first day of the month next following the month in which such beneficiary attains age sixty-two; or (B) January first, two thousand seven.

(iii) In any case where the reduction of variable supplements payments to a beneficiary has ceased pursuant to item (ii) of this subparagraph, that beneficiary, for the purpose of determining his or her eligibility for and the amount of any other supplemental retirement allowance, shall be deemed to have retired on the date of the cessation of such reduction specified in the applicable provisions of such item (ii).

(2) The legislature hereby declares that the variable supplements authorized by this section and the granting and

receipt thereof:

(i) shall not create or constitute membership in a pension or retirement system and shall not create or constitute a contract with any beneficiary or with any correction officer; and

(ii) shall not constitute a pension or retirement allowance or benefit under the retirement system or otherwise.

(3) Except as otherwise provided in sections 13-195 and 13-195.1 of this chapter, nothing contained in this section shall create or impose any obligation on the part of the retirement system, or the funds or monies thereof, or authorize such funds or monies to be appropriated or used for any payment under this section or for any purpose thereof.

(f) Beneficiaries shall be eligible to receive variable supplements pursuant to this section, notwithstanding any other provision of law to the contrary.

(g) The monies or assets of the variable supplements fund shall not be used for any purpose, other than payment of variable supplements pursuant to the provisions of this section, except that they may be invested as authorized by subdivision six of this section.

5. The correction officers' variable supplements fund shall have the powers and privileges of a corporation and by its name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property held.

6. (a) The members of the variable supplements board shall be the trustees of the monies received by or belonging to the correction officers' variable supplements fund pursuant to this section and, subject to the provisions of paragraph (b) of this subdivision, shall have full power to invest same, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of such monies shall have been invested as well as of the proceeds of such investments and of any monies belonging to such fund.

(b) The members of the variable supplements board shall have the same investment powers and power to delegate such powers as are vested by the code and the retirement and social security law in the members of the board of trustees of the retirement system.

7. The variable supplements board shall publish annually in the City Record a report for the preceding year showing the assets of the correction officers' variable supplements fund and a statement as to the accumulated cash and securities of such fund as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as the board may deem pertinent.

8. The comptroller shall be custodian of the monies and assets of the correction officers' variable supplements fund. All such monies and assets included in such fund or which shall hereafter accrue to such fund shall be in his custody for the purposes of this section subject to the direction, control and approval of such board as to disposition, investment, management and report. All payments from such fund shall be made by the comptroller upon a voucher signed by the secretary of the variable supplements board.

9. Except as provided in this section, the trustees and employees assigned to the variable supplements board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment of the correction officers' variable supplements fund or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board.

10. The superintendent of insurance may examine the affairs of the correction officers' variable supplements fund with the same powers and jurisdiction as are applicable in the case of an examination of a life insurance company by the superintendent under article three of the insurance law. The correction officers' variable supplements fund shall be subject to assessment for expenses pursuant to the provisions of section three hundred thirteen of the insurance law, but shall not be subject to assessment for expenses under any of the provisions of section three hundred thirty-two of the insurance law.

**HISTORICAL NOTE**

Section added chap 657/1999 § 2, eff. Dec. 29, 1999.

Subd. 1 pars (c), (d) amended chap 255/2000 § 2, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 1 pars (e), (f), (g), (h) added chap 255/2000 § 3, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 2 amended chap 255/2000 § 4, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 3 par (a) amended chap 255/2000 § 5, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 3 par (b) subpar (2-a) added chap 255/2000 § 6, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 3 par (b) subpar (3) amended chap 255/2000 § 7, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 3 par (b) subpar (4) added chap 255/2000 § 8, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 3 par (c) amended chap 255/2000 § 9, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 3 par (d) relettered (formerly par (e)) chap 255/2000 § 11, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 3 par (d) repealed chap 255/2000 § 10, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 3 par (d-1) relettered (formerly par (f)) chap 255/2000 § 11, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29,

1999.

Subd. 3 pars (e)-(j) added chap 255/2000 § 12, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 4 amended chap 255/2000 § 13, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 4 par (e) subpar (1) item (i) amended chap 125/2000 § 13, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 6 amended chap 255/2000 § 14, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Subd. 10 amended chap 255/2000 § 15, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.



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Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-195 Correction captains' and above variable supplements fund.

**HISTORICAL NOTE**

Section repealed chap 255/2000 § 16, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Section added chap 657/1999 § 2, eff. Dec. 29, 1999.



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Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-195 Payments to correction officers' variable supplements fund.

1. As used in this section, the following terms shall mean and include:

(a) "Base fiscal year". Any fiscal year of the city beginning on or after July first, nineteen hundred ninety-nine and ending on or before June thirtieth of the first calendar year covered by a payment guarantee (as defined in paragraph (g) of this subdivision), with respect to which fiscal year a determination is required to be made as to whether the retirement system is required to make a payment, pursuant to the provisions of this section, to the correction officers' variable supplements fund.

(b) "Current fiscal year". The fiscal year of the city next succeeding the base fiscal year.

(c) "Transferable earnings". (i) The total amount obtained in a base fiscal year with respect to the New York city employees' retirement system by following the procedure described in paragraph twelve of subdivision a of section 13-232 of this title, as such procedure is modified in subparagraph (ii) of this paragraph.

(ii) In determining the transferable earnings for a base fiscal year pursuant to subparagraph (i) of this paragraph, the term "assumed rate of interest", as used in item (i) of subparagraph (d) of paragraph seven of subdivision a of section 13-232 of this title shall be deemed to mean the rate of interest equal to one hundred fifteen percent of the average of monthly, ten-year United States treasury note yields as published in the Federal Reserve Statistical Bulletin H.15 or any successor publication. In the event that ten-year United States treasury note yields are no longer so published, then a comparable bond yield will be used.

(d) "Amount of assets of the retirement system". With respect to any base fiscal year, the aggregate amount of all assets of the retirement system on June thirtieth of such fiscal year.

(e) "Correction officers assets". The amount obtained by multiplying the total assets of the retirement system as of June thirtieth of such base fiscal year by (i) the total salaries of correction officer members of the retirement system as of such June thirtieth and dividing the product by (ii) the total salaries of members of the retirement system as of such June thirtieth.

(f) "Allocation to the correction officers' variable supplements fund". With respect to any base fiscal year, the amount obtained:

(i) by multiplying the transferable earnings, if any, with respect to such base fiscal year by the amount of correction officer assets with respect to such base fiscal year; and

(ii) by dividing the amount computed pursuant to subparagraph (i) of this paragraph by the amount of assets of the retirement system with respect to such base fiscal year.

(g) "Calendar year covered by a payment guarantee". The calendar year in which a guarantee by the city of payment of variable supplements first takes effect pursuant to paragraph (f) or paragraph (g) of subdivision three of section 13-194 of this chapter, and any succeeding calendar year.

(h) "Basis fiscal year related to a payment guarantee". Any fiscal year of the city beginning on or after July first of the first calendar year covered by a payment guarantee (as defined in paragraph (g) of this subdivision).

2. As soon as practicable after the close of each base fiscal year, but not later than August thirty-first of the current fiscal year, the board of the retirement system shall:

(a) determine, in the manner provided in paragraph (f) of subdivision one of this section, whether there is an allocation to the correction officers' variable supplements fund with respect to such base fiscal year; and

(b) if there be such an allocation to the correction officers' variable supplements fund with respect to the base fiscal year, determined as hereinabove provided, the retirement system shall pay such allocation from the contingent reserve fund to the correction officers' variable supplements fund.

3. For the nineteen hundred ninety-nine-two thousand base fiscal year (as defined in paragraph (a) of subdivision one of this section) and each succeeding base fiscal year to and including the base fiscal year ending on June thirtieth of the first calendar year covered by a payment guarantee (as defined in paragraph (g) of subdivision one of this section), the determination as to whether there are transferable earnings with respect to each base fiscal year, and if there are such transferable earnings, the amount thereof, shall be made pursuant to the preceding subdivisions of this section.

4. The preceding subdivisions of this section shall be inapplicable to the determination of any and all rights of the correction officers' variable supplements fund to any payments from the retirement system derived from or based on investment earnings of the retirement system in any fiscal year of the city commencing on or after July first of the first calendar year covered by a payment guarantee (as defined in paragraph (g) of subdivision one this section).

5. The determination as to whether the retirement system is required to pay any monies to the corrections officers' variable supplements fund with respect to all basis fiscal years related to a payment guarantee (as defined in paragraph (h) of subdivision one of this section), and if any such monies are so payable, the amount thereof, shall be made pursuant to section 13-195.1 of this chapter.

**HISTORICAL NOTE**

Section renumbered and amended (formerly § 13-196) chap 255/2000

§ 17, eff. Aug. 16, 2000 and deemed in force and effect on and after Dec. 29, 1999.

Section added chap 657/1999 § 2, eff. Dec. 29, 1999.

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Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-195.1 Payments to correction officers' variable supplements fund for basis fiscal years related to a payment guarantee.

1. (a) Subject to the provisions of paragraph (b) of this subdivision, for the purposes of this section, the definitions of terms set forth in paragraphs (d), (e) and (f) of subdivision one of section 13-195 of this chapter shall apply to this section with the same force and effect as if such definitions were specifically set forth in this section.

(b) For the purpose of any determination, calculation or allocation under this section with respect to any basis fiscal year related to a payment guarantee (as defined in paragraph (a) of subdivision three of this section): (i) the term "base fiscal year" used in paragraphs (d), (e) and (f) of subdivision one of section 13-195 of this chapter shall be deemed to refer to a basis fiscal year related to a payment guarantee; and

(ii) the term "transferable earnings", as used in paragraph (f) of subdivision one of section 13-195 of this chapter, shall be deemed to refer to a cumulative earnings factor (as defined in paragraph (e) of subdivision three of this section), whether such factor is a positive or a negative quantity.

2. For the purposes of this section, the definitions set forth in paragraphs five, six and seven of subdivision a of section 13-232 of this title shall apply to this section with the same force and effect as if such definitions were specifically set forth in this section; provided, however, that for the purpose of any determination, calculation or allocation under this section with respect to any basis fiscal year related to a payment guarantee (as defined in paragraph (c) of subdivision three of this section):

(a) the term "basis fiscal year related to a payment guarantee" shall be deemed to be substituted for the term

"base fiscal year" set forth in paragraphs five, six and seven of subdivision a of section 13-232 of this title;

(b) the words "retirement system" shall be deemed to be substituted for the words "pension fund" or "fund" set forth in subparagraph (a) of paragraph five of subdivision a of section 13-232 of this title and in paragraph seven of such subdivision a; and

(c) the term "assumed rate of interest" set forth in item (i) of subparagraph (d) of paragraph seven of subdivision a of section 13-232 of this title shall be deemed to have the meaning set forth in paragraph (j) of subdivision three of this section.

3. For the purposes of this section the following terms shall mean and include:

(a) "Basis fiscal year related to a payment guarantee". Any fiscal year of the city commencing on or after July first of the first calendar year covered by a payment guarantee (as defined in paragraph (h) of this subdivision).

(b) "Prior basis fiscal year related to a payment guarantee". Any fiscal year of the city which begins on or after the July first referred to in paragraph (a) of this subdivision and which also precedes a basis fiscal year related to a payment guarantee.

(c) "Earnings differential". The amount (expressed as a positive or negative quantity) by which the equity experience factor (expressed as a positive or negative quantity) with respect to the basis fiscal year related to a payment guarantee (as defined in paragraph (a) of this subdivision) differs from the hypothetical fixed income securities earnings with respect to such basis fiscal year. If such equity experience factor is greater than such hypothetical fixed income securities earnings, the difference between the two shall be expressed as a positive quantity. If such hypothetical fixed income securities earnings are greater than such equity experience factor, the difference between the two shall be expressed as a negative quantity.

(d) "Cumulative earnings factor as of June thirtieth in the first calendar year covered by a payment guarantee". (i) An amount, expressed as a positive or negative quantity, as the case may be, which shall be determined in accordance with the method set forth in the succeeding subparagraphs of this paragraph.

(ii)(A) Subject to the provisions of item (B) of this subparagraph, the cumulative earnings differential for the base fiscal year (as defined in paragraph eleven of subdivision a of section 13-232 of this title), as made applicable by paragraph (c) of subdivision one of section 13-195 of this chapter to the base fiscal years defined in paragraph (a) of such subdivision one, shall be computed pursuant to such section 13-195 for the base fiscal year (as so defined by such paragraph (a)) next preceding July first of the first calendar year covered by a payment guarantee (as defined in paragraph (h) of this subdivision).

(B) In the computation of the cumulative earnings differential for such next preceding base fiscal year as provided for in item (A) of this subparagraph, computations for such next preceding base fiscal year and each preceding base fiscal year shall be made in compliance with the applicable provisions of subdivision three of section 13-195 of this chapter.

(iii) The cumulative distributions of transferable earnings for prior base fiscal years (as defined in paragraph thirteen of subdivision a of section 13-232 of this chapter) shall be computed pursuant to such section 13-232 and section 13-195 of this chapter with respect to such base fiscal year next preceding July first of the first calendar year covered by a payment guarantee.

(iv) The amount of transferable earnings (as defined in paragraph (c) of subdivision one of section 13-195 of this chapter), if any, for such fiscal year next preceding such July first, determined in accordance with the applicable provisions of subdivision three of such section 13-195, shall be added to the cumulative distributions of transferable earnings computed pursuant to subparagraph (iii) of this paragraph.

(v) The sum resulting from the addition prescribed by subparagraph (iv) of this paragraph shall be subtracted from the amount computed pursuant to subparagraph (ii) of this paragraph. The remainder resulting from the subtraction shall be the cumulative earnings factor as of June thirtieth in the first calendar year covered by a payment guarantee.

(e) "Cumulative earnings factor". (i) The cumulative earnings factor for any basis fiscal year related to a payment guarantee (as defined in paragraph (a) of this subdivision) shall be determined as follows:

(A) If the cumulative earnings factor for the immediately preceding basis fiscal year related to a payment guarantee was a positive quantity, the cumulative earnings factor for the basis fiscal year related to a payment guarantee shall be equal to the earnings differential for such basis fiscal year related to a payment guarantee.

(B) If the cumulative earnings factor for the immediately preceding basis fiscal year related to a payment guarantee was a negative quantity, the cumulative earnings factor for the basis fiscal year related to a payment guarantee shall be equal to the sum of:

(1) the earnings differential for the basis fiscal year related to a payment guarantee; and

(2) the cumulative earnings factor for the immediately preceding basis fiscal year related to a payment guarantee, increased with interest at a rate equal to the assumed rate of interest (as defined in paragraph (j) of this subdivision) with respect to such basis fiscal year related to a payment guarantee for which a cumulative earnings factor is being determined pursuant to this paragraph.

(ii) In applying the provisions of this paragraph for the first basis fiscal year related to a payment guarantee (as defined in paragraph (a) of this subdivision), the term defined in paragraph (d) of this subdivision as "cumulative earnings factor as of June thirtieth in the first calendar year covered by a payment guarantee" shall be substituted for the term "cumulative earnings factor for the immediately preceding basis fiscal year related to a payment guarantee".

(f) "COVSF cumulative earnings factor". With respect to any basis fiscal year related to a payment guarantee (as defined in paragraph (a) of this subdivision), the amount equal to the allocation to the correction officers' variable supplements fund (as determined pursuant to the provisions of paragraph (f) of subdivision one of section 13-195 of this chapter, as made applicable to this section by subdivision one of this section), for such basis fiscal year related to a payment guarantee.

(g) "COVSF unfunded accrued liability". In any case where the valuation of assets and liabilities of the correction officers' variable supplements fund by the actuary pursuant to paragraph (h) of subdivision three of section 13-194 of this chapter shows that for any basis fiscal year related to a payment guarantee, such liabilities exceed such assets, the term "COVSF unfunded accrued liability" shall mean the amount of the excess of such liabilities over the amount of such assets for such basis fiscal year.

(h) "Calendar year covered by a payment guarantee". The calendar year in which a guarantee by the city of payment of variable supplements first takes effect pursuant to paragraph (f) or paragraph (g) of subdivision three of section 13-194 of this chapter and any succeeding calendar year.

(i) "Current fiscal year related to a payment guarantee". The fiscal year of the city next succeeding a basis fiscal year related to a payment guarantee (as defined in paragraph (a) of this subdivision).

(j) "Assumed rate of interest". The rate of interest equal to one hundred fifteen percent of the average of monthly, ten-year United States treasury note yields as published in the Federal Reserve Statistical Bulletin H.15 or any successor publication. In the event that ten-year United States treasury note yields are no longer so published, then a comparable bond yield will be used.

4. As soon as practicable after the close of each basis fiscal year related to a payment guarantee (as defined in

paragraph (a) of subdivision three of this section), but not later than December thirty-first of the current fiscal year related to a payment guarantee (as defined in paragraph (i) of subdivision three of this section), the board of trustees of the retirement system shall compute the COVSF cumulative earnings factor (as defined in paragraph (f) of subdivision three of this section) with respect to such basis fiscal year.

5. If the COVSF cumulative earnings factor for such basis fiscal year is a positive quantity, the retirement system, on or before December thirty-first of the current fiscal year related to a payment guarantee, shall pay from its contingent reserve fund to the correction officers' variable supplements fund, as the payment due for such basis fiscal year under this section, an amount determined pursuant to the provisions of subdivision six of this section.

6. The amount payable for such basis fiscal year as provided for in subdivision five of this section shall be the lesser of (a) the COVSF cumulative earnings factor for such basis fiscal year referred to in such subdivision five or (b) the COVSF unfunded accrued liability (as defined in paragraph (g) of subdivision three of this section) for such basis fiscal year.

7. No amount shall be due from or payable by the retirement system to such variable supplements fund under this section for any basis fiscal year related to a payment guarantee which shall exceed the COVSF unfunded accrued liability for such basis fiscal year, regardless of the amount and character of the COVSF cumulative earnings factor for such basis fiscal year.

8. The comptroller shall furnish to the board of trustees of the retirement system such information and data as it may request for the purpose of carrying out the provisions of this section.

**HISTORICAL NOTE**

Section added chap 255/2000 § 18, eff. Aug. 16, 2000 and deemed in

force and effect on and after Dec. 29, 1999.

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

*NYC Administrative Code 13-196*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 1 (CONTINUED) NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

§ 13-196 Excess benefit plan.

1. As used in this section, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

(a) "Retirement benefits" shall mean benefits payable to a beneficiary by the retirement system or a variable supplements fund established pursuant to this chapter which are subject to the limitations imposed by section 415(b) of the Internal Revenue Code.

(b) "Beneficiary" shall mean a person who is receiving retirement benefits from the retirement system.

(c) "Excess benefit plan" shall mean the excess benefit plan established by this section for the sole purpose of paying benefits as permitted under section 415(m) of the Internal Revenue Code.

(d) "Eligible participant" shall mean a beneficiary who is entitled to replacement benefits from the excess benefit plan for a plan year in accordance with subdivisions four and five of this section.

(e) "Replacement benefits" shall mean the benefits payable by the excess benefit plan to an eligible participant as determined pursuant to subdivision five of this section.

(f) "Internal Revenue Code" shall mean the Federal Internal Revenue Code of 1986, as amended.

(g) "Plan year" shall mean the limitation year of the retirement system as provided in section six hundred twenty of the retirement and social security law.

2. There is hereby established an excess benefit plan, the sole purpose of which shall be to provide replacement benefits, as permitted by section 415(m) of the Internal Revenue Code, to beneficiaries whose annual retirement benefits have been reduced because such benefits exceed the limitations imposed by section 415(b) of the Internal Revenue Code. The excess benefit plan shall be administered by the board of trustees of the retirement system.

3. There is hereby established a fund to be known as the excess benefit fund which shall be maintained for the sole purpose of providing replacement benefits to eligible participants in the excess benefit plan established by this section, as permitted under section 415(m) of the Internal Revenue Code. Such fund shall consist of such employer contributions as shall be made thereto pursuant to subdivision six of this section. Such contributions to the excess benefit fund shall be held separate and apart from the assets held by the other funds of the retirement system, provided, however, that the assets of the excess benefit fund may be invested with the other retirement system assets, but such excess benefit fund assets shall be accounted for separately from the other retirement system assets.

4. All beneficiaries of the retirement system whose retirement benefits for a plan year are being reduced because of section 415(b) of the Internal Revenue Code shall be eligible participants in the excess benefit plan for that plan year. Participation in the excess benefit plan shall be determined for each plan year. No beneficiary of the retirement system shall be an eligible participant in the excess benefit plan for any plan year for which his or her retirement benefits are not reduced because of section 415(b) of the Internal Revenue Code.

5. (a) For each plan year in which a beneficiary is an eligible participant in the excess benefit plan, such eligible participant shall receive replacement benefits from the excess benefit plan equal to the difference between the full amount of the retirement benefits otherwise payable to the eligible participant for that plan year prior to any reduction because of section 415(b) of the Internal Revenue Code, and the retirement benefits payable to the eligible participant for that plan year as reduced because of section 415(b) of the Internal Revenue Code. No replacement benefits for any plan year shall be paid pursuant to this subdivision to any beneficiary who is not receiving retirement benefits from the retirement system for that plan year.

(b) Replacement benefits pursuant to this section shall be paid at the same time and in the same manner as the retirement benefits which are being replaced. At no time shall an eligible participant be permitted directly or indirectly to defer compensation under the excess benefit plan.

6. (a) The required employer contributions to the excess benefit fund for each plan year shall be an amount, as determined by the actuary, which is necessary to pay the total amount of replacement benefits that are payable pursuant to this section to eligible participants for that plan year.

(b) Such required employer contributions shall be paid into the excess benefit fund from an allocation of the employer contribution amounts paid by the city and other public employers pursuant to sections 13-127, 13-130 and 13-131 of this chapter and other applicable provisions of law. Such allocation of employer contribution amounts shall be paid into the excess benefit fund at such times and in such amounts as determined by the actuary.

(c) The benefit liabilities of the excess benefit plan shall be funded on a plan year to plan year basis, provided, however, that any employer contributions to the excess benefit fund, including any investment earnings on such contributions, which are not used to pay replacement benefits for the current plan year shall be used to pay replacement benefits for future plan years.

7. The right of an eligible participant to receive replacement benefits pursuant to this section, and the replacement benefits received pursuant to this section, shall be exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment or any other process whatsoever, and shall be unassignable, except as otherwise specifically provided for benefits payable by the retirement system.

8. Nothing contained in this section shall be construed to mean or imply that variable supplements payments from a variable supplements fund established pursuant to this chapter constitute pension or retirement allowance

payments, or that any such variable supplements fund constitutes a pension or retirement system or fund.

9. Nothing contained in this section shall be construed as affecting in any way the eligibility of any person for variable supplements pursuant to applicable provisions of this chapter.

**HISTORICAL NOTE**

Section added chap 623/2004 § 1, eff. Oct. 19, 2004 and shall be deemed

to have been in full force and effect on and after July 1, 2000. [See

Note 1]

**NOTE**

1. Provisions of Chap 623/2004:

§ 6. Nothing contained in this act shall be construed to create any contractual right on the part of any member of a retirement system or pension fund to any benefit provided by this act. The provisions of this act are intended to provide retirees and other retirement system and pension fund beneficiaries with certain benefits which are authorized by the Internal Revenue Code, and the effectiveness of this act and the benefits it confers are completely contingent upon the authorization of such benefits by the Internal Revenue Code.

§ 7. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after July 1, 2000, provided, however, that this act shall remain in effect only as long as the benefits provided therein are authorized by the Internal Revenue Code; provided that the state comptroller of the city of New York shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in this act in order that the commission may maintain an accurate and timely effective date base of the official text of the laws of the state of New York in furtherance of effecting the provisions of section 44 of the legislative law and section 70-b of the public officers law.

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

*NYC Administrative Code 13-201*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 1 [POLICE DEPARTMENT, SUBCHAPTER ONE PENSION FUND]

§ 13-201 Definitions.

As used in this subchapter the following terms shall mean and include:

1. "Member." (a) A person who was a member of the police force in the department at the time when this section shall take effect.

(b) In any case where a member, while serving as a member of the police force, is appointed police commissioner or a deputy police commissioner, he or she shall, while serving as police commissioner or deputy police commissioner, continue to be a member of the pension fund. For the purposes of this subchapter, a member whose membership is continued pursuant to this paragraph (b) or whose membership is restored pursuant to paragraph one of subdivision f of section 13-206 of this subchapter, shall during the period of such continuance or restoration of membership, as the case may be, be deemed to be a member of the police force and the police department and his or her service as police commissioner or deputy police commissioner during such period shall be deemed to be service in such force and department.

2. "Board of trustees". The board of trustees provided for in section 13-202 of this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-1.0 added LL 2/1940 § 1

Sub 1 amended chap 1009/1972 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Pension rights of widow of policeman were to be determined under the pension statute in force at time of his death and the widow's application for a pension, particularly since the amended statute, effective subsequent to the widow's application for a pension, expressly defined the term "member" as one who was a member of the police force at time the statute took effect.-Dolan v. Valentine, 177 Misc. 216, 29 N.Y.S. 2d 793 [1941].

¶ 2. There is no provision in this article for the return, to a policeman or his representatives, of the deductions made from the salaries of policemen for pension purposes. Thus, the widow of a deceased policeman could not recover the pension deductions taken from his salary. The policeman never had any title or right to possession of the money deducted from his salary and consequently, they formed no part of his estate.-Genther v. Valentine, 172 Misc. 38, 14 N.Y.S. 2d 935 [1939].

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*NYC Administrative Code 13-202*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 1 [POLICE DEPARTMENT, SUBCHAPTER ONE PENSION FUND]

§ 13-202 Board of trustees.

a. The police pension fund shall be administered by a board of trustees which shall, subject to the provisions of law and to the prior approval of the board of estimate, from time to time, establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof. Such board shall consist of:

1. The police commissioner who shall be chairperson of the board and who shall be entitled to cast one and one-half votes.

2. The comptroller of the city who shall be entitled to cast one and one-half votes.

3. A representative of the mayor who shall be appointed by the mayor and who shall be entitled to cast one and one-half votes.

4. The commissioner of finance of the city who shall be entitled to cast one and one-half votes.

5. The president of the patrolmen's benevolent association of the city of New York who shall be entitled to cast one vote.

6. The first vice-president of the patrolmen's benevolent association of the city of New York who shall be

entitled to cast one vote.

7. The second vice-president of the patrolmen's benevolent association of the city of New York who shall be entitled to cast one vote.

8. The chairperson of the board of trustees of the patrolmen's benevolent association of the city of New York who shall be entitled to cast one vote.

9. The president of the captains' endowment association of the police department of the city of New York who shall be entitled to cast one-half vote.

10. The president of the lieutenants' benevolent association, police department, city of New York who shall be entitled to cast one-half vote.

11. The president of the sergeants' benevolent association of the city of New York who shall be entitled to cast one-half vote.

12. The president of the detectives' endowment association of the city of New York who shall be entitled to cast one-half vote.

b. Every act of the board of trustees shall be by resolution which shall be adopted only by a vote of at least seven-twelfths of the whole number of votes authorized to be cast by all of the members of such board.

c. The board of trustees shall receive all moneys applicable to such fund and deposit the same to the credit of such fund, in banks or trust companies to be selected by it, and continue to receive and deposit the funds applicable to the same, as received, to the credit of such fund, or to invest the same in obligations issued by the city of New York, obligations issued by the state of New York or obligations issued by the United States of America, as such board of trustees may deem most advantageous for the object of such fund, and such board of trustees shall have the power to make all necessary contracts, and to take all necessary remedies in the premises.

d. The police commissioner shall assign to the board of trustees a sufficient number of clerical and other assistants to permit the board efficiently to exercise its powers and to perform its duties.

e. On or before the first day of September of each year the board of trustees shall make a detailed verified report to the mayor.

f. Any member of the board, referred to in paragraphs five through twelve, respectively, of subdivision a of this section, shall be a member of the uniformed force and may authorize in writing at any time any other officer of the respective associations to represent him or her on such board in the event of his absence or disability, provided, however, that the by-laws or constitution of such respective associations provide for the designation of a representative in such event.

g. Notwithstanding any other provision of law to the contrary, on July first, nineteen hundred ninety-five, the duties and responsibilities of the board of trustees of administering the provisions of this subchapter shall be transferred in accordance with the provisions of subdivision f of section 13-213.1 of this subchapter to the board of trustees of the police pension fund provided for in subchapter two of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. g added chap 503/1995 § 1, eff. Aug. 2, 1995.

**DERIVATION**

Formerly § B18-2.0 added LL 2/1940 § 1

Sub f added LL 95/1951 § 1

Sub a par 4 amended chap 100/1963 § 400

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*NYC Administrative Code 13-203*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 1 [POLICE DEPARTMENT, SUBCHAPTER ONE PENSION FUND]

§ 13-203 Composition of pension fund.

The police pension fund shall consist of the following:

1. The capital, interest, income, dividends, cash, deposits, securities and credits in such fund on the first day of January, nineteen hundred forty.

2. All forfeitures imposed by the police department, from time to time, upon or against any member or members.

3. All rewards, fees, gifts, testimonials and emoluments that may be presented, paid or given to any member on account of police services, except such as have been or shall be allowed by the police commissioner to be retained by such members.

4. All moneys received from the property clerk pursuant to sections 14-140 and 10-106 of the code, and all moneys realized, derived or received from the sale of any condemned, unfit or unserviceable property belonging to or in the possession or under the control of the police department.

5. All moneys, pay, compensation or salary, or any part thereof, forfeited, deducted or withheld from any member or members on account of absence for any cause, lost time, sickness or other disability, physical or mental, to be paid semi-monthly by the comptroller to such fund.

6. All moneys received or derived from the granting or issuing of licenses to have and possess pistols or revolvers in dwellings or places of business, or to have and carry concealed a pistol or revolver in such city pursuant to subsection a of section 10-131 of the code.

7. All moneys received or derived from the granting or issuing of permits or the granting of permission to conduct masked or fancy dress balls in the city. Such balls shall be conducted only upon condition that a license fee therefor of not less than five dollars nor more than one hundred dollars shall first be paid to such department for the benefit of such fund.

8. a. A sum of money equal to but not greater than:

(1) Five per cent. of the semi-monthly pay, salary or compensation of each member of the force who shall elect to contribute on the basis of retirement after twenty-five years of service in such force, or

(2) Six per cent. of the semi-monthly pay, salary or compensation of each member of the force who shall elect to contribute on the basis of retirement after twenty years of service in such force which sum shall be deducted semi-monthly by the comptroller from the pay, salary, or compensation of each member and forthwith paid to the board of trustees of such fund. Every member shall be deemed to consent and agree to such deductions and shall receipt in full for his or her pay, salary or compensation, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such member during the period covered by such payment, except his or her claim to the benefits to which he or she may be entitled under the provisions of this subchapter.

b. Each member shall signify in writing to the board of trustees within thirty days after this section shall take effect, his or her election to contribute on the basis of retirement either after twenty years of service or after twenty-five years of service.

c. In the case of a member receiving extra pay, salary or compensation for additional duties assigned to him or her, the comptroller shall make such semi-monthly deductions on the basis of such extra pay, salary or compensation unless such member shall signify in writing to the board of trustees his or her election to have his or her benefits and obligations computed on the basis of the pay, salary or compensation received by him or her prior to the time when he or she first received such extra compensation. Members who heretofore or are now receiving such extra pay, salary or compensation shall so signify within thirty days after this section shall take effect. Members who hereafter receive such extra pay, salary or compensation shall so signify within thirty days after the first receipt thereof. If any member has or shall have received extra pay, salary or compensation for an aggregate of five years or more or for the period of time fixed by section 14-114 of this code, the comptroller shall continue to make such semi-monthly deductions on the basis of such extra pay, salary or compensation, notwithstanding that such member does not continue to receive it, unless such member shall signify to the board of trustees in writing his or her election to have his or her benefits and obligations computed on the basis of the pay, salary or compensation actually received by him or her. Additional deductions made pursuant to this subdivision shall entitle such member to a pension on the basis of such extra pay, salary or compensation. The provisions of this subdivision shall not diminish or impair the benefits provided in subdivision c of section 14-114 of this code.

9. If the amount derived from the above-mentioned sources included in this section shall be insufficient to pay the pensions, allowances, benefits and returns of salary deductions which have been or which may hereafter be granted, it shall be the duty of the police commissioner each year at the time of submitting the departmental estimate to the director of the budget, to submit a full and detailed statement of the assets of such fund and the amount required to pay all such sums in full. There shall annually be included in the budget a sum sufficient to provide for such deficiency. The comptroller shall pay the money so provided to the board of trustees.

10. Such board of trustees is authorized, empowered and entitled to take and hold any and all gifts or bequests

which may be made to such fund or to any police pension fund existing prior to the first day of January, eighteen hundred ninety-eight in any of the territory now constituting the city of New York.

11. Notwithstanding any other provision of law to the contrary, on and after July first, nineteen hundred ninety-five, the composition of this pension fund shall be as modified by the provisions of section 13-213.1 of this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. 11 added chap 503/1995 § 2, eff. Aug. 2, 1995

**DERIVATION**

Formerly § B18-3.0 added LL 2/1940 § 1

Sub 4 repealed and added LL 47/1943 § 3

Sub 10 amended LL 204/1964 § 3

**CASE NOTES FROM FORMER SECTION**

¶ 1. Under Admin. Code § B18-3.0, subd. 9c, a patrolman who received a salary of $4,150 but for more than five years prior to 1946 had been assigned as a first grade detective at an extra pay of $1,000 a year and had contributed to the pension fund upon a total compensation of $5,150, and who in 1946 became a sergeant at a salary of $4,650 but had continued to contribute to the pension fund upon the basis of $5,150, was not entitled to have his contributions increased as if his pay was $5,650 or $1,000 greater than a sergeant's pay and $500 greater than the pay of a lieutenant of permanent rank.-Jeffereys v. Comptroller, 278 App. Div. 496, 105 N.Y.S. 2d 723 [1951], aff'd 303 N.Y. 792, 103 N.E. 2d 898 [1952].

¶ 2. A regulation requiring the fingerprinting of cabaret employees and requiring such employees to obtain identification cards is constitutional and valid. The right of the Commissioner to require identification cards implies authority to charge fees for such services.-Simone v. Kennedy, 26 Misc. 2d 748, 212 N.Y.S. 2d 838 [1961].



Administrative Code of the City of New York



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

*NYC Administrative Code 13-204*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 1 [POLICE DEPARTMENT, SUBCHAPTER ONE PENSION FUND]

§ 13-204 Reduction of contributions by members.

The mayor, by executive order adopted prior to the first day of June, nineteen hundred sixty-three, may direct that beginning with the first full payroll period following January first, nineteen hundred sixty-three and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred sixty-four, the deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by two and one-half per cent of such pay, salary or compensation. Such executive order may also provide for a method or procedure for the refunding or crediting to a member by the pension fund of the amount of the reduction in his or her deductions for any period prior to the adoption of such executive order. The benefits provided pursuant to this section shall apply only to members of the pension fund who are in active service in the police force on or after the date of adoption of such executive order.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-3.1 added chap 221/1963 § 1

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*NYC Administrative Code 13-205*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 1 [POLICE DEPARTMENT, SUBCHAPTER ONE PENSION FUND]

§ 13-205 Reduction of contributions by members.

a. The mayor, by executive order adopted prior to the first day of June, nineteen hundred sixty-four, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-four and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred sixty-five, the deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by two and one-half per cent of such pay, salary or compensation.

b. The mayor, by executive order adopted prior to June nineteenth, nineteen hundred sixty-five, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-five and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred sixty-six, the deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by two and one-half per cent of such pay, salary or compensation.

c. The mayor, by executive order adopted prior to June nineteenth, nineteen hundred sixty-six, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-six and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred sixty-seven, the deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by two and one-half per cent of such pay, salary or compensation.

d. The mayor, by executive order adopted prior to June seventeenth, nineteen hundred sixty-seven, may direct that beginning with the payroll period, the first day of which is nearest to July first, nineteen hundred sixty-seven and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight, the deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by two and one-half per cent of such pay, salary or compensation.

e. (1) Subject to the provisions of paragraph two of this subdivision, beginning with the first full payroll period following January first, nineteen hundred sixty-seven, and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight, the deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by two and one-half per cent of such pay, salary or compensation.

(2) The reduction provided for by paragraph one of this subdivision shall be in addition to any reduction made during the period mentioned in such paragraph one pursuant to subdivision c or d of this section. The amount of the reduction made pursuant to paragraph one of this subdivision in the deductions of any such member for such portion of the period mentioned in such paragraph one as precedes the effective date of this subdivision shall be refunded without interest.

(3) Beginning with the payroll period the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight, and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred seventy-one, the deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by five per cent of such pay, salary or compensation.

f. The mayor, by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-one, may direct that beginning with the payroll period, the first day of which is nearest to June thirtieth, nineteen hundred seventy-one and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred seventy-two, the deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by five per cent of such pay, salary or compensation.

g. The mayor, by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-two or June seventeenth of such year, whichever is later, may direct that beginning with the payroll period, the first day of which is nearest to June thirtieth, nineteen hundred seventy-two and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred seventy-three, the deductions from the semi-monthly pay, salary or compensation of each member made pursuant to the provisions of this subchapter shall be reduced by five per cent of such pay, salary or compensation.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-3.2 added chap 634/1964 § 1

Amended chap 382/1965 § 4

Sub c added chap 611/1966 § 4

Sub d added chap 379/1967 § 4

Sub e added chap 130/1968 § 1

Sub e par 3 amended chap 870/1969 § 8

Sub e par 3 amended chap 960/1970 § 9

Sub f added chap 615/1971 § 12

Sub g added chap 921/1972 § 9

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-206*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 1 [POLICE DEPARTMENT, SUBCHAPTER ONE PENSION FUND]

§ 13-206 Payment of pensions; disability; retirement for service.

a. The board of trustees shall retire any member who, upon an examination, as provided in subdivision d of this section, may be found to be disqualified, physically or mentally, for the performance of his or her duties. Such member so retired shall receive from such pension fund an annual pension as provided in this section. In every case such board shall determine the circumstances thereof, and such pension so allowed is to be in lieu of any salary received by such member at the time of his or her being so retired. The department shall not be liable for the payment of any claim or demand for services thereafter rendered, and the amount of such pension shall be determined upon the following conditions:

1. In case of total permanent disability at any time caused in or induced by the actual performance of the duties of his or her position, the amount of annual pension to be allowed shall be not less than three-fourths of the annual salary of such member at the date of his or her retirement.

1-a. In any case where a member is allowed, pursuant to paragraph one of this subdivision a, a pension equal to but not exceeding three-fourths of the annual salary of such member at the date of his or her retirement, such member shall receive, in addition, the amount of the deductions, without interest, made from his or her pay, salary or compensation pursuant to subdivision nine of section 13-203 of this subchapter, such amount to be paid either in a lump sum or in the form of an annuity which is the actuarial equivalent of such amount of deductions, as the member may elect. Such annuity, if so elected, shall be computed on the basis of the mortality tables adopted pursuant to section

13-221 of this chapter, as in effect on the date of retirement of such member, and on the basis of regular interest.

2. In case of partial permanent disability at any time caused in or induced by the actual performance of the duties of his or her position, which disqualifies him or her only from performing active duty in the police force, the member so disabled shall be relieved by the commissioner from active service and assigned to the performance of such light duties as a police surgeon of such department may certify him or her to be qualified to perform, or he or she shall be retired on his or her own application at not less than three-fourths of his or her salary at the date of his or her retirement from the service, on an examination, as provided by subdivision d of this section, showing that his or her disability is permanent.

2-a. In any case where a member is allowed, pursuant to paragraph two of this subdivision a, a pension equal to but not exceeding threefourths of his or her salary at the date of his or her retirement from the service, such member shall receive, in addition, the amount of the deductions, without interest, made from his or her pay, salary or compensation pursuant to subdivision nine of section 13-203 of this subchapter, such amount to be paid either in a lump sum or in the form of an annuity which is the actuarial equivalent of such amount of deductions, as the member may elect. Such annuity, if so elected, shall be computed on the basis of the mortality tables adopted pursuant to section 13-221 of this chapter, as in effect on the date of retirement of such member, and on the basis of regular interest.

3. In case of total permanent disability not caused in or induced by the actual performance of the duties of his or her position, which shall occur after the expiration of ten years' service in such department, but before he or she has performed service in the force for a period greater than the minimum period for service retirement elected by him or her, the amount of annual pension to be allowed shall be one-half of the annual salary of such member at the date of his or her retirement from the service.

4. In case of partial permanent disability not caused in or induced by the actual performance of the duties of his or her position, which may occur after ten years' service in such department, the member so disabled may be relieved by the commissioner from active service, but shall remain a member of the police force, subject to the rules governing such force, and be assigned to the performance of such light duties as a police surgeon of such department may certify him or her to be qualified to perform, or, if such member be retired after the expiration of ten years' service, but before he or she has performed service in the force for a period greater than the minimum period for service retirement elected by him or her, the annual pension to be paid to such member shall be one-half of the annual salary of such member at the date of his or her retirement from the service.

5. In case of total permanent disability not caused in or induced by the actual performance of the duties of his or her position, which may occur before the expiration of ten years' service in such department, the amount of annual pension to be allowed shall be one-third of the annual salary of such member at the date of his or her retirement from the service.

6. In case of partial permanent disability not caused in or induced by the actual performance of the duties of his or her position, which may occur before ten years' service in such department, the member so disabled shall be relieved by the commissioner from active service, but shall remain a member of the police force, subject to the rules governing such force, and be assigned to the performance of such light duties as a police surgeon of such department may certify him or her to be qualified to perform, or, if such member be retired before the expiration of ten years' service, the annual pension to be paid to such member shall be one-third of the annual salary of such member at the date of his or her retirement from the service.

b. Any member of such department, who has or shall have performed duty therein for a period of twenty years or upwards, upon a medical examination, as provided in subdivision d of this section, showing that such member is permanently disabled, physically or mentally, so as to be unfit for duty, shall be retired from such force and service, and placed on the roll of the pension fund, and awarded and granted, to be paid from such fund:

1. an annual pension during his or her lifetime, of a sum not less than one-half his or her full salary at the date of

his or her retirement from the service; and

2. if such member is awarded and granted, pursuant to paragraph one of this subdivision b, an annual pension equal to but not exceeding one-half of his or her full salary at the date of his or her retirement from the service, and if such member, at the time of such retirement, has performed service in the force for a number of years greater than the minimum period for service retirement elected by him or her, an annual pension, in addition to the pension provided for by paragraph one of this subdivision b, which shall be equal to:

(i) one-fortieth of his or her full salary or compensation on the date of his or her retirement from the service, multiplied by the number of years of service in the force performed by him or her after completion of such minimum period of service elected by him or her, if such member elected a minimum period of twenty years; or

(ii) one-fiftieth of his or her full salary or compensation on the date of his or her retirement from the service, multiplied by the number of years of service in the force performed by him or her after completion of such minimum period of service elected by him or her, if such member elected a minimum period of twenty-five years.

c. Any member who:

1. Shall have elected to contribute on the basis of retirement after twenty years of service and who has or shall have performed service in the force for at least twenty years, or

2. Shall have elected to contribute on the basis of retirement after twenty-five years of service and who has or shall have performed service in the force for at least twenty-five years, upon his or her own application in writing to and filed with the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, shall be retired as of the date specified in said application from such force and service, and placed on the roll of the pension fund, and awarded and granted, to be paid from such fund, an annual pension during his or her lifetime, not less than one-half of his or her full salary at the date of his or her retirement from service, and provided further that at the time so specified for his or her retirement his or her term or tenure of office or employment shall not have terminated or have been forfeited, provided further that upon his or her request in writing the member shall be granted a leave of absence from the date of filing said application until the date the retirement becomes effective.

d. All medical examinations required by or made pursuant to the provisions of this subchapter shall be conducted by a medical board appointed by the commissioner, provided, however, that any member, within thirty days after receipt of the decision of such medical board, in writing may request that the decision of such board be reviewed by a special medical board which shall consist of one doctor of the medical board and a doctor selected and compensated by such member. The decision of such special board shall supersede the decision of the medical board. In the event that the two doctors of the special board shall disagree, a recognized specialist on the condition, disease or injury for which such member has been examined or for which disability is claimed shall be selected by such doctors to be a third member of the special board. The decision of a majority of the three members of such special board shall supersede the decision of the medical board. The specialist selected by the two doctors of the special board shall be compensated by the city. Such compensation shall be fixed by the comptroller and shall be subject to his or her audit.

e. The board of trustees shall have the power to grant, award or pay a pension on account of physical or mental disability or disease, only upon a certificate of a medical board or a special medical board after examination as provided in subdivision d of this section. Such certificate shall set forth the cause, nature and extent of the disability, disease or injury of such member.

f. (1) In any case where a person who retired for service as a member of the pension fund is subsequently appointed police commissioner or a deputy police commissioner, his or her pension shall cease. During his or her service as police commissioner or deputy police commissioner he or she shall again be a member of the pension fund and shall contribute thereto at the rate of contribution applicable to him or her at the time of his or her prior retirement.

(2) Subject to the provisions of paragraphs three and four of this subdivision f, upon his or her subsequent retirement as police commissioner or deputy police commissioner, as the case may be, he or she shall receive the pension, if any, which he or she was receiving or entitled to receive immediately prior to his or her appointment as police commissioner or deputy police commissioner, and in addition, a further pension of one-sixtieth of his or her average annual salary earned during his or her credited service after restoration to membership pursuant to paragraph one of this subdivision f, multiplied by the number of years of his or her credited service during such restoration.

(3) Subject to the provisions of paragraph four of this subdivision f, where any such retiree who is appointed police commissioner or deputy police commissioner shall have earned at least three years of member credit for service during the period of his or her restoration to membership pursuant to paragraph one of this subdivision f, the total service credit to which he or she was entitled at the time of his or her earlier retirement may, at his or her election, again be credited to him or her and upon his or her subsequent retirement as police commissioner or deputy police commissioner, as the case may be, he or she shall be credited in addition with all service during such period of restoration to membership.

(4) Such total service credit to which he or she was entitled at the time of his or her earlier retirement shall be credited as provided in paragraph three of this subdivision f only in the event that he or she returns to the pension fund with regular interest the actuarial equivalent of the amount of the amount of the pension he or she received; provided, however, that in the event that such amount is not so repaid, the actuarial equivalent thereof shall be deducted from his or her subsequent pension.

g. The granting of a pension on severance from service for fault or delinquency shall not be a matter of right, but such a pension may be granted in consideration of special circumstances by the board of trustees and a vote of at least two-thirds of the whole number of votes authorized to be cast by all the members of such board.

h. The terms "total permanent disability" and "partial permanent disability" as used in this section may be defined in the rules and regulations of the board of trustees.

i. Except as otherwise provided, the pensions granted under this section shall be for the life of the pensioner, and shall not be revoked, repealed or diminished.

j. Notwithstanding any other provision of this code, and in lieu of any lesser amount otherwise provided, any member of the department who has or shall have performed duty therein for a period of at least thirty-five years may elect to be retired and placed on the roll of the pension fund, and awarded and granted, to be paid from such fund, an annual pension during his or her lifetime, of a sum equal to his or her full salary at the date of his or her retirement from service.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-4.0 added LL 2/1940 § 1

Sub c amended LL 44/1951 § 1

Sub j added chap 1002/1966 § 1

Sub a par 1-a added chap 871/1969 § 1

Sub a par 2-a added chap 871/1969 § 2

Sub a pars 3, 4 amended chap 871/1969 § 3

Sub b amended chap 871/1969 § 4

Sub f amended chap 1009/1972 § 2

(Special provisions chap 1009/1972 §§ 7, 8)

**CASE NOTES FROM FORMER SECTION**

¶ 1. Police officer never possessed title to or right to possession of the monies compulsorily deducted from his salary and turned over to the Police Pension Fund pursuant to Admin. Code §§ B18-1.0 to B18-13.0, and consequently such monies formed no part of his estate on his death from natural causes while still a member of the Department, and his widow and administratrix might not recover the pension deductions in an action at law.-Genthner v. Valentine, 172 Misc. 38, 14 N.Y.S. 2d 935 [1939].

¶ 2. Petitioner, who was 44 years old and had served as a policeman two months over 20 years, and under Admin. Code § B18-4.0 was entitled to be retired for service under a pension of not less than one-half his salary, **held** not entitled to an order of mandamus directing the Police Pension Fund trustees to approve his application for retirement, inasmuch as the granting or withholding of mandamus is controlled by equitable principles, and following the Pearl Harbor attack there had been a great many applications for retirement by members of the police force, the police force was now confronted by a scarcity of able-bodied experienced policemen who were not subject to military service, and the City had worked out a plan whereby applications for service retirement would be approved at the same rate as prevailed before Pearl Harbor, with priority being given to disabled applicants and thereafter to applicants who had served 25 years or more and who were at least 55 years of age.-In re Wolf (Valentine), 178 Misc. 308, 34 N.Y.S. 2d 92 [1942].

¶ 3. Admin. Code § B18-4.0 subdivision c, providing that a qualified member of the Police Department "upon his own application in writing shall be retired" and placed on a pension, **held** self-executing, and hence the retirement of petitioner members of the department was effectuated by the mere filing of their applications, without action by the trustees.-Pierne v. Valentine, 291 N.Y. 333, 52 N.E. 2d 890 [1943].

¶ 4. Application of member of uniformed force of the Police Department to compel respondents to retire him on a pension, was denied as unauthorized under the wartime program whereby retirements were limited to 39 men a month. Such plan did not deny petitioner's right to retire, but simply deferred it until his application was reached in regular order.-In re Wood (Valentine), 109 (96) N.Y.L.J. (4-26-43) 1613, Col. 6 F.

¶ 5. Member of New York City Police Department who had served over 20 years, **held** not entitled to an order compelling his retirement pursuant to Admin. Code § B18-4.0, since the seeming absoluteness of the right of retirement is subject to implications necessarily arising from the nature and purpose of the police force, and the present shortage of manpower due to war conditions warranted a refusal of retirement. The right of policemen to be retired from active duty is subject to the qualification that it may not be exercised at such a time or in such manner as to leave the City without adequate police protection.-In re Chiurazzo (Valentine), 181 Misc. 830, 44 N.Y.S. 2d 237 [1943].

¶ 6. Member of Police Pension Fund was entitled to maintain action to compel specific performance of contractual obligation of the trustees of the Fund to retire him upon his application, as the trustees had no discretion in the matter. A proceeding under C.P.A., Article 78, was not an adequate remedy, as the member's absolute right to retirement might be denied him in such a proceeding pursuant to the inherent discretion of the Court to grant or withhold relief on mandamus.-Underhill v. Valentine, 267 App. Div. 778, 46 N.Y.S. 2d 93 [1943].

¶ 7. Admin. Code § B18-4.0, providing that any member who had performed duty on the police force for 20 years and who had served as a Police Commissioner or Deputy Police Commissioner should be granted the pension allowed

to a Chief Inspector, was to be construed with subdivision (c) of that section, which would apply to a chief inspector and provides that any member of the police force eligible for retirement should be paid an annual pension of not less than one-half his full salary at the date of his retirement. Accordingly, a Chief Inspector, whose current salary is $9,000, was entitled, as a matter of law, to not less than $4,500, and it was immaterial that the trustees in the exercise of their discretion had been allowing a Chief Inspector a pension of $6,000.-Kent v. Valentine, 184 Misc. 94, 52 N.Y.S. 2d 867 [1944], aff'd 269 App. Div. 832, 56 N.Y.S. 2d 414 [1945].

¶ 8. Furthermore, it was not an abuse of discretion for the trustees to grant petitioner a pension of $4,500 per year even though Chief Inspectors since 1928 had been retired on annual pensions of $6,000, inasmuch as petitioner had been serving as a Sixth Deputy Police Commissioner at a salary of $6,000 per year for only two months when he applied for retirement, and in the history of the department no Commissioner or Deputy Commissioner had ever been retired on a pension equal to his full salary.-Id.

¶ 9. Admin. Code § B18-4.0, subd. f, which permits any member of the police force who shall have performed duty on the force for 20 years and who subsequently shall serve as Police Commissioner or Deputy Police Commissioner, to be retired and placed upon the pension roll and granted the pension allowed to a Chief Inspector of such department, **held** constitutional as providing for a pension in its true sense, and not merely to authorize a gift of public moneys. Proof of use of the statute for purposes not intended, did not justify the court in annulling the law.-Bergerman v. Murphy, 278 App. Div. 388, 105 N.Y.S. 2d 642 [1951], reversing 199 Misc. 1008, 102 N.Y.S. 2d 622 [1950], aff'd 303 N.Y. 762, 103 N.E. 2d 545 [1952].

¶ 10. However, in the instant case two persons who had been members of the police force for more than 20 years were permitted to resign their positions as first grade detectives and were then appointed as Deputy Police Commissioners, and after service for 24 days in one case and for 44 days in the other they were permitted to retire at an annual pension of $6,000, which was $825 more than their salary as first grade detectives and $3,412.50 more than the pension allowance of a first grade detective, during their appointments as Deputy Commissioners they had not in fact performed the duties of such office and were merely nominal Commissioners, and the clear inference was that the sole purpose in giving them the title of Deputy Commissioner was to afford them an opportunity after a brief period to resign and seek a higher rate of pension. Accordingly the appointments were deemed made in bad faith and to be illegal, and the award of the higher pensions likewise were illegal.-Bergerman v. Murphy, 278 App. Div. 388, 105 N.Y.S. 2d 642 [1951], aff'g, on this point, 199 Misc. 1008, 102 N.Y.S. 2d 622 [1950], aff'd 303 N.Y. 762, 103 N.E. 2d 545 [1952].

¶ 11. The statutory requirement that retirement pursuant to Admin. Code § B18-4.0, subd. c, part 1, on basis of 20 years of service, be on the member's "own application in writing", was not complied with where an application made by the employee in his own writing was tentative and later withdrawn, a letter written by the attorney for the committee of the employee was made on behalf of the mother and family and not on behalf of the committee acting for the employee, and a proceeding which had been brought by the committee under C.P.A. Art. 78 was not sustained. Furthermore, assuming that the employee was incompetent, a personal right of election could have been made for him by the Supreme Court on the application of his committee, and the committee herself could not exercise the election.-Delia v. Wallander, 101 N.Y.S. 2d 279 [1950].

¶ 12. There appears to be no provision in the Admin. Code applicable to petitioner authorizing the trustees of the fund to consider or act upon the present application made after the petitioner ceased, by reason of his retirement, to be a member of the police force. Petitioner, who was a member of the force prior to March 29, 1940, had already been retired and was receiving pension payments.-Mitchell v. Murphy, 125 (97) N.Y.L.J. (5-18-51) 1846, Col. 6 T.

¶ 13. Application of patrolman for retirement on basis of 20 years service was self-executing and effectuated his retirement without any action on part of the Board of Trustees of the Pension Fund, and hence, being no longer a member of the police force, he was not entitled to a medical examination pursuant to Admin. Code § B18-4.0 to determine whether an injury allegedly received by him in performance of his duty would warrant his retirement on a disability pension. Although plaintiff's complaint was based upon theory that he applied for a pension of one-half of his

full salary due to a mutual mistake of fact that he would fully recover from an injury incurred in the performance of his duty, his affidavit failed to present triable issues of fact.-Mitchell v. Murphy, 128 (7) N.Y.L.J. (7-10-52) 63, Col. 3 T, aff'd 283 App. Div. 803, 128 N.Y.S. 2d 456 [1953].

¶ 14. New York City Local Law No. 44 of 1951, which amended Admin. Code § B18-4.0 so as to require a retiring member of the Police Department to give 30 days' notice of his impending retirement, and also to require him to file his application with the Board of Trustees of the Police Pension Fund, which could deny him his pension if his term of office was forfeited prior to the retirement date, **held** not unconstitutional as in violation of Article 5, § 7 of the State Constitution, providing that membership in any pension or retirement system of the state or civil division thereof should be a contractual relationship, the benefit of which should not be impaired.-Gorman v. City of New York, 280 App. Div. 39, 110 N.Y.S. 2d 711 [1952], aff'd without opinion 304 N.Y. 865, 109 N.E. 2d 881 [1953], remittitur amended, 304 N.Y. 973 [1953] to recite that Local Law 44 of 1951 did not violate Art. 1, § 10 of the Federal Constitution or the Fifth or Fourteenth Amendments thereto, dismissed, 345 U.S. 962 [1953].

¶ 15. Contention that Local Law No. 44 also violated Constitution Article 9, § 12 and City Home Rule Law § 21, prohibiting any city from repealing or superseding any law enacted by the Legislature or relating to any pension or retirement, since Admin. Code § B18-4.0, subd. c, which Local Law No. 44 would amend, was itself a local law originally and was thereafter "legalized and validated" by state law, and accordingly was a law "enacted by the legislature relating to any pension or retirement system," **held** untenable.-Id.

¶ 16. Local Law No. 45 of 1951, which amended Admin. Code § B18-40.0 so as to require that a member in service would have to attain the minimum age or period of service requirement elected by him before he could file his application to retire, **held** unconstitutional, since it would delay a member's benefits for 30 days. Prior to amendment a member while still in the service could give his notice 30 days prior to completion of his elected period of service and retire on the very day he reached his minimum service requirement.-Sherrin v. City of N.Y., 126 (69) N.Y.L.J. (10-8-51) 772, Col. 3 T.

¶ 17. Application for order of prohibition against Police Commissioner of City of New York continuing the conduct of disciplinary proceedings against petitioner, on ground that while the charges were pending against him petitioner had filed an application for retirement effective immediately and therefore was no longer a member of the Police Department, was denied, as the right to automatic retirement did not give a member immunity from a departmental disciplinary proceeding commenced while he was a member. No act of retirement could deny the public the protection of Civil Service Law § 14, subd. 4, which provides that a person removed from the civil service may be disqualified by the Civil Service Commission from holding further office under the civil service, and moreover the prohibition of disciplinry proceedings would enable petitioner to make a claim for salary withheld during suspension.-Flood v. Monaghan, 201 Misc. 560, 108 N.Y.S. 2d 414 [1951].

¶ 18. Where petitioner members or the police force challenged the Police Commissioner's jurisdiction to try them on charges, inasmuch as they had theretofore filed applications for retirement, petitioners properly proceeded by seeking an order of prohibition. Certiorari was not an adequate remedy. At least there was room for the exercise of discretion, and the Court of Appeals would not interfere with the determination of the lower courts that prohibition was proper.-Pierne v. Valentine, 291 N.Y. 333, 52 N.E. 2d 890 [1943], reversing in part and affirming in part, 266 App. Div. 70, 42 N.Y.S. 2d 404 [1943], which reversed 179 Misc. 114, 37 N.Y.S. 2d 519.

¶ 19. Admin. Code § B18-4.0 subdivision a, providing that "the board of trustees shall retire any member who, upon an examination, * * * may be found to be disqualified, * * * for the performance of his duties," **held** not self-executing, and the board was not required to retire petitioner policeman upon a certificate of the Medical Board that he was physically incapacitated to perform full police duties. The Board was not obliged to act until it had investigated the charges filed against the member after he applied for retirement.-In re Wood (Valentine), 109 (96) N.Y.L.J. (4-26-43) 1613, Col. 6 F.

¶ 20. A request for a leave of absence made in connection with an application for retirement was self-executing and the Commissioner had no discretion to deny the request. After filing the application, the petitioner was not subject to general administrative regulations which related only to active performance of duty and could not be dismissed from the police force and thereby deprived of his pension benefits on charges that during his terminal leave of absence he breached administrative regulations.-Matter of Gordon, 309 N.Y. 336, 130 N.E. 2d 882 [1955].

¶ 21. An Article 78 proceeding was not appropriate to establish the rights of the parties where petitioner and another, claimed the widow's pension.-Happell v. Adams, 133 (81) N.Y.L.J. (4-26-55) 7, Col. 3 M.

¶ 22. Plaintiff-members of the N.Y.C. Police Department who were eligible by virtue of service to receive pensions and had received notice of retirement from the Department pursuant to Local Law No. 71 and had brought an action for a declaratory judgment based on the premise that the Local Law was unconstitutional as interfering with their pension rights as guaranteed by the constitution and other statutes, **held** not entitled to an injunction restraining their retirement, since if injunctive relief were granted civil service lists from which appointments would be made to replace certain of the retired plaintiffs would expire and entail hardship on prospective appointees, assignments would be confused, and, if unsuccessful, plaintiffs would nevertheless remain in office until after the trial and until a new list could be promulgated. However, plaintiffs might receive an early trial.-Humbeutel v. City of N.Y., 127 (4) N.Y.L.J. (1-7-52) 65, Col. 3 T.

¶ 23. Petitioner, whose claim that his permanent disability was caused by injuries received by him in performance of his duties and without fault on his part was supported by competent medical proof, **held** entitled to a court review of action of Police Commisioner in refusing to grant him a minimum pension allowance of 75 per cent of his salary. Petitioner was not seeking to review the discretion of the Commissioner, since if he proved his allegations the Commissioner was bound to award at least the pension sought.-Gough v. Valentine, 100 (120) N.Y.L.J. (11-23-38) 1771, Col. 3 M.

¶ 24. Previous orders of the Court holding that petitioner was not seeking to review the discretion of the Police Commissioner in ruling that petitioner was not permanently disabled while in performance of his duties and that if petitioner proved his allegations the Commissioner would be bound to award him the compensation and directing that the issues of fact be resolved by a jury trial, **held** binding on the Court on subsequent application to dismiss the proceedings despite the verdict of the jury, notwithstanding the prior orders were intermediate in character, since a court of coordinate jurisdiction should not disregard an earlier decision on the same question in the same case.-In re Gough (Valentine), 102 (82) N.Y.L.J. (10-6-39) 1001, Col. 3 F.

¶ 25. Evidence that while acting in performance of police duties and as result of being thrown from a horse, petitioner had fractured his spine and was otherwise injured, especially about the head and face, and that one week after being released from the hospital he suffered an attack of amnesia which competent medical authorities attributed to the original accidental injury, **held** to present a triable issue as to whether his disability as a result of amnesia had been suffered in the line of duty so that the pension award made him was insufficient.-In re Agnew (Valentine), 101 (98) N.Y.L.J. (4-28-39) 1955, Col. 1 M.

¶ 26. Police officer who on dismissal from his duties at 11:45 p.m. had proceeded from the station house in Brooklyn to a restaurant on Delancey Street in Manhattan for supper and had then proceeded to a nearby station house in Manhattan to change to his civilian clothes before going home, and at 1:20 a.m. while ascending a stairway in the station house fell and sustained his injuries, **held** not to have been injured while in actual performance of duties within meaning of the pension regulations.-Smith v. Valentine, 102 (112) N.Y.L.J. (11-14-39) 1612, Col. 5 T.

¶ 27. Retirement and consequent pension do not flow automatically from disability, or a finding of disability by the competent trier of the facts, but the trustees of the Police Pension Fund must first vote for retirement.-Delia v. Valentine, 185 Misc. 202, 56 N.Y.S. 2d 505 [1945].

¶ 28. Determination of trustees of Police Pension Fund awarding retired policeman a pension of one-half of his salary for non-service-incurred disability, would not be disturbed, where, although there might be room for a legitimate difference of opinion as to the origin of the disability, the findings of the Medical and Special Medical Boards and the determination of the trustees based on such findings had reasonable medical support.-In re Cohen (Valentine), 58 N.Y.S. 2d 415 [1945], aff'd 271 App. Div. 952, 67 N.Y.S. 2d 708 [1947].

¶ 29. That trustees of the Police Pension Fund chose to accept the opinion of their own medical experts that death of petitioner's husband was not the result of disease as the immediate effect of injuries received during performance of duties as police officer, rather than to accept statement of the husband's family physician, did not warrant conclusion that their determination was arbitrary.-In re Orsi (Valentine), 118 (17) N.Y.L.J. (7-24-47) 141, Col. 4 F.

¶ 30. Denials of applications for a pension could not be reviewed in a plenary action instituted ten years later.-Woods v. Wallander, 121 (86) N.Y.L.J. (5-3-49) 1580, Col. 5 M.

¶ 31. Where the issue involved in retiring a pensioner is based solely on a conflict of medical testimony concerning the origin of a physical disorder, it is the function of the Department head and not the court to resolve the question.-Thomasson v. Valentine, 263 App. Div. 334, 32 N.Y.S. 2d 996 [1942].

¶ 32. Where there was no dispute as to existence of the psycho-neurotic condition for which the petitioner, a patrolman in the City Police Department, was retired at half pay, but petitioner merely asserted that the disorder was due to a prior physical injury which was service-incurred and entitled him to a pension of three-fourths of his salary, and the Medical Board found no connection between the injury and the present condition and there was merely divergent medical opinion evidence presented, the court should not upset the determination of the Medical Board and of the Commissioner based thereon merely because a jury had differed with the Department's psychiatrist as to which expert's opinion was correct.-Id.

¶ 33. Although the Board of Trustees of the Police Pension Fund must accept the decision of the Special Medical Board as to the nature and extent of the disability of a member, they need not accept the decision of such Board as to whether the disability was incurred in performance of duty nor the Board's opinion as to the causal connection between an injury so incurred and the disability for which a member is to be retired, as it is the duty of the Trustees to "determine the circumstances" of the disability, and in this respect they perform the functions of a jury and the opinion of the Medical Board is merely advisory. Hence in the immediate case the determination of the Board of Trustees rejecting the decision of the Special Medical Board that petitioner's disability had been incurred in performance of her duties would not be disturbed where the trustees were not shown to have acted arbitrarily and there was evidence to support their findings.-In re Hickie (Valentine), 177 Misc. 743, 31 N.Y.S. 2d 688 [1941], aff'd without opinion, 262 App. Div. 832, 29 N.Y.S. 2d 504 [1942].

¶ 34. Policeman, retired for disability, was not entitled to notice of the findings of the Special Medical Board, as he was not entitled to a review of the findings of such board or to a hearing before the board of trustees, and was therefore in no way prejudiced by the failure to receive formal notice. Furthermore, he had made no request for a copy of such Board's findings, and his own doctor was his representative on the board and he could readily have ascertained from him the conclusions reached by the Board.-In re Cohen (Valentine), 58 N.Y.S. 2d 415 [1945], aff'd 271 App. Div. 952, 67 N.Y.S. 2d 708 [1947].

¶ 35. Contention of policeman that his retirement for disability was invalid because he received no notice of the action taken by the board of trustees, was rejected, as the determination of the board to retire him was duly published in the special orders of the Police Department and transmitted to each precinct in the City of New York. Such special orders represent the medium for notification to members of the Police Department of all official action taken in the department.-Id.

¶ 36. That petitioner had been suspended from the Police Force following his arrest on a charge of second degree

murder and thereafter charges had been served upon him by the Department and following his commitment to a state hospital for the insane he had been dropped from the rolls of the Department, did not deprive him of his right to a trial of the charges against him, although he was not entitled to appointment of a medical board for his examination and the taking of steps for determination of his pension rights while the charges against him were undisposed of.-Delia v. Valentine, 185 Misc. 202, 56 N.Y.S. 2d 505 [1945]. See also, 276 App. Div. 924, 94 N.Y.S. 2d 385 [1950].

¶ 37. Administratrix of deceased incompetent policeman was not entitled to recover from the Pension Fund pursuant to Admin. Code § B18-4.0, subd. b, or subd. a, part 3, where plaintiff had been appointed the patrolman's committee four years prior to his death, during this time it was within her power to seek the relief, pointed out in the court's decision, of having a trial of charges pending against the patrolman to lift his suspension from the Police Department, and this would have paved the way for a proper consideration of the asserted disability of the patrolman by a medical board, which is a prerequisite to action by the trustees.-Delia v. Wallander, 101 N.Y.S. 2d 279 [1950].

¶ 38. A member of the Police Department under charges can not compel action by the trustees of the Police Pension Fund until the charges are disposed of.-Delia v. Valentine, 185 Misc. 202, 56 N.Y.S. 2d 505 [1945]. See also, 276 App. Div. 924, 94 N.Y.S. 2d 385 [1950].

¶ 39. Finding of the Special Medical Board that petitioner was physically disqualified for police duty because of an old injury to his left hand, **held** conclusive upon the Board of Trustees of the Police Pension Fund with respect to the physical disability, and where there was no evidence that the disability did not result from anything but the line of duty wound which he received in 1914, the determination of the trustees denying petitioner's application for disability pension, was annulled.-O'Hara v. Monaghan, 131 (2) N.Y.L.J. (1-5-54) 8, Col. 5 T.

¶ 40. It is well settled that although the finding of disability by the Medical Board is conclusive upon the trustees of the Police Pension Fund, the determination whether the disability was service incurred is for the trustees to make and any finding thereon by the Medical Board is only advisory. In instant case, finding of trustees that any disability from which petitioner might be suffering was not the result of the shotgun wound and the stab wounds incurred in the line of duty, would not be disturbed.-Whalen v. Monaghan, 127 (37) N.Y.L.J. (2-25-52) 741, Col. 3 F.

¶ 41. The Board of Trustees of the police pension fund were arbitrary and unreasonable in denying a three-fourths of pay pension to petitioner on the ground that his disability was not caused by the actual performance of the duties of his position where the medical board appointed by the Commissioner had determined that the petitioner had a "line-of-duty permanent disability".-Matter of O'Hara, 309 N.Y. 931, 132 N.E. 2d 310 [1955], aff'g 286 App. Div. 828, 143 N.Y.S. 2d 630 [1955].

¶ 42. Where petitioner, formerly Chief of Detectives of the Police Department, was found by the Department's Medical Board physically incapacitated to perform full police duty and such board recommended that he be retired because of such disability, and petitioner was thereupon retired by the Pension Board as of October 16, 1950 but the board at a meeting on November 22, 1950 rejected a resolution which would grant him a pension of three-fourths of his salary for service-connected disability, and also rejected a proposal to grant him a pension of half of his salary, a proceeding under C.P.A. Article 78 for an order directing the board to allow him a pension of not less than three-fourths of his salary, was dismissed, as the board had not yet taken any definitive action and the court would not hasten them in the discharge of their duty of fixing the pension.-Whalen v. Murphy, 125 (59) N.Y.L.J. (3-27-51) 1087, Col. 2 M.

¶ 43. Where certificate of the Medical Board which had been forwarded to the patrolman merely stated that the Board found him physically incapacitated to perform full police duty by reason of cerebral thrombosis, weakness and partial paralysis of left arm and leg and that the Board had recommended his retirement for such disability, but no mention was made of the cause of the disability as required by Admin. Code § B18-4.0, subd. e, and that the Board had found disability was not service-incurred, the patrolman was thereby deprived of an important right of appeal to a Special Medical Board, and he had not been properly retired from the Department.-Cohen v. Valentine, 263 App. Div. 559, 33 N.Y.S. 2d 436 [1942].

¶ 44. Petitioner (policeman) was seriously injured in line of duty on August 20, 1947 and returned to active duty October 15, 1947. Ten years later in 1957 he collapsed while on duty suffering from a herniated disc of the lower lumbar spine. There was agreement that petitioner was to be retired but there was disagreement as to whether the disability was caused by the 1947 accident. The medical board's opinion was based solely on the fact that petitioner failed to prove caused relationship to the 1947 accident and the petitioner was entitled to a trial to determine whether the disability resulted from the 1947 accident.-Matter of Foster (Kennedy), 143 (124) N.Y.L.J. (6-28-60) 6, Col. 7 T.

¶ 45. The Pension Fund trustees could reject an application for disability retirement, even where the Special Medical Board found the disability to be service-connected. The Board is advisory only. The evidence was insufficient to show that the action of the trustees was arbitrary.-Toppiti v. Kennedy, 141 (72) N.Y.L.J. (4-15-59) 12, Col. 8 M.

¶ 46. Petitioner's application for retirement was properly denied on the basis of the Police Medical Board's finding as to the extent and nature of the disability since the trustees were legally bound to accept such medical determinations. There was ample evidence to support the Medical Board's decision. Furthermore, petitioner could be required to perform clerical duty in the Police Department as such work would come within the meaning of "performance of city-service" under Admin. Code § B18-43.0.-Matter of Reich (M. Golebuck), 26 Misc. 2d 813, 207 N.Y.S. 2d 853 [1960].

¶ 47. A determination that the petitioner should not be allowed disability retirement because his disability was not incurred in the performance of duty was proper where the determination was based upon medical evidence upon which there was no disagreement.-Matter of Algergren, 139 (27) N.Y.L.J. (2-7-58) 6, Col. 2 F.

¶ 48. While the trustees of the Police Pension Fund are free to determine whether a disability is service-connected, they may not disregard the findings of the Medical Board with respect to the nature and the extent of the disability. Even if they disagree with the board, its conclusion is binding upon them. The order denying the relief sought is reversed.-Matter of Whalen v. Monaghan, 285 A.D. 884, 137 N.Y.S. 2d 899 [1955], aff'd without opinion 309 N.Y. 929, 132 N.E. 2d 309 [1955].

¶ 49. A policeman and a fireman retired for service-connected total permanent disability may not be allowed "extra service pension credits".-Lowe v. Police Pension Fund, 9 N.Y. 2d 800, 215 N.Y.S. 2d 511, 175 N.E. 2d 168 [1961].

¶ 50. Policeman incurred a service-connected injury in 1932 and was then given light duty. He filed for retirement in 1955 on basis of 20 years' service which application was self-effectuating. His present action to reform the application for retirement on ground that the parties intended it to be for service-connected disability was dismissed. There was no mutual mistake of fact as the application was made only by the plaintiff. Plaintiff knew immediately in 1955 that he did not receive disability retirement pay and he should have taken some action then.-Johnstone v. Kennedy, 143 (125) N.Y.L.J. (6-29-60) 7, Col. 8 T.

¶ 51. Plaintiffs, former members of the police force and members of the Police Pension fund who retired before completing 35 years of service were not entitled to reinstatement to complete the 35 years of service since § 434a-21.0 mandates retirement at 63 and this section does not violate plaintiffs' contractual pension rights or the due process or equal protection clauses of the Constitution.-Beaudouin v. Board of Trustees of Police Pension Fund, 78 Misc. 2d 258, 356 N.Y.S. 2d 736 [1974].

¶ 52. Medical Board serves Bd. of Trustees in an advisory capacity, but it is the Bd. of Trustees that actually adjudicates accidental disab claims. Kenny v. NYCTA, 9-25-00, page 23, col. 4, ad1.

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*NYC Administrative Code 13-207*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 1 [POLICE DEPARTMENT, SUBCHAPTER ONE PENSION FUND]

§ 13-207 [Minimum disability pension.]

a. Notwithstanding the provisions of section 13-206 of this subchapter, in any case where a pension was or is awarded under the provisions of such section, by reason of the retirement of a member for disability caused or induced by the actual performance of the duties of his or her position, such member shall be entitled to a pension of not less than three-fourths the annual salary or compensation payable to a first grade patrolman as of July first, nineteen hundred and sixty-five.

In the case of any member receiving a pension less than three-fourths the annual salary or compensation of a first grade patrolman as of July first, nineteen hundred and sixty-five his or her pension shall be increased by such amount which when added to the lesser pension shall equal three-fourths the annual salary or compensation of a first grade patrolman as of July first, nineteen hundred and sixty-five.

b. Such pension shall be payable to the same persons and shall be subject to the same terms and conditions, including provisions as to termination as to the pension which would otherwise be payable under section 13-206 of this subchapter.

c. The pension payable under this section shall be in lieu of any pension which would otherwise be payable to the member under section 13-206 of this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-4.1 added LL 35/1966 § 1

Amended LL 94/1973 § 1



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

*NYC Administrative Code 13-208*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 1 [POLICE DEPARTMENT, SUBCHAPTER ONE PENSION FUND]

§ 13-208 Extra service pension credit.

Except as provided in subdivisions a and b of section 13-206 of this subchapter:

1. A member who shall have elected to contribute on the basis of retirement after twenty years of service, upon completing such period of service, may continue in the service. In such event and upon retirement for service, there shall be added to his or her annual service pension one-sixtieth of the salary received at the date of retirement for each completed additional year of service, during which years such deductions shall have been made. Any such member upon completing twenty-five years of service, shall have such deductions made at the rate of five per cent, in which event and upon retirement for service, such additional amounts also shall be added to his or her annual service pension for the years during which deductions shall have been made at the rate of five per cent.

2. A member who shall have elected to contribute on the basis of retirement after twenty-five years of service, upon completing such period of service, may continue in the service. In such event there shall be added to his or her annual service pension upon retirement for service one-sixtieth of the salary received at the date of retirement for each completed additional year of service, during which years such deductions shall have been made at the rate of five per cent.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-5.0 added LL 2/1940 § 1

Sub a par 1 amended LL 16/1941 § 1

Amended chap 498/1960 § 1

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*NYC Administrative Code 13-209*

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 1 [POLICE DEPARTMENT, SUBCHAPTER ONE PENSION FUND]

§ 13-209 Payment of pensions; death.

a. The board of trustees of the pension fund shall pay a pension out of such fund to the spouse, child or children or dependent parent or parents of any deceased member of the police force in such department, if the death of such member occur during his or her service in such police force, or after he or she was retired from service in such force. The amount of any such pension to be paid by the board of trustees to each of the several representatives of such member, in case there shall be more than one, from time to time, may be determined by such board according to the circumstances of each case. The annual pension to the representative or representatives of such member, however, shall be six hundred dollars, and no part of such sum shall be paid to any such spouse who shall remarry, after such remarriage, or to any child after it shall have reached the age of eighteen years.

In lieu of the aforementioned pension, when a member of the force dies while in active service, his or her beneficiary shall be paid the accumulated deductions of such deceased member if written application therefor be made to the board of trustees by such beneficiary.

b. In case any member in the police force of such department is killed while actually engaged in the performance of duty, or if death ensues, or results from a disease, as the immediate effect of injuries received, the board of trustees of such fund, upon evidence submitted to it, shall have power to decide whether death so occurred and upon such decision shall award to the spouse of such member an annual sum as a pension, to be paid out of such fund in an amount not to exceed, except as herein provided, one-half of the salary of such member at the date of his or her decease. If such

member, dying, leaves no spouse surviving him or her, but leaves a child or children, under the age of eighteen years, or dependent parent or parents, such board shall award to the legal guardian of such child or children, or dependent parent or parents, for its or their support and maintenance, an annual sum as a pension out of such fund, in an amount not to exceed one-half of the salary of such member at the date of his or her decease. The amount of such pension to any spouse shall cease upon his or her death. Such annual pension shall cease upon the death or marriage of such child, or upon its reaching the age of eighteen years. If such payment to the spouse of any such member shall cease by reason of his or her death, such board shall make payments to the child or children, or dependent parent or parents of such member, if any, as though he or she had died without leaving a spouse surviving him or her.

c. The board of trustees, subject to the separate approval of the mayor, may presume a member or former member of the pension fund to be dead, if such member has disappeared and has been absent for three years or more, unless there be affirmative evidence that he or she was alive within that time. In the case of a former member who has disappeared, has been absent for three years or more and who was last known to be alive while a member of the police force in the department, the board of trustees, subject to the separate approval of the mayor, may presume that death occurred while such former member was a member of such police force, unless there be affirmative evidence that he or she was alive after his or her separation from service in the police force. If in its judgment the evidence warrants such determination, the board of trustees, subject to the separate approval of the mayor, may make an additional and separate finding that such presumed death occurred while such member or former member was actually engaged in the performance of duty. In the event that the board of trustees, upon approval of the mayor, shall take action pursuant to a presumption of death with respect to the disappearance of a former member of the police force, the police commissioner shall have power to revoke any disciplinary action, with respect to the absence of such former member of the police force, which was taken by him or her after the date when such former member is presumed to have died. Notwithstanding any other provision of law, the board of trustees and the police commissioner shall have power to revoke or rescind any action taken by them, respectively, pursuant to this subdivision, with or without cause at any time prior to five years from the date of the disappearance of a member or former member and thereafter they may take action and exercise such power in the event that they respectively shall determine, on the basis of affirmative evidence submitted to them, that any member or former member was alive after the date he or she was presumed to be dead. Upon the expiration of a period of five years from the date of the disappearance of a member or former member, continuation of the payment of a pension pursuant to this section based upon the presumed death of such member or former member shall be conditioned upon a determination by a court of competent jurisdiction, in an action or special proceeding brought by a beneficiary receiving all or part of such pension or any other member of the family of such member or former member pursuant to the provisions of section 21.7 of the estates, powers and trusts law, that such member or former member is presumed to be dead. Such determination shall be deemed conclusive for the purposes of this section, unless such member or former member thereafter shall be found to be alive.

d. (1) Notwithstanding the provisions of subdivision b of this section, in any case where a pension was or is awarded under the provisions of such subdivision, or any predecessor provision by reason of the death of any such member, occurring before July first, nineteen hundred and sixty-five, such pension, subject to the provisions of paragraphs two and three of this subdivision d, shall consist:

(a) For each full calendar year, on and after January first, nineteen hundred and sixty-five, of a sum as a pension to be paid out of such fund and in an amount not to exceed, except as herein provided, one-half of the annual salary or compensation payable, on July first, nineteen hundred and sixty-five, to a member of the uniformed force of rank, seniority, and other salary-determining status, equal to that of the deceased member on the date of his or her decease but in no case less than one-half of the salary payable to a first grade patrolman on July first, nineteen hundred and sixty-five, and

(b) For any portion of a calendar year, on and after January first, nineteen hundred and sixty-five, the appropriate pro rata portion of the amount which would be payable, under the provisions of subparagraph (a) of this paragraph one, for the full calendar year which includes such portion of a year, if a pension were payable under this subdivision d for such full calendar year.

(2) Such pension shall be payable to the same persons and shall be subject to the same terms and conditions, including provisions as to termination, as to the pension which would otherwise be payable, on and after January first, nineteen hundred and sixty-five, pursuant to subdivision b of this section or any applicable predecessor provision, by reason of the death of such member.

(3) The pension payable pursuant to the provisions of paragraphs one and two of this subdivision d shall be in lieu of any pension which would otherwise be payable on or after January first, nineteen hundred and sixty-five pursuant to the provisions of such subdivision b, or predecessor provision, and, except as otherwise provided in paragraph one of subdivision e of section 13-686 of this title, shall be in lieu of any supplemental retirement allowance which would otherwise be payable, on and after such date, under the provisions of subchapter six of chapter five of this title or any other law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended chap 764/1990 § 2 eff. July 22, 1990 applying on April

1, 1990.

**DERIVATION**

Formerly § B18-6.0 added LL 2/1940 § 1

Sub c added LL 15/1943 § 1

Sub a amended chap 1076/1960 § 1

Sub d added LL 67/1965 § 1

Sub d par 3 amended chap 994/1973 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where the widow of a retired in § B18-6.0 represents a contractual right and is not in the nature of a gratuity. It is mandatory upon the trustees of the Police Pension Fund to grant an annual pension of $600 upon death of a member if he leaves him surviving any of the representatives therein mentioned.-In re Horan (Wallender), 186 Misc. 40, 58 N.Y.S. 2d 471 [1945].

¶ 2. Petitioner's acquittal, on her defense of temporary insanity, of a charge of first degree murder in the shooting of her husband, a police officer, was not an adjudication binding on the trustees of the Police Pension Fund, so far as her right to a widow's pension was involved.-Id.

¶ 3. Under § B18-6.0, the annual pension of $600 must be paid if the deceased police officer leave him surviving any of the representatives specified in such section, but how the pension shall be distributed among those representatives rests in the discretion of the trustees of the Pension Fund. Accordingly, the trustees had the power to determine that it would award the entire $600 to the two children, under the age of 18, to the exclusion of the widow who had shot her husband, although she had been acquitted, on her defense of temporary insanity, of a charge of first degree murder. When the children became 18 years of age, and if the widow had not remarried and there were no dependent parents, the trustees would be bound to pay her the $600 pension unless her act in shooting the husband deprived her of any right thereto, and the trustees could at that time inquire into that matter.-In re Horan (Wallender), 186 Misc. 40, 58 N.Y.S. 2d 471 [1945].

¶ 4. A policeman, who, while transferring from one post to another, fell from the running board of private automobile and died of injuries was in the actual performance of his duties and even though he had violated a Department rule that patrolmen were not permitted to ride in private automobiles, his widow was entitled to a pension of one half of his annual salary.-Matter of Dolan (McGahen), 297 N.Y. 913, 79 N.E. 2d 743 [1948], aff'g 272 App. Div. 814, 71 N.Y.S. 2d 903 [1947].

¶ 5. Once the Board of Trustees of the Police Pension Fund, as successors of the Police Commissioner, exercised its discretion to grant a pension to the two children of a deceased policeman, the Board had no discretion as to the date to which the payments should be made retroactive. The pension was required to date from the mother's remarriage on September 13, 1942.-Lambrecht v. Monaghan, 280 App. Div. 618, 116 N.Y.S. 2d 604 [1952], aff'd 305 N.Y. 874, 114 N.E. 2d 216 [1953].

¶ 6. Where, although a purported decree of divorce was obtained by the decedent in Florida in 1939 and decedent allegedly remarried in such state three days later, not once had this been asserted against petitioner so as to deprive her of monthly pension fund payments over a period of fourteen years in accordance with a separation agreement authorizing such payments by the trustees of the Police Pension Fund, and no proof was presently submitted showing that such a divorce decree was actually obtained, and if it was, that it had any binding effect on petitioner, petitioner was deemed to be the lawful widow of deceased, for purposes of obtaining a pension.-Moeller v. Adams, 131 (50) N.Y.L.J. (3-16-54) 7, Col. 2 F.

¶ 7. Plaintiff, who was married to policeman prior to his securing a purported Mexican divorce decree, was entitled to widow's pension, though the policeman had remarried after the decree, since decree was invalid.-Johannsen v. Kennedy, 22 Misc. 2d 191, 198 N.Y.S. 2d 648 [1960].

¶ 8. Today, pensions are not discretionary. The practice in regard to widows employed is to grant the petition but suspend payment during the period of employment. A widow, who was employed as a school teacher when she applied for a pension in 1938, was properly denied a pension, since at that time the granting of pensions was discretionary with the Commissioner, but she was entitled to a pension in 1959 following her retirement, and refusal of same was arbitrary. The four-month period of limitations did not bar review, since the only petition involved was the denial of the petition in 1959. Matter of Wallace, 23 Misc. 2d 148, 199 N.Y.S. 2d 526 [1960].

¶ 9. Where trustees of the Police Pension Fund denied an application for a pension for the surviving family of a policeman who purportedly died in the line of duty on the basis of the Medical Board's recommendations and did not permit petitioner to appear or offer any evidence on her behalf or to examine the records of the Medical Board, the action of trustee annulled. The petitioner was entitled to participate and offer evidence on her behalf.-Matter of Clifford (Trustee etc.), 144 (55) N.Y.L.J. (5-23-60) 13, Col. 3 M.

**CASE NOTES**

¶ 1. Where a California divorce was deemed valid in New York under the "full faith and credit" clause of the constitution, the wife was not entitled to a widow's pension under § 13-209. Kulaka v. Fire Department Article 1 Pension Fund, 145 A.D.2d 538, 535 N.Y.S.2d 750 (2nd Dept. 1988).

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 1 [POLICE DEPARTMENT, SUBCHAPTER ONE PENSION FUND]

§ 13-210 Return of deductions on discontinuance of membership or on death.

a. Should a member discontinue service in the force, except by death or retirement, he or she shall be paid the amount of the five per cent. or six per cent. deductions without interest made from his or her pay, salary or compensation pursuant to subdivision nine of section 13-203 of this subchapter.

b. In the event that a member shall die before retirement and a pension is not paid by the board of trustees pursuant to section 13-209 of this subchapter, the amount of the five per cent. or six per cent. deductions without interest made from the pay, salary or compensation of such member pursuant to subdivision nine of section 13-203 of this subchapter shall be paid by such board to the beneficiary or beneficiaries, as such member shall have nominated by written designation duly acknowledged and filed with such board. Such designation shall be made within thirty days after this section shall take effect, and may be changed, from time to time, by such member upon filing with the board a new designation duly acknowledged.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-7.0 added LL 2/1940 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. A policeman in 1938 entered into a separation agreement with his first wife, pursuant to which, he agreed not to change beneficiary in any of his insurance policies or "benefits on his life". In 1940, he nominated his first wife as the person to receive a return of deductions in accordance with § B18-7.0. In 1944 he retired to Florida, divorced his first wife and remarried. **Held:** the right to the widow's allowance was not an insurance policy or benefit. Such a right depends upon the statute and not upon the terms of a separation agreement. Also the right to receive deductions had no bearing upon the question, since upon retirement no one had any right to deductions.-Kreidler v. Kreidler, 1 Misc. 2d 85, 146 S 2d 160 [1955].

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

*NYC Administrative Code 13-211*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 1 [POLICE DEPARTMENT, SUBCHAPTER ONE PENSION FUND]

§ 13-211 Time of payment of pensions.

All pensions payable out of the police pension fund shall be paid in equal monthly installments, each one-twelfth, in amount, of the sum allowed as the annual pension or in ratably smaller amounts when the benefit begins after the first day of the month or ends before the last day of the month.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-8.0 added LL 2/1940 § 1

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

*NYC Administrative Code 13-212*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 1 [POLICE DEPARTMENT, SUBCHAPTER ONE PENSION FUND]

§ 13-212 Exemption from tax and legal process.

The right of a person to a pension, an allowance, to the return of contributions, the pension itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this subchapter and the moneys in the fund provided for by this subchapter, are hereby exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this article specifically provided.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-9.0 added LL 2/1940 § 1

Reenacted chap 437/1940 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Widow's Police Department pension might not be subjected to claim of an unpaid balance on a funeral bill for

funeral of the widow's husband, even though the widow had rendered herself individually liable for the funeral expenditure.-In re Canfield (Stone), 103 (100) N.Y.L.J. (4-29-40) 1942, Col. 4 M.

¶ 2. Pension being paid to defendant by Board of Trustees of the New York City Police Pension Fund was subject to defendant's alimony obligations. However, since a specific fund was involved, an order of sequestration might be granted without appointment of a receiver.-Levine v. Levine, 111 (70) N.Y.L.J. (3-25-44) 1184, Col. 1 M.

¶ 3. Although trustees of Police Department Pension Fund would be required to pay plaintiff a certain sum per month to satisfy an award of alimony, the order of sequestration would be denied with respect to counsel fee.-Meagher v. Meagher, 124 (83) N.Y.L.J. (10-30-50) 994, Col. 2 F.

¶ 4. Plaintiff was not entitled to an order directing the trustees of the Police Pension Fund to pay over accumulated pension allotments to satisfy a judgment for unpaid alimony.-In re Wolbert, 146 (77) N.Y.L.J. (10-20-61) 14, Col. 6 M.

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

*NYC Administrative Code 13-213*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 1 [POLICE DEPARTMENT, SUBCHAPTER ONE PENSION FUND]

§ 13-213 False swearing.

Every person who knowingly or wilfully in anywise procures the making or presentation of any false or fraudulent affidavit or affirmation concerning any claim for pension or payment thereof shall in every such case forfeit a sum not exceeding two hundred fifty dollars, to be sued for and recovered by and in the name of such board of trustees, which when recovered, shall be paid to and thereupon become a part of such fund. Any person who shall wilfully swear falsely in any oath, or affirmation, in obtaining or procuring any pension or payment thereof, under the provisions of this subchapter, shall be guilty of perjury.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-10.0 added LL 2/1940 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where the widow of a retired policeman had been granted a pension as a matter of discretion under Greater New York Charter § 354, which pension, by express statutory provisions, was to terminate upon a remarriage, but the

widow had secretly remarried and for several years thereafter had collected pension checks, representing by her endorsement that she had not remarried, and upon being discovered the widow had agreed to make restitution and had repaid nearly half of the money obtained when she obtained an annulment of her second marriage, she was not then entitled to an order compelling the trustees of the pension fund to vacate the determination of revocation upon the theory that the annulment operated retroactively and destroyed the marriage ab initio since even if she showed a clear legal right to restoration her conduct was such as to suggest that an exercise of discretion be extraordinary remedy of mandamus should be withheld.-Coffey v. Valentine, 107 (22) N.Y.L.J. (1-27-42) 399, Col. 7 M.

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*NYC Administrative Code 13-213.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 1 [POLICE DEPARTMENT, SUBCHAPTER ONE PENSION FUND]

§ 13-213.1 Transfer of assets, liabilities and administration of pension fund, subchapter one to pension fund, subchapter two: payment of certain benefits by pension fund, subchapter two.

a. The following terms, as used in this section, shall have the following meanings unless a different meaning is plainly required by the context:

1. "Pension fund, subchapter one". The police pension fund provided for in this subchapter.

2. "Pension fund, subchapter two". The police pension fund provided for in subchapter two of this chapter.

3. "Police subchapter one beneficiary". Any person who is entitled under the laws in effect immediately prior to July first, nineteen hundred ninety-five to receive benefits from pension fund, subchapter one.

b. Subject to the provisions of subdivision g of this section, and notwithstanding any other provision of law to the contrary, on July first, nineteen hundred ninety-five, all assets held by pension fund, subchapter one shall be transferred to pension fund, subchapter two and shall be credited to the contingent reserve fund of pension fund, subchapter two.

c. Subject to the provisions of subdivision g of this section, and notwithstanding any other provision of law to the contrary, on and ofter July first, nineteen hundred ninety-five, all moneys which otherwise would be paid to pension

fund, subchapter one pursuant to the provisions of section 13-203 of this subchapter or any other provision of law, or from any other source whatsoever, shall instead by*2 paid to the general fund of the city established pursuant to section one hundred nine of the New York city charter.

d. Subject to the provisions of subdivision g of this section, and notwithstanding any other provision of law to the contrary, on July first, nineteen hundred ninety-five, all liabilities of pension fund, subchapter one as of such date, including, but not limited to, liability for the payment of all benefits required under laws in effect immediately prior to such date to be paid on and after such date by pension fund, subchapter one to police subchapter one beneficiaries, shall be transferred to and assumed by pension fund, subchapter two, and such benefits payable to police subchapter one beneficiaries on and after such date shall be paid to such beneficiaries by pension fund, subchapter two.

e. Subject to the provisions of subdivision g of this section, and notwithstanding any other provision of law to the contrary, on July first, nineteen hundred ninety-five, the liability of the city supplemental pension fund established under section 13-650 of this title for the payment of all supplemental benefits required under laws in effect immediately prior to such date to be paid on and after such date by such supplemental pension fund to police subchapter one beneficiaries shall be transferred to and assumed by pension fund, subchapter two, and such supplemental benefits payable to such police subchapter one benificiaries*3 on and after such date shall be paid to such beneficiaries by pension fund, subchapter two.

f. Notwithstanding any other provision of law to the contrary, on July first, nineteen hundred ninety-five, the duties and responsibilities of administering the provisions of this subchapter conferred upon the board of trustees of pension fund, subchapter one by the provisions of this subchapter in effect immediately prior to such date shall be transferred to and assumed by the board of trustees of pension fund, subchapter two.

g. Notwithstanding any other provision of law to the contrary, for all funding or accounting purposes, including but not limited to, the funding or accounting purposes associated with the implementation of the provisions of this section, the provisions of subparagraph (d) of paragraph two of subdivision b of section 13-228 of this chapter or the provisions of paragraph six of subdivision b of such section 13-228 of this chapter or the provisions of paragraph six of subdivision b of such section 13-228, the transfer of certain assets or liabilities to pension fund, subchapter two as required by subdivision b, d or e of this section to be made on July first, nineteen hundred ninety-five shall be deemed to have been made on July first, nineteen hundred ninety-four, and the payment of certain moneys to the general fund of the city as required by subdivision c of this section to be made on and after July first, nineteen hundred ninety-five shall be deemed to have been made on and after July first, nineteen hundred ninety-four.

**HISTORICAL NOTE**

Section added chap 503/1995 § 3, eff. Aug. 2, 1995 with subd. g retro-

active to July 1, 1994.

**FOOTNOTES**

2

[Footnote 2]: * So in original. "by" s.b. "be"

3

[Footnote 3]: * So in original. "benificiaries" s.b. "beneficiaries"

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*NYC Administrative Code 13-214*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-214 Definitions.

The following words and phrases as used in this subchapter unless a different meaning is plainly required by the context, shall have the following meanings:

1. "Pension fund" shall mean the police pension fund provided for in this subchapter.

2. "Medical board" shall mean the board of physicians provided for in section 13-223 of this subchapter.

3. "City service" shall mean service in the police force in the department and shall include service credit acquired by transfer pursuant to section forty-three of the retirement and social security law or by transfer, from another pension or retirement system, of funds actuarially determined in a manner similar to that provided by such section of the retirement and social security law. In any case where a member, after becoming eligible to retire for service, is appointed police commissioner or deputy police commissioner, and in any case where a person who retired for service as a member of the pension fund is thereafter appointed police commissioner or deputy police commissioner, his or her service as police commissioner or deputy police commissioner shall constitute city service.

4. "Member" shall mean any person included in the membership of the pension fund as provided in section 13-215 of this subchapter.

5. "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance, a dependent benefit, a death benefit or any other benefit provided by this subchapter.

6. "Final compensation" shall mean the average annual compensation earnable by a member for city-service during his or her last five years of city-service, or during any other five consecutive years of city-service since he or she last became a member which such member shall designate.

7. "Accumulated deductions" shall mean the sum of all the amounts, deducted from the compensation of a member or contributed by him or her, standing to the credit of his or her individual account in the annuity savings fund together with regular interest and special interest, if any, thereon.

8. (a) Except as otherwise provided in paragraphs (b), (c), (d), (e) and (g) of this subdivision, "regular interest", in the cases of persons who are members on the thirtieth day of June, nineteen hundred forty-seven, shall mean interest at four per centum per annum, compounded annually, and in the cases of persons becoming members thereafter, shall mean interest at three per centum per annum, compounded annually to and including the thirtieth day of June, nineteen hundred sixty-five, and interest at four per centum per annum, compounded annually, from and after the first day of July, nineteen hundred sixty-five, except that (i) as to the annuity savings fund and reserve-for-increased-take-home-pay of persons becoming members after June thirtieth, nineteen hundred forty-seven, the term "regular interest", for the period from July first, nineteen hundred sixty-five through December thirty-first, nineteen hundred sixty-seven, shall mean three per centum per annum compounded annually, and (ii) in the cases of persons becoming members after June thirtieth, nineteen hundred forty-seven, whose city-service has been or shall be terminated by death, retirement, resignation, dismissal, or otherwise on or before June thirtieth, nineteen hundred sixty-seven, the term "regular interest" shall mean interest at three per centum per annum, compounded annually, to and including the date of such termination.

(b) The provisions of paragraph (a) of this subdivision shall not apply to any actuarial valuation, determination or appraisal which is made pursuant to this chapter and which is used to determine the amount of any contribution required to be paid by the city or other public employer into the contingent reserve fund of the pension fund in the nineteen hundred seventy-seven-nineteen hundred seventy-eight fiscal year of the city or any subsequent fiscal year thereof.

(c) (i) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this chapter and which is used to determine the amount of any contribution required to be paid, by the city or other public employer into the contingent reserve fund of the pension fund in the nineteen hundred seventy-seven-nineteen hundred seventy-eight fiscal year of the city and in each succeeding fiscal year thereof to and including the nineteen hundred seventy-nine-nineteen hundred eighty fiscal year thereof, "regular interest" shall mean interest at five and one-half per centum per annum, compounded annually.

(ii) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, and except as otherwise provided in paragraphs (1) and (4) of subdivision b of section 13-228 of this subchapter with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this chapter and which is used to determine the amount of any contribution required to be paid by the city or other public employer into the contingent reserve fund of the pension fund in the nineteen hundred eighty-nineteen hundred eighty-one fiscal year of the city and in each succeeding fiscal year thereof to and including the nineteen hundred eighty-one-nineteen hundred eighty-two fiscal year thereof, "regular interest" shall mean interest at the rate of seven and one-half per centum per annum, compounded annually.

(iii) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, and except as otherwise provided in paragraphs (1)and (4) of subdivision b of section 13-228 of this subchapter with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this

subchapter and which is used to determine the amount of any contribution required to be paid by the city (or other obligors required to pay public employer contributions on account of members) into the contingent reserve fund of the pension fund in the nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year of the city and in each succeeding fiscal year thereof to and including the nineteen hundred eighty-seven-nineteen hundred eighty-eight fiscal year thereof, "regular interest" shall mean interest at the rate of eight per centum per annum, compounded annually.

(iv) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, and except as otherwise provided in paragraphs (1) and (4) of subdivision b of section 13-228 of this subchapter with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this subchapter and which is used to determine the amount of any contribution required to be paid by the city (or other obligors required to pay public employer contributions on account of members) into the contingent reserve fund of the pension fund in the nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year of the city and the nineteen hundred eighty-nine-nineteen hundred ninety fiscal year thereof, "regular interest" shall mean interest at the rate of eight and one-quarter per centum per annum, compounded annually.

(d) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, and except as otherwise provided in paragraphs (1) and (4) of subdivision b of section 13-228 of this subchapter with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this subchapter and which is used to determine the amount of any contribution required to be paid by the city or other public employer into the contingent reserve fund of the pension fund in the city's nineteen hundred ninety-nineteen hundred ninety-one fiscal year and in any subsequent fiscal year thereof, "regular interest" shall mean interest at such rate per annum, compounded annually, as shall be prescribed by the legislature in section 13-638.2 of this title.

(e) On or after May first, nineteen hundred eighty-nine and not later than October thirty-first of such year, the board shall submit to the governor, the temporary president and minority leader of the senate, the speaker of the assembly, the majority and minority leaders of the assembly, the state superintendent of insurance, the chairperson of the permanent commission on public employee pension and retirement systems, the mayor of the city and the members of the board of estimate and city council thereof, the written recommendations of the board as to the rate of interest and effective period thereof which should be established by law as "regular interest" for the purpose specified in paragraph (d) of this subdivision.

(f) (i) Subject to the provisions of subparagraph (c) of paragraph two of subdivision b of section 13-228 of this subchapter, nothing contained in paragraphs (b), (c), (d) and (e) of this subdivision shall be construed as prescribing for the purpose of crediting interest to individual accounts in the annuity savings fund or to reserves-for-increased-take-home-pay or for any other purpose besides that specified in such paragraphs, a rate of regular interest other than as prescribed in paragraph (a) or paragraph (g) of this subdivision.

(ii) Subject to the provisions of section 13-638.2 of this title, nothing contained in paragraphs (c) and (d) of this subdivision shall be construed as requiring the original unfunded accrued liability contribution, as defined in subparagraph (a) of paragraph (3) of subdivision b of section 13-228 of this subchapter, and the revised unfunded accrued liability contribution, as defined in subparagraph (b) of such paragraph (3), and the nineteen hundred eighty unfunded accrued liability adjustment, as defined in subparagraph (c) of such paragraph (3), and the nineteen hundred eighty-two unfunded accrued liability adjustment, as defined in subparagraph (d) of such paragraph (3) to be determined in any manner other than as prescribed in such subparagraphs. Subject to the provisions of section 13-638.2 of this title, nothing contained in paragraphs (c) and (d) of this subdivision shall be construed as requiring any balance sheet liability or balance sheet liability contribution computed pursuant to the provisions of paragraph (4) of subdivision b of such section 13-228 of this subchapter to be determined in any manner other than as prescribed in such paragraph (4).

(g) (i) Commencing on August first, nineteen hundred eighty-three, and continuing thereafter, "regular interest",

in the cases of persons who were members on July thirty-first, nineteen hundred eighty-three or who thereafter became or become members, shall mean, subject to the provisions of subparagraph (ii) to (x), inclusive, of this paragraph (g), interest at seven per centum per annum, compounded annually.

(ii) (A) (1) Subject to the provisions of sub-items (2) and (3) of this item (A), regular interest at the rate of seven per centum per annum, compounded annually, shall be used as the actuarial interest assumption for determining any actuarial equivalent benefit payable to or on account of any seven percent member for actuarial equivalent benefit purposes.

(2) Where an actuarial equivalent benefit is required by board resolution to be determined for any seven percent member for actuarial equivalent benefit purposes through the use of the modified Option 1 pension computation formula (as defined in subdivision twenty-eight of this section), the actuarial interest assumptions used in making such determination shall be as prescribed in such formula.

(3) Where it is provided by board resolution that a portion of an actuarial equivalent benefit shall be determined for any such seven percent member on the basis of gender-neutral mortality tables, and that the remainder of such benefit shall be determined on the basis of mortality tables which are not gender-neutral, regular interest at the rate of seven per centum per annum, compounded annually, shall be used as the actuarial interest assumption for determining the portion of such benefit required by such resolution to be determined on the basis of gender-neutral mortality tables and such rate of regular interest shall not apply to the determination of the remainder of such benefit.

(B) Notwithstanding that the process of determining whether a member is a seven percent member for actuarial equivalent benefit purposes may include, for the purpose of ascertaining the highest applicable benefit, alternative hypothetical benefit calculations utilizing a rate of regular interest other than such rate of seven per centum, nothing contained in subparagraph (i) of this paragraph (g) or in item (A) of this subparagraph (ii) shall be construed as requiring that in the determination of any actuarial equivalent benefit payable to or on account of any member who is not a seven percent member for actuarial equivalent benefit purposes, any rate of interest be used as the actuarial interest assumption other than regular interest, compounded annually, as prescribed by the applicable provisions of paragraph (a) of this subdivision.

(iii) The provisions of item (A) of subparagraph (ii) of this paragraph (g) shall not apply to any person who, prior to August first, nineteen hundred eighty-three, retired as a member of the pension fund for service or superannuation or for ordinary or accident disability and was such a retiree immediately prior to such August first, provided however, that if any such retiree returned or returns to city-service and, on or after July thirty-first, nineteen hundred eighty-three, was or is restored to membership in the pension fund as required or permitted by law, the provisions of such item (A), from and after the date of such restoration to membership, shall apply to such restored member with respect to determination of any actuarial equivalent benefit which is both (A) a benefit to which he or she became or becomes entitled upon his or her subsequent retirement or subsequent discontinuance of service so as to qualify for benefits, and (B) a benefit which is not a continuation, without change, of a benefit which had previously become payable to him or her by reason of his or her prior retirement; provided further that nothing contained in the preceding provisions of this subparagraph shall be construed as making the provisions of item (A) of such subparagraph (ii) applicable to any such restored member who was not or is not a seven percent member for actuarial equivalent benefit purposes at the time for such subsequent retirement or subsequent discontinuance of service.

(iv) (A) Subject to the provisions of items (B) and (C) of this subparagraph (iv), the provisions of item (A) of subparagraph (ii) of this paragraph (g) shall not apply to any member who, (1) prior to August first, nineteen hundred eighty-three, discontinued service under such circumstances that such member became a discontinued member, and (2) was such a discontinued member immediately prior to such August first.

(B) If such a discontinued member returned or returns to city-service and on or after July thirty-first, nineteen hundred eighty-three and before payability of his or her retirement allowance as such member began or begins, again

becomes an active member pursuant to the applicable provisions of section 13-256 of this subchapter, the provisions of item (A) of such subparagraph (ii) shall apply to him or her on and after the date of such resumption of active membership; provided that nothing contained in the preceding provisions of this item (B) shall be construed as making the provisions of item (A) of such subparagraph (ii) applicable to any such member who was not or is not a seven percent member for actuarial equivalent benefit purposes at the time of subsequent retirement or subsequent discontinuance of service so as to qualify for benefits.

(C) If a discontinued member referred to in item (A) of this subparagraph (iv) returned or returns to city-service and on or after July thirty-first, nineteen hundred eighty-three and on or after the date on which payability of his or her retirement allowance as such member began or begins, again became or becomes an active member pursuant to the applicable provisions of section 13-256 of the code, the provisions of item (A) of such subparagraph (ii), on and after the date of such resumption of active membership, shall apply to him or her with respect to determination of any actuarial equivalent benefit which is both (1) a benefit to which he or she became or becomes entitled upon his or her subsequent retirement or subsequent discontinuance of service so as to qualify for benefits, and (2) a benefit which is not a continuation, without change, of a benefit which had previously become payable to him or her by reason of his or her prior discontinuance of service; provided that nothing contained in the preceding provisions of this item (C) shall be construed as making item (A) of such subparagraph (ii) applicable to any such member who was not or is not a seven percent member for actuarial equivalent benefit purposes at such time of subsequent retirement or subsequent discontinuance of service.

(v) (A) Subject to the provisions of item (B) of this subparagraph (v) and to the provisions of subparagraph (viii) of this paragraph (g), the selection of mode of benefit (as defined in subdivision twenty-nine of this section) made prior to the date of enactment (as such date is certified pursuant to section forty-one of the legislative law) of this paragraph (g) by a person entitled to a recomputation of benefits pursuant to the best-of-three-computations method (as defined in subdivision thirty-one of this section) in relation to the retirement allowance (or any component thereof) which became payable to him or her prior to such date of enactment shall be the selection of mode of benefit applicable to the recomputed retirement allowance (or any corresponding component thereof) to which he or she is entitled under the best-of-three-computations method (as defined in subdivision thirty of this section), and any such person entitled to a recomputation of benefits pursuant to the best-of-three-computations method shall not be entitled to make any change in such selection of mode of benefit.

(B) (1) Notwithstanding the provisions of item (A) of this subparagraph (v), a person entitled to a recomputation of benefits pursuant to the best-of-three-computations method shall be entitled, to the extent and in the manner prescribed in the succeeding sub-items of this item (B), to change the original selection of mode of benefit applicable to the retirement allowance (or any component thereof) which became payable to him or her prior to the date of enactment of this paragraph (g).

(2) In any case where the original selection of mode of benefit of a person entitled to a recomputation of benefits pursuant to the best-of-three-computations method was a selection of a joint and survivor option (as defined in subdivision thirty-two of this section), no change from such original selection of a joint and survivor option may be made under this item (B) to any other selection of mode of benefit if the designated beneficiary selected with respect to such joint and survivor option by such person entitled to a recomputation is not alive at the time of filing of the form whereby such person entitled to a recomputation seeks to change, pursuant to this item (B), his or her original selection of such joint and survivor option.

(3) Except for a change of selection of mode of benefit prohibited by sub-item two of this item (B), any original selection of mode of benefit may be changed pursuant to this item (B) to another selection of mode of benefit, provided all of the conditions set forth in sub-items four, six and eight of this item (B) are met.

(4) Subject to the provisions of sub-items seven and eight of this item (B), a person entitled to a recomputation of benefits pursuant to the best-of-three-computations method may, pursuant to this item (B), effect any such

permissible change of his or her original selection of mode of benefit by executing, acknowledging and filing with the pension fund, within the applicable period of time prescribed by sub-item six of this item, a new selection of mode of benefit. If the original selection of mode of benefit of the person filing such new selection was a selection of a joint and survivor option, such new selection shall be void and of no effect unless (a) the designated beneficiary named in such original selection of a joint and survivor option signs and acknowledges, in the form for such new selection of mode of benefit, a consent to such changed selection of mode of benefit, and (b) such original designated beneficiary is alive on the date of filing of such new selection.

(5) The pension fund shall mail to each person entitled to a recomputation of benefits pursuant to the best-of-three-computations method a letter showing amounts of benefits, as recomputed for such person under the best-of-three-computations method, for modes of benefit other than joint and survivor options, together with a statement advising such person that upon request the amounts of recomputed benefits under joint and survivor options will be provided.

(6) The period of time within which any such person entitled to a recomputation may file a new selection of mode of benefit as provided for in sub-items three and four of this item (B) shall be sixty days after the date of issuance set forth in such letter mailed to such person pursuant to sub-item five of this item; provided, however, that if, pursuant to the request of such person, a later letter setting forth benefits information in relation to new selection of a mode of benefit is mailed to such person by the pension fund, such period of time for filing a new selection of mode of benefit shall be thirty days after the date of issuance set forth in such later letter.

(7) Upon the filing of a new selection of mode of benefit pursuant to this item (B) by any such person entitled to a recomputation, such new selection shall be irrevocable and such person shall not be entitled to file any other selection of mode of benefit with respect to such retirement allowance (or any component thereof) which became payable to him or her prior to the date of enactment of this paragraph (g).

(8) No new selection of mode of benefit filed pursuant to the preceding sub-items of this item (B) shall be valid or effective as a change of mode of benefit or for any other purpose unless the person entitled to a recomputation of benefits pursuant to the best-of-three-computations method who files such new selection is alive on the date (hereinafter referred to as the "validating date") three hundred sixty-five days after the date of filing of such new selection of mode of benefit. If such person filing such new selection of mode of benefit is alive on the validating date with respect to such new selection, such new selection shall become valid and effective on such validating date; provided, however, that from and after the effective date of retirement of such person making such valid and effective new selection of mode of benefit (if he or she retired for service or superannuation or for ordinary or accident disability) or from and after the date on which payability of the original benefits of such person began (if he or she was a discontinued member), such new selection of mode of benefit shall supersede such original selection of mode of benefit and shall apply to and govern the amount of benefits payable to such person or to his or her designated beneficiary or estate.

(vi) Subject to the provisions of subparagraph (viii) of this paragraph (g), in any case where a member who retired before August first, nineteen hundred eighty-three for service or superannuation or for ordinary or accident disability returned or returns to city-service and, on or after July thirty-first, nineteen hundred eighty-three, re-entered or re-enters membership in the pension fund, nothing contained in subparagraphs (i) to (iv), inclusive of this paragraph (g) shall be construed as authorizing or permitting him or her to change any selection of mode of benefit (as defined in subdivision twenty-nine of this section) made by him or her with respect to any benefit which, upon his or her subsequent retirement or discontinuance of service so as to qualify for benefits, is payable to him or her as a continuation, without change, of a benefit which had previously become payable to him or her by reason of his or her prior retirement.

(vii) Subject to the provisions of subparagraph (viii) of this paragraph (g), in any case where a discontinued member referred to in item (A) of subparagraph (iv) of this paragraph returned or returns to city-service and, on or after July thirty-first, nineteen hundred eighty-three, again became or becomes an active member pursuant to applicable

provisions of law, nothing contained in subparagraphs (i) to (iv), inclusive, of this paragraph (g) shall be construed as authorizing or permitting him or her to change any selection of mode of benefit made by him or her with respect to any benefit which, upon his or her subsequent retirement or discontinuance of service so as to qualify for benefits, is payable to him or her as a continuation, without change, of a benefit which had previously become payable to him or her by reason of his or her prior discontinuance of service.

(viii) Nothing contained in subparagraphs (v), (vi) and (vii) of this paragraph (g) shall be construed as preventing:

(A) any person subject to such subparagraph (v) who, on or after July thirty-first, nineteen hundred eighty-three, re-entered or re-enters city-service and again became or becomes an active member; or

(B) any re-entered member referred to in such subparagraph (vi) or subparagraph (vii); upon his or her subsequent retirement, from exercising any right, which any other applicable law grants to him or her under such circumstances, to make a selection of mode of benefit (as defined in subdivision twenty-nine of this section).

(ix) Notwithstanding the provisions of subparagraph (i) of this paragraph (g) prescribing a rate of regular interest of seven per centum per annum, compounded annually, for specified members described in such subparagraph (i), the rate of regular interest which shall be applied to fix the rate of interest on any loan to any such member eligible to borrow shall be four per centum per annum, compounded annually.

(x) The rate of regular interest applicable to determination of the rate of member contribution of any member whose last membership began prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this paragraph (g) shall be the rate of regular interest which was applicable, under the provisions of law in effect prior to such date of enactment, to the determination of the rate of member contribution of such member, and nothing contained in the preceding subparagraphs of this paragraph (g) shall be construed as applicable to the determination of the rate of member contribution of any such member whose last membership so began or as changing or affecting the rate of member contribution of any such member.

9. "Pension" shall mean payments for life derived from appropriations made by the city as provided in this subchapter.

10. "Annuity" shall mean payments for life derived from contributions made by a member as provided in this subchapter.

11. "Dependent benefit" shall mean payments derived from contributions made by a member as provided in section 13-253 of this subchapter.

12. "Retirement allowance" shall mean the pension plus the annuity and the pension-providing-for-increased-take-home-pay, if any.

13. "Pension reserve" shall mean the present value of all payments to be made on account of any pension, or benefit in lieu of any pension, granted under the provisions of this subchapter, computed upon the basis of such mortality tables as shall be adopted by the board with regular interest.

14. "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity, or benefit in lieu of any annuity, granted under the provisions of this subchapter, computed upon the basis of such mortality tables as shall be adopted by the board with regular interest.

15. "Fiscal year" shall mean any year commencing with the first day of July and ending with the thirtieth day of June next following.

16. "Total service" shall mean all service of a member allowable as provided in subdivision three of this section and section 13-218 of this subchapter.

17. "Board" shall mean the board of trustees provided for in section 13-216 of this subchapter.

18. Pension-providing-for-increased-take-home-pay. The annual allowance for life payable in monthly installments derived from contributions made by the city to the contingent reserve fund pursuant to section 13-226 of this subchapter.

19. Reserve-for-increased-take-home-pay. The amount of the reserve provided by the city which shall be a sum consisting of the total of all products obtained by multiplying the compensation of the member, during each period of reduction of member contributions under section 13-226 of this subchapter, by the percentage of reduction of his contributions applicable under such section with respect to such period, plus regular interest, and additional interest, if any, thereon.

20. "Special interest". A distribution to the annuity savings fund, in addition to regular interest, which distribution (a) for each of the periods as to which the provisions of section 13-234 of this subchapter or section 13-638.2 of this title grant special interest, consists of the amount prescribed by such provisions for such period and (b) for each such period, is credited in such applicable amount to the accounts in the annuity savings fund of members who are eligible under such provisions for crediting of such amount for such period.

21. "Additional interest". A distribution to the reserve-for-increased-take-home-pay in addition to regular interest, which distribution (a) for each of the periods as to which the provisions of section 13-234 of this subchapter or section 13-638.2 of this title grant additional interest, consists of the amount prescribed by such provisions for such period and (b) for each such period, is to be included in such applicable amount in the reserve-for-increased-take-home-pay of each member who is eligible under such provisions for inclusion of such amount for such period.

22. "Discontinued member." A member who has discontinued police service and who has a vested right to a deferred retirement allowance under section 13-256 of this subchapter.

23. "Police service." Service in the uniformed force of the police department, as a member of such force, including service for which credit is granted by section 14-112 of the code, but excluding any service credit acquired by transfer or otherwise under any provision of law.

24. "Supplementary interest". An annual allowance, in addition to regular interest, of interest on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter (excluding, however, the annuity savings fund and the amount of reserve-for-increased-take-home-pay in the contingent reserve fund), which allowance, (a) for each of the periods as to which the provisions of section 13-234 of this subchapter or section 13-638.2 of this title grant supplementary interest, consists of the amount prescribed by such provisions for each period and (b) for each such period, is credited in such applicable amount to such funds at the time, in the manner, to the extent and subject to the exclusions prescribed by the provisions of such section.

25. "Actuarial equivalent benefit". Any benefit which by law is required to be an actuarial equivalent or by law is required to be determined on the basis of an actuarial equivalent.

26. "Seven percent member for actuarial equivalent benefit purposes". (a) A member who meets all of the following conditions:

(i) subparagraph (i) of paragraph (g) of subdivision eight of this section (relating to the definition of members as to whom regular interest at seven per centum per annum, compounded annually, applies) applies to such member; and

(ii) an actuarial equivalent benefit has become payable to or on account of such member; and

(iii) it is provided by a resolution adopted by the board (A) that a mortality table which does not differentiate on the basis of sex shall be used to calculate such actuarial equivalent benefit or a portion of such benefit, or (B) that the modified Option 1 pension computation formula (as defined in subdivision twenty-eight of this section) shall be used to calculate such actuarial equivalent benefit.

(b) Except in cases to which the modified Option 1 pension computation formula applies pursuant to a resolution adopted by the board, nothing contained in subparagraph (iii) of paragraph (a) of this subdivision twenty-six shall be construed as referring to or including any calculation of an actuarial equivalent benefit (or portion of such benefit) payable to any person where such calculation is required by board resolution to be made throught the use of a sex-differentiated mortality table.

27. "Tier I member". A member whose benefits (other than a supplemental retirement allowance) are prescribed by this subchapter and who is not subject to the provisions of article eleven, article fourteen or article fifteen of the retirement and social security law.

28. "Modified Option 1 pension computation formula". (a) The method of computing the Option 1 pension component of a retirement allowance payable to a Tier I member and the amount of the Option 1 benefit payable to the beneficiary or estate of such member who selected or selects Option 1 as to such pension component, which method of computation is as prescribed by the succeeding paragraphs of this subdivision twenty-eight.

(b) The initial reserve for such pension component shall be computed through use of mortality tables which do not differentiate on the basis of sex (hereinafter referred to as "gender-neutral mortality tables") and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually.

(c) Solely for the purpose of use as the minuend from which the payments of such pension component to such member are subtracted in order to determine the amount of the Option 1 benefit payable, upon such member's death, to such member's beneficiary or estate by reason of such Option 1 selection in relation to such pension component, the present value of such member's maximum pension, as it was at the time of such member's retirement, shall be deemed to be the greatest of:

(i) such present value determined on the basis of gender-neutral mortality tables and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually; or

(ii) such present value determined on the basis of the female mortality tables and the regular interest applicable to such member in effect immediately prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this subdivision twenty-eight; or

(iii) such present value determined on the basis of the male mortality tables and the regular interest applicable to such member in effect immediately prior to the date of enactment of this sub- division.

(d) The pension component payable to such member shall be computed on the basis of gender-neutral mortality tables and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually; so that:

(i) the present value, as it was at the time of such member's retirement, of such component; plus

(ii) the present value, as it was at the time of such member's retirement, of the amount payable to such member's Option 1 beneficiary or estate upon the death of the member as provided for by the applicable provisions of paragraph (e) of this subdivision; shall be equal to the Option 1 initial reserve determined for such pension component with respect to such member pursuant to the provisions of paragraph (b) of this subdivision.

(e) Where such member dies before he or she has received payments on account of such pension component equal to the present value of such member's maximum pension as computed pursuant to paragraph (c) of this subdivision, the Option 1 benefit payable to the beneficiary or estate of such deceased member by reason of such Option 1 selection in relation to such pension component, shall be the remainder obtained by subtracting from such present value determined pursuant to such paragraph (c) in relation to such pension component, the total of such Option 1 payments on account of such pension component received by or payable to such member for the period prior to his or her death.

(f) In relation to the Option 1 benefits determined pursuant to the method of computation set forth in this subdivision twenty-eight by reason of discontinuance of city-service by a discontinued member, the phrase "time of such member's retirement", as set forth in paragraphs (c) and (d) of this subdivision, shall be deemed, for the purpose of this subdivision, to mean the date of commencement of the retirement allowance of such discontinued member.

29. "Selection of mode of benefit". The choice made by a member (as permitted by and pursuant to the requirements of law governing such choice by such member) as to whether the maximum amount of his or her retirement allowance or a component thereof shall be payable or such retirement allowance or a component thereof shall be payable under an option selected by the member. The term "selection of mode of benefit" shall include a case where the maximum retirement allowance or a maximum component thereof becomes payable because of a member's omission, within the time permitted by law, to select the maximum benefit or an option.

30. "Best-of-three-computations method". (a) A method (as prescribed by a resolution of the board) under which a retirement allowance (or portion thereof) payable to a member is required to be determined for such member so as to be the greatest of:

(i) such retirement allowance (or portion thereof) determined on the basis of gender-neutral mortality tables and regular interest at the rate of seven per centum per annum; or

(ii) such retirement allowance (or portion thereof) determined on the basis of female mortality tables and the regular interest applicable to such member as of a time prescribed in such resolution; or

(iii) such retirement allowance (or portion thereof) determined on the basis of male mortality tables and the regular interest applicable to such member as of a time prescribed in such resolution.

(b) Where, under the provisions of any such resolution of the board, the modified Option 1 pension computation formula (as defined in subdivision twenty-eight of this section) applies to any member, the term "best-of-three-computations method", where used in relation to such member, shall be deemed to include such modified Option 1 pension computation formula, to the extent that such formula governs the determination of the pension component (or portion thereof) of such member's retirement allowance.

31. "Person entitled to a recomputation of benefits pursuant to the best-of-three-computations method". Any person who meets all of the conditions stated below in this subdivision thirty-one:

(a) such person, during the period beginning on August first, nineteen hundred eighty-three and ending on the date next preceding the date of enactment (as such date is certified pursuant to section forty-one of the legislative law) of this subdivision thirty-one, (i) retired for service or superannuation or for ordinary or accident disability or (ii) discontinued service so as to become a discontinued member; and

(b) such person's retirement allowance (or a portion thereof), by reason of such retirement or discontinuance of service is required by a resolution adopted by the board to be redetermined pursuant to the best-of-three-computations method (as defined in subdivision thirty of this section); and

(c) a first payment on account of his or her retirement allowance (as such retirement allowance was determined

prior to the date of enactment of this subdivision) was made prior to such date of enactment.

32. "Joint and survivor option". (a) Any option under which, at the time when such option is selected, a choice is made which includes both:

(i) a benefit payable for the lifetime of the retired or vested member by whom or in whose behalf such option is selected; and

(ii) a benefit (A) which consists of an amount equal to or constituting a percentage of such retired or vested member's benefit and (B) which is payable for the lifetime of a designated beneficiary selected at the time when such option is selected.

(b) In any case where an option described in paragraph (a) of this subdivision thirty-two includes a provision prescribing that if the designated beneficiary predeceases such retired or vested member, a maximum benefit shall become payable to such member, such option shall nevertheless be deemed to be a joint and survivor option.

33. "Normal rate of contribution." The proportion of the earnable compensation of a member which is required to be deducted from the compensation of such member by the applicable provisions of section 13-225 of this subchapter as his or her member contributions, exclusive of any increase in such contributions pursuant to subdivision c of subdivision d of such section 13-225 or any decrease thereof on account of any program for increased-take-home-pay or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law (relating to election to decrease member contributions by contributions due on account of social security coverage).

34. "Member contributions eligible for pick up by the employer." (a) with respect to any payroll period for a member (other than a member who is not required to contribute during such payroll period because of his or her currently effective election to discontinue member contributions pursuant to subdivision b of section 13-225 of this subchapter), the term "member contributions eligible for pick up by the employer" shall mean the amount of member contributions which, in the absence of an employer pick up program applicable to such member pursuant to section 13-225.1 of this subchapter (providing for pick up of required member contributions), would be required by law to be deducted, on account of such member's normal rate of contribution, from the compensation of such member for such payroll period, after (1) giving effect to any reduction in such contributions required under any program for increased-take-home-pay or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law and (2) excluding any deductions from such compensation (or redeposits, restorations or payments) on account of (i) loans or withdrawals of excess contributions or (ii) any election by such member to increase his or her contributions pursuant to subdivision c or subdivision d of section 13-225 of this subchapter or (iii) any other cause not attributable to the member's normal rate of contribution after reduction, if any, in such rate as described in subpararaph one of this paragraph (a).

(b) If no deductions on account of a member's normal rate of contribution are required by law to be made from the compensation of any member for any payroll period, such member shall not have, for such payroll period, any member contributions eligible for pick up by the employer. The amount of any member's member contributions eligible for pick up by the employer for any payroll period shall be determined solely on the basis of compensation paid to such member for such payroll period by his or her public employer. A member shall not have any member contributions eligible for pick up by the employer with respect to any payroll period for which he or she is not paid compensation by his or her public employer.

35. "Starting date for pick up." The first day of the first whole payroll period commencing after the date which is three months after the internal revenue service shall have issued a ruling that member contributions picked up pursuant to section 13-225.1 of this subchapter are not includible as gross income for federal income tax purposes until distributed or made available.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. 8 par (c) subpar (iii) amended chap 581/1989 § 34 subpar (iv) added chap 581/1989 § 35

Subd. 8 par (d) amended chap 878/1990 § 7 eff. July 25, 1990 applying on and after July 1, 1989

Subd. 8 par (f) subpar (ii) amended chap 878/1990 § 8 eff. July 25, 1990 applying on and after July 1, 1989

Subds. 20, 21, 24 amended chap 878/1990 § 9 eff. July 25, 1990 applying on and after July 1, 1989

Subds. 33, 34, 35 added chap 114/1989 § 1

**DERIVATION**

Formerly § B18-11.0 added LL 2/1940 § 2

Sub 8 amended chap 626/1947 § 2

Sub 3 amended chap 100/1963 § 401

Subs 18, 19 added chap 223/1963 § 2

Sub 12 amended chap 223/1963 § 3

Sub 7 amended chap 719/1964 § 1

Sub 19 amended chap 719/1964 § 2

Subs 20, 21 added chap 719/1964 §§ 3, 4

Sub 8 amended chap 575/1967 § 3

Subs 22, 23 added chap 827/1969 § 2

Sub 19 amended chap 870/1969 § 8-b

Sub 3 amended chap 1009/1972 § 3

Sub 8 amended chap 976/1977 § 13

Sub 20 amended chap 977/1977 § 3

Sub 8 pars c, d, e, f amended chap 957/1981 § 55

Sub 21 amended chap 957/1981 § 62

Sub 24 added chap 957/1981 § 63

Sub 8 pars c, d, f amended chap 914/1982 § 22

Sub 8 par a amended chap 910/1985 § 25

Sub 8 par f subpar i amended chap 910/1985 § 26

Subs 25-32 added chap 910/1985 § 27

Sub 8 par g added chap 910/1985 § 28

Sub 8 par c subpar iii amended chap 911/1985 § 30

Sub 8 par d amended chap 911/1985 § 31

Sub 8 par e amended chap 911/1985 § 32

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-215*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-215 Membership; composition and eligibility.

a. The membership of the pension fund shall consist of:

(1) all persons in city-service, as defined in this subchapter, in positions in the competitive class of the civil service, who shall serve probationary periods, or who shall receive permanent appointments in the police force after the time when this section shall take effect; and

(2) all persons in city-service, as defined in this subchapter, who hold a position of surgeon of police classified in the non-competitive class of the civil service.

b. Notwithstanding any other provision of this subchapter or any other law to the contrary, in any case where a member who is eligible to retire for service is appointed police commissioner or a deputy police commissioner, he or she shall, while serving as police commissioner or deputy police commissioner, continue to be a member of the pension fund. For the purposes of this subchapter, a member serving as police commissioner or deputy police commissioner whose membership is continued pursuant to this subdivision b or whose membership is restored pursuant to subdivision a of section 13-262 of this subchapter shall, during the period of such continuance or restoration of membership, be deemed to be a member of the police force in the department and his or her service as police commissioner or deputy police commissioner during such period shall be deemed to be service in such force.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 229/1988 § 1

**DERIVATION**

Formerly § B18-12.0 added LL 2/1940 § 2

Amended chap 1009/1972 § 4

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-216*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-216 Board of trustees.

a. The police pension fund shall be administered by a board of trustees which shall, subject to the provisions of law from time to time, establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof. The provisions of sections one thousand forty-two, one thousand forty-three, one thousand forty-four and one thousand forty-five of the New York city charter shall not be construed to apply to the adoption of such rules and regulations. Such board shall consist of:

1. The police commissioner who shall be chairperson of the board and who shall be entitled to cast one and one-half votes.

2. The comptroller of the city who shall be entitled to cast one and one-half votes.

3. A representative of the mayor who shall be appointed by the mayor and who shall be entitled to cast one and one-half votes.

4. The director of finance of the city who shall be entitled to cast one and one-half votes.

5. The president of the patrolmen's benevolent association of the city of New York who shall be entitled to cast one vote.

6. The first vice-president of the patrolmen's benevolent association of the city of New York who shall be entitled to cast one vote.

7. The second vice-president of the patrolmen's benevolent association of the city of New York who shall be entitled to cast one vote.

8. The chairperson of the board of trustees of the patrolmen's benevolent association of the city of New York who shall be entitled to cast one vote.

9. The president of the captains' endowment association of the police department of the city of New York who shall be entitled to cast one-half vote.

10. The president of the lieutenants' benevolent association, police department, city of New York who shall be entitled to cast one-half vote.

11. The president of the sergeants' benevolent association of the city of New York who shall be entitled to cast one-half vote.

12. The president of the detectives' endowment association of the city of New York who shall be entitled to cast one-half vote.

13. (i) Where, during any six month period during a fiscal year, as defined in subdivision three of section 13-268 of the code, the equity portion of the assets of the pension fund is less than forty-five percent, subparagraph (ii) of this paragraph shall be effective during the succeeding fiscal year.

(ii) Two investment representatives, one of whom shall be appointed by the mayor and one of whom shall be appointed by the comptroller upon the occurrence of the condition specified in subparagraph (i) of this paragraph. Each such representative shall be entitled to cast one vote only in relation to determinations of the board:

(A) as to whether the assets of the pension fund shall be invested in equities or fixed income securities and the proportion of the assets of the pension fund to be invested in equities and fixed income securities; and

(B) as to the identity, nature, character and amounts of the equities (within the proportion as determined under item (A) of this subparagraph) to be acquired, held, sold, disposed of or otherwise dealt with by the pension fund; and

(C) as to any steps necessary to effectuate any of the functions set forth in items (A) and (B) of this subparagraph; and

(D) as to delegation by the board, pursuant to law, of the functions described in items (A), (B) and (C) of this subparagraph.

§2. Subdivision b of section 13-216 of the administrative code of the city of New York, as amended by chapter 247 of the laws of 1988, is amended to read as follows:

b. Subject to the provisions of subdivision b-1 and subdivision f of this section, every act of the board of trustees shall be by resolution which shall be adopted only by a vote of at least seven-twelfths of the whole number of votes authorized to be cast by all of the members of such board.

b-1. Every act of the board of trustees in relation to the investment matters referred to in paragraph thirteen of subdivision a of this section shall be by resolution which shall be adopted only by a vote of at least eighty-fourteenths of the whole number of votes authorized to be cast by all of the members of the board empowered to vote on such investment matters.

c. The police commissioner shall appoint an executive director of the police pension fund, provided, however, that if such designee of the police commissioner is not a member of the uniformed force of the police department, the board of trustees shall approve such appointment. The executive director of the police pension fund shall perform such duties as may be conferred upon him or her by the chairperson of the board, by resolution passed by the board, or by law.

d. Any member of the board, referred to in paragraphs five through twelve, respectively, of subdivision a of this section, shall be members of the uniformed force and may authorize in writing at any time any other officer of the respective associations to represent him or her on such board in the event of his or her absence or disability, provided, however, that the by-laws or constitution of such respective associations provide for the designation of a representative in such event.

e. 1. In addition to the powers conferred upon it by any other provision of law, the board of trustees shall, on or before April first of each year, establish a budget, sufficient to fulfill the powers, duties and responsibilities set forth in this chapter and any other provision of law which sets forth the benefits of members of the pension fund and may draw upon the assets of the pension fund to fund such budget, subject to the provisions of paragraphs two, three, four, five and six of this subdivision and subdivisions f, g, h and i of this section. The provisions of this section shall not be applicable to the payment of investment expenses pursuant to section 13-705 of this title and nothing contained herein shall be construed as abolishing, limiting, or modifying any power of the board of trustees to provide for the payment of investment expenses pursuant to section 13-705 of this title.

2. If a budget has not been adopted by the commencement of the new fiscal year, the budget for the preceding fiscal year shall be deemed to have been extended for the new fiscal year until such time as a new budget is adopted.

3. Any budget in effect pursuant to paragraph one or two of this subdivision may be modified during such succeeding fiscal year.

4. Notwithstanding any other provision of law, the board of trustees shall have the power either directly or by delegation to the executive director, to obtain by employment or by contract the goods, property and services necessary to fulfill its powers, duties and responsibilities within the appropriation authorized by the board of trustees pursuant to paragraph one of this subdivision.

5. (i) The pension fund shall be considered an entity separate from the city of New York police department. The board of trustees of the pension fund shall work closely with the city of New York police department.

(ii) The provisions of chapter seventeen of the New York city charter shall continue to apply to the police pension fund and such fund shall constitute an agency for the purposes of such chapter. The board of trustees shall not obtain any legal services by the retention of employees or by contract unless the corporation counsel shall consent thereto.

6. All contracts for goods or services entered into by the police pension fund shall be procured as prescribed in chapter thirteen of the New York city charter; provided, however, that where the provisions of such chapter thirteen require action by the mayor in regard to a particular procurement (except for mayoral action pursuant to subdivision c of section three hundred thirty-four of the New York city charter) such action shall not be taken by the mayor or such appointee of the mayor but shall be taken by the board of trustees or the executive director pursuant to a resolution adopted by the board of trustees delegating such authority to the executive director.

f. Notwithstanding any other provisions of this section, any resolution of the board of trustees which establishes a budget or modifies a budget pursuant to the provisions of paragraph one or three of subdivision e of this section shall require the concurrence of the comptroller and the representative of the mayor. This provision shall only apply to this subdivision and nothing contained herein shall be construed to apply to any other vote of the board. No assets of the police pension fund shall be drawn upon pursuant to the provisions of paragraph one of subdivision e of this section

unless authorized by a budget or budget modification established by such resolution of the board of trustees.

g. Employment by the police pension fund shall constitute city-service for the purposes of this subchapter for those employees that are members of the fund pursuant to section 13-215 of this subchapter; for all other employees, employment by the pension fund shall constitute city service for the purposes of chapter one of title thirteen of this code; provided, however, that nothing contained herein shall be construed as granting membership rights in the pension fund or any retirement system to a contractor of such fund or such contractor's employees. Employees of the pension fund shall be deemed to be employees of the city of New York for the purposes of chapter thirty-five of the New York city charter and title twelve of this code.

h. Whenever the assets of the pension fund are drawn upon pursuant to the provisions of paragraph one of subdivision e of this section all monies so withdrawn shall be made a charge to be paid by the employer otherwise required to make contributions to the police pension fund no later than the end of the fiscal year next succeeding the time period during which such assets were drawn upon, provided, however, that where such charge is for assets so withdrawn in fiscal year two thousand four-two thousand five or in any fiscal year thereafter, such charge shall be paid by such employer no later than the end of the second fiscal year succeeding the time period during which such assets are drawn upon. The actuary shall calculate such charge to be paid by the employer. All charges to be paid pursuant to this subdivision shall be paid at the regular rate of interest utilized by the actuary in determining employer contributions to the pension fund pursuant to the provisions of paragraph two of subdivision b of section 13-638.2 of this title.

i. The funds withdrawn from the pension fund shall not be utilized for any purpose other than the budget established by the board of trustees. All expenditures of the pension fund shall be subject to audit by the comptroller, who may make recommendations, including but not limited to, procedures designed to improve accounting and expenditure control. All expenditures of the pension fund shall be reported to the mayor's office of management and budget and the budgetary office of the city of New York police department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 292/2001 § 1, eff. Sept. 5, 2001 with special provisions. [See Note]

Subd. a par 13 added chap 247/1988 § 20.

Subd. b amended chap 292/2001 § 2, eff. Sept. 5, 2001 with special provisions. [See Note]

Subd. b amended chap 247/1988 § 21.

Subd. b-1 added chap 247/1988 § 22.

Subd. c amended chap 292/2001 § 3, eff. Sept. 5, 2001 with special provisions. [See Note]

Subd. e added chap 292/2001 § 4, eff. Sept. 5, 2001 with special provisions. [See Note]

Subd. f added chap 292/2001 § 4, eff. Sept. 5, 2001 with special

provisions. [See Note]

Subd. g added chap 292/2001 § 4, eff. Sept. 5, 2001 with special provisions. [See Note]

Subd. h amended chap 152/2006 § 4, eff. July 7, 2006 and deemed to have been in full force and effect on and after July 1, 2005. [See § 13-103 Note 1]

Subd. h added chap 292/2001 § 4, eff. Sept. 5, 2001 with special provisions. [See Note]

Subd. i added chap 292/2001 § 4, eff. Sept. 5, 2001 with special provisions. [See Note]

**DERIVATION**

Formerly § B18-13.0 added LL 2/1940 § 2

Sub d added LL 95/1951 § 2

Sub a par 4 amended chap 100/1963 § 402

**NOTE**

Provisions of chap 292/2001:

§ 5. Except as specified herein, nothing contained in this act shall affect or impair the rights or privileges of officers or employees of the police pension fund in relation to the personnel, appointment, ranks, grades, length of service, promotion, removal, pension and retirement rights, civil rights, or any other rights or privileges of officers or employees of the city generally or officers or employees of such fund.

§ 6. In the event that any provision of this act shall be adjudged to be invalid or unconstitutional on its face or in its application to any person or circumstances by a court of competent jurisdiction, after all rights to appeal have been exhausted, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the provision of such section directly involved in the controversy in which judgment shall have been rendered.

§ 7. This act shall take effect immediately; provided, however, that the provisions of this act authorizing the adoption of a budget and the use of the assets of the police pension fund to pay expenses may be utilized during the fiscal year commencing on July 1, 2001 and provided further, that in such event, such budget shall be deemed to have been established on April 1, 2001.

**CASE NOTES FROM FORMER SECTION**

¶ 1. A policeman injured in 1963 applied for disability retirement on April 29, 1964. On June 9 the medical board certified his disability to the Board of Trustees of the Police Pension Fund. Before the Board could act the Police Commissioner suspended the policeman because of his refusal to answer questions before a grand jury. **Held:** Petitioner could not be dismissed without giving him an opportunity to explain his refusal to answer questions before grand jury. It

is required that he be given notice and hearing as to this matter.-Matter of Conlon, 24 App. Div. 2d 737, 263 N.Y.S. 2d 360 [1965], reversing, 44 Misc. 2d 504, 254, N.Y.S. 2d 68 [1964].

**CASE NOTES**

¶ 1. Board of Trustees is composed of 12 members, 8 union officials with weighted votes totaling 6, and 4 city officials whose weighted votes total 6. Accident disability pension vote which is a tie results in an ordinary disability retirement. City v. Schoeck, 294 NY 559.

¶ 2. The court found that individual members of the New York City Police Dept. Pension Funds have no authority to retain private legal council when taking issue with the votes of others. The authority of the Board and its individual members is determined by the statuatory structure establishing that fund, Ad Code § 13-216[a][b]. Retention of private counsel by individual trustees is ultra vires under their statutorily defined role on the Board and, therefore, not compensable by the fund. Caruso v. NYC Police Fund, 136 AD2d 266 affirmed 72 NY2d 568 [1988].

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*NYC Administrative Code 13-217*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-217 Rules and regulations.

Each member shall be subject, until retirement, to all the provisions of this subchapter and to all the rules and regulations adopted by such board applying to members.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-14.0 added LL 2/1940 § 2

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

*NYC Administrative Code 13-218*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-218 Credit for service.

a. Subject to the following and to all other provisions of this subchapter, including such rules and regulations as such board shall adopt in pursuance thereof, such board shall determine and may modify allowances for service.

b. Such board shall fix and determine how much service rendered in any year shall be the equivalent of a year of service and of parts thereof, but shall credit one year for two hundred fifty or more days of service and not more than one year for all service in any calendar year.

c. Time during which a member was absent on leave without pay shall not be allowed in computing service as a member except as to time subsequent to approval of such allowance for retirement purposes granted by the commissioner and approved by such board. Time during which a member was on a preferred civil service list shall not be construed to form part of the period within which membership must begin.

d. (1) Any person who was a member of the New York city employees' retirement system, and whose membership therein was terminated by his or her attaining membership in the police pension fund, subchapter two, and who had withdrawn his or her contributions to the New York city employees' retirement system, shall receive credit in the said police pension fund for prior creditable city service by paying into the annuity savings fund of the said police pension fund the amount of the employee contributions required to have been paid into the New York city employees' retirement system for such prior creditable city service, prior to July first, nineteen hundred eighty-two, and, subject to

the provisions of paragraph two of this subdivision, and shall have the period of such prior creditable city service counted as service as a police officer for the purpose only of determining the amount of his or her pension or retirement allowance. Subject to the provisions of paragraph two and paragraph three of this subdivision, no member of the said police pension fund shall be eligible for retirement for service until he or she has served in the police force for a minimum period of twenty or twenty-five years, or until he or she has reached the age of fifty-five, according to the minimum period or age of retirement elected by such member prior to the certification of his or her rate of contribution.

(2) (a) Subject to the provisions of subparagraph (b) of this paragraph, and period of allowable service rendered as an "EMT member", as defined in paragraph one of subdivision a of section 13-157.2 of this title, as added by chapter five hundred seventy-seven of the laws of two thousand, which immediately precedes service in the police force, and any period of allowable service rendered (i) as a peace officer, as defined in section 2.10 of the criminal procedure law, (ii) in the title of sheriff, deputy sheriff, marshal or district attorney investigator, or (iii) in any position specified in appendix A of operations order 2-25 of the police department of the city of New York dated December eleventh, two thousand two which immediately precedes service in the police force, and any period of allowable service in the uniformed transit police force, uniformed correction force, housing police service and the uniformed force of the department of sanitation immediately preceding service in the police force, credit for which immediately preceding allowable service was or is obtained pursuant to paragraph one of this subdivision, shall be deemed to be service in the police force for purposes of eligibility for benefits and to determine the amount of benefits under the police pension fund.

(b) In any case where, by reason of credit for such immediately preceding service, the date of completion of such member's minimum period for service retirement under the police pension fund became or becomes earlier than such date would have been or would be if such credit for immediately preceding service had not been so acquired, there shall be effected with respect to such member:

(i) such increase in such member's normal rate of contribution, effective as of the date on which such member last became a member of the police pension fund, as may be necessary to reflect such earlier date of eligibility for service retirement; and

(ii) the charging of such member who acquired or acquires such credit for such immediately preceding service with a contribution rate deficiency:

(A) which shall accrue from the date on which such member last became a member of the police pension fund; and

(B) which shall be in such amount as shall be the product of the increase provided in item (i) of this subparagraph (b) and the member's compensation during the period of time provided in sub-item (A) of this item (ii); and

(C) which, unless paid by such member in such manner as shall be prescribed by rules and regulations adopted by the board of trustees of such pension fund, shall require an appropriate adjustment of any benefit which may become payable to or on account of such member.

(3) Nothing contained in subparagraph (b) of paragraph two of this subdivision d shall cause a member who acquires or acquired service credit by reason of the provisions of subparagraph (a) of such paragraph two to be denied:

(a) the right or entitlement, if any, to terminate or reduce contributions to such pension fund or to a refund of or credit for contributions paid during a period when the member would have been entitled to terminate or reduce such contributions if he or she had such service credit on the date when he or she last became a member of the pension fund; or

(b) any other right, benefit or entitlement of a similarly situated member of such pension fund with equal total

service credit consisting only of service in the uniformed force of the police department, provided that the foregoing provisions of this paragraph three shall not be construed in a manner inconsistent with the provisions of subparagraph (b) of paragraph two of this subdivision d.

e. Any person who was a member of the board of education retirement system and whose membership therein was terminated by such member attaining membership in the police pension fund, subchapter two, shall receive credit in the said police pension fund for prior creditable city service by paying into the annuity savings fund of the said police pension fund the amount of the employee contributions required to have been paid into the board of education retirement system for such prior creditable city service, within one year after July sixteenth, nineteen hundred sixty-five shall take effect, or within one year after becoming a member of the police pension fund, subchapter two, whichever is later, and shall have the period of such prior creditable city service counted as service as a police officer for the purpose only of determining the amount of such member's pension or retirement allowance, provided however, that no member of the said police pension fund shall be eligible for retirement for service until he or she has served in the police force for a minimum period of twenty or twenty-five years, or until he or she has reached the age of fifty-five, according to the minimum period or age of retirement elected by such member prior to the certification of his or her rate of contribution.

f. (1) Upon election, any member of the police pension fund, subchapter two of this chapter, who was a member of the New York city employees' retirement system while employed as a New York city police department trainee shall receive credit in the said police pension fund, subchapter two of this chapter, for prior creditable service in the New York city employees' retirement system earned while employed as a New York city police department police trainee by paying into the annuity savings fund of said police pension fund additional member contributions plus interest which would have been paid or credited had such member been a member of the police pension fund, subchapter two of this chapter, from his or her last date of appointment as a New York city police department trainee or date of membership in the New York city employees' retirement system, whichever is later, provided such payment is made within one year after this subdivision shall take effect, and the period of such prior service credit shall be deemed to be service in the police force for purposes of eligibility for benefits and to determine the amounts of benefits under the police pension fund.

(2) A member of the police pension fund, subchapter two of this chapter, who acquires service credit by reason of the provisions of paragraph one of this subdivision shall be entitled to any other right, benefit or entitlement of a similarly situated member of such pension fund with equal total service credit consisting only of service in the uniformed force of the police department.

g. (1) (a) Upon election, the following persons (each of whom has been granted a retroactive appointment eligibility date as a New York city police department trainee, pursuant to Acha v. Beame, 570 F.2d 57) shall receive credit in the police pension fund, subchapter two of this chapter, for the period of such retroactive eligibility by paying into the annuity savings fund of said police pension fund additional member contributions plus interest which would have been paid or credited had such member been a member of the police pension fund from the retroactive appointment eligibility date as a New York city police department trainee, provided such payment is made within one year after this subdivision takes effect:

| Name | Tax Registry # | Name | Tax Registry # |
|---|---|---|---|
| Catherine Wyman | 872015 | Maureen Kirwan | 867289 |
| Kathleen Jappe | 866563 | Kathleen Driscoll | 866837 |
| Martina Guidone | 866846 | Carol Conry | 867273 |
| Kathleen Fogarty | 866680 | Kathleen Reynolds | 872113 |
| Gail Petersen | 866867 | Catherine DeLaRionda | 866830 |
| Alicia Parker | 866201 | Charlene Davey | 866437 |
| Catherine Codd | 870819 | Mary Boyd | 866818 |
| Karen Krizan | 867507 | Laura Pascual | 866684 |
| Kathleen Sammon | 866682 | Kerry Schreiner | 866565 |

| | | | |
|---|---|---|---|
| Patricia Scarlett | 866900 | Kathleen Groger | 866840 |
| Eleanor Del Rosario | 866867 | Anita Matusiak | 866879 |
| Yvonne Mitchell | 868415 | Mary Jo Yakowenko | 867916 |
| Lorraine Martucciello | 866878. | | |

(b) The period of such retroactivity shall be deemed to be service in the police force for purposes of eligibility for benefits and to determine the amounts of benefits under the police pension fund.

(2) A member of the police pension fund, subchapter two of this chapter, who acquires service credit by reason of the provisions of paragraph one of this subdivision shall be entitled to any other right, benefit or entitlement of a similarly situated member of such pension fund with equal total service credit consisting only of service in the uniformed force of the police department.

h.* (1) Any4 member of the pension fund who, prior to June thirtieth, nineteen hundred ninety-two, would have been entitled to transfer membership in another public retirement system to the pension fund pursuant to any provision of law, but who failed to make a timely election to do so, may elect to transfer such membership to the pension fund by filing a written request for such transfer with the first retirement system within one year after the effective date of this subdivision.

(2) All transfers of membership to the pension fund pursuant to this subdivision shall be in accordance with the procedures set forth in the transfer provisions that would have been applicable if the member had made a timely election to transfer. Where a transfer is made pursuant to this subdivision, and such applicable transfer provisions would have required a transfer of pension reserves, the first retirement system shall transfer to the pension fund all pension reserves that would have been transferred to the pension fund if the member had made a timely election to transfer.

(3) Service credit transferred to the pension fund pursuant to this subdivision shall be credit in the same manner and for the same purposes as it would have been credited if the member had made a timely election to transfer, and the member shall pay to the pension fund all member contributions, plus interest, which would have been paid or credited if such service credit had been transferred to the pension fund on the date of such member's entry into the pension fund.

h.* Notwithstanding5 the provisions of subdivision c of this section, any member who is absent without pay for child care leve of absence pursuant to regulations of the New York city police department shall be eligible for credit for such period of child care leave provided such member files a claim for such service credit with the pension fund by December thirty-first, two thousand one or within ninety days following termination of the child care leave, whichever is later, and contributes to the pension fund an amount which such member would have contributed during the period of such child care leave, together with interest thereon. Service credit provided pursuant to this subdivision shall not exceed one year of credit for each period of authorized child care leave. In the event there is a conflict between the provisions of this subdivision and the provisions of any other law or code to the contrary, the provisions of this subdivision shall govern.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. d par (2) subpar (a) amended chap 498/2005 § 2, eff. Aug. 16,

2005.

Subd. d par (2) subpar (a) amended chap 728/2004 §2, eff. Dec. 8, 2004.

Subd. f added chap 756/1990 § 1 eff. July 22, 1990

Subd. g added chap 586/1993 § 1, eff. July 28, 1993

Subd. h (laid out first) added chap 571/2000 § 1, eff. Dec. 8, 2000.

Subd. h (laid out second) added chap 594/2000 § 1, eff. Dec. 8, 2000.

**DERIVATION**

Formerly § B18-15.0 added LL 2/1940 § 2

Sub d added chap 983/1963 § 1

Sub e added chap 823/1965 § 1

Sub d amended chap 902/1965 § 1

Sub d amended chap 1003/1966 § 1

Sub e amended chap 383/1967 § 1

Sub d amended chap 640/1980 § 3

Sub d amended chap 941/1981 § 4

**CASE NOTES FROM FORMER SECTION**

¶ 1. The right to death gamble benefits is limited to members who have completed the minimum period of service elected for retirement and hence when petitioner did not serve 20 years, unused vacation time and accrued terminal leave could not be considered in determining availability for death gamble benefits.-Keane v. Leary, 34 App. Div. 2d 771, 311 N.Y.S. 2d 349 [1970]; aff'd 29 N.Y. 2d 713, 275 N.E. 2d 334, 325 N.Y.S. 2d 752 [1971].

**FOOTNOTES**

4

[Footnote 4]: * There are two subdivisions h.

5

[Footnote 5]: * There are two subdivisions h.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-219*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-219 Re-entry into membership after withdrawal of contributions.

If a member has received benefits under section 13-240 of this subchapter, his or her member-service credit at the time of leaving service shall be restored in full provided such member returns to service within five years after leaving service and redeposits the total amount so withdrawn. Subsequent contributions shall be at the rate applicable to his age on re-entry to service.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-16.0 added LL 2/1940 § 2



Administrative Code of the City of New York



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

*NYC Administrative Code 13-220*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-220 Pension fund; a corporation.

The pension fund shall have the powers and privileges of a corporation and by its name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property held.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-17.0 added LL 2/1940 § 2

Reenacted chap 437/1940 § 1

**CASE NOTES**

¶ 1. A member of the pension fund brought an action to reinstate pension benefits an annul an administrative order of recoupment of benefits previously paid. The court held that petitioner did not obtain jurisdiction over the Police Pension Board by serving the petition on the City or its subdivisions, such as the Police Department and Department of

Personnel. Here, the failure to serve the proper entity, the Police Pension Fund, Article II, was not curable by substitution or amendment. Thus, the petition had to be dismissed. Freda v. Board of Education of the City of New York, 638 N.Y.S.2d 83 (App.Div. 1st Dept. 1996).

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*NYC Administrative Code 13-221*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-221 Pension fund; adoption of tables and certification of rates.

The actuary appointed by the board of estimate shall be the technical adviser of the board on all matters regarding the operation of the funds provided for by this subchapter and shall perform such other duties as are required of him or her. He or she shall keep in convenient form such data as shall be necessary for the actuarial valuation of such funds. Every five years, he or she shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries as defined by this subchapter and he or she shall make a valuation, as of June thirtieth of each year, of the assets and liabilities of the various funds provided for by this subchapter at such times as he or she shall determine. Upon the basis of such investigation such board shall:

1. Adopt for the pension fund such mortality, service and other tables as shall be deemed necessary; and

2. Certify the rates of deduction from compensation computed to be necessary to pay the annuities authorized under the provisions of this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-18.0 added LL 2/1940 § 2

Open par amended chap 100/1963 § 403

Amended chap 876/1968 § 4

Amended chap 957/1981 § 56

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

*NYC Administrative Code 13-222*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-222 Pension fund; reports.

Such board shall publish annually in the City Record a report for the preceding year showing a valuation of the assets and liabilities of the funds provided for by this subchapter as certified by the actuary, and a statement as to the accumulated cash and securities of the funds as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as may be of value in the advancement of knowledge concerning employees' pensions and annuities.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-19.0 added LL 2/1940 § 2



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

*NYC Administrative Code 13-223*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-223 Medical board.

a. (1) There shall be a medical board of three physicians. One of such physicians shall be appointed by the board and shall hold office at the pleasure of such board, one shall be appointed by the commissioner of health and shall hold office at the pleasure of such commissioner, and the third shall be appointed by the commissioner of citywide administrative services and shall hold office at the pleasure of such commissioner.

(2) The board, the commissioner of health and the commissioner of citywide administrative services shall each have power to appoint one or more but not exceeding four alternate physicians, who shall hold office at the pleasure of such appointing board or official. Whenever the board of trustees of the retirement system shall so direct, the functions, powers and duties of the medical board, in addition to being performed and exercised by the three physicians appointed pursuant to paragraph one of this subdivision, shall be performed and exercised by one or more groups of three physicians as hereinafter prescribed. Each such group of three physicians shall function separately as the medical board and each such group may consist partly of a physician or physicians appointed pursuant to such paragraph one and partly of one or more alternate physicians or may consist entirely of alternate physicians; provided, however, that one of the physicians or alternate physicians in each such group shall be appointed by the board, one by the commissioner of health and one by the commissioner of citywide administrative services.

b. The medical board shall arrange for and shall pass upon all medical examinations required under the provisions of this subchapter, shall investigate all essential statements and certifications by or on behalf of a member in

connection with an application for disability retirement, and shall report to the board its conclusions and recommendations thereon.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended L.L. 84/1988 § 1

Subd. a pars (1), (2) amended L.L. 59/1996 § 70, eff. Aug. 8, 1996

**DERIVATION**

Formerly § B18-20.0 added LL 2/1940 § 2

Amended LL 29/1969 § 1

**CASE NOTES**

¶ 1. There is no requirement that the Medical Board provided for in the Administrative Code to arrange for each case that comes before it to be reivewed by a panel which includes a physician who is a specialist in treating the type of condition involved. Barber v. Ward, 194 A.D.2d 459 (1st Dept. 1993).

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

*NYC Administrative Code 13-224*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-224 The funds; component funds.

The funds provided for herein are the annuity savings fund, the annuity reserve fund, the dependent benefit contingent reserve fund, the dependent benefit reserve fund, the contingent reserve fund and the pension reserve fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-21.0 added LL 2/1940 § 2



Administrative Code of the City of New York



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

*NYC Administrative Code 13-225*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-225 Contributions of members and their use; annuity savings fund.

a. (1) The annuity savings fund shall be the fund in which there shall be accumulated deductions from the compensation of members to provide for their annuities and their withdrawal allowances. Upon the basis of the tables herein authorized, and regular interest, the actuary of such board shall determine for each member the proportion of compensation which, when deducted from each payment of his or her prospective earnable compensation prior to his or her eligibility for retirement and accumulated at regular interest until the attainment of the minimum age or period of service retirement elected by him or her, shall be computed to provide, at that time, an annuity equal to twenty-five seventy-fifths of the pension then allowable to him or her for service as a member. Such proportion of compensation shall be computed to remain constant. Notwithstanding the foregoing, the rate of contribution required to be made on and after October first, nineteen hundred fifty-one, by any member whose rate was computed pursuant to this subdivision, as enacted by local law two of nineteen hundred forty, shall be twenty-five forty-fifths of such prior rate.

(2) Notwithstanding the foregoing provisions of paragraph (one) of this subdivision a, the rate of contribution required to be made on and after the first day of the first payroll period beginning after January first, nineteen hundred sixty-eight by any member who became a member after June thirtieth, nineteen hundred forty-seven and prior to June thirtieth, nineteen hundred sixty-seven shall be his or her rate as of June twenty-ninth, nineteen hundred sixty-seven, as computed pursuant to paragraph (one) of this subdivision a, including any increase thereof pursuant to subdivisions c and d of this section or any decrease thereof pursuant to section 13-226 of this subchapter or subdivision one of section one hundred thirty-eight-b of the retirement and social security law, hereinafter referred to as his or her "computed prior

rate", less the difference between the rate which was computed for such member on the date he or she last became a member pursuant to paragraph (one) of the subdivision a, exclusive of any increase thereof pursuant to subdivisions c and d of this section or any decrease thereof pursuant to paragraph (one) of this subdivision or section 13-226 of this subchapter or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and the rate which would have been computed for such member on the date he or she last became a member, pursuant to paragraph (one) of this subdivision, had he or she been entitled on that date to regular interest at four per cent; provided that the adjusted rate of contribution computed pursuant to this paragraph shall be subject to change pursuant to subdivisions c and d of this section, section 13-226 of this subchapter or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law.

(3) for any member to whom the last paragraph applies, and beginning with the first day of the first payroll period commencing after June thirtieth, nineteen hundred sixty-seven and ending with the last day of the last payroll period before the first payroll period beginning after January first, nineteen hundred sixty-eight, the amount of contribution paid by him or her which represents the difference between the "computed prior rate" of such member and his or her adjusted rate of contribution as computed pursuant to paragraph (two) of this subdivision a shall be refunded upon the member's election, or, otherwise, shall be deemed additional contributions for the purpose of purchasing additional annuity, but such additional contributions shall not enter into the computation for allowance on ordinary disability retirement as described in section 13-251 of this subchapter.

b. Such board shall certify to the commissioner who shall deduct from the compensation of each member on each and every pay roll of such member for each and every pay roll period, the proportion of his or her earnable compensation so computed. Such board shall not certify nor shall the commissioner make any deduction for annuity purposes from the compensation of a member who elects not to contribute if his or her age and total service are such as would entitle a new entrant to retire for service on a pension not less than seventy-five per cent of one-half of his or her final compensation. In determining the amount earnable by a member in a payroll period, such board may consider the rate of compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period and such board may omit deductions from compensation for any period less than a full payroll period if an employee was not a member on the first day of the payroll period. To facilitate the making of deductions, such board may modify the deduction required of any member by such an amount as shall not exceed one-tenth of one per cent of the compensation upon the basis of which such deduction is to be made. The deductions provided herein shall be made notwithstanding that the minimum compensation provided by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt in full for his or her salary or compensation, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except his or her claim to the benefits to which he or she may be entitled under the provisions of this subchapter. The commissioner shall certify to the comptroller on each and every payroll the amounts to be deducted. Each of such amounts shall be deducted and when deducted shall be paid into the annuity savings fund, and shall be credited, together with regular interest, to an individual account of the member from whose compensation such deduction was made. The method of computation and deductions prescribed by this subdivision and subdivision a of this section shall be appropriately modified in the case of a member for whom a rate is otherwise fixed pursuant to section 13-226 of this subchapter.

c. In addition to the computed deductions, any member may elect to contribute at a rate fifty per centum in excess of that heretofore provided, for the purpose of purchasing additional annuity. In computing the amount of such additional rate any modification of the normal rate pursuant to section 13-226 of this subchapter shall be disregarded. These additional contributions shall be credited to the annuity savings fund with regular interest. Such additional contributions shall not enter into the computation for allowance on ordinary disability retirement as described in section 13-251 of this subchapter. A member may elect to discontinue his or her additional contributions at any time.

d. In addition to the deductions from compensation hereinbefore provided, any member may redeposit in the annuity savings fund by a single payment an amount equal to the total amount which he or she withdrew previously

therefrom as provided in this subchapter, or any member may deposit therein by a single payment, or in equal installments over a period to be designated by such member, but not exceeding five years, immediately prior to his or her retirement, an amount computed to be sufficient to purchase an additional annuity, which, together with his or her prospective retirement allowance, will provide for him or her a total retirement allowance of one-half of his or her final compensation at the minimum age or period of retirement elected by him or her. Such additional amounts so deposited shall become a part of his or her accumulated deductions. The accumulated deductions of a member withdrawn as provided in this subchapter shall be paid out of the annuity savings fund. Upon retirement of a member, his or her accumulated deductions shall be transferred from such fund to the annuity reserve fund.

e. In the case of a member receiving extra pay, salary or compensation for additional duties assigned to him or her, the comptroller shall make such semi-monthly deductions on the basis of such extra pay, salary or compensation unless such member shall signify in writing to the board, within thirty days after the first receipt thereof, his or her election to have his or her benefits and obligations computed on the basis of the pay, salary or compensation received by him or her prior to the time when he or she first received such extra compensation. If any member receives extra pay, salary or compensation for an aggregate or five years or more or for the period of time fixed by section 14-114 of this code, the comptroller shall continue to make such semi-monthly deductions on the basis of such extra pay, salary or compensation, notwithstanding that such member does not continue to receive it, unless such member shall signify to the board in writing his or her election to have his or her benefits and obligations computed on the basis of the pay, salary or compensation actually received by him. Additional deductions so made shall entitle such member to a retirement allowance on the basis of such extra pay, salary or compensation. The provisions of this subdivision shall not diminish or impair the benefits provided in subdivision c of section 14-114 of this code.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-22.0 added LL 2/1940 § 2

Sub a amended LL 99/1951 § 1

Sub b amended LL 99/1951 § 2

Subs b, c amended chap 223/1963 § 4

Sub a amended chap 575/1967 § 4

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*NYC Administrative Code 13-225.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-225.1 Employer pick up of member contributions.

a. Notwithstanding any other provision of law to the contrary, on and after the starting date for pick up, the city shall pick up and pay into the annuity savings fund, the member contributions eligible for pick up by the employer which each member would otherwise be required to make on and after such starting date.

b. An amount equal to the amount of such picked up contributions shall be deducted by the city from the compensation of such member (as such compensation would be in the absence of a pick up program applicable to him or her hereunder) and shall not be paid to such member. Such deduction shall be effected by means of subtraction from such member's current compensation (as so defined), or offset against future pay increases, or a combination of such methods.

c. (1) The member contributions picked up pursuant to this section for any member shall be paid by the city in lieu of an equal amount of the member contributions otherwise required to be paid by such member under the provisions of this subchapter, including any member contributions required to be made for the purchase of credit for previous service or credit for military service pursuant to subdivision f of this section, provided, however, that contributions picked up for the purchase of credit for military service shall be deposited in the employer contributions account in accordance with the provisions of subdivision four of section one thousand of the retirement and social security law and shall be deemed to be and treated as employer contributions pursuant to subsection h of section four hundred fourteen of the United States internal revenue code, as amended, for the purposes, under federal law, for which

such subsection h so classifies such picked up contributions. Subject to the provisions of subdivision b of this section, for all other purposes, including, but not limited to:

(i) the obligation of such member to pay New York state and New York city income and/or wages or earnings taxes and the withholding of such taxes; and

(ii) the determination of the amount of such member's member contributions eligible for pick up by the employer; and

(iii) the determination of the amount of any retirement allowance or other pension fund benefit payable to or on account of such member or any other pension fund right, benefit or privilege of such member; the amount of the member contributions picked up pursuant to this section shall be deemed to be a part of the employee compensation of such member, and such member's gross compensation (as it would be in the absence of a pick up program applicable to him or her hereunder) shall not be deemed to be changed by such member's particiaption*1 in such program.

(2) Nothing contained in paragraph one of this subdivision c shall be construed as superseding the provisions of section four hundred thirty-one of the retirement and social security law or any similar provision of law which limits the salary base for computing retirement benefits payable by a public retirement system.

d. (1) For the purpose of determining the pension fund rights, benefits and privileges (including the procurement of loans) of any member whose member contributions eligible for pick up by the employer are picked up pursuant to this section, such picked up member contributions shall be deemed to be and treated as member contributions made by such member pursuant to law and as included in such member's accumulated deductions. Interest on such picked up contributions shall accrue in favor of the member and be payable by the city at the same rate, for the same time periods, in the same manner and under the same circumstances as interest would be required to accrue in favor of the member and be payable by the city on such picked up contributions if they were made by the member in the absence of an employer pick up program applicable to such member under the provisions of this section.

(2) The picked up member contributions of any member paid into the annuity savings fund by the city pursuant to this section shall be credited to a separate account within the individual account of such member in such fund, so that a separate record of the amount of such picked up contributions is maintained.

(3) Nothing contained in this subdivision d shall be construed as granting member contributions picked up under this section any status, under federal law, other than as employer contributions, pursuant to subsection h of section four hundred fourteen of the United States internal revenue code, for the federal purposes for which such subsection h so classifies such picked up contributions.

e. No member whose member contributions are required to be picked up pursuant to this section shall have any right to elect that such pick up of contributions, with accompanying deduction from the compensation of such member as prescribed by subdivision b of this section, shall not be effectuated.

f. Employer pick-up of contributions in respect of previous service or military service. Notwithstanding any other provision of law, any member eligible to purchase credit for previous service with a public employer pursuant to this chapter or to purchase credit for military service pursuant to article twenty of the retirement and social security law, may elect to purchase any or all of such service by executing a periodic payroll deduction agreement where and to the extent such elections are permitted by the retirement system by rule or regulation. Such agreement shall set forth the amount of previous service or military service being purchased, the estimated total cost of such service credit, and the number of payroll periods in which such periodic payments shall be made. Such agreement shall be irrevocable, shall not be subject to amendment or modification in any manner, and shall expire only upon completion of payroll deductions required therein. Notwithstanding the foregoing, any member who has entered into such a payroll deduction agreement and who terminates employment prior to the completion of the payments required therein shall be credited with any service as to which such member shall have paid the contributions required under the terms of such agreement.

**HISTORICAL NOTE**

Section added ch. 114/1989 § 2.

Subd. c par (1) open par amended chap 627/2007 § 19, approved Aug. 28, 2007 eff. upon compliance with chap 627/2007 § 22. [See § 13-101 Note 1]

Subd. f added chap 627/2007 § 20, approved Aug. 28, 2007 eff. upon compliance with chap 627/2007 § 22. [See § 13-101 Note 1]

**FOOTNOTES**

1

[Footnote 1]: * So in original.

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*NYC Administrative Code 13-226*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-226 Pensions-for-increased-take-home-pay.

a. 1. The mayor, by executive order, adopted prior to the first day of June, nineteen hundred sixty-three, may direct that beginning with the first full payroll period following January first, nineteen hundred sixty-three, and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred sixty-four, the contribution of each member made pursuant to subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivisions c and d of section 13-225 of this subchapter, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by two and one-half percent of the compensation of such member. Such a reduction shall be subject to waiver by the member as provided in subdivision d of this section and shall take precedence over the member's privilege under subdivision one of section one hundred thirty-eight-b of the retirement and social security law, to decrease his or her annuity contribution for the purpose of paying his or her contributions for old age, survivors, and disability insurance coverage or the tax imposed upon him or her pursuant to the federal insurance contribution act. Such executive order may also provide for a method or procedure for the refunding or crediting to a member by the pension fund of the amount of the reduction in his or her deductions for any period prior to the adoption of such executive order.

2. The mayor, by executive order, adopted prior to the first day of June, nineteen hundred sixty-four, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-four, and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred sixty-five,

the contribution of each member made pursuant to subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivisions c and d of section 13-225 of this subchapter, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by two and one-half percent of the compensation of such member. Such a reduction shall be subject to waiver by the member as provided in subdivision d of this section and shall take precedence over the member's privilege under subdivision one of section one hundred thirty-eight-b of the retirement and social security law, to decrease his or her annuity contribution for the purpose of paying his or her contributions for old age, survivors, and disability insurance coverage or the tax imposed upon him or her pursuant to the federal insurance contribution act.

3. The mayor, by executive order, adopted prior to June nineteenth, nineteen hundred sixty-five, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-five, and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred sixty-six, the contribution of each member made pursuant to subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivisions c and d of section 13-225 of this subchapter, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by two and one-half percent of the compensation of such member. Such a reduction shall be subject to waiver by the member as provided in subdivision d of this section and shall take precedence over the member's privilege under subdivision one of section one hundred thirty-eight-b of the retirement and social security law, to decrease his or her annuity contribution for the purpose of paying his or her contributions for old age, survivors and disability insurance coverage or the tax imposed upon him or her pursuant to the federal insurance contribution act.

4. The mayor, by executive order adopted prior to June nineteenth, nineteen hundred sixty-six, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-six, and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred sixty-seven, the contribution of each member made pursuant to subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivisions c and d of section 13-225, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by two and one-half percent of the compensation of such member. Such a reduction shall be subject to waiver by the member as provided in subdivision d of this section and shall take precedence over the member's privilege under subdivision one of section one hundred thirty-eight-b of the retirement and social security law, to decrease his or her annuity contribution for the purpose of paying his or her contributions for old age, survivors and disability insurance coverage or the tax imposed upon him or her pursuant to the federal insurance contribution act.

5. The mayor, by executive order adopted prior to June seventeenth, nineteen hundred sixty-seven, may direct that beginning with the payroll period, the first day of which is nearest to July first, nineteen hundred sixty-seven, and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight, the contribution of each member made pursuant to subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivisions c and d of section 13-225 of this subchapter, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by two and one-half per cent of the compensation of such member. Such a reduction shall be subject to waiver by the member as provided in subdivision d of this section and shall take precedence over the member's privilege under subdivision one of section one hundred thirty-eight-b of the retirement and social security law, to decrease his or her annuity contribution for the purpose of paying his or her contributions for old age, survivors and disability insurance coverage or the tax imposed upon him or her pursuant to the federal insurance contribution act.

6. a. (1) Subject to the provisions of item two of this subparagraph a, beginning with the first full payroll period following January first, nineteen hundred sixty-seven, and ending with the payroll period immediately prior to that, the first day of which is nearest June thirtieth, nineteen hundred sixty-eight, the contribution of each member made pursuant to subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivisions c and d of section 13-225 of this subchapter, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by two and one-half per cent of the

compensation of such member.

(2) The reduction provided for by item one of this subparagraph a shall be in addition to any reduction made during the period mentioned in such item one pursuant to paragraphs four or five of this subdivision. The amount of the reduction made pursuant to item one of this subparagraph in the deductions of any such member for such portion of the period mentioned in such item one as precedes the effective date of this paragraph shall be refunded without interest.

(3) Beginning with the payroll period the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight, and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred seventy-one, the contribution of each member made pursuant to subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivision c or d of section 13-225 of this subchapter, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by five percent of the compensation of such member.

b. The reductions referred to in paragraph a of this subdivision six shall be subject to waiver by the member as provided in subdivision d of this section and shall take precedence over the member's privilege under subdivision one of section one hundred thirty-eight-b of the retirement and social security law, to decrease his or her annuity contribution for the purpose of paying his or her contribution for old age, survivor and disability insurance coverage or the tax imposed upon him or her pursuant to the federal insurance contribution act.

7. The mayor, by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-one, may direct that beginning with the payroll period, the first day of which is nearest to June thirtieth, nineteen hundred seventy-one, and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred seventy-two, the contribution of each member made pursuant to subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivision c or d of section 13-225 of this subchapter, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by five per cent of the compensation of such member. Such a reduction shall be subject to waiver by the member as provided in subdivision d of this section and shall take precedence over the member's privilege under subdivision one of section one hundred thirty-eight-b of the retirement and social security law, to decrease his or her annuity contribution for the purpose of paying his or her contributions for old age, survivors and disability insurance coverage or the tax imposed upon him or her pursuant to the federal insurance contribution act.

8. The mayor, by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-two or June seventeenth of such year, whichever is later, may direct that beginning with the payroll period, the first day of which is nearest to June thirtieth, nineteen hundred seventy-two, and ending with the payroll period immediately prior to that, the first day of which is nearest to June thirtieth, nineteen hundred seventy-three, the contribution of each member made pursuant to subdivision b or e of section 13-225 of this subchapter, exclusive of any increase thereof pursuant to subdivision c or d of section 13-225 of this subchapter, or of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by five per cent of the compensation of such member. Such a reduction shall be subject to waiver by the member as provided in subdivision d of this section and shall take precedence over the member's privilege under subdivision one of section one hundred thirty-eight-b of the retirement and social security law, to decrease his or her annuity contribution for the purpose of paying his or her contributions for old age, survivors and disability insurance coverage or the tax imposed upon him or her pursuant to the federal insurance contribution act.

b. For such period of time as the reduction pursuant to the provisions of subdivision a of this section shall be in effect, contributions shall be made to the contingent reserve fund by the city at a rate fixed by the actuary, which shall be computed to be sufficient to provide the death benefit hereunder, and the pension-providing-for-increased-take-home-pay which are or may become payable on account of such member.

c. Such a benefit and such a pension-providing-for-increased-take-home-pay shall be based on a reserve-for-increased-take-home-pay, which shall be a sum consisting of the total of all products obtained by multiplying the compensation of the member, during each period of reduction of member contributions under this section, by the percentage of reduction of his or her contributions applicable under this section with respect to such period, plus regular interest on such sum, and additional interest, if any, thereon.

d. Where a member's rate of contribution is reduced because the city contributes towards the pension-providing-for-increased-take-home-pay pursuant to this section, such member may by written notice duly acknowledged and filed with the pension fund within one year after such reduction or within one year after he or she last became a member, whichever is later, elect to waive such reduction. One year or more after the filing thereof, a member may withdraw any such waiver by written notice duly acknowledged and filed with the retirement system. Where a member makes an election to waive such reduction he or she shall contribute to the pension fund as otherwise provided in this subchapter.

e. A member who waives a reduction of contribution pursuant to this section or who elects or has elected to discontinue his or her contributions pursuant to subdivision b of section 13-225 of this subchapter shall be entitled to a pension-providing-for-increased-take-home-pay and death benefits to the same extent as if such waiver or election had not been made.

f. The benefits provided pursuant to paragraph one of subdivision a of this section apply only to members of the pension fund who are in active service in the police force on or after the date of adoption of the executive order by the mayor pursuant to such paragraph one.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-22.1 added chap 223/1963 § 1

Sub a par 1 designated chap 622/1964 § 1

Sub a par 2 added chap 622/1964 § 2

Sub f amended chap 622/1964 § 3

Sub a par 3 added chap 382/1965 § 5

Sub e amended chap 382/1965 § 6

Sub a par 4 added chap 611/1966 § 5

Sub a par 5 added chap 379/1967 § 5

Sub a par 6 added chap 130/1968 § 2

Sub a par 6 subpar a item 3 amended chap 870/1969 § 8

Sub c amended chap 870/1969 § 8-a

Sub a par 6 subpar a item 3 amended chap 960/1970 § 9

Sub a par 7 added chap 615/1971 § 13

Sub a par 8 added chap 921/1972 § 10

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*NYC Administrative Code 13-227*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-227 Contributions of members and their use; annuity reserve fund and dependent benefit reserve funds.

a. The annuity reserve fund shall be the fund from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this subchapter.

b. The dependent benefit reserve fund shall be the fund from which shall be paid all dependent benefits payable as provided in section 13-253 of this subchapter.

c. The dependent benefit contingent reserve fund shall be the fund in which shall be accumulated the contributions of members to create the reserve necessary to pay all benefits provided in section 13-253 of this subchapter.

d. Upon the basis of the mortality and other tables herein authorized, and regular interest, the actuary shall compute the amount of contribution, expressed as a proportion of the compensation paid to each such member, which, if paid, semi-monthly during the entire prospective city-service of the member, would be sufficient to provide for the reserve required at the time of his or her death to cover the dependent benefits which might be payable pursuant to the provisions of section 13-253 of this subchapter. Such proportion of compensation shall be computed to remain constant during his or her prospective city-service. Upon the death of such a member, an amount equal to the reserve for such dependent benefits shall be transferred from such fund to the dependent benefit reserve fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-23.0 added LL 2/1940 § 2

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*NYC Administrative Code 13-228*

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-228 Contributions of the city and their use; contingent reserve fund.

a. The contingent reserve fund shall be the fund in which shall be accumulated the reserve necessary to pay all pensions and the reserve-for-increased-take-home-pay, and all death benefits allowable by the city on account of the city-service of members as provided in this subchapter.

b. (1) (a) Subject to the provisions of paragraph five of this subdivision, the city shall contribute to the contingent reserve fund;

(i) annually an amount to be known as the normal contribution; and

(ii) in equal annual installments during the period beginning with fiscal year nineteen hundred seventy-seven-nineteen hundred seventy-eight and ending on the last day of fiscal year nineteen hundred seventy-nine-nineteen hundred eighty, an additional amount which shall be known as the original unfunded accrued liability contribution, and which shall be determined as provided for in subparagraph a of paragraph (3) of this subdivision b; and

(iii) in each city fiscal year during the period beginning with fiscal year nineteen hundred eighty-nineteen hundred eighty-one and ending on the last day of fiscal year two thousand fourteen-two thousand fifteen, the annual installment, applicable to such fiscal year, of an additional amount which shall be known as the revised unfunded

accrued liability contribution and which shall be determined as provided for in subparagraph (b) of paragraph (3) of this subdivision; and

(iv) in each city fiscal year during the period beginning with fiscal year nineteen hundred eighty-one-nineteen hundred eighty-two and ending on the last day of fiscal year two thousand twenty-two thousand twenty-one, the annual installment, applicable to such fiscal year, of an additional amount which shall be known as the balance sheet liability contribution and which shall be determined as provided for in paragraph (4) of this subdivision; and

(v) in fiscal year nineteen hundred eighty-nineteen hundred eighty-one, the amount of one year's interest, at the rate of seven and one-half per centum per annum, on the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty, as determined pursuant to the provisions of paragraph four of this subdivision; and

(vi) in each city fiscal year, beginning with fiscal year nineteen hundred eighty-nineteen hundred eighty-one and ending on the last day of fiscal year nineteen hundred ninety-four-nineteen hundred ninety-five, the amount required to fulfill the public employer obligation, if any, which accrued in such fiscal year, to make contributions on account of increased-take-home-pay; and

(vii) in each city fiscal year, beginning with fiscal year nineteen hundred eighty-nineteen hundred eighty-one and ending on the last day of fiscal year nineteen hundred ninety-four-nineteen hundred ninety-five, the amount required to fulfill the public employer obligation, which accrued in such fiscal year under the provisions of subdivision twenty of section two hundred forty-three of the military law, to pay in behalf of members qualifying for such benefit, member contributions with respect to certain periods of the military service of such members.

(b) (i) If the nineteen hundred eighty unfunded accrued liability adjustment determined pursuant to subparagraph (c) of paragraph (3) of this subdivision b is a credit, the total of the amounts required to be contributed by the city to the contingent reserve fund in each city fiscal year, commencing with the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and ending with the two thousand nine-two thousand ten fiscal year, pursuant to items (i), (iii), (iv), (v), (vi) and (vii) of subparagraph (a) of this paragraph one shall be reduced by the amount of one annual installment of such unfunded accrued liability adjustment.

(ii) If the nineteen hundred eighty unfunded accrued liability adjustment determined pursuant to such subparagraph (c) is a charge, the city shall contribute in each city fiscal year, commencing with the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and ending with the two thousand nine-two thousand ten fiscal year, in addition to the amounts required to be contributed under the provisions of subparagraph (a) of this paragraph, one annual installment of such unfunded accrued liability adjustment.

(iii) The total of the amounts required to be contributed to the contingent reserve fund in each city fiscal year commencing with the nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year and ending with the two thousand eleven-two thousand twelve fiscal year pursuant to items (i), (iii), (iv), (v), (vi) and (vii) of subparagraph (a) of this paragraph one and the applicable provisions of items (i) and (ii) of this subparagraph (b) and otherwise pursuant to law shall be reduced by the amount of one annual installment of the nineteen hundred eighty-two unfunded accrued liability adjustment determined pursuant to subparagraph (d) of paragraph three of this subdivision b.

(iv)* The total2 of the amounts required to be contributed to the contingent reserve fund in each city fiscal year commencing with the nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year and ending with the two thousand fourteen-two thousand fifteen fiscal year pursuant to items (i), (iii), (iv), (v), (vi) and (vii) of subparagraph (a) of this paragraph one and the applicable provisions of items (i) and (ii) of this subparagraph (b) and otherwise pursuant to law shall be increased by the amount of one annual installment of the nineteen hundred eighty-five unfunded accrued liability adjustment determined pursuant to subparagraph (e) of paragraph three of this subdivision b.

(iv)* For the purpose of effectuating the nineteen hundred eighty-eight unfunded accrued liability adjustment provided for in section 13-638.1 of the code, contributions to the contingent reserve fund shall be made by the

responsible obligor (as defined in paragraph six of subdivision a of such section) or credits shall be allowed to such obligor against contributions otherwise payable by such obligor, as the case may be, to the extent and in the manner provided for in such section. The annual determination of the normal contribution for fiscal years occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-eight shall appropriately take account of the nineteen hundred eighty-eight unfunded accrued liability adjustment and the provisions of subparagraph (b) of paragraph two of this subdivision b shall be deemed to be comformably modified for such purpose.

(c) (i) Any amount required by the provisions of items (iii), (iv), (v), (vi) and (vii) of subparagraph (a) of this paragraph and items (ii) and (iv) of subparagraph (b) of this paragraph and section 13-704 of this title to be contributed to the contingent reserve fund in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year or any subsequent fiscal year shall be payable with interest on such amount at a rate per centum per annum equal to the rate per centum per annum required to be used for the purpose of any actuarial valuation, determination or appraisal made to determine the amount of the normal contribution payable to the contingent reserve fund in such fiscal year.

(ii) Any amount required to be contributed to the contingent reserve fund in any fiscal year of the city preceding the nineteen hundred eighty-nineteen hundred eighty-one fiscal year shall be deemed to have been required to be paid with interest on such amount at a rate per centum per annum equal to the rate per centum per annum required to be used for the purpose of any actuarial valuation, determination or appraisal made to determine the amount of the normal contribution payable to the contingent reserve fund in such fiscal year.

(iii) It is hereby declared that the provisions of items (i) and (ii) of this subparagraph (c), insofar as they relate to provisions of this subchapter or other laws requiring payment of employer contributions to the pension fund prior to the date of enactment of the act which added this subparagraph (c), express the intent of such provisions of this subchapter or other laws requiring such payment.

(2) Normal contribution.-(a) (i) Upon the basis of the latest mortality and other tables herein authorized and regular interest, the actuary shall determine, as of June thirtieth, nineteen hundred eighty and as of each succeeding June thirtieth, the amount of the total liability for all benefits provided in this subchapter, in article eleven of the retirement and social security law, article fourteen of such law (if and when applicable) and in any other law prescribing benefits payable by the pension fund on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions, if any, and the liability for benefits attributable to the annuity savings fund, provided, however, that in determining such total liability for all benefits as of June thirtieth, nineteen hundred ninety-five and as of each succeeding June thirtieth, the actuary shall include (A) the liability on account of future increased-take-home-pay contributions, if any, (B) the liability on account of future public employer obligations under the provisions of subdivision twenty of section two hundred forty-three of the military law, to pay in behalf of members qualifying for such benefit, member contributions with respect to certain periods of the military service of such members and (C) the liability for benefits attributable to the annuity savings fund.

(ii) For the purposes of subparagraphs (b) and (c) of this paragraph two, the actuary shall determine, as of June thirtieth, nineteen hundred ninety-five and as of each succeeding June thirtieth, the total liability of the pension fund which shall be an amount equal to the sum of (A) the total liability for all benefits as determined pursuant to item (i) of this subparagraph and (B) the amount, as estimated by the actuary, of the total liability of the pension fund on account of all payments which the pension fund may be required to make for base fiscal years (as defined by the applicable provisions of paragraph one of subdivision b of section 13-232.1 of this subchapter and paragraph one of subdivision b of section 13-232.3 of this subchapter) beginning on or after July first, nineteen hundred ninety-four to the police officer's variable supplements fund, pursuant to subdivisions d, e and f of such section 13-232.1 and to the police superior officer's variable supplements fund pursuant to subdivisions d, e and f of such section 13-232.3.

(a-1) Notwithstanding any other provision of law to the contrary, for the purpose of calculating the amount of the normal contribution due from the city to the contingent reserve fund pursuant to subparagraph (c) of this paragraph

in fiscal year two thousand five-two thousand six, and in each fiscal year thereafter, both the total liability of the pension fund, as calculated by the actuary in accordance with subparagraph (a) of this paragraph, and the normal rate of contribution, as calculated by the actuary in accordance with subparagraph (b) of this paragraph, shall be determined as of June thirtieth of the second fiscal year preceding the fiscal year in which the normal contribution is payable, provided, however, that (i) the actuary shall use for such calculations the mortality and other tables that are applicable at the time he or she performs such calculations; (ii) the total funds on hand, as determined by the actuary pursuant to sub-item (F) of item (i) of subparagraph (b) of this paragraph, shall be adjusted by adding to such amount the present value of all employer contributions required to be paid into the contingent reserve fund in the fiscal year next preceding the fiscal year in which the normal contribution is payable, as determined by the actuary; and (iii) the present value of the prospective future salaries of all members, as computed by the actuary for the purposes of item (ii) of subparagraph (b) of this paragraph, shall be reduced by the present value of the salaries expected to be paid to all members in the fiscal year next preceding the fiscal year in which the normal contribution is payable, as determined by the actuary.

(b) The normal rate of contribution shall be the rate per centum obtained;

(i) by deducting from the amount of such total liability the sum of;

(A) (1) the amount obtained by adding together the present value of all required future revised unfunded accrued liability contributions and the present value of all required future payments of the nineteen hundred eighty unfunded accrued liability adjustment, determined pursuant to subparagraph (c) of paragraph three of this subdivision b, if such adjustment is a charge; or

(2) the remainder obtained by subtracting from the present value of all required future revised unfunded accrued liability contributions, the present value of all future installments of the nineteen hundred eighty unfunded accrued liability adjustment required to be credited, if such nineteen hundred eighty adjustment is a credit;

(3) minus (whether (1) or (2) of this sub-item (A) is applicable) the present value of all future installments of the nineteen hundred eighty-two unfunded accrued liability adjustment; and

(A-1) the present value of all future installments of the nineteen hundred eighty-five unfunded accrued liability adjustment determined pursuant to subparagraph (e) of paragraph three of this subdivision b; and

(B) the present value of all required future balance sheet liability contributions, plus, in the case of the determination of the normal contribution payable in fiscal year nineteen hundred eighty-nineteen hundred eighty-one, the present value, as of June thirtieth, nineteen hundred eighty, of the payment of interest on the balance sheet liability as required by item (v) of subparagraph (a) of paragraph one of this subdivision b; and

(C) the present value of all future member contributions on account of dependent benefits; and

(D) the present value of all required future payments, pursuant to section 13-704 of this title, of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(E) in the case of the determination of the normal contribution payable in each fiscal year commencing with fiscal year nineteen hundred ninety-five-nineteen hundred ninety-six, the present value of future member contributions of all members; and

(F) the total funds on hand, including the amount of any unpaid moneys appropriated pursuant to section 13-231 of this subchapter and, in the case of the determination of the normal contribution payable in each fiscal year commencing with fiscal year nineteen hundred ninety-five-nineteen hundred ninety-six, including the amount in the annuity savings fund; and

(G) the present value of all other future installments of accrued liability contributions to the pension fund

required by the applicable provisions of section 13-638.3 of this title which are not covered by the preceding sub-items of this item (i); and

(ii) by dividing the remainder by one per centum of the present value of the prospective future salaries of all members, as computed by the actuary on the basis of the latest mortality and service tables adopted pursuant to section 13-221 of this subchapter, and on the basis of regular interest. The normal rate of contribution determined by the actuary shall not be less than zero, shall be certified by the actuary after each such valuation and shall continue in force until the next succeeding valuation and certification.

(c) (i) The amount of the normal contribution due from the city to the contingent reserve fund in each city fiscal year, commencing with the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and ending with the two thousand four-two thousand five fiscal year, shall be the amount obtained by multiplying the normal rate of contribution, as determined by the actuary as of June thirtieth next preceding such fiscal year, by the aggregate annual salaries of the members on such next preceding June thirtieth, and shall be payable in such fiscal year next following such June thirtieth, together with such regular interest thereon which may be due, if any, as calculated by the actuary.

(ii) The amount of the normal contribution due from the city to the contingent reserve fund in each city fiscal year, commencing with the two thousand five-two thousand six fiscal year, shall be the amount obtained by multiplying the normal rate of contribution, as determined by the actuary as of the second June thirtieth preceding the fiscal year in which the normal contribution is payable, in accordance with the provisions of subparagraphs (a-1) and (b) of this paragraph, by the aggregate amount of the salaries expected to be paid to the members during the fiscal year in which the normal contribution is payable, as determined by the actuary, and such normal contribution shall be payable in the second fiscal year following the June thirtieth as of which the normal rate of contribution is determined, together with such regular interest thereon which may be due, if any, as calculated by the actuary.

(iii) In the case of the normal contribution payable in the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and in any subsequent fiscal year, the term "regular interest", as used in this subparagraph (c), shall mean regular interest as defined by the applicable provisions of subparagraph (ii) or subparagraph (iii) of paragraph (c) or paragraph (d) of subdivision eight of section 13-214 of this subchapter.

(d) (i) For the purposes of this subparagraph (d), the terms "pension fund, subchapter one" and "police subchapter one beneficiary" shall have the meanings set forth in paragraphs one and three, respectively, of subdivision a of section 13-213.1 of this chapter.

(ii) The amount of the normal contribution due from the city to the contingent reserve fund in the city's nineteen hundred ninety-four-nineteen hundred ninety-five fiscal year shall be equal to the amount of the normal contribution for such fiscal year, as calculated in accordance with the provisions of subparagraph (c) of this paragraph, minus the sum (calculated by the actuary to reflect regular interest in accordance with the provisions of subparagraph (c) of this paragraph) of the following:

(A) the amount of the assets deemed to have been transferred on July first, nineteen hundred ninety-four from pension fund, subchapter one to this pension fund and credited to the contingent reserve fund in accordance with the provisions of subdivisions b and c of section 13-213.1 of this chapter, as if such transfer actually had been made on such July first; and

(B) the amount of the benefits payable during the nineteen hundred ninety-four-nineteen hundred ninety-five fiscal year by pension fund, subchapter one to police subchapter one beneficiaries; and

(C) the amount of supplemental benefits payable during the nineteen hundred ninety-four-nineteen hundred ninety-five fiscal year, including the increase in certain of such benefits provided by paragraph four of subdivision a of section 13-687 of this title, as added by the chapter of the laws of nineteen hundred ninety-five which added this subparagraph, by the city supplemental pension fund established under section 13-650 of this title to police subchapter

one beneficiaries.

(3) Unfunded accrued liability contributions.-(a) The original unfunded accrued liability contribution shall be an amount which, if paid to the contingent reserve fund in forty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred seventy-seven-nineteen hundred seventy-eight fiscal year would be the actuarial equivalent, on the basis of five and one-half percentum interest and the actuarial tables in effect as of July first, nineteen hundred seventy-seven, of the difference between the accrued liability excluding the liability for benefits attributable to the annuity savings fund on June thirtieth, nineteen hundred seventy-five and the total funds on hand, excluding the amount in the annuity savings fund, but including the amount of any unpaid moneys appropriated pursuant to section 13-231 of this subchapter.

(b) (i) The revised unfunded accrued liability contribution shall be an amount determined as prescribed in items (ii), (iii), (iv), (v), (vi) and (vii) of this subparagraph (b).

(ii) To the amount of the difference constituting the unfunded accrued liability as of June thirtieth, nineteen hundred seventy-five heretofore determined pursuant to the provisions of this paragraph three as in effect on July first, nineteen hundred seventy-seven, there shall be added interest thereon at the rate of five and one-half per centum per annum for the period from July first, nineteen hundred seventy-five to June thirtieth, nineteen hundred eighty.

(iii) (A) There shall be computed, in the manner provided for in subitem (B) of this item (iii), the discounted value of each of the installments of the unfunded accrued liability contribution which, in the absence of the enactment of chapter nine hundred fifty-seven of the laws of nineteen hundred eighty-one, where payable or would have been payable in the city's nineteen hundred seventy-seven-nineteen hundred seventy-eight, nineteen hundred seventy-eight-nineteen hundred seventy-nine, nineteen hundred seventy-nine-nineteen hundred eighty, nineteen hundred eighty-nineteen hundred eighty-one and nineteen hundred eighty-one-nineteen hundred eighty-two fiscal years.

(B) Such discounted value of each such installment shall be computed as of January first of the city's second fiscal year preceding the fiscal year in which such installment was payable or would have been payable and on the basis of five and one-half per centum interest per annum on the amount of such installment.

(C) There shall be computed with respect to such discounted value of each such installment, interest thereon from January first of such second fiscal year preceding the fiscal year in which such installment was or would have been payable to June thirtieth, nineteen hundred eighty at the rate of five and one-half per centum per annum.

(D) The discounted values of all of such installments with respect to such fiscal years, computed as provided for in sub-items (A) and (B) of this item (iii), together with interest on each such installment as provided for in sub-item (C) of this item, shall be added together.

(iv) From the sum computed pursuant to item (ii) of this subparagraph (b), the sum computed pursuant to item (iii) of this subparagraph shall be subtracted.

(v) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty and ending on June thirtieth, nineteen hundred eighty-two, the revised unfunded accrued liability contribution shall be the annual installment, applicable to such fiscal year, of an amount which, if paid to the contingent reserve fund in thirty-five equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year, would be the actuarial equivalent, on the basis of seven and one-half per centum interest per annum, of the remainder computed pursuant to item (iv) of this subparagraph.

(vi) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, the revised unfunded accrued liability contribution shall be the annual installment, applicable to such fiscal year, of an amount which, if paid to the contingent reserve fund in thirty-three equal annual installments, commencing with payment of a first installment in the city's

nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-two on the basis of seven and one-half per centum interest per annum, of those installments of the unfunded accrued liability contribution computed pursuant to item (v) of this subparagraph (b), which installments are hypothetically allocated by such item (v) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-two.

(vii) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand fifteen, the revised unfunded accrued liability contribution shall be the annual installment, applicable to such fiscal year, of an amount which, when paid to the contingent reserve fund in twenty-seven equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the unfunded accrued liability contribution computed pursuant to item (vi) of this subparagraph (b), which installments are hypothetically allocated by such item (vi) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(c) (i) The nineteen hundred eighty unfunded accrued liability adjustment shall be an amount determined as prescribed in items (ii), (iii), (iv) and (v) of this subparagraph (c).

(ii) (A) Upon the basis of the actuarial tables in effect as of June thirtieth, nineteen hundred eighty, for valuation purposes and interest at the rate of seven and one-half per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty, the amount of the total liability for all benefits provided in this subchapter, in article eleven of the retirement and social security law, in article fourteen of the retirement and social security law (if applicable) and in any other law prescribing benefits payable by the pension fund on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions, if any, and the liability for benefits attributable to the annuity savings fund.

(B) From such total liability computed pursuant to sub-item (A) of this item (ii), there shall be subtracted the sum of:

(1) the present value, as of June thirtieth, nineteen hundred eighty, of all future normal costs of the pension fund, computed pursuant to the entry age normal cost method of determining such normal costs; and

(2) the present value, as of such June thirtieth, of all future installments of the balance sheet liability contribution (as defined in paragraph four of this subdivision b); and

(3) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this title, of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(4) the present value, as of such June thirtieth, of future member contributions of members, if any, subject to article fourteen of the retirement and social security law; and

(5) the total funds on hand as of such June thirtieth, excluding the amount in the annuity savings fund, but including the amount of any unpaid moneys appropriated pursuant to section 13-231 of this subchapter.

(iii) (A) If the amount computed pursuant to sub-item (B) of item (ii) of this subparagraph (c) is larger than the amount computed pursuant to item (iv) of subparagraph (b) of this paragraph (3), the latter amount shall be subtracted from the former amount and the remainder resulting from such subtraction shall constitute a charge.

(B) If the amount computed pursuant to sub-item (B) of item (ii) of this subparagraph (c) is smaller than the amount computed pursuant to item (iv) of subparagraph (b) of this paragraph, the former amount shall be subtracted

from the latter amount and the remainder resulting from such subtraction shall constitute a credit.

(iv) (A) If the remainder computed pursuant to item (iii) of this subparagraph is a charge, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, if paid to the contingent reserve fund in thirty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year, would be the actuarial equivalent, on the basis of seven and one-half per centum interest per annum, of such remainder.

(B) If the remainder computed pursuant to item (iii) of this subparagraph is a credit, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, if credited in thirty equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year) in reduction of the amount which the city would otherwise be required to pay to the contingent reserve fund pursuant to items (i), (iii), (iv), (v), (vi) and (vii) of subparagraph (a) of paragraph (1) of this subdivision b or otherwise pursuant to law, would be the actuarial equivalent, on the basis of seven and one-half per centum interest per annum, of such remainder.

(v) (A) With respect to determination of the amount of contributions payable to the contingent reserve fund in each of the city's nineteen hundred eighty-nineteen hundred eighty-one and nineteen hundred eighty-one-nineteen hundred eighty-two fiscal years, the annual installment of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to item (iv) of this subparagraph (c), which installment is applicable to such fiscal year, shall be applied as a charge or a credit, as the case may be, in relation to such contributions payable in such fiscal year.

(B) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, if paid (if a charge) or credited (if a credit) in twenty-eight equal annual installments, commencing with a payment or credit, as the case may be, in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-two on the basis of seven and one-half per centum interest per annum, of those installments of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to item (iv) of this subparagraph (c), which installments are hypothetically allocated by such item (iv) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-two.

(C) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand ten, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, when paid (if a charge) or credited (if a credit) in twenty-two equal annual installments, commencing with a payment or credit, as the case may be, in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to sub-item (b)*4 of this item (v), which installments are hypothetically allocated by such sub-item (b) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(D) With respect to determination of the amount of contributions payable to the contingent reserve fund in each of such city fiscal years referred to in sub-item (B) or sub-item (C) of this item (v), the annual installment of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to sub-item (B) or sub-item (C) of this item (v), which installment is applicable to such fiscal year, shall be applied as a charge or credit, as the case may be, in relation to such contributions payable in such fiscal year.

(d) (i) The nineteen hundred eighty-two unfunded accrued liability adjustment shall be an amount determined as

prescribed in items (ii), (iii), (iv) and (v) of this subparagraph (d).

(ii) Upon the basis of the actuarial tables in effect as of June thirtieth, nineteen hundred eighty-one for valuation purposes and interest at the rate of seven and one-half per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-two, the amount of the actuarial accrued liability of the pension fund, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(iii) Upon the basis of the actuarial tables in effect as of June thirtieth, nineteen hundred eighty-two for valuation purposes and interest at the rate of eight per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-two, the amount of the actuarial accrued liability of the pension fund, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(iv) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, the nineteen hundred eighty-two unfunded accrued liability adjustment shall be an amount which, if credited in thirty equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year) in reduction of the amounts which the city would otherwise be required to pay to the contingent reserve fund pursuant to items (i), (iii), (iv), (vi) and (vii) of subparagraph (a) of paragraph (1) of this subdivision b or otherwise pursuant to law, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the excess of the amount computed pursuant to item (ii) of this subparagraph (d) over the amount computed pursuant to item (iii) of this subparagraph.

(v) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand twelve, the nineteen hundred eighty-two unfunded accrued liability adjustment shall be an amount which, when credited in twenty-four equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the amounts which the city would otherwise be required to pay to the contingent reserve fund pursuant to items (i), (iii), (iv), (vi) and (vii) of subparagraph (a) of paragraph (1) of this subdivision b or otherwise pursuant to law, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the nineteen hundred eighty-two unfunded accrued liability adjustment computed pursuant to item (iv) of this subparagraph (d), which installments are hypothetically allocated by such item to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(e) (i) The nineteen hundred eighty-five unfunded accrued liability adjustment shall be an amount determined as prescribed in items (ii), (iii) and (iv) of this subparagraph (e).

(ii) Upon the basis of the actuarial tables in effect for valuation purposes with respect to determination of the normal contribution payable to the contingent reserve fund in the city's nineteen hundred eighty-four-nineteen hundred eighty-five fiscal year and interest at the rate of eight per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-five, the amount of the actuarial accrued liability of the pension fund, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(iii) Upon the basis of the actuarial tables in effect for valuation purposes with respect to determination of the normal contribution payable to the contingent reserve fund in the city's nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year and interest at the rate of eight per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-five, the amount of the actuarial accrued liability of the pension fund, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(iv) (A) The nineteen hundred eighty-five unfunded accrued liability adjustment, for each city fiscal year

occurring during the period beginning on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight, shall be an amount which if paid to the contingent reserve fund in thirty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the excess of the amount computed pursuant to item (iii) of this subparagraph (e) over the amount computed pursuant to item (ii) of this subparagraph.

(B) The nineteen hundred eighty-five unfunded accrued liability adjustment for each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand fifteen, shall be an amount which, when paid to the contingent reserve fund in equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of the June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the unfunded accrued liability adjustment computed pursuant to sub-item (A) of this item (iv), which installments are hypothetically allocated by such sub-item (A) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(4) (a) As used in this section, the following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:

(i) (A) "Normal contribution for balance sheet liability purposes". The hypothetical amount which the normal contribution payable in each city fiscal year occurring during the period beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred eighty would have equalled if such normal contribution had been required by law to be paid to the contingent reserve fund in the city fiscal year in which the obligation to make such normal contribution had been required by law to be determined in the manner provided for in subitems (B), (C) and (D) of this item (i).

(B) Upon the basis of the mortality and other tables effective under this subchapter as of July first, nineteen hundred seventy-seven and interest at the rate of five and one-half per centum per annum, the actuary shall determine, as of June thirtieth next preceding each such fiscal year for which such normal contribution is being determined (hereinafter referred to as the "subject fiscal year") the amount of the then total liability for all benefits provided in this subchapter, in article eleven of the retirement and social security law, in any other law prescribing benefits payable by the pension fund in article fourteen of such law (if applicable) and in any other law prescribing benefits payable by the pension fund on account of all then members and beneficiaries, excluding the then liability on account of future annual contributions, for balance sheet liability purposes, on account of reserves-for-increased-take-home-pay (as defined in item (iv) of this subparagraph (a)*3 , if any, and the then liability for benefits attributable to the annuity savings fund.

(C) The hypothetical normal rate of contribution with respect to the subject fiscal year shall be the rate per centum obtained:

(1) by deducting from the amount of such total liability the sum of:

(A) the present value of all then required future unfunded accrued liability contributions for balance sheet liability purposes (as defined in item (ii) of this subparagraph (a)); and

(B) the present value of all then required future annual contributions, for balance sheet liability purposes, on account of amortization of losses on dispositions of certain securities within the meaning of section 13-704 of this title (as defined in item (iii) of this subparagraph (a)); and

(C) the present value of future member contributions of members, if any, subject to article fourteen of the retirement and social security law; and

(D) the amount obtained by adding together the total funds on hand (excluding therefrom the amount in the annuity savings fund) and the balance sheet liability as of such June thirtieth next preceding the subject fiscal year; and

(2) by dividing the remainder by one per centum of the then present value of the prospective future salaries of all members, as computed on the basis of the mortality and service tables adopted pursuant to section 13-221 of this subchapter and in effect on July first, nineteen hundred seventy-seven, and on the basis of interest at the rate of five and one-half per centum per annum.

(D) The amount of the normal contribution for balance sheet liability purposes hypothetically payable in the subject fiscal year shall be the amount obtained (1) by multiplying such hypothetical normal contribution rate computed with respect to the subject fiscal year by the aggregate annual salaries of the members as of June thirtieth of the subject fiscal year and (2) by adding to the product of such multiplication, interest on such product at the rate of five and one-half per centum per annum for a period of six months.

(ii) "Unfunded accrued liability contribution for balance sheet liability purposes". (A) With respect to the city's nineteen hundred seventy-four-nineteen hundred seventy-five fiscal year, such term shall mean a hypothetical amount which, if paid to the contingent reserve fund in forty equal annual installments, beginning with payment of a first installment in the city's nineteen hundred seventy-four-nineteen hundred seventy-five fiscal year, would be the actuarial equivalent, on the basis of interest at the rate of five and one-half per centum per annum, of the remainder computed in the manner prescribed by sub-items (B) and (C) of this item (ii).

(B) Upon the basis of the actuarial tables in effect as of July first, nineteen hundred seventy-seven for valuation purposes and interest at the rate of five and one-half per centum per annum, there shall be computed, as of June thirtieth, nineteen hundred seventy-four, the amount of the total liability for all benefits provided by this subchapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the pension fund on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions and the liability for benefits attributable to the annuity savings fund.

(C) From such total liability computed pursuant to sub-item (B) of this item (ii) there shall be subtracted the sum of:

(1) the present value, as of June thirtieth, nineteen hundred seventy-four, of all future normal costs of the pension fund, computed pursuant to the entry age normal cost method of determining such normal cost; and

(2) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this title (as then in effect), of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(3) the sum obtained by adding together the balance sheet liability as of such June thirtieth (as such liability is determined pursuant to the provisions of subparagraph (b) of this paragraph four) and the total funds on hand as of such June thirtieth, excluding the amount in the annuity savings fund, but including the amount of any unpaid moneys appropriated pursuant to section 13-231 of this subchapter.

(D) With respect to each of the city's fiscal years occurring during the period from July first, nineteen hundred seventy-five to June thirtieth, nineteen hundred eighty, such term shall mean a hypothetical amount which, if paid to the contingent reserve fund in forty equal annual installments, beginning with payment of a first installment in the city's nineteen hundred seventy-five-nineteen hundred seventy-six fiscal year, would be the actuarial equivalent, on the basis of interest at the rate of five and one-half per centum per annum, of the remainder computed pursuant to sub-items (E) and (F) of this item (ii).

(E) Upon the basis of the actuarial tables in effect as of July first, nineteen hundred seventy-seven for valuation purposes and interest at the rate of five and one-half per centum per annum, there shall be computed, as of June thirtieth,

nineteen hundred seventy-five, the amount of the total liability for all benefits provided by this chapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the retirement system on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions and the liability for benefits attributable to the annuity savings fund.

(F) From such total liability computed pursuant to sub-item (E) of this item (ii), there shall be subtracted the sum of:

(1) the present value, as of June thirtieth, nineteen hundred seventy-five, of all future normal costs of the pension fund, computed pursuant to the entry age normal cost method of determining such normal costs; and

(2) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this title (as then in effect), of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(3) the sum obtained by adding together the balance sheet liability as of such June thirtieth (as such liability is determined pursuant to the provisions of subparagraphs (c) to (i) inclusive, of this paragraph four) and the total funds on hand, as of such June thirtieth, excluding the amount in the annuity savings fund, but including the amount of any unpaid moneys appropriated pursuant to section 13-231 of this subchapter.

(iii) "Annual contribution, for balance sheet liability purposes, on account of amortization of losses on dispositions of certain securities within the meaning of section 13-704 of this title". A hypothetical annual payment to the contingent reserve fund in each of the city's fiscal years occurring during the period beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred eighty, of the amount of the excess of installments (payable in such year) of losses on prior dispositions of securities within the meaning of section 13-704 of this title over the installments (creditable in such year) of gains on such prior dispositions, which annual amount shall be determined in the manner provided in subdivision h of such section 13-704 of this title.

(iv) "Annual contribution, for balance sheet liability purposes, on account of reserves-for-increased-take-home-pay". A hypothetical annual payment to the contingent reserve fund in each of the city's fiscal years occurring during the period from July first, nineteen hundred seventy-four to June thirtieth, nineteen hundred eighty, of the amount required to fulfill the public employer obligation, which accrued in such year, to make contributions on account of increased-take-home-pay.

(v) "Annual military law contribution for balance sheet liability purposes". A hypothetical annual payment to the contingent reserve fund in each of the city's fiscal years occurring during the period beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred eighty, of the amount required to fulfill the public employer obligation, which accrued in such year under the provisions of subdivision twenty of section two hundred forty-three of the military law, to pay in behalf of members qualifying for such benefit, member contributions with respect to certain periods of military service of such members.

(vi) "Deficiency contribution". The annual amount which, under the provisions of paragraph one of this subdivision b and paragraph three thereof, as such provisions were in effect during the period from July first, nineteen hundred seventy-two to June thirtieth, nineteen hundred seventy-seven, the city was required to pay to the contingent reserve fund in each of the city's nineteen hundred seventy-four-nineteen hundred seventy-five, nineteen hundred seventy-five-nineteen hundred seventy-six and nineteen hundred seventy-six-nineteen hundred seventy-seven fiscal years.

(vii) "Contribution on account of amortization, pursuant to section 13-704 of this title, of losses on dispositions of certain securities". The total annual amount by which the sum of the installments of losses, payable pursuant to section 13-704 of this title (as in effect prior to July first, nineteen hundred eighty) in each of the city's fiscal years occurring during the period from July first, nineteen hundred seventy-four to June thirtieth, nineteen hundred eighty in

relation to dispositions of securities within the meaning of such section, exceeds the sum of the installments of gains creditable in the same fiscal year in relation to the same dispositions of securities.

(b) The balance sheet liability as of June thirtieth, nineteen hundred seventy-four shall be the sum of two hundred fifty-two million, three hundred fifty-two thousand, six hundred ninety-nine dollars ($252,352,699), consisting of the sum of:

(i) the discounted value, as of June thirtieth, nineteen hundred seventy-four, of the sum of ninety-five million, seven hundred thousand dollars ($95,700,000), which constituted the amount payable into the contingent reserve fund in the city's nineteen hundred seventy-four-nineteen hundred seventy-five fiscal year by the city in fulfillment of its obligations to make contributions to the pension fund payable in such fiscal year, such discounting being calculated on the basis of interest at the rate of five and one-half per centum per annum and a discount period of six months extending retroactively from January first, nineteen hundred seventy-five to June thirtieth, nineteen hundred seventy-four, and such discounted value being the sum of ninety-three million, one hundred seventy-two thousand, eighty-five dollars ($93,172,085); and

(ii) the discounted value, as of June thirtieth, nineteen hundred seventy-four, of the sum of one hundred seventy-two million, four hundred ninety-one thousand, nine hundred ninety-four dollars ($172,491,994), which constituted the amount payable to the contingent reserve fund in the city's nineteen hundred seventy-five-nineteen hundred seventy-six fiscal year by the city in fulfillment of its obligations to make contributions to the pension fund payable in such fiscal year, such discounting being calculated on the basis of interest at the rate of five and one-half per centum per annum and a discount period of eighteen months extending retroactively from January first, nineteen hundred seventy-six to June thirtieth, nineteen hundred seventy-four, and such discounted value being the sum of one hundred fifty-nine million, one hundred eighty thousand, six hundred fourteen dollars ($159,180,614).

(c) The balance sheet liability, as of each June thirtieth succeeding June thirtieth, nineteen hundred seventy-four to and including June thirtieth, nineteen hundred eighty, shall be determined as provided for in subparagraphs (d) to (j), inclusive, of this paragraph four.

(d) To the amount of the balance sheet liability as of June thirtieth next preceding the June thirtieth (which last-mentioned June thirtieth is hereinafter referred to as the "subject June thirtieth") as of which the balance sheet liability is being determined as provided for in subparagraph (c) of this paragraph four, there shall be added one year's interest on such amount at the rate of five and one-half per centum per annum.

(e) With respect to the city's fiscal year ending on the subject June thirtieth (hereinafter referred to as the "subject fiscal year") there shall be added together the contribution components hereinafter specified in this subparagraph (e), which components, for the purposes of this paragraph four, are hypothetically deemed to have accrued in the subject fiscal year and to have been payable therein, as follows:

(i) the amount of the normal contribution for balance sheet liability purposes (as defined in item (i) of subparagraph (a) of this paragraph four); and

(ii) the amount of the applicable installment of the unfunded accrued liability contribution for balance sheet liability purposes (as defined in item (ii) of subparagraph (a) of this paragraph); and

(iii) the amount of the annual contribution, for balance sheet liability purposes, on account of amortization of losses on dispositions of certain securities within the meaning of section 13-704 of this title (as defined in item (iii) of subparagraph (a) of this paragraph); and

(iv) the amount of the annual contribution, for balance sheet liability purposes, on account of reserves-for-increased-take-home-pay (as defined in item (iv) of subparagraph (a) of this paragraph); and

(v) the amount of the annual military law contribution for balance sheet liability purposes (as defined in item (v) of subparagraph (a) of this paragraph).

(f) To the amount resulting from the addition prescribed by subparagraph (e) of this paragraph four, there shall be added interest thereon at the rate of five and one-half per centum per annum from January first of the subject fiscal year to June thirtieth of such fiscal year.

(g) The amount computed pursuant to subparagraph (d) of this paragraph four in relation to the balance sheet liability as of June thirtieth next preceding the subject June thirtieth (together with one year's interest on such balance sheet liability as provided for in such subparagraph) shall be added to the amount computed pursuant to subparagraph (f) of this paragraph in relation to the subject fiscal year.

(h) From the amount computed pursuant to subparagraph (g) of this paragraph, there shall be subtracted the sum of:

(i) the total amount of the sums paid to the contingent reserve fund during the subject fiscal year by the city on account of its obligations, which accrued during the city's second fiscal year preceding the subject fiscal year, to provide:

(A) the normal contribution payable in the subject fiscal year under the provisions of paragraphs one and two of this subdivision b as then in effect; and

(B) the installment of the deficiency contribution (as defined in item (vi) of subparagraph (a) of this paragraph four) or the installment of the original unfunded accrued liability contribution, (as defined in subparagraph (a) of paragraph three of this subdivision b), as the case may be, payable in the subject fiscal year; and

(C) the amount of the contribution on account of amortization, pursuant to section 13-704 of this title, of losses on dispositions of certain securities (as defined in item (vii) of subparagraph (a) of this paragraph four) payable in the subject fiscal year; and

(D) the amount payable in the subject fiscal year on account of reserves-for-increased-take-home-pay; and

(E) the amount payable in the subject fiscal year in behalf of members pursuant to subdivision twenty of section two hundred forty-three of the military law; plus

(ii) interest on such total amount referred to in item (i) of this subparagraph (h) at the rate of five and one-half per centum per annum from January first of the subject fiscal year to June thirtieth thereof.

(i) The remainder resulting from the subtraction prescribed by subparagraph (h) of this paragraph four shall be the balance sheet liability as of June thirtieth of the subject fiscal year.

(j) The balance sheet liability as of June thirtieth, nineteen hundred eighty shall be the amount resulting from the successive computations of the balance sheet liability as of each June thirtieth succeeding June thirtieth, nineteen hundred seventy-four up to and including June thirtieth, nineteen hundred eighty, as prescribed by subparagraphs (c) to (i), inclusive, of this paragraph four.

(k) The balance sheet liability contribution payable in the city's nineteen hundred eighty-one-nineteen hundred eighty-two fiscal year shall be the first annual installment of an amount which, if paid to the contingent reserve fund in forty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-one-nineteen hundred eighty-two fiscal year, would be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-one, on the basis of seven and one-half per centum interest per annum, of an amount equal to the balance sheet liability as of June thirtieth, nineteen hundred eighty.

(1) The balance sheet liability contribution payable in each city fiscal year during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight shall be one annual installment of an amount which, if paid to the contingent reserve fund in thirty-nine equal installments, commencing with a first payment in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year, would be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-two, on the basis of eight per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-two on the basis of seven and one-half per centum interest per annum, of those installments of the balance sheet liability contribution computed pursuant to subparagraph (k) of this paragraph (4), which installments are hypothetically allocated by such subparagraph (k) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-two.

(m) The balance sheet liability contribution payable in each city fiscal year during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand twenty-one shall be one annual installment of an amount which, when paid to the contingent reserve fund in thirty-three equal annual installments, commencing with a first payment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-eight, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the balance sheet liability contribution computed pursuant to subparagraph (1) of this paragraph (4), which installments are hypothetically allocated by such subparagraph (1) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(5) Contributions to the contingent reserve fund payable by the city in fiscal years of the city beginning on or after July first, nineteen hundred ninety shall be governed by the provisions of this section, as modified and supplemented by sections 13-638.2 and 13-638.3 of this title, and such other laws as may be applicable.

(6) (a) On the basis of interest at the rate of eight and one-half per centum per annum and the actuarial tables in effect as of July first, nineteen hundred ninety-four, the actuary shall determine the present value as of such July first, of the future liability of the pension fund for paying all benefits and supplemental benefits on and after such date to police subchapter one beneficiaries (as defined in paragraph three of subdivision a of section 13-213.1 of this chapter), which liability is deemed to have been transferred to and assumed by the fund pursuant to subdivisions d, e and g of section 13-213.1 of this chapter as if such transfers actually had been made on such July first.

(b) The city shall pay to the contingent reserve fund in ten equal annual installments, commencing with payment of a first installment in the city's nineteen hundred ninety-four-nineteen hundred ninety-five fiscal year, an amount which, when paid in such installments, is the actuarial equivalent of the amount determined pursuant to subparagraph (a) of this paragraph.

c. Whenever the board, upon recommendation by the actuary, shall determine that it is necessary to increase the reserves held in the annuity reserve fund, the pension reserve fund or the dependent benefit reserve fund, the board may direct that the amount so needed shall be transferred thereto from the contingent reserve fund.

d. The cash benefits payable under the provisions of this subchapter to, or upon the death of, a member in active service shall be paid from such contingent reserve fund.

e. Upon the retirement of such a member, or upon his or her death in the performance of duty, an amount equal to the pension reserve for the pension payable by the city on account of his or her city-service as a member, together with reserve-for-increased-take-home-pay, shall be transferred from such fund to the pension reserve fund. Contributions shall be paid into the contingent reserve fund, in the manner and to the extent specified by section 13-226 of this subchapter, to provide reserves-for-increased-take-home-pay.

f. Repealed.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b par (1) subpar (a) opening clause amended chap 878/1990 § 10 eff. July 25, 1990 applying on and after July 1, 1989

Subd. b par (1) subpar (a) items (vi), (vii) amended chap 598/1996 § 1, eff. Aug. 8, 1996 and deemed effective July 1, 1995

Subd. b par (1) subpar (b) item (iii) separately amended chap 579/1989 § 14 and chap 580/1989 § 7

Subd. b par (1) subpar (b) item (iv) added chap 579/1989 § 15. (laid out first)

Subd. b par (1) subpar (b) item (iv) separately added chap 580/1989 § 8 and chap 581/1989 § 79. (laid out second)

Subd. b par (1) subpar (b) item (vii) added chap 581/1989 § 37

Subd. b par (1) subpar (c) item (i) amended chap 579/1989§ 16

Subd. b par (2) subpar (a) amended chap 598/1996 § 2, eff. Aug. 8, 1996 and deemed effective July 1, 1995

Subd. b par (2) subpar (a-1) added chap 152/2006 § 5, eff. July 7, 2006 and deemed to have been in full force and effect on and after July 1, 2005. [See § 13-103 Note 1]

Subd. b par (2) subpar (b) amended chap 579/1989 § 17

Subd. b par (2) subpar (b) item (i) sub-items (E), (F) amended chap 598/1996 § 3, eff. Aug. 8, 1996 and deemed effective July 1, 1995

Subd. b par (2) subpar (b) item (i) sub-item (G) added chap 598/1996 § 4, eff. Aug. 8, 1996 and deemed effective July 1, 1995

Subd. b par (2) subpar (b) item (ii) amended chap 85/2000 § 3, eff. June 23, 2000 and deemed to have been in effect on and after July 1, 1999.

Subd. b par (2) subpar (b) item (ii) amended chap 598/1996 § 5, eff. Aug. 8, 1996 and deemed effective July 1, 1995

Subd. b par (2) subpar (c) amended chap 152/2006 § 6, eff. July 7, 2006

and deemed to have been in full force and effect on and after July 1, 2005. [See § 13-103 Note 1]

Subd. b par (2) subpar (c) amended chap 598/1996 § 6, eff. Aug. 8, 1996 and deemed effective July 1, 1995

Subd. b par (2) subpar (d) added chap 503/1995 § 4, eff. Aug. 2, 1995

Subd. b par (3) subpar (b) items (i), (vi) amended chap 581/1989 § 36

Subd. b par (3) subpar (c) items (i), (v) amended chap 581/1989 § 38

Subd. b par (3) subpar (d) items (i), (iv) amended chap 581/1989 § 39

item (v) added chap 581/1989 § 40

Subd. b par (3) subpar (e) added chap 579/1989 § 18

item (iv) amended chap 581/1989 § 41

Subd. b par (4) subpar (l) amended chap 581/1989 § 42

subpar (m) added chap 581/1989 § 43

Subd. b par (5) amended chap 608/1991 § 8, retro. to July 1, 1990

Subd. b par (5) added chap 878/1990 § 11 eff. July 25, 1990 applying on and after July 1, 1989

Subd. b par (6) added chap 503/1995 § 5, eff. Aug. 2, 1995

Subd. f repealed chap 503/1995 § 6, eff. Aug. 2, 1995.

**DERIVATION**

Formerly § B18-24.0 added LL 2/1940 § 2

Amended chap 223/1963 § 5

Repealed and added chap 876/1968 § 5

Sub b amended chap 976/1977 § 14

Sub b amended chap 957/1981 § 57

Sub b pars 1, 2, 3 amended chap 914/1982 § 23

Sub b par 4 subpar a item iii amended chap 914/1982 § 24

Sub b par 4 subpar k amended chap 914/1982 § 25

Sub b par 4 subpar l amended chap 914/1982 § 26

**FOOTNOTES**

2

[Footnote 2]: * There are 2 items (iv).

3

[Footnote 3]: * So in original. (Closing parenthesis missing.)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-229*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-229 Contributions of the city and their use; pension reserve fund.

The pension reserve fund shall be the fund from which shall be paid all pensions, and all pensions-provided-for-increased-take-home-pay, and all benefits in lieu of pensions, and all benefits in lieu of pensions-providing-for-increased-take-home-pay, if any, allowable by the city on account of the city-service of members. Should any pension or pension-providing-for-increased-take-home-pay payable from such pension reserve fund be cancelled, the pension reserve or reserve-for-increased-take-home-pay thereon shall thereupon be transferred from the pension reserve fund to the contingent reserve fund. Should any pension or pension-providing-for-increased-take-home-pay payable from such fund be reduced, the amount of the annual reduction in such pension or pension-providing-for-increased-take-home-pay shall be paid annually into the contingent reserve fund during the period of such reduction.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-25.0 added LL 2/1940 § 2

Amended chap 223/1963 § 5

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-230*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-230 Contributions of public benefit corporations and their use.

Notwithstanding the requirements of section 13-228 of this subchapter, of the amounts due from the city, all amounts due to the contingent reserve fund on account of any members of the pension fund during the period of their employment by any authority or body corporate and politic constituting a public benefit corporation or its successor, shall be paid by such employing authority or body corporate and politic or successor.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-26.0 added LL 2/1940 § 2

Reenacted chap 437/1940 § 1

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

*NYC Administrative Code 13-231*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-231 Guarantee of funds.

a. Regular interest, charges payable, the creation and maintenance of reserves in the contingent reserve fund and the pension reserve fund and the maintenance of annuity reserves, pension reserves, dependent benefit reserves and reserves-for-increased-take-home-pay as provided for in this subchapter and the payment of all pensions, pensions-providing-for-increased-take-home-pay, annuities, retirement allowances, refunds, death benefits, dependent benefits and any other benefits granted under the provisions of this subchapter, are hereby made obligations of the city. Except as otherwise provided in sections 13-232, 13-232.1, 13-232.2 and 13-232.3 of this subchapter, all income, interest and dividends derived from deposits and investments authorized by this subchapter shall be used and disposed of in the manner prescribed by subdivision b of this section. Upon the basis of each actuarial determination and appraisal provided for in this subchapter, the commissioner shall prepare pursuant to section one hundred twelve of the charter and submit to the director of management and budget an itemized estimate of the amounts necessary to be appropriated by the city to the various funds to provide for payment in full during the ensuing fiscal year of all such obligations of the city accruing during the ensuing fiscal year. There shall be included annually in the budget a sum sufficient to provide for such obligations of the city. The comptroller shall pay the sums so provided into the various funds provided for by this subchapter, subject to the provisions of subdivision b of this section.

b. (1) Subject to the provisions of paragraphs two, three and four of this subdivision, all income, interest and dividends derived from deposits and investments authorized by this subchapter, which income, interest and dividends were heretofore or are hereafter received during any city fiscal year commencing on or after July first, nineteen hundred

eighty, shall (after payment therefrom of the sum, if any, required to be paid pursuant to sections 13-232, 13-232.1, 13-232.2 and 13-232.3 of this subchapter) be used in such fiscal year for the purposes hereinafter specified in this paragraph (to the extent that such income, interest and dividends are sufficient for such purposes), in the order of priority herein stated, as follows:

(A) first, to pay into the funds of the pension fund the amounts of regular interest which are required to be paid into such funds in such fiscal year by reason of being required to be allowed to such funds pursuant to the provisions of section 13-234 of this subchapter, and to pay into such funds the amount of supplementary interest, if any, required to be so paid in such fiscal year under the applicable provisions of such section, and to pay into the annuity savings fund the amounts of special interest, if any, required to be so paid in such fiscal year under the applicable provisions of such section, and to pay into the contingent reserve fund the amounts of additional interest, if any, required to be paid in such fiscal year under the applicable provisions of such section;

(B) second, to pay into the contingent reserve fund the amount of any losses in excess of gains (i) which net losses the pension fund sustained during such fiscal year by reason of sales or other dispositions of securities, and (ii) for which net losses the pension fund is required to be reimbursed in such fiscal year, and (iii) to which net losses section 13-704 of this title, relating to graduated crediting of gains and amortization of losses on dispositions of certain securities, does not apply;

(C) third, if the total amount of such income, interest and dividends received during such fiscal year is in excess of the total amount required to make, in such fiscal year, the payments prescribed by subparagraphs (A) and (B) of this paragraph, the amount of such excess shall be paid into the contingent reserve fund and shall become a part of the assets of such fund.

(2) Notwithstanding the provisions of paragraph one of this subdivision or any other law to the contrary, any such income, interest or dividends which are received by the pension fund may be used for the purpose specified in section 13-705 of this title (relating to expenses incurred in the acquisition, management and protection of investments), regardless of when received and prior to use for the purposes stated in such paragraph one.

(3) (A) Notwithstanding any other provision of this section or any other law to the contrary, the term "all income, interest and dividends derived from deposits and investments", as used in paragraph two of this subdivision (as such subdivision was in effect prior to July first, nineteen hundred eighty), shall be construed, in relation to disposition of all income, interest and dividends received by the pension fund in each of the city's nineteen hundred seventy-six-nineteen hundred seventy-seven and nineteen hundred seventy-seven-nineteen hundred seventy-eight obligations fiscal years (as such fiscal years were defined by paragraph one of this subdivision prior to such July first) as meaning the remainder obtained:

(i) by subtracting from such income, interest and dividends the amount of any expenses charged thereto pursuant to the provisions of section 13-705 of this title; and

(ii) by subtracting from such amount computed pursuant to item (i) of this subparagraph (A) the amount, if any, required to be paid therefrom pursuant to section 13-232 of this subchapter; and

(iii) by subtracting from the amount computed pursuant to item (ii) of this subparagraph (A) the sum of:

(1) the amounts of regular, supplementary and special interest required to be allowed and paid into the appropriate funds of the retirement system in such fiscal year pursuant to the applicable provisions of section 13-234 of this subchapter; and

(2) the amount of any losses in excess of gains (a) which net losses were sustained by the pension fund during such fiscal year and which net losses were sustained by reason of sales or other dispositions of securities, and (b) to which net losses the provisions of section 13-704 of this title do not apply.

(B) for the purposes of the order of priority governing the disposition, in the payment fiscal year with respect to each such obligations fiscal year, of such remainder computed pursuant to subparagraph (A) of this paragraph three (as such disposition was prescribed by the provisions of this subdivision as in effect during each such payment fiscal year) the provisions of subparagraphs (A) and (B) of such paragraph two shall be deemed to have been inapplicable and the order of priority for such disposition shall be first, the use set forth in subparagraph (C) of such paragraph, second, the use set forth in subparagraph (D) of such paragraph, third, the use set forth in subparagraph (E) of such paragraph and fourth, the use set forth in subparagraph (F) of such paragraph, as such subparagraphs were in effect during such payment fiscal year.

(4) (a) Subject to the provisions of paragraph five of this subdivision b, all income, interest and dividends which were derived from deposits and investments authorized by this title and which were received during each of the city's nineteen hundred seventy-eight-nineteen hundred seventy-nine and nineteen hundred seventy-nine-nineteen hundred eighty fiscal years shall be used (after payment therefrom of the sum, if any, required to be paid pursuant to section 13-232 of this subchapter*5 in each such fiscal year for the purposes hereinafter stated in this subparagraph (a), in the order of priority herein stated, as follows:

(A) first, (i) to pay into the funds of the pension fund the amounts of regular interest which are required to be paid into such funds in such fiscal year wherein such income, interest and dividends were received, which interest is so payable by reason of being required to be allowed to such funds in such fiscal year pursuant to the provisions of section 13-234 of this subchapter, and (ii) to pay into such funds the amounts of supplementary interest required to be so paid in such fiscal year under the applicable provisions of such section, and (iii) to pay into the annuity savings fund the amounts of special interest required to be so paid in such fiscal year under the applicable provisions of such section, and (iv) to pay into the contingent reserve fund the amounts of additional interest required to be paid in such fiscal year under the applicable provisions of such section;

(B) second, to pay into the contingent reserve fund the amount of any losses in excess of gains (i) which net losses were sustained by the pension fund during such fiscal year in which such income, interest and dividends were received and which net losses were sustained by reason of sales or other dispositions of securities, and (ii) for which net losses the pension fund is required to be reimbursed in such fiscal year, and (iii) to which net losses section 13-704 of this title, relating to graduated crediting of gains and amortization of losses on dispositions of certain securities, does not apply; and

(C) third, to pay into the contingent reserve fund the amount, if any, by which,

(i) the total of all losses which the pension fund sustained during such fiscal year by reason of sales of securities within the meaning of such section 13-704 of this title and which the responsible public employer, as defined in paragraph four of subdivision a of such section 13-704 of this title, would otherwise be required to amortize pursuant to such section, exceeds

(ii) the total of all gains which were realized during such fiscal year by reason of sales of securities within the meaning of such section and which would otherwise be required by such section to be credited in favor of the responsible public employer in installments.

(b) if the total amount of such income, interest and dividends received during each such fiscal year referred to in subparagraph (a) of this paragraph four is in excess of the total amount required to make, in the same fiscal year, the payments prescribed by items (A), (B) and (C) of such subparagraph (a), the amount of such excess shall be paid into the contingent reserve fund as of June thirtieth of such fiscal year and shall become a part of the assets of such fund as of such date.

(5) Notwithstanding the provisions of paragraph four of this subdivision or any other law to the contrary, any such income, interest or dividends which were received by the pension fund in either such fiscal year referred to in such

paragraph four may be used for the purpose specified in section 13-705 of this title (relating to expenses incurred in the acquisition, management and protection of investment) prior to use for the purposes stated in such paragraph four.

c. (1) The comptroller shall make monthly payments, in twelve equal installments, with respect to obligations which the city incurs to pay sums to the pension fund.

(2) In the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year and in each city fiscal year thereafter, the equal monthly payments shall be in respect of obligations which accrue in such fiscal year and shall be made in such fiscal year on or before the last day of each month.

(3) The board of trustees of the pension fund may waive the requirements of the foregoing provisions of this subdivision with respect to time of payment to such fund, provided that any such waiver of time of payment in any instance shall not apply to the time of subsequent payments unless there shall be a subsequent waiver.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 479/1993 § 19 retro. to Jan. 1, 1993 amended chap 247/1988 § 25

Subd. b par 1 amended chap 479/1993 § 20 retro. to Jan. 1, 1993 amended chap 247/1988 § 26

**DERIVATION**

Formerly § B18-27.0 added LL 2/1940 § 2

Amended chap 100/1963 § 404

Amended chap 223/1963 § 5

Amended chap 876/1970 § 2

Amended chap 595/1974 § 4

(Legislative findings, investment earnings chap 595/1974 § 1)

(chap 595/1974 § 1 amended chap 801/1975 § 1)

Sub b pars 2, 3 amended chap 801/1975 § 4

Sub b pars 4, 5 repealed chap 801/1975 § 7

(Note amendments by chap 801/1975 expire and revert chap

801/1975 § 8)

Amended chap 976/1977 § 15

Sub c added chap 785/1978 § 6

Subs b, c amended chap 957/1981 § 58

**FOOTNOTES**

5

[Footnote 5]: * So in original. (Closing parenthesis missing.)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-232*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-232 Payments to variable supplements funds.

a. For the purposes of this section, the following terms shall mean and include:

1. "Base fiscal year". Any fiscal year of the city beginning on or after July first, nineteen hundred sixty-nine, with respect to which fiscal year a computation of earnings differential, based on equity investments made or held by the pension fund during such fiscal year, is being made pursuant to this section.

2. "Current fiscal year". The fiscal year of the city next succeeding the base fiscal year.

3. "Prior base fiscal year". Any fiscal year of the city which begins on or after July first, nineteen hundred sixty-nine and which precedes the base fiscal year.

4. "Earnings differential". The amount (expressed as a positive or negative quantity) by which the equity experience factor (expressed as a positive or negative quantity) with respect to the base fiscal year differs from the interest comparison factor with respect to the base fiscal year. If such equity experience factor is greater than such interest comparison factor, the difference between the two shall be expressed as a positive quantity. If such interest comparison factor is greater than such equity experience factor, the difference between the two shall be expressed as a negative quantity.

5. (a) "Equity experience factor". An amount (expressed as a positive or negative quantity) equal to (i) the income earned by the pension fund during the base fiscal year from its investments in equities, plus (ii) the capital gains, realized or unrealized, occurring during such fiscal year by reason of such investments, less (iii) the capital losses, realized or unrealized, occurring during such fiscal year by reason of such investments.

(b) In the event that any equity is sold during the base fiscal year, the expense of such sale, including but not limited to broker's commissions, shall be deducted from capital gain or added to capital loss, in determining whether such sale produced a capital gain or a capital loss and the amount thereof.

6. "Income." Any yield of equities, including but not limited to dividends, other than capital gains.

7. "Hypothetical fixed income securities earnings." (a) The aggregate of the hypothetical interest yields computed pursuant to subparagraphs (b), (c) and (d) of this paragraph seven.

(b) The board shall compute with respect to each investment made or maintained by the pension fund in an equity during the base fiscal year, the amount of interest which would have been hypothetically earned during such fiscal year, under the methods of calculation prescribed in this subparagraph seven, if an amount equal to such investment had instead been hypothetically invested in fixed income securities and such securities had been held by such fund for a period (in the base fiscal year) co-extensive with the period during which such equity was held by such fund in the base fiscal year.

(c) For the purposes of this section, the amount of any such investment in an equity during the base fiscal year shall be deemed to be:

(i) the market value of the equity on the first day of the base fiscal year, in the case of any such equity acquired by the pension fund prior to the commencement of such fiscal year and held by such fund on the first day of such fiscal year; and

(ii) the total amount paid by such fund to acquire the equity, including but not limited to broker's commissions and other expenses of such acquisition, in the case of any such equity which is acquired by such fund during the base fiscal year.

(d) For the purposes of this section, the amount of interest which would have been earned by the pension fund on such hypothetical fixed income securities during the base fiscal year shall be deemed to be the amount obtained:

(i) by multiplying the amount of the investment in such equity, determined as prescribed by subparagraph (c) of this paragraph seven, by the assumed rate of interest for the base fiscal year; and

(ii) by prorating the interest so computed, in any case where the investment in such equity was maintained by the pension fund for a part of the base fiscal year.

8. "Assumed rate of interest". (a) In relation to any base fiscal year, a hypothetical rate of interest, fixed as hereinafter in this paragraph eight prescribed, which shall be used for the purpose of the computing, pursuant to paragraph seven of this subdivision a, amounts of interest which would have been hypothetically earned on hypothetical investments of the pension fund in fixed income securities during such fiscal year.

(b) The board shall fix the assumed rate of interest with respect to each base fiscal year. In the event of a tie vote with respect to the fixation of such rate, it shall be fixed by an arbitrator designated by the board. If there is a tie vote as to the designation of such an arbitrator, such rate shall be fixed by an arbitrator appointed by the supreme court, on the application of any member of the board. The cost of any arbitration pursuant to the foregoing provisions of this subparagraph (b) shall be paid from transferable earnings.

9. "Six per cent interest offset". In relation to any base fiscal year, the excess, if any, of the hypothetical fixed income securities earnings with respect to such year, over the amount which such earnings would be if they have been computed on the basis of an interest rate of six per cent, rather than on the basis of the assumed rate of interest; provided, however, that there shall be no six per cent interest offset with respect to any base fiscal year unless the hypothetical fixed income securities earnings with respect to such fiscal year exceeds the equity experience factor with respect to such fiscal year; and provided further that no six per cent interest offset with respect to any base fiscal year shall in any event exceed the amount obtained by subtracting the equity experience factor with respect to such fiscal year from the hypothetical fixed income securities earnings with respect to such fiscal year.

10. "Interest comparison factor". In relation to any base fiscal year, the amount obtained by subtracting the six per cent interest offset, if any, with respect to such fiscal year, from the hypothetical fixed income securities earnings with respect to such fiscal year.

11. "Cumulative earnings differential for the base fiscal year". In relation to a base fiscal year, the amount (expressed as a positive or negative quantity) obtained by adding to the earnings differential for such base fiscal year, the total of all earnings differentials for all prior base fiscal years.

12. "Transferable earnings". In relation to a base fiscal year, the total amount required by the provisions of subdivision c of this section to be distributed, with respect to such base fiscal year, in the manner provided by subdivision d of this section.

13. "Cumulative distributions of transferable earnings for prior base fiscal years". In relation to a base fiscal year, the total of all payments of transferable earnings made or required to be made by the pension fund to the police officer's variable supplements fund and the superior police officers' variable supplements fund with respect to all prior base fiscal years pursuant to subdivisions c and d of this section.

14. *6 Police officer's variable supplements fund". The police officer's variable supplements fund established by subchapter three of this chapter.

15. "Police superior officers' variable supplements fund". The police superior officers' variable supplements fund established by subchapter four of this chapter.

16. "Superior police officers". Members of the uniformed force of the police department who (a) hold the position of sergeant or any position of higher rank in such force, or (b) are detectives.

b. As soon as practicable after the close of each base fiscal year, but not later than August thirty-first of the current fiscal year, the board shall compute:

(1) the earnings differential with respect to such base fiscal year, and the interest offset, if any, with respect to such fiscal year;

(2) the total contributions made to the police pension fund, subchapter two, with respect to such base fiscal year on behalf of all members of the uniformed force of the police department who are police officers, as of the last day of such base fiscal year; and

(3) the total contributions made to the police pension fund, subchapter two, with respect to such base fiscal year on behalf of all members of the uniformed force of the police department who are superior police officers, as of such last day.

c. If the cumulative earnings differential for the base fiscal year is a positive quantity and exceeds the cumulative distributions of transferable earnings for prior base fiscal years, a sum equal to the amount of such excess shall be distributed by the pension fund in the manner provided by subdivision d of this section.

d. (1) If there be transferable earnings with respect to the base fiscal year, computed as hereinabove provided, such transferable earnings shall be divided into a police officer's variable supplements fund share and a superior police officers' variable supplements fund share in the ratio that the total contributions made to the police pension fund, subchapter two, with respect to such base fiscal year on behalf of police officers bears to the total contributions made to the police pension fund, subchapter two, with respect to such base fiscal year on behalf of superior police officers, as computed for such base fiscal year pursuant to the provisions of paragraphs two and three of subdivision b of this section.

(2) On or before August thirty-first of the current fiscal year, the pension fund shall pay from the contingent reserve fund to the police officer's variable supplements fund and the superior police officers' variable supplements fund their respective shares of such transferable earnings with respect to the base fiscal year, as such shares are computed pursuant to paragraph one of this subdivision d.

e. The comptroller shall furnish to the board such information and data as it may request for the purpose of carrying out the provisions of this section.

f. The police officer's variable supplements fund and the police superior officers' variable supplements fund shall not have any rights under this section to any payments by the pension fund to such variable supplements funds derived from or based upon the investment earnings of the pension fund in any fiscal year of the city commencing on or after July first, nineteen hundred eighty-eight. Any and all rights of the police officer's variable supplements fund to payments from the pension fund derived from or based upon the investment earnings of the pension fund in any fiscal year of the city commencing on or after such July first shall be governed solely by the provisions of section 13-232.1 of this subchapter. Any and all rights of the police superior officers' variable supplements fund to payments from the pension fund derived from or based upon the investment earnings of the pension fund in any fiscal year of the city included in the period commencing on such July first and ending on June thirtieth, nineteen hundred ninety-two shall be governed solely by the provisions of section 13-232.2 of this subchapter. Any and all rights of the police superior officers' variable supplements fund to payments from the pension fund derived from or based upon the investment earnings of the pension fund in any fiscal year of the city commencing on or after July first, nineteen hundred ninety-two shall be governed solely by the provision of section 13-232.3 of this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par 15 amended chap 247/1988 § 16

Subd. f amended chap 479/1993 § 14 retro. to Jan. 1, 1993 added chap 247/1988 § 17

**DERIVATION**

Formerly § B18-27.1 added chap 876/1970 § 3

**FOOTNOTES**

6

[Footnote 6]: * So in original. (Open quotes missing.)

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-232.1 Payments to police officer's variable supplements fund for base fiscal years commencing on or after July first, nineteen hundred eighty-eight.

a. For the purposes of this section, the definitions of terms set forth in paragraphs two, five, six, seven, eight and fourteen of subdivision a of section 13-232 of this subchapter shall apply to this section 13-232.1 with the same force and effect as if such definitions were specifically set forth in this section.

b. For the purposes of this section, the following terms shall mean and include:

1. "Base fiscal year". Any fiscal year of the city beginning on or after July first, nineteen hundred eighty-eight.

2. "Prior base fiscal year". Any fiscal year of the city which begins on or after July first, nineteen hundred eighty-eight and which precedes the base fiscal year.

3. "Cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight". (a) An amount, expressed as a positive or negative quantity, as the case may be, which shall be determined in accordance with the method set forth in subpararaph (b) of this paragraph three.

(b) (i) The cumulative earnings differential for the base fiscal year (as defined in paragraph eleven of subdivision a of section 13-232 of this subchapter), as applicable to the nineteen hundred eighty-seven-nineteen hundred

eighty-eight base fiscal year (as so defined) shall be computed pursuant to the provisions of such section 13-232.

(ii) The cumulative distributions of transferable earnings for prior base fiscal years (as defined in paragraph thirteen of subdivision a of such section 13-232) shall be computed pursuant to such section 13-232 with respect to such nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year.

(iii) The amount of transferable earnings (as defined in paragraph twelve of subdivision a of such section 13-232), if any, for the nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year, determined pursuant to such section 13-232, shall be added to the cumulative distributions of transferable earnings computed pursuant to item (ii) of this subparagraph (b).

(iv) The sum resulting from the addition prescribed by item (iii) of this subparagraph (b) shall be subtracted from the amount computed pursuant to item (i) of this subparagraph. The remainder resulting from the subtraction shall be the cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight.

4. "Earnings differential". The amount (expressed as a positive or negative quantity) by which the equity experience factor (expressed as a positive or negative quantity) with respect to the base fiscal year differs from the hypothetical fixed income securities earnings with respect to the base fiscal year. If such equity experience factor is greater than such hypothetical fixed income securities earnings, the difference between the two shall be expressed as a positive quantity. If such hypothetical fixed income securities earnings are greater than such equity experience factor, the difference between the two shall be expressed as a negative quantity.

5. "Cumulative earnings factor". (a) The cumulative earnings factor for any base fiscal year shall be determined as follows:

(i) If the cumulative earnings factor for the immediately preceding base fiscal year was a positive quantity, the cumulative earnings factor for the base fiscal year shall be equal to the earnings differential for the base fiscal year.

(ii) If the cumulative earnings factor for the immediately preceding base fiscal year was a negative quantity, the cumulative earnings factor for the base fiscal year shall be equal to the sum of:

(A) the earnings differential for the base fiscal year; and

(B) the cumulative earnings factor for the immediately preceding base fiscal year, increased with interest at a rate equal to the assumed rate of interest fixed with respect to such base fiscal year pursuant to the provisions of paragraph eight of subdivision a of section 13-232 of this subchapter, as made applicable to this section 13-232.1 by subdivision a hereof.

(b) In applying the provisions of this paragraph five for the base fiscal year nineteen hundred eighty-eight-nineteen hundred eighty-nine, the term defined in paragraph three of this subdivision b as "cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight" shall be substituted for the term "cumulative earnings factor for the immediately preceding base fiscal year".

6. "POVSF cumulative earnings factor". With respect to any base fiscal year, the amount obtained by multiplying the cumulative earnings factor for such base fiscal year by a fraction, the numerator of which shall be the total contributions made to the police pension fund, subchapter two, with respect to such base fiscal year on behalf of all members of the uniformed force of the police department who are police officers, as of the last day of such base fiscal year, and the denominator of which shall be the total contributions made to such police pension fund with respect to such base fiscal year on behalf of all persons who are members of the uniformed force of the police department as of the last day of such base fiscal year.

7. "POVSF unfunded accrued liability". In any case where the valuation of assets and liabilities of the police

officer's variable supplements fund by the actuary pursuant to subdivision e of section 13-270 of this chapter shows that for any base fiscal year, such liabilities exceed such assets, the term "POVSF unfunded accrued liability" shall mean the amount of the excess of such liabilities over the amount of such assets for such base fiscal year.

8. "Police officer". A member of either this pension fund or the police pension fund provided for in subchapter one of this chapter who, at the time of retirement for service, was not a police superior officer as defined in subdivision four of section 13-278 of this chapter.

c. As soon as practicable after the close of each base fiscal year, but not later than December thirty-first of the current fiscal year, the board shall compute the POVSF cumulative earnings factor with respect to such base fiscal year.

d. If the POVSF cumulative earnings factor for such base fiscal year is a positive quantity, the pension fund, on or before December thirty-first of the current fiscal year, shall pay from its contingent reserve fund to the police officer's variable supplements fund, as the payment due for such base fiscal year under this section, an amount determined pursuant to the provisions of subdivision e of this section.

e. The amount payable for such base fiscal year as provided for in subdivision d of this section shall be the lesser of (1) the POVSF cumulative earnings factor for such base fiscal year referred to in such subdivision d or (2) the liability POVSF unfunded accrued liability for such base fiscal year.

f. No amount shall be due from or payable by the pension fund to such variable supplements fund under this section for any base fiscal year which shall exceed the POVSF unfunded accrued liability for such base fiscal year, regardless of the amount and character of the POVSF cumulative earnings factor for such base fiscal year.

g. The comptroller shall furnish to the board such information and data as it may request for the purpose of carrying out the provisions of this section.

**HISTORICAL NOTE**

Section added chap 247/1988 § 18, see note below.

**NOTE**

Note provisions of chap 247/1988 §§ 14, 15, 27, 28, 29.

§ 14. The legislature hereby finds that the provisions of this act remedy certain inequities which operate to the disadvantage of the city of New York and remedy certain other inequities which operate to the disadvantage of the beneficiaries receiving variable supplements from the police officer's variable supplements fund provided for by subchapter three of chapter two of title thirteen of the administrative code of the city of New York. As a part of the remedies for such inequities, fifteen per cent of the assets of the police officer's variable supplements fund as of July first, nineteen hundred eighty-eight, but not exceeding the sum of seventy-five million dollars, shall be transferred to and become the property of such city within thirty days after this act becomes law.

§ 15. The provisions of section 13-232 of the administrative code of the city of New York shall be inapplicable to determination of any and all rights of the police officer's variable supplements fund referred to in section fourteen of this act and of the police superior officers' variable supplements fund (provided for by subchapter four of chapter two of title thirteen of the administrative code of the city of New York) to any payments from the police pension fund (provided for by subchapter two of such chapter two) derived from or based on investment earnings of such police pension fund in any fiscal year of such city commencing on or after July first, nineteen hundred eighty-eight. Any and all rights of such police officer's variable supplements fund to payments from such police pension fund derived from or based upon the investment earnings of such police pension fund in any such fiscal year commencing on or after such July first shall be governed solely by the provisions of section 13-232.1 of such code. Any and all rights of such police

superior officers' variable supplements fund to payments from such police pension fund derived from or based upon the investment earnings of such police pension fund in any such fiscal year commencing on or after such July first shall be governed solely by the provisions of section 13-232.2 of such code.



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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-232.2 Payments to police superior officers' variable supplements fund for base fiscal years included in the period commencing on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-two.

a. For the purposes of this section, the definitions of terms set forth in paragraphs two, four, six, eight, nine and ten of subdivision a of section 13-232 of this subchapter shall apply to this section 13-232.2 with the same force and effect as if such definitions were specifically set forth in this section.

b. For the purposes of this section, the following terms shall mean and include:

1. "Base fiscal year". Any fiscal year of the city included in the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-two.

2. "Prior base fiscal year". Any fiscal year of the city which begins on or after July first, nineteen hundred eighty-eight and which precedes the base fiscal year.

3. "Cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight". (a) An amount, expressed as a positive or negative quantity, as the case may be, which shall be determined in accordance with the method set forth in subparagraph (b) of this paragraph three.

(b) (i) The cumulative earnings differential for the base fiscal year (as defined in pararaph eleven of subdivision

a of section 13-232 of this subchapter), as applicable to the nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year (as so defined) shall be computed pursuant to the provisions of such section 13-232.

(ii) The cumulative distributions of transferable earnings for prior base fiscal years (as defined in paragraph thirteen of subdivision a of such section 13-232) shall be computed pursuant to such section 13-232 with respect to such nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year.

(iii) The amount of transferable earnings (as defined in paragraph twelve of subdivision a of such section 13-232), if any, for the nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year, determined pursuant to such section 13-232, shall be added to the cumulative distributions of transferable earnings computed pursuant to item (ii) of this subparagraph (b).

(iv) The sum resulting from the addition prescribed by item (iii) of this subparagraph (b) shall be subtracted from the amount computed pursuant to item (i) of this subparagraph.

(v) The remainder resulting from the subtraction shall be the cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight.

4. "Equity experience factor". (a) An amount (expressed as a positive or negative quantity) which shall be determined for each base fiscal year in accordance with the method of computation set forth in the succeeding subparagraphs of this paragraph four.

(b) The amount of income earned by the pension fund during the base fiscal year from its investment in equities shall be computed.

(c) To each such amount of income for a base fiscal year there shall be added the capital gains, realized and unrealized, occurring during such base fiscal year by reason of such investments.

(d) From the sum resulting from the addition prescribed by subparagraph (c) of this paragraph there shall be subtracted the capital losses, realized or unrealized, occurring during such base fiscal year by reason of such investment.

(e) In the event that any equity is sold during the base fiscal year, the expense of such sale, including but not limited to broker's commissions, shall be deducted from capital gain or added to capital loss, in determining whether such sale produced a capital gain or a capital loss and the amount thereof.

(f) (i) With respect to base fiscal years occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety, the remainder resulting from the subtraction prescribed by subparagraph (d) of this paragraph shall be adjusted so that it equals the amount which it would have been in the absence of the enactment of chapter two hundred forty-seven of the laws of nineteen hundred eighty-eight and chapter five hundred eighty-one of the laws of nineteen hundred eighty-nine.

(ii) With respect to each base fiscal year included in the period beginning on July first, nineteen hundred ninety and ending on June thirtieth, nineteen hundred ninety-two, the remainder resulting from the subtraction prescribed by subparagraph (d) of this paragraph shall be adjusted so that it equals the amount which it would have been in the absence of the enactment of chapter two hundred forty-seven of the laws of nineteen hundred eighty-eight.

(iii) For the purpose of determining the entitlement, with respect to any base fiscal year included in the period beginning on July first, nineteen hundred ninety and ending on June thirtieth, nineteen hundred ninety-two, of the police superior officers' variable supplements fund to receive payment of any sum from the pension fund pursuant to this section, the cumulative earnings factor for such base fiscal year shall be calculated in the same manner as if (A) that part of this subparagraph, which part, prior to July twenty-sixth, nineteen hundred ninety-one, referred to chapter five hundred eighty-one of the laws of nineteen hundred eighty-nine, had never been enacted and (B) items (ii) and (iii) of

this subparagraph, as such items were in effect prior to July twenty-sixth, nineteen hundred ninety-one, had never been enacted.

(g) Any adjustment required to be made pursuant to the provisions of subparagraph (f) of this paragraph shall be computed pursuant to a scientific method recommended to the board by the actuary and approved by the board; provided that if the board is unable to approve, by the required majority vote, any such formula recommended by the actuary, such adjustment shall be computed pursuant to a scientific formula recommended by the actuary and approved by an arbitrator designated pursuant to the procedure set forth in subparagraph (b) of paragraph eight of subdivision a of section 13-232 of this subchapter.

(h) The equity experience factor for such base fiscal year shall be the amount remaining after the adjustment prescribed by subparagraphs (f) and (g) of this paragraph has been made.

5. "Hypothetical fixed income securities earnings". (a) The aggregate of the hypothetical interest yields computed pursuant to subparagraphs (b), (c) and (d) of this paragraph five.

(b) The board shall compute with respect to each investment made or maintained by the pension fund in an equity during the base fiscal year, the amount of interest which would have been hypothetically earned during such fiscal year, under the methods of calculation prescribed in this paragraph five, if an amount equal to such investment had instead been hypothetically invested in fixed income securities and such securities had been held by such fund for a period (in the base fiscal year) co-extensive with the period during which such equity was held by such fund in the base fiscal year.

(c) For the purposes of this section, the amount of any such investment in an equity during the base fiscal year shall be deemed to be:

(i) the market value of the equity on the first day of the base fiscal year, in the case of any such equity acquired by the pension fund prior to the commencement of such fiscal year and held by such fund on the first day of such fiscal year; and

(ii) the total amount paid by such fund to acquire the equity, including but not limited to broker's commissions and other expenses of such acquisition, in the case of any such equity which is acquired by such fund during the base fiscal year.

(d) For the purposes of this section, the amount of interest which would have been earned by the pension fund on such hypothetical fixed income securities during the base fiscal year shall be deemed to be the amount obtained:

(i) by multiplying the amount of the investment in such equity, determined as prescribed by subparagraph (c) of this paragraph five, by the assumed rate of interest for the base fiscal year; and

(ii) by prorating the interest so computed, in any case where the investment in such equity was maintained by the pension fund for a part of the base fiscal year; and

(iii) by multiplying the amount of interest computed for the full base fiscal year pursuant to items (i) and (ii) of this subparagraph by a fraction, the numerator of which is the amount designated as the equity experience factor with respect to such base fiscal year by subparagraph (h) of paragraph four of this subdivision b and the denominator of which is the remainder produced by the subtraction prescribed by subparagraph (d) of such paragraph four with respect to such base fiscal year; and

(iv) by adding together the products of all such multiplications performed pursuant to item (iii) of this subparagraph in relation to all such equities held by the pension fund during such fiscal year.

6. "Cumulative earnings factor". (a) The cumulative earnings factor for any base fiscal year shall be determined as follows:

(i) If the cumulative earnings factor for the immediately preceding base fiscal year was a positive quantity, the cumulative earnings factor for the base fiscal year shall be equal to the earnings differential for the base fiscal year.

(ii) If the cumulative earnings factor for the immediately preceding base fiscal year was a negative quantity, the cumulative earnings factor for the base fiscal year shall be equal to the sum of:

(A) the earnings differential for the base fiscal year; and

(B) the cumulative earnings factor for the immediately preceding base fiscal year.

(b) In applying the provisions of this subdivision six for the base fiscal year nineteen hundred eighty-eight-nineteen hundred eighty-nine, the term defined in paragraph three of this subdivision b as "cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight" shall be substituted for the term "cumulative earnings factor for the immediately preceding base fiscal year".

7. "PSOVSF cumulative earnings factor". With respect to any base fiscal year, the amount obtained by multiplying the cumulative earnings factor for such base fiscal year by a fraction, the numerator of which shall be the total contributions made to the pension fund with respect to such base fiscal year on behalf of all members of the uniformed force of the police department who are police superior officers, as of the last day of such base fiscal year, and the denominator of which shall be the total contributions made to the pension fund with respect to such base fiscal year on behalf of all persons who are members of the uniformed force of the police department as of the last day of such base fiscal year.

8. "Police superior officers". Members of the uniformed force of the police department who (a) hold the position of sergeant or any position of higher rank in such force, or (b) are detectives.

9. "Police superior officers' variable supplements fund". The police superior officers' variable supplements fund established by subchapter four of this chapter.

c. As soon as practicable after the close of each base fiscal year, but not later than August thirty-first of the current fiscal year, the board shall compute the PSOVSF cumulative earnings factor with respect to such base fiscal year.

d. If the PSOVSF cumulative earnings factor for the base fiscal year is a positive quantity, the pension fund, on or before August thirty-first of the current fiscal year, shall pay from its contingent reserve fund to the police superior officers' variable supplements fund a sum equal to the amount of such factor.

e. The comptroller shall furnish to the board such information and data as it may request for the purpose of carrying out the provisions of this section.

**HISTORICAL NOTE**

Section added chap 247/1988 § 19

Section heading amended chap 479/1993 § 15 retro. to Jan. 1, 1993

Subd. b par 1 amended chap 479/1993 § 16 retro. to Jan. 1, 1993 par 4 subpar (f) amended chap 608/1991 § 9 retro. to July

Subd. b par 4 subpar (f) 1, 1993

Subd. b par 4 subpar (f) amended chap 878/1990 § 26 retro to July 1, 1989 amended chap 581/1989 § 81

Subd. b par 4 subpar (f) items (ii), (iii) amended chap 479/1993 § 17 retro. to July 1, 1990

Subd. b par 4 subpars (g), (h) amended chap 581/1989 § 81

Subd. b par 5 subpar (d) item (iii) amended chap 581/1989 § 83

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-232.3 Payments to police superior officers' variable supplements fund for base fiscal years commencing on or after July first, nineteen hundred ninety-two.

a. For the purposes of this section, the definitions of terms set forth in paragraphs two, five, six, seven, eight and fifteen of subdivision a of section 13-232 of this subchapter shall apply to this section 13-232.3 with the same force and effect as if such definitions were specifically set forth in this section.

b. For the purposes of this section, the following terms shall mean and include:

(1) "Base fiscal year". Any fiscal year of the city beginning on or after July first, nineteen hundred ninety-two.

(2) "Prior base fiscal year". Any fiscal year of the city which begins on or after July first, nineteen hundred ninety-two and which precedes the base fiscal year.

(3) "Cumulative earnings factor as of June thirtieth, nineteen hundred ninety-two". An amount, expressed as a positive or negative quantity, as the case may be, which shall be equal to the cumulative earnings factor for the nineteen hundred ninety-one-nineteen hundred ninety-two base fiscal year computed pursuant to section 13-232.2 of this subchapter.

(4) "Earnings differential". The amount (expressed as a positive and negative quantity) by which the equity

experience factor (expressed as a positive or negative quantity) with respect to the base fiscal year differs from the hypothetical fixed income securities earnings with respect to the base fiscal year. If such equity experience factor is greater then such hypothetical fixed income securities earnings, the difference between the two shall be expressed as a positive quantity. If such hypothetical fixed income securities earnings are greater then such equity experience factor, the difference between the two shall be expressed as a negative quantity.

(5) "Cumulative earnings factor". (a) The cumulative earnings factor for any base fiscal year shall be determined as follows:

(i) If the cumulative earnings factor for the immediately preceding base fiscal year was a positive quantity, the cumulative earnings factor for the base fiscal year shall be equal to the earnings differential for the base fiscal year.

(ii) If the cumulative earnings factor for the immediately preceding base fiscal year was a negative quantity, the cumulative earnings factor for the base fiscal year shall be equal to the sum of:

(A) the earnings differential for the base fiscal year; and

(B) the cumulative earnings factor for the immediately preceding base fiscal year, increased with interest at a rate equal to the assumed rate of interest fixed with respect to such base fiscal year pursuant to the provisions of paragraph eight of subdivision a of section 13-232 of this subchapter, as made applicable to this section 13-232.3 by subdivision a hereof.

(b) In applying the provisions of this paragraph five for the base fiscal year nineteen hundred ninety-two-nineteen hundred ninety-three, the term defined in paragraph three of this subdivision b as "cumulative earnings factor as of June thirtieth, nineteen hundred ninety-two" shall be substituted for the term "cumulative earnings factor the the immediately preceding base fiscal year".

(6) "PSOVSF cumulative earnings factor". With respect to any base fiscal year, the amount obtained by multiplying the cumulative earnings factor for such base fiscal year by a fraction, the numerator of which shall be the total contributions made to the pension fund with respect to such base fiscal year on behalf of all members of the uniformed force of the police department who are police superior officers, as of the last day of such base fiscal year, and the denominator of which shall be the total contributions made to the pension fund with respect to such base fiscal year on behalf of all persons who are members of the uniformed force of the police department as of the last day of such base fiscal year.

(7) "PSOVSF unfunded accrued liability". In any case where the valuation of assets and liabilities off the police supeerior officers' variable supplements fund by the actuary pursuant to subdivision e of section 13-280 of this chapter shows that for any base fiscal year, such liabilities exceed such assets, the term "PSOVSF unfunded accrued liability" shall mean the amount of the excess of such liabilities over the amount of such assets for such base fiscal year.

(8) "Police superior officers". Members of the uniformed force of the police department who (a) hold the position of sergeant or any position of higher rank in such force, or (b) are detectives.

c. As soon as practicable after the close of each base fiscal year, but not later than December thirty-first of the current fiscal year, the board shall compute the PSOVSF cumulative earnings factor with respect to such base fiscal year.

d. If the PSOVSF cumulative earnings factor for such base fiscal year is a positive quantity, the pension fund, on or before December thirty-first of the current fiscal year, shall pay from its contingent reserve fund to the police superior officers' variable supplements fund, as the payment due for such base fiscal year under this section, an amount determined pursuant to the provisions of subdivision e of this section.

e. The amount payable for such base fiscal year as provided for in subdivision d of this section shall be the lesser of (1) the PSOVSF cumulative earnings factor for such base fiscal year referred to in such subdivision d or (2) the PSOVSF unfunded accrued liability for such base fiscal year.

f. No amount shall be due from or payable by the pension fund to such variable supplements fund under this section for any base fiscal year which shall exceed the PSOVSF unfunded accrued liability for such base fiscal year, regardless of the amount and character of the PSOVSF cumulative earnings factor for such base fiscal year.

g. The comptroller shall furnish to the board such information and data as it may request for the purpose of carrying out the provisions of this section.

**HISTORICAL NOTE**

Section added chap 479/1993 § 18 retro. to Jan. 1, 1993

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-233*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-233 Trustees of funds; investments.

a. The members of the board shall be the trustees of the several funds provided for by this subchapter, and shall have full power to invest the same, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and, subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the funds provided for by this subchapter shall have been invested as well as of the proceeds of such investments and of any moneys belonging to such funds.

b. Notwithstanding the provisions of subdivision two of section one hundred seventy-seven of the retirement and social security law, or any other provision of law to the contrary, the amounts which may be invested by the pension fund in securities pursuant to the provisions of paragraphs (a), (b), (c), (d), (e) and (f) of subdivision twenty-six of section two hundred thirty-five of the banking law, shall be subject to the following maximum limits, in lieu of any such limits imposed by any other provision of law:

(1) Not more than fifty per cent of the assets of the pension fund shall be invested in such securities; and

(2) Not more than five per cent of such assets shall be invested in the securities of any one corporation and its subsidiaries; and

(3) Not more than two per cent of the total issued and outstanding equity securities of any one corporation shall be owned by the pension fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-28.0 added LL 2/1940 § 2

Amended chap 876/1970 § 4

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

*NYC Administrative Code 13-234*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-234 Allowance of interest.

a. Such board shall annually allow regular interest on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this chapter. The amount so allowed shall be due and payable to such funds, and shall be annually credited thereto by such board.

b. The investment earnings of the retirement system shall be determined for the calendar year nineteen hundred sixty-four. To the extent that such earnings are in excess of the amount allowed as regular interest for calendar year nineteen hundred sixty-four, the board shall declare a rate of special interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the amount required for the allowance of regular interest divided by the aggregate mean amount for the calendar year nineteen hundred sixty-four in the annuity savings funds of members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-four. Special interest, as determined by multiplying said special interest rate by the mean amount for the calendar year nineteen hundred sixty-four in the individual annuity savings funds of persons who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-four, shall be credited as of December thirty-first nineteen hundred sixty-four to the individual annuity savings funds of persons who are members, with a balance, after adjustment, as of June thirtieth, nineteen hundred sixty-five and who are allowed regular interest at the rate of three per centum per annum for calendar year nineteen hundred sixty-four. For members who are allowed regular interest at three per centum for calendar year nineteen hundred sixty-four and who do not have a balance, after adjustment, in their annuity savings funds as of June thirtieth,

nineteen hundred sixty-five, a payment shall be made equal to the amount of special interest which would have been credited as of December thirty-first, nineteen hundred sixty-four had they had a balance in their annuity savings funds as of June thirtieth, nineteen hundred sixty-five, provided that the sum of said special interest and any additional interest to be paid pursuant to subdivision c hereof is ten dollars or more. Special interest shall not be considered in determining rates of contribution of members.

c. If the full one per centum of special interest has been allowed, then to the extent that the amount of said earnings exceeds the amount allowed as regular interest and the amount allowed or paid as special interest, the board shall declare a rate of additional interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the sum of the allowance of regular interest and the allowance and payment of special interest divided by the aggregate mean amount for calendar year nineteen hundred sixty-four which would be the reserve-for-increased-take-home-pay of all members to whom special interest is credited or paid pursuant to paragraph b hereof. In determining the reserve-for-increased-take-home-pay of any member to whom special interest is credited pursuant to paragraph b hereof additional interest, as determined by multiplying said additional interest rate by the mean amount for calendar year nineteen hundred sixty-four which would be said member's reserve-for-increased-take-home-pay shall be included. However, for members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-four and who retire or die prior to June thirtieth, nineteen hundred sixty-five, the amount of additional interest for calendar year nineteen hundred sixty-four shall not be included in the retirement allowance, but shall be paid in a single payment provided that the sum of said additional interest and any special interest to be paid pursuant to paragraph b hereof is ten dollars or more. Additional interest shall not be considered in determining rates of contribution of members.

d. The investment earnings of the retirement system shall be determined for the calendar year nineteen hundred sixty-five. To the extent that such earnings are in excess of the amount allowed as regular interest for calendar year nineteen hundred sixty-five, the board shall declare a rate of special interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the amount required for the allowance of regular interest divided by the aggregate mean amount for the calendar year nineteen hundred sixty-five in the annuity savings funds of members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-five. Special interest, as determined by multiplying said special interest rate by the mean amount for the calendar year nineteen hundred sixty-five in the individual annuity savings funds of persons who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-five, shall be credited as of December thirty-first, nineteen hundred sixty-five to the individual annuity savings funds of persons who are members, with a balance, after adjustment, as of June thirtieth, nineteen hundred sixty-six and who are allowed regular interest at the rate of three per centum per annum for calendar year nineteen hundred sixty-five. For members who are allowed regular interest at three per centum for calendar year nineteen hundred sixty-five and who do not have a balance, after adjustment, in their annuity savings funds as of June thirtieth, nineteen hundred sixty-six, a payment shall be made equal to the amount of special interest which would have been credited as of December thirty-first, nineteen hundred sixty-five had they had a balance in their annuity savings funds as of June thirtieth, nineteen hundred sixty-six, provided that the sum of said special interest and any additional interest to be paid pursuant to subdivision e hereof is ten dollars or more. Special interest shall not be considered in determining rates of contribution of members.

e. If the full one per centum of special interest has been allowed, then to the extent that the amount of said earnings exceeds the amount allowed as regular interest and the amount allowed or paid as special interest, the board shall declare a rate of additional interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the sum of the allowance of regular interest and the allowance and payment of special interest divided by the aggregate mean amount for calendar year nineteen hundred sixty-five which would be the reserve-for-increased-take-home-pay of all members to whom special interest is credited or paid pursuant to subdivision d hereof. In determining the reserve-for-increased-take-home-pay of any member to whom special interest is credited pursuant to subdivision d hereof, additional interest as determined by

multiplying said additional interest rate by the mean amount for calendar year nineteen hundred sixty-five which would be said member's reserve-for-increased-take-home-pay shall be included. However, for members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-five and who retire or die prior to June thirtieth, nineteen hundred sixty-six, the amount of additional interest for calendar year nineteen hundred sixty-five shall not be included in the retirement allowance, but shall be paid in a single payment provided that the sum of said additional interest and any special interest to be paid pursuant to subdivision d hereof is ten dollars or more. Additional interest shall not be considered in determining rates of contribution of members.

f. The investment earnings of the retirement system shall be determined for the calendar year nineteen hundred sixty-six. To the extent that such earnings are in excess of the amount allowed as regular interest for calendar year nineteen hundred sixty-six, the board shall declare a rate of special interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the amount required for the allowance of regular interest divided by the aggregate mean amount for the calendar year nineteen hundred sixty-six in the annuity savings funds of members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-six. Special interest, as determined by multiplying said special interest rate by the mean amount for the calendar year nineteen hundred sixty-six in the individual annuity savings funds of persons who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-six, shall be credited as of December thirty-first, nineteen hundred sixty-six to the individual annuity savings funds of persons who are members, with a balance, after adjustment, as of June thirtieth, nineteen hundred sixty-seven and who are allowed regular interest at the rate of three per centum per annum for calendar year nineteen hundred sixty-six. For members who are allowed regular interest at three per centum for calendar year nineteen hundred sixty-six and who do not have a balance, after adjustment, in their annuity savings funds as of June thirtieth, nineteen hundred sixty-seven, a payment shall be made equal to the amount of special interest which would have been credited as of December thirty-first nineteen hundred sixty-six had they had a balance in their annuity savings funds as of June thirtieth, nineteen hundred sixty-seven, provided that the sum of said special interest and any additional interest to be paid pursuant to subdivision g hereof is ten dollars or more. Special interest shall not be considered in determining rates of contribution of members.

g. If the full one per centum of special interest has been allowed, then to the extent that the amount of said earnings exceeds the amount allowed as regular interest and the amount allowed or paid as special interest, the board shall declare a rate of additional interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the sum of the allowance of regular interest and the allowance and payment of special interest divided by the aggregate mean amount for the calendar year nineteen hundred sixty-six which would be the reserve-for-increased-take-home-pay of all members to whom special interest is credited or paid pursuant to subdivision f hereof. In determining the reserve-for-increased-take-home-pay of any member to whom special interest is credited pursuant to subdivision f hereof, additional interest as determined by multiplying said additional interest rate by the mean amount for calendar year nineteen hundred sixty-six which would be said member's reserve-for-increased-take-home-pay shall be included. However, for members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-six and who retire or die prior to June thirtieth, nineteen hundred sixty-seven, the amount of additional interest for calendar year nineteen hundred sixty-six shall not be included in the retirement allowance, but shall be paid in a single payment provided that the sum of said additional interest and any special interest to be paid pursuant to subdivision f hereof is ten dollars or more. Additional interest shall not be considered in determining rates of contribution of members.

h. (1) During the period commencing on July first, nineteen hundred seventy-seven and ending on June thirtieth, nineteen hundred eighty, special interest at the rate of one and one-half per centum per annum, compounded annually, shall be allowed with respect to the individual account of each member in the annuity savings fund.

(2) Subject to the provisions of subdivision j of this section, during the period commencing on July first, nineteen hundred eighty and ending on June thirtieth, nineteen hundred eighty-two, special interest at the rate of three and one-half per centum per annum, compounded annually, shall be allowed with respect to the individual account of

each member in the annuity savings fund.

(3) (a) Subject to the provisions of subdivision j of this section, during the period commencing on July first, nineteen hundred eighty-two and ending on July thirty-first, nineteen hundred eighty-three, special interest at the rate of four per centum per annum, compounded annually, shall be allowed with respect to the individual account of each member in the annuity savings fund.

(b) Subject to the provisions of subdivision j of this section, during the period commencing on August first, nineteen hundred eighty-three and ending on June thirtieth, nineteen hundred eighty-five, special interest at the rate of one per centum per annum, compounded annually, shall be allowed with respect to the individual account of each member in the annuity savings fund.

(c) Subject to the provisions of subdivision j of this section, during the period commencing on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight, special interest at the rate of one per centum per annum, compounded annually, shall be allowed with respect to the individual account of each member in the annuity savings fund.

(d) Subject to the provisions of subdivision j of this section, during the period commencing on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety, special interest at the rate of one and one-quarter per centum per annum, compounded annually, shall be allowed with respect to the individual account of each member of the annuity savings fund.

(4) Such special interest provided for by paragraphs (1), (2) and (3) of this subdivision shall be credited to such individual account of each member entitled thereto in the same manner and at the same time as regular interest is required to be credited to such account with respect to the same period of time. Such special interest shall not be considered in determining rates of contributions of members. Nothing contained in this subdivision h shall be construed as applicable to any member who is subject to the provisions of article fourteen of the retirement and social security law.

i. (1) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of one and one-half per centum per annum compounded annually shall be included for each city fiscal year occurring during the period beginning on July first, nineteen hundred seventy-seven and ending on June thirtieth, nineteen hundred eighty.

(2) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of three and one-half per centum per annum compounded annually shall be included for each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty and ending on June thirtieth, nineteen hundred eighty-two.

(3) (a) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of four per centum per annum compounded annually shall be included for each city fiscal year and portion thereof occurring during the period beginning on July first, nineteen hundred eighty-two and ending on July thirty-first, nineteen hundred eighty-three.

(b) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of one per centum per annum compounded annually shall be included for each city fiscal year and portion thereof occurring during the period beginning on August first, nineteen hundred eighty-three and ending on June thirtieth, nineteen hundred eighty-five.

(c) Subject to the provisions of subdivision j of this section, in determinating the

reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of one per centum per annum, compounded annually, shall be included for each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight.

(d) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of one and one-quarter per centum per annum, compounded annually, shall be included for each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety.

(4) Additional interest shall not be considered in determining rates of contribution of members. Nothing contained in this subdivision shall be construed as applicable to any member who is subject to the provisions of article fourteen of the retirement and social security law.

j. (1) The provisions of paragraph (2) of subdivision h of this section and the provisions of paragraphs (1) and (2) of subdivision i of this section, to the extent that any of such provisions grants special or additional interest, as the case may be, for any period prior to July thirty-first, nineteen hundred eighty-one, shall not apply to any person who was not a member on such July thirty-first, and shall not apply to any person to whom, on such July thirty-first, a deferred retirement allowance or any part of such a retirement allowance was payable pursuant to the provisions of section 13-256 of this subchapter. Nothing contained in subdivisions h and i of this section shall be construed as granting special or additional interest, as the case may be, to any person with respect to any period wherein such person was not a member entitled to be credited with regular interest for the same period or was not a discontinued member entitled to be credited, as a discontinued member, with regular interest for the same period.

(2) (a) The provisions of subparagraph (a) of paragraph (3) of subdivision h of this section, to the extent that such subparagraph grants special interest for any period prior to December sixteenth, nineteen hundred eighty-two, and the provisions of subparagraph (a) of paragraph (3) of subdivision 1 of this section, to the extent that such subparagraph grants additional interest for any period prior to such date, shall not apply to any person who was not a member on such date and shall not apply to any person to whom, on such date, a deferred retirement allowance or any part of such a retirement allowance was payable pursuant to the provisions of section 13-256 of this subchapter.

(b) The provisions of subparagraph (d) of paragraph (3) of subdivision h of this section, to the extent that such subparagraph grants special interest for any period prior to the date of enactment of this subparagraph (b) of this paragraph (2) (as such date is certified pursuant to section forty-one of the legislative law), and the provisions of subparagraph (d) of paragraph (3) of subdivision 1 of this section, to the extent that such subparagraph (d) grants additional interest for any period prior to such date, shall not apply to any person who was not a member on such date and shall not apply to any person to whom, on such date, a deferred retirement allowance or any part of such a retirement allowance was payable pursuant to the provisions of section 13-256 of this subchapter.

k. (1) Subject to the provisions of paragraph (4) of this subdivision k, in addition to regular interest annually allowed for the period from July first, nineteen hundred seventy-seven to June thirtieth, nineteen hundred eighty on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter, there shall be annually allowed with respect to such period supplementary interest at the rate of one and one-half per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest was credited to such funds with respect to such period.

(2) Subject to the provisions of paragraph (4) of this subdivision k, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty to June thirtieth, nineteen hundred eighty-two on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter, there shall be annually allowed with respect to such period supplementary interest at the rate of three and one-half per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary

interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(3) (a) Subject to the provisions of paragraph (4) of this subdivision k, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty-two to July thirty-first, nineteen hundred eighty-three, on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter, there shall be annually allowed with respect to such period supplementary interest at the rate of four per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(b) Subject to the provisions of paragraph four of this subdivision k, in addition to regular interest annually allowed for the period from August first, nineteen hundred eighty-three to June thirtieth, nineteen hundred eighty-five, on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this article, there shall be annually allowed with respect to such period supplementary interest at the rate of one per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(c) Subject to the provisions of paragraph (4) of this subdivision k, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty-five to June thirtieth, nineteen hundred eighty-eight on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter, there shall be annually allowed with respect to such period supplementary interest at the rate of one per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(d) Subject to the provisions of paragraph (4) of this subdivision k, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty-eight to June thirtieth, nineteen hundred ninety on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter, there shall be annually allowed with respect to such period supplementary interest at the rate of one and one-quarter per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(4) The provisions of paragraphs (1), (2) and (3) of this subdivision k shall not apply to or affect (a) the allowance of interest on or the crediting of interest to accounts of members or discontinued members in the annuity savings fund or (b) the allowance of interest on or crediting of interest to reserve-for-increased-take-home-pay of members or discontinued members or (c) the determination of the amount of any benefit payable to any member or beneficiary.

l. On or after May first, nineteen hundred eighty-nine and not later than October thirty-first of such year, the board shall submit to the public officers and permanent commission referred to in paragraph (e) of subdivision eight of section 13-214 of this subchapter the recommendations of such board:

(1) as to whether legislation should be enacted providing for the crediting of special interest to members after June thirtieth, nineteen hundred ninety and if so, the recommended rate thereof and duration of such crediting; and

(2) as to whether legislation should be enacted providing that in the determination of reserves-for-increased-take-home-pay of members entitled to such a reserve, additional interest shall be included for any period after June thirtieth, nineteen hundred ninety, and if so, the recommended rate thereof and the period as to which

such interest should be included; and

(3) as to whether legislation should be enacted providing for the crediting of supplementary interest after June thirtieth, nineteen hundred ninety to such funds to which subdivision k of this section is applicable and if so, the recommended rate thereof and duration of such crediting.

m. The allowance of special interest, additional interest and supplementary interest, if any, with respect to any fiscal year of the city beginning on or after July first, nineteen hundred ninety shall be governed by the applicable provisions of section 13-638.2 of this title.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. h par (3) subpar (c) amended chap 581/1989 § 44 subpar (d) added chap 581/1989 § 45

Subd. i par (3) subpar (c) amended chap 581/1989 § 46 subpar (d) added chap 581/1989 § 47

Subd. j par (2) amended chap 581/1989 § 48

Subd. k par (3) subpar (c) amended chap 581/1989 § 49 subpar (d) added chap 581/1989 § 50

Subd. m added chap 878/1990 § 12 eff. July 25, 1990 applying

on and after July 1, 1989

**DERIVATION**

Formerly § B18-29.0 added LL 2/1940 § 2

Amended chap 719/1964 § 5

Amended chap 519/1965 § 1

Subs f, g added chap 640/1966 § 1

Subs h, i added chap 976/1977 § 16

Sub h amended chap 957/1981 § 59

Subs i, j, k added chap 957/1981 § 60

Sub l relettered and amended chap 957/1981 § 61

(formerly sub i added chap 976/1977)

Sub h amended chap 914/1982 § 27

Subs i, j, k amended chap 914/1982 § 28

Sub h par 3 amended chap 910/1985 § 29

Sub i par 3 amended chap 910/1985 § 30

Sub k par 3 amended chap 910/1985 § 31

Sub h par 3 subpar c added chap 911/1985 § 33

Sub h par 3 amended chap 911/1985 § 34

Sub i par 3 subpar c added chap 911/1985 § 35

Sub i par 3 amended chap 911/1985 § 36

Sub k par 3 subpar c added chap 911/1985 § 37

Sub k par 3 amended chap 911/1985 § 38

Sub l amended chap 911/1985 § 39

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

*NYC Administrative Code 13-235*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-235 Custodian of funds.

The comptroller shall be custodian of the several funds provided for by this subchapter. Such funds, and all moneys which shall form a part thereof, or which shall hereafter accrue to them, shall be in his or her custody for the purposes of this subchapter subject to the direction, control and approval of such board as to disposition, investment, management and report.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-30.0 added LL 2/1940 § 2

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-236*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-236 Payments from funds.

All payments from such funds shall be made by such comptroller upon a voucher signed by the secretary of the board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-31.0 added LL 2/1940 § 2



Administrative Code of the City of New York



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

*NYC Administrative Code 13-237*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-237 Fund for current needs.

For the purpose of meeting disbursements for pensions, pensions-providing-for-increased-take-home-pay, annuities and other payments, there may be kept an available fund, not exceeding ten per cent of the total amount in the several funds provided for by this subchapter, on deposit in any bank in this state organized under the laws thereof or under the laws of the United States, or in any trust company incorporated by any law of this state, provided such bank or trust company shall furnish adequate security for such fund, and further provided that the sum deposited in any one bank or trust company shall not exceed twenty-five per cent of the paid-up capital and surplus of such bank or trust company.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-32.0 added LL 2/1940 § 2

Amended chap 223/1963 § 5



Administrative Code of the City of New York



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

*NYC Administrative Code 13-238*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-238 Prohibition upon trustees and employees.

Except as provided in this subchapter, the trustees and employees assigned to the board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment of the pension fund or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board; nor shall any such trustee or any such employee become an indorser or surety or become in any manner an obligor for moneys loaned by or borrowed of such pension fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-33.0 added LL 2/1940 § 2

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Administrative Code of the City of New York



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*NYC Administrative Code 13-239*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-239 Rules regulating loans to members.

Any member who shall have been a member continuously at least three years, may borrow from the pension fund, subject to such rules and regulations as may be approved by such board, an amount not exceeding ninety per centum of the amount of his or her accumulated contributions provided that the amount so borrowed together with interest thereon, can be repaid before attainment of age sixty-three years by additional deductions of ten per centum from his or her compensation made at the same time compensation is paid to the member. The amount so borrowed together with regular interest creditable to the account of the member on any unpaid balance thereof shall be repaid to the pension fund in equal instalments by deduction from the compensation of the member at the time the compensation is paid, but such instalments shall be at least two per centum of the member's earnable compensation and at least sufficient to repay before attainment of age sixty-three years, the amount borrowed with interest thereon. Notwithstanding anything to the contrary in this subchapter, the additional deductions required to repay the loan shall be made, and the interest paid on the loan shall be credited to the proper funds of the pension fund. In lieu of loan, any member whose rate of contribution is cancelled, may withdraw from his or her account and may restore thereto in any year as he or she may elect any sum in excess of the maximum in his or her annuity savings account and due thereto at the end of the calendar year in which he or she became entitled to cancel his or her rate. The actuarial equivalent of any unpaid balance of a loan at the time any benefit may become payable shall be deducted from the benefit otherwise payable except that each loan made pursuant to this section shall be insured by the pension fund, without cost to the member, against the death of such member in an amount up to but not exceeding twenty-five thousand dollars as follows:

1. Until thirty days have elapsed after the making thereof, no part of the loan shall be insured.

2. From the thirtieth through the fifty-ninth day after the making thereof, twenty-five per centum of the present value of the outstanding loan shall be insured.

3. From the sixtieth through the eighty-ninth day after the making thereof, fifty per centum of the present value of the outstanding loan shall be insured.

4. On and after the ninetieth day after the making thereof, all of the present value of the outstanding loan shall be insured.

Upon the death of a member, the amount of insurance so payable shall be credited to his or her accumulated contributions.

**HISTORICAL NOTE**

Section amended chap 468/2005 § 1, eff. Aug. 9, 2005.

Section amended chap 918/1990 § 1 eff. August 29, 1990

Section added chap 907/1985 § 1

Open par amended chap 588/2001 § 1, eff. Feb. 8, 2002

Open par amended chap 502/1991 § 1, eff. July 19, 1991

**DERIVATION**

Formerly § B18-34.0 added LL 2/1940 § 2

Amended chap 705/1954 § 1

Amended LL 16/1960 § 1

Amended chap 515/1961 § 1

Amended chap 782/1963 § 1

Amended chap 798/1965 § 1

Amended chap 643/1980 § 1

Amended chap 588/1982 § 1

Amended chap 594/1985 § 1

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*NYC Administrative Code 13-240*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-240 Termination of membership; discontinuance of service.

Should a member discontinue city-service except by death or retirement, he or she shall be paid such part of the amount of the accumulated deductions standing to the credit of his or her individual account in the annuity savings fund as he or she shall demand. Such board, however, in its discretion, may withhold for not more than one year after a member last rendered city-service all or part of his or her accumulated deductions, if after a previous discontinuance of service he or she withdrew from the annuity savings fund all or part of the amount of his or her accumulated deductions and failed to redeposit such withdrawn amount in such fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-35.0 added LL 2/1940 § 2

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*NYC Administrative Code 13-241*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-241 Termination of membership; election to city, county or state office.

Should a member previously in city-service as a city official or employee be elected a city, county or state official, he or she may on application therefor and approval by the mayor, withdraw from the pension fund, and upon such withdrawal, he or she shall be paid such part of the amount of the accumulated deductions standing to the credit of his or her individual account in the annuity savings fund as he or she shall be entitled to receive.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-36.0 added LL 2/1940 § 2



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

*NYC Administrative Code 13-242*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-242 Termination of membership; miscellaneous.

Membership in the pension fund shall cease upon the occurrence of any one of the following conditions:

1. When the time out of city-service, other than time on a preferred civil service list, of any member who has resigned or has been separated from the service through no fault of his or her own, and who has total service of less than twenty-five years, shall aggregate more than five years in any period not exceeding ten consecutive years since he or she last became a member.

2. When any member shall have withdrawn more than one-quarter of his or her accumulated deductions.

3. When any member shall die.

4. When any member shall be retired on a pension.

5. When any member becomes eligible to participate in another pension or retirement system supported in whole or in part by the city or state of New York.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-37.0 added LL 2/1940 § 2

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*NYC Administrative Code 13-243*

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-243 Death benefits; ordinary death benefits.

a. Upon the death of a member or of a former member, there shall be paid to his or her estate, or to such person as he or she has nominated or shall nominate by written designation duly executed and filed with such board during the lifetime of the member:

1. His or her accumulated deductions; and, in addition thereto,

2. If such member is in city-service or is on a civil service preferred eligible list by reason of city-service, unless a pension be payable by the city under the provisions of section 13-244 of this subchapter, an amount equal to the compensation earnable by him or her while a member, during the six months immediately preceding his or her death, and, if the total number of years in which allowable service was rendered exceeds ten, then an amount equal to the compensation earnable by him or her in city-service while a member during the twelve months immediately preceding his or her death, and in addition, in either such case, the reserve-for-increased-take-home-pay.

b. Until the first payment has been made on account of a retirement benefit without optional selection of a member, such member may be construed by such board to have been in city-service and the benefits provided in this section may be paid in lieu of the retirement allowance.

c. The member, or on the death of the member, the person nominated by him or her to receive either his or her

accumulated deductions, his or her death benefit, together with the reserve-for-increased-take-home-pay, or both, may provide by written designation duly executed and filed with such board that the actuarial equivalent of the benefit otherwise payable in a lump sum shall be paid to the person designated in the form of an annuity payable in installments not more often than once a month, the amount of such annuity to be determined at the time of the member's death on the basis of the age of the beneficiary at that time.

d. Notwithstanding the foregoing provisions of this section, and in lieu of any lesser amount thereby prescribed, upon the death of a member, prior to the first payment of a retirement benefit, who has attained the minimum age or completed the minimum period of service, as elected by him or her for retirement, and whether or not such member shall have filed application for retirement, there shall be paid to his or her estate, or to such person as he or she has nominated or shall nominate by written designation duly executed and filed in accordance with the requirements of this subchapter:

1. His or her accumulated deductions; and in addition thereto,

2. The amount of reserve equal to the present value of the pension he or she would have received if he or she had retired and became entitled to pension on the day immediately preceding his or her death.

The beneficiary of such deceased member shall have the right to accept such benefits in lump sum or in such periodic payments, on an annuity basis, as such beneficiary shall elect.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-38.0 added LL 2/1940 § 2

Amended chap 223/1963 § 5

Amended chap 1065/1965 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Board of Trustees of the Police Pension fund in determining eligibility for "death gamble" benefits may not consider unused vacation time and accrued terminal leave.-In re Wein, 34 App. Div. 2d 771, 311 N.Y.S. 2d 349 [1970].



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

*NYC Administrative Code 13-244*

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-244 Death benefits; accidental death benefits.

Upon the accidental death of a member before retirement, provided that evidence shall be submitted to such board proving that the death of such member was the natural and proximate result of an accident sustained while a member and while in the performance of duty at some definite time and place and that such death was not the result of wilful negligence on his or her part, his or her accumulated deductions shall be paid to his or her estate, or to such persons as he or she has nominated or shall nominate by written designation, duly acknowledged and filed with such board. Upon application by or on behalf of the dependent of such deceased member, such board shall grant a lump sum payment of the reserve-for-increased-take-home-pay and, in addition thereto, a pension of one-half of the final compensation of such employee, which pension shall in no case be less than one-half of the full salary payable to a first grade police officer on the date of death of such employee:

1. To his or her surviving spouse, to continue until the death of the surviving spouse; or

2. If there be no surviving spouse, or if the surviving spouse dies before any child of such deceased member shall have attained the age of eighteen years, or if a student, before such child shall have attained the age of twenty-three years, then to his or her child or children under such age, divided in such manner as such board in its discretion shall determine, to continue as a joint and survivor pension of one-half of his or her final compensation until every such child dies or attains such age; or

3. If there be no surviving spouse or child under the age of eighteen years, or if a student, under the age of twenty-three years, surviving such deceased member, then to his or her dependent father or mother, as the deceased member shall have nominated by written designation duly acknowledged and filed with such board; or, if there be no such nomination, then to his or her dependent father or to his or her dependent mother, as such board in its discretion shall direct, to continue for life.

4. Notwithstanding any other provision of law to the contrary, and solely for the purposes of this section, a member shall be deemed to have died as the natural and proximate result of an accident sustained in the performance of duty upon which his or her membership is based, and not as a result of willful negligence on his or her part, provided that such member was in active service upon which his or her membership is based at the time that such member was ordered to active duty, other than for training purposes, pursuant to Title 10 of the United States Code, with the armed forces of the United States, and such member died while on such active duty on or after the effective date of the chapter of the laws of two thousand five which added this subdivision while serving on such active military duty.

**HISTORICAL NOTE**

Section amended chap 348/1989 § 4. [See Note]

Section added chap 907/1985 § 1

Subds 2, 3 amended chap 733/1990 § 4 eff. January 1, 1991

Subd. 4 added chap 105/2005 § 22, eff. June 14, 2005.

**DERIVATION**

Formerly § B18-39.0 added LL 2/1940 § 2

Open par amended LL 145/1952 § 1

Amended chap 223/1963 § 5

**NOTE**

Provisions of chap 348/1989, as amended by chap 564/1993 § 1:

§ 6. This act shall take effect April 1, 1990, and shall apply to widows or widowers of members who remarry on or after April 1, 1990; provided however that, effective July 1, 1993, widows or widowers of members who had remarried prior to April 1, 1990, may apply to have their accidental death benefits and special accidental death benefits reinstated prospectively effective July 1, 1993; provided further, that for those widows or widowers of members who had remarried prior to April 1, 1990 and have been granted benefit reinstatement effective on or after July 1, 1993, if the deceased members' child or children who are under the age of eighteen, or if students under the age of twenty-three, are currently receiving accidental death or special accidental death benefits such benefits to said child or children shall cease upon reinstatement of such benefits to the widows or widowers, except if such child or children are issue of a prior marriage in which case the benefits shall be divided between the surviving widow or widower and the deceased member's child or children by a prior marriage such that fifty percent of the benefits accrues to the widow or widower and fifty percent of the benefits accrues to the surviving child or children of the prior marriage per stirpes until age eighteen or if a student until age twenty-three.

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where widow of retired policeman had been granted a pension as a matter of discretion under Greater New York Charter § 354, which pension by express statutory provision was to terminate upon a remarriage, but the widow

had secretly remarried and for several years thereafter had collected pension checks, representing by her endorsements that she had not remarried, and upon being discovered she had agreed to make restitution and had repaid nearly half of the moneys obtained when she sued for and obtained an annulment, she was not now entitled to an order compelling the trustees of the Pension Fund to vacate the determination of revocation upon theory that the annulment operated retroactively and destroyed the marriage ab initio, since even if she showed a clear legal right to restoration her conduct was such as to suggest that in exercise of discretion the extraordinary remedy of mandamus should be withheld, and moreover there was no semblance of a suggestion that the discretion to revoke the pension was improperly exercised.-Coffey v. Valentine, 107 (22) N.Y.L.J. (1-27-42) 399, Col. 7 M.

¶ 2. An order directing Trustees of the Police Pension Fund to award widow of patrolman an accidental death pension instead of an ordinary death pension based on death of the patrolman from injuries received when he fell from running board of a private automobile which he had hailed for a ride to a special post to which he had been assigned, was affirmed by the Court of Appeals without opinion.-Dolan v. McGahen, 297 N.Y. 913, 79 N.E. 2d 743 [1948].

¶ 3. Police pension board did not fulfill its duty to take evidence of facts and to make an independent determination of the issues based on the evidence when the board merely referred an application for accidental death benefits to a medical board of physicians and recommended denial of the application on the basis of the medical board's determination without a consideration of the evidence disclosed by the police department records. Brady v. City of N.Y., 22 N.Y. 2d 601, 241 N.E. 2d 236, 294 N.Y.S. 2d 215 [1968], reversing, 26 A.D. 2d 278, 274 N.Y.S. 13 [1966].

¶ 4. Petitioner, who was awarded an accidental death pension upon the death of her husband in 1971 and whose pension benefits were terminated upon her remarriage in 1977 to an employee of the Federal Government who died in 1978, was not entitled to reinstatement of her accidental death pension since it is the intent of the statute that benefits to a widow shall permanently terminate upon her remarriage.-Matter of Giraldi (Trustees of Board of Police Pension Fund), 183 (24) N.Y.L.J. (2-4-80) 6, Col. 4 T.

¶ 5. Where there was no evidence that decedent identified himself as a police officer and proof did not establish that he was acting as a police officer during a fight with another person outside of a bar, denial of request of mother for accidental death benefits was not arbitrary or capricious.-Breslin v. N.Y.C. Police Pension Fund Bd. of Trustees, 60 N.Y. 2d 622 [1983] affirming, 92 App. Div. 2d 800 [1983], reversing, 111 Misc. 2d 184 [1981].

**CASE NOTES**

¶ 1. In adjudicating a claim for accidental disability, the court cannot weigh the medical evidence or substitute its judgment for that of the Medical Board. Only if the Board of Trustees determination is "wholly irrational" should the court step in and upset the Board's determination. Appleby v. Herkommer, 165 A.D.2d 727, 563 N.Y.S.2d 786 (1st Dept. 1990).



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

*NYC Administrative Code 13-245*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-245 Accidental death benefits in the case of deaths occurring prior to July first, nineteen hundred sixty-five.

a. Notwithstanding the provisions of section 13-244 of this subchapter, in any case where a pension was or is awarded under the provisions of such section, by reason of the death of a member occurring before July first, nineteen hundred and sixty-five, such pension, subject to the provisions of subdivisions b and c of this section, shall be:

(1) For each full calendar year, on and after January first, nineteen hundred and sixty-five, an amount equal to one-half of the annual salary or compensation payable, on July first, nineteen hundred and sixty-five, to a member of the uniformed force of rank, seniority and other salary-determining status, equal to that of the deceased member on the date of his or her death, but in no case less than one-half of the salary payable, to a first grade police officer on July first, nineteen hundred sixty-five, and

(2) For any portion of a calendar year, on and after January first, nineteen hundred and sixty-five, the appropriate pro rata portion of the amount which would be payable, under the provisions of paragraph one of this subdivision a, for the full calendar year which includes such portion of a year, if a pension were payable under this section for such full calendar year.

b. Such pension shall be payable to the same persons and shall be subject to the same terms and conditions, including provisions as to termination, as the pension which would otherwise be payable, on and after January first, nineteen hundred and sixty-five, pursuant to section 13-244 of this subchapter by reason of the death of such member.

c. The pension payable pursuant to the provisions of subdivisions a and b of this section shall be in lieu of any pension which would otherwise be payable on and after the effective date of this section, pursuant to the provisions of section 13-244 of this subchapter and, except as otherwise provided in paragraph one of subdivision e of section 13-686 of this title, shall be in lieu of any supplemental retirement allowance which would otherwise be payable, on and after such date, under the provisions of subchapter six of chapter five of this title of the code or any other law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-39.1 added LL 68/1965 § 1

Sub c amended chap 994/1973 § 3



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

*NYC Administrative Code 13-246*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-246 Retirement; minimum age or period for service retirement.

Any member in city-service who shall have attained the minimum age or period of service retirement elected by him or her upon such member's own written application to and filed with the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, shall be retired as of the date specified in said application, provided that at the time so specified for his or her retirement, his or her term or tenure of office or employment shall not have terminated or have been forfeited, provided further that upon such member request in writing the member shall be granted a leave of absence from the date of filing said application until the date the retirement becomes effective.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-40.0 added LL 2/1940 § 2

Amended LL 45/1951 § 1

**CASE NOTES**

¶ 1. A statutory scheme providing for the payment of variable supplements to retirees who retired "for service" after 20 years but does not provide these benefits for persons who retired under other circumstances (such as disability) did not violate the eual protection clause of the constitution or violate the constitutional prohibition against impairment of contracts. Castellano v. Board of Trustees of the Police Officers Variable Supplements Fund, 937 F.2d 752 (2nd Cir. 1991).

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*NYC Administrative Code 13-247*

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-247 Retirement; selection of either twenty or twenty-five years of city-service.

a. Any person becoming a member who was not previously a member or who during his or her last previous membership in the pension fund contributed on the basis of a minimum period of retirement of twenty years of city-service, may elect, prior to the certification of his or her rate of contribution, to contribute on the basis of a minimum retirement period of twenty years of city-service, by a written election duly executed and acknowledged and filed with the board. The minimum period of retirement for such member so electing shall be twenty years of city-service, and all contributions and benefits payable by or on account of any such member shall be computed on the basis of such minimum retirement period.

b. Any person becoming a member who was not previously a member or who during his or her last previous membership in the pension fund contributed on the basis of a minimum period of retirement of twenty-five years of city-service, may elect, prior to certification of his or her rate of contribution, to contribute on the basis of a minimum retirement period of twenty-five years of city-service by a written election duly executed and acknowledged and filed with the board. The minimum period of retirement for such members so electing shall be twenty-five years of city-service, and all contributions and benefits payable by or on account of any such member shall be computed on the basis of such minimum retirement period.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-41.0 added LL 2/1940 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. Police lieutenant who had been in the service for just under twenty years when he was suspended from duty without pay pending trial of charges, and who consequently had been incapable of performing any service in the Police Department between the day of suspension and his dismissal from the force on a finding of guilt made on a date more than twenty years after his original entry into the service, **held** not entitled to be retired on theory he had served at least twenty years in the force within meaning of Local Law No. 2 of 1940.-In re Behan (Valentine), 106 (79) N.Y.L.J. (10-2-41) 861, Col. 1 M.

¶ 2. Police lieutenant might not apply for retirement during period of his suspension from duty without pay on charges which ultimately resulted in his conviction and dismissal from the force.-Id.



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

*NYC Administrative Code 13-248*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-248 Retirement; selection of age fifty-five.

Any person becoming a member who was not previously a member or who during his or her last previous membership in the pension fund contributed on the basis of a minimum retirement age of fifty-five, may elect, prior to the certification of his or her rate of contribution, to contribute on the basis of a minimum retirement age of fifty-five by a written election duly executed and acknowledged and filed with the board. The minimum age of retirement for such members so electing shall be fifty-five years, and all contributions and benefits payable by or on account of such member shall be computed on the basis of such minimum retirement age.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-41.1 added LL 2/1940 § 2

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*NYC Administrative Code 13-249*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-249 Method of computing certain pensions.

In lieu of any other retirement benefits granted to him or her upon retirement from the police force, any member who shall have served as a chief inspector/chief of operations of the police department on or after July first, nineteen hundred sixty-six, shall be entitled upon retirement to a retirement allowance which shall consist of an annuity which is the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement from the police force and a pension which, when added to such annuity, will make such retirement allowance equal to two-thirds of his or her salary as chief inspector. For the purpose of computing the annuity portion of such retirement allowance, such member's accumulated deductions shall be the required amount of such deductions at the time of such member's retirement from the police force, without any increase resulting from excess contributions and without any decrease resulting from withdrawals, loans, optional modification, payment of his or her contributions for old age and survivor's insurance coverage, or from any other transaction authorized by law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-41.2 added chap 970/1964 § 1

Amended chap 733/1967 § 1

Amended chap 1009/1972 § 5

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*NYC Administrative Code 13-250*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-250 Continuance of retirement allowance upon election to public office.

Notwithstanding the provisions of any general, special, local law, charter, administrative code or rule or regulation to the contrary, the payment of any pension from the police pension fund, subchapter two of this chapter, shall not be revoked, repealed or diminished by reason of the pensioner holding or receiving any compensation as the result of his or her election to a public office under the state of New York, or of any city, county or other political subdivision or agency or board of the state of New York.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-41.3 added chap 1029/1970 § 1

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*NYC Administrative Code 13-251*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-251 Retirement; for ordinary disability.

Medical examination of a member in city-service for ordinary disability shall be made upon the application of the commissioner, or upon the application of such member or of a person acting in his or her behalf, stating that such member is physically or mentally incapacitated for the performance of duty and ought to be retired. If such medical examination shows that such member is physically or mentally incapacitated for the performance of duty and ought to be retired, the medical board shall so report and the board shall retire such member for ordinary disability not less than thirty nor more than ninety days after the execution and filing of application therefor with the pension fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-42.0 added LL 2/1940 § 2

Amended chap 935/1961 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Although the Medical Board of the Police Department is not bound by the recommendation of its physician, it must set forth some reason for rejecting the physician's report. In the absence of a satisfactory explanation, a trial of the issues was required to determine whether the Department was arbitrary in rejecting an application for a service-connected pension.-Tenore v. City of New York, 148 (101) N.Y.L.J. (11-27-62) 15, Col. 3 F.



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

*NYC Administrative Code 13-252*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-252 Retirement; for accident disability.

Medical examination of a member in city-service for accident disability and investigation of all statements and certifications by him or her or on his or her behalf in connection therewith shall be made upon the application of the commissioner, or upon the application of a member or of a person acting in his or her behalf, stating that such member is physically or mentally incapacitated for the performance of city-service, as a natural and proximate result of such city-service, and certifying the time, place and conditions of such city-service performed by such member resulting in such alleged disability and that such alleged disability was not the result of wilful negligence on the part of such member and that such member should, therefore, be retired. If such medical examination and investigation shows that such member is physically or mentally incapacitated for the performance of city-service as a natural and proximate result of an accidental injury received in such city-service while a member, and that such disability was not the result of wilful negligence on the part of such member and that such member should be retired, the medical board shall so certify to the board, stating the time, place and conditions of such city-service performed by such member resulting in such disability, and such board shall retire such member for accident disability forthwith.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-43.0 added LL 2/1940 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. Petitioner, who applied for an order directing the trustees of the Police Pension Fund to grant him a service-connected disability pension rather than an ordinary disability pension, claimed that the surgeon submitted false reports because of personal hatred and animosity toward him which prevented a fair evaluation of whether the disability was service connected or not. **Held,** the matter would be remanded to the trustees so that there would be such a review as to preclude a claim that his pension application was not fairly processed.-Matter of Varchim (Trustees, etc.), 145 (66) N.Y.L.J. (4-6-61) 13, Col. 8 T.

¶ 2. A patrolman was retired because of an anxiety complex which the Board of Trustees found prevented him from carrying out his duties. The patrolman's psychiatrist testified that the complex did not interfere with the patrolman's competency. **Held,** the court would not substitute its judgment for that of the Board of Trustees as to which medical opinion was correct.-Epstein v. Murphy, 148 (118) N.Y.L.J. (12-20-62) 10, Col. 1 M, aff'd 258 N.Y.S. 2d 324 [1965].

¶ 3. Petitioner was properly denied service-connected disability retirement. In 1948 he sustained laceration of hand and sprain of both arms which incapacitated him for two weeks. About one month later a tremor developed that eventually led to his retirement. An independent neurologist concluded that the 1948 accident was not responsible for the tremor.-In re Kaplan, 151 (25) N.Y.L.J. (2-5-64) 14, Col. 3 M, rev'd on other grds. 25 App. Div. 2d 827, 269 N.Y.S. 2d 587 [1966].

¶ 4. Refusal to grant police officers a service-connected disability pension was arbitrary where medical proof established a causal relation between disabling condition of psychoneurosis, and the injuries sustained by the officer in line of duty accidents.-Tenore v. City of N.Y., 150 (107) N.Y.L.J. (12-3-63) 12, Col. 6 M.

¶ 5. Determination retiring police officer under non-accident disability, would not be disturbed, where although petitioner had been injured in a collision in 1954 and he had thereafter complained of shoulder and back pain, there was no evidence to show a causal relation between the accident and present disability.-Bree v. City of N.Y., 150 (122) N.Y.L.J. (12-24-64) 8, Col. 3 F.

¶ 6. A policeman, injured in 1963, applied for disability retirement on April 29, 1964. On June 9 the medical board certified his disability to the Board of Trustees of the Police Pension Fund. Before the Board could act the Police Commissioner suspended the policeman because of his refusal to answer questions before a grand jury. The policeman was afforded no hearing regarding his refusal to testify before the grand jury. The Court rejected the contention of petitioner that his right to be retired on a pension vested automatically on June 9 since he had not requested retirement until July 1. Moreover, as no regular meeting of the Board of Trustees was held before July 15 when petitioner's employment was terminated the Board did not fail to act "forthwith" as provided in this section. However, before dismissal petitioner should have been given a hearing at which he could have explained his refusal to answer questions before the grand jury. Absence of such notice and hearing constituted a denial of due process of law. The proceeding was remanded to determine upon due notice an opportunity to petitioner to be heard, whether his employment in the police department should be terminated.-Conlon v. Murphy, 24 App. Div. 2d 737, 263 N.Y.S. 2d 360 [1965], reversing, 44 Misc. 2d 504, 254 N.Y.S. 2d 68 [1964].

¶ 7. A police officer whose application for designation of a certain injury as a "line of duty injury" had been disapproved could bring an Article 78 proceeding for an order directing approval of his application as there was no administrative appeal from such determination and he was presently aggrieved as such determination has immediate financial consequences for the injured officer and as such determination is final it is judicially reviewable.-Jedynski v. Murphy, 154 (109) N.Y.L.J. (12-8-65) 17, Col. 1 T.

¶ 8. Where there was ample credible evidence to support determination of medical board that his psychiatric

disorder was not due to his police career petitioner did not establish his right to retire for a service-connected disability even though his psychiatrist reported that his mental incapacity was a natural and proximate result of such city service. A mere difference of medical opinion as to causal relationship over a long period of service is insufficient to find that the determination of the board was arbitrary. Wegell v. Board of Trustees of Police Pension Fund, 161 (36) N.Y.L.J. (2-21-69) 15, Col. 2 F.

¶ 9. Petitioner whose application for service connected disability retirement was denied and who was retired on ordinary disability was entitled to a trial where the medical board found him unfit to perform police duty by reason of a compensation neurosis but there was no evidence to show whether the neurosis was caused by any event other than injuries that occurred in the line of duty.-Matter of Anthony Melnick (Police Pension Fund) 165 (57) N.Y.L.J. (3-25-71) 18, Col. 1 F.

¶ 10. There was no unreasonable delay in processing petitioner's application for retirement for disability despite claim by petitioner that his application was withheld from the meeting of trustees scheduled for February 23 because the board knew that petitioner was being sentenced for a crime on February 28 where applications of others examined by the medical board of the police pension fund on the same day as petitioner were also processed in March.-Glazer v. Board of Trustees of the Police Pension Fund, etc., 66 A.D. 2d 760, 411 N.Y.S. 2d 611 [1978], aff'd, 48 N.Y. 2d 790 [1979].

¶ 11. Police officer upon retirement for disabling heart disease should have been retired with accidental disability benefits rather than ordinary disability benefits since statutory presumption that this condition was incurred in the performance of duty was not rebutted and presumption carries with it presumption of accidental causation.-Lemmerman v. McGuire, 102 Misc. 2d 56 [1979].

¶ 12. Court erred in directing that an accident disability retirement pension be granted to petitioner because this power resides in the board of trustees and not the court which must remand when there has been an arbitrary or capricious determination.-Matter of Durstec, 81 A.D. 2d 553 [1981].

¶ 13. Trustees of the Police Pension Fund acted without authority when they adopted resolution defining an accidental disability as one caused by the intervention of an external, unexpected and unusual fortuitous event proximately causing the injury where the provisions of this section state that accidental disability retirement may be awarded if physical incapacity is the "natural and proximate result of such city service".-Picciotto v. McGuire, 112 Misc. 2d 763 [1982].

¶ 14. Denial of accidental disability to petitioner, a police officer who was injured while removing barriers at a concert in Central Park, by Board of Trustees of Police Pension Fund was not capricious and unreasonable where it found that the injury was the result of a performance of an ordinary duty and not the result of an accident.-Del Grosso v. Board of Trustees of Police Pension Fund, 113 Misc. 2d 440 [1982].

¶ 15. Where petitioner did not show or even allege that his elbow disease was the result of any particular accident matter should not have been remanded to Medical Board to identify cause of disability in proceeding to obtain accident disability retirement pension.-Manzolillo v. N.Y.C. Employees' Retirement System, 87 App. Div. 2d 792 [1982].

¶ 16. Petitioner's hearing loss which was illegally caused by his exposure to noise on the firing range while a firing range officer for the police department did not entitle him to a service-connected accident disability retirement, and he was entitled to be retired for ordinary disability only.-Matter of Cardone v. Codd, 59 N.Y. 2d 700 [1983].

¶ 17. Where petitioner, an employee of the sanitation department, injured his back while lifting a heavy can of garbage he was not entitled to accident disability retirement since an injury which occurs without an unexpected event as the result of activity undertaken in the performance of ordinary employment duties is not an accidental injury within the meaning of this section.-Shannon v. Bd. of Trustees of N.Y.C. Employees' Retirement System, 92 App. Div. 2d 528 [1983].

¶ 18. Petitioner, a Housing Authority Patrolman, was not entitled to accident disability benefits when while on duty he sustained a disabling back condition when he placed a spare tire in the trunk of his patrol car, such injury not being within the scope of "accidental injury" for purposes of this statute.-Menno v. N.Y.C. Employees' Retirement System, 91 App. Div. 2d 537 [1982].

¶ 19. To obtain accidental disability retirement, petitioner must prove that he was physically or mentally incapacitated because of an accidental injury received in city service, and it is not sufficient to establish that the disability is employment related.-Lichtenstein v. Bd. of Trustees of Police Pension Fund, 57 N.Y. 2d 1010 [1982].

¶ 20. Statutory presumption that a disabling heart condition sustained by a New York City police officer was accidentally sustained as a result of his employment was rebutted when petitioner's disabling heart condition, which was mitral valve disease, was caused by rheumatic heart disease, and that disease is always caused by rheumatic fever.-Matter of Vecchiarello v. Bd. of Trustees of Police Pension Fund, 115 Misc. 2d 241 [1982].

¶ 21. Injury to police officer's knee resulting from fall in abandoned building while in line of duty was result of performance of ordinary duty and not the result of an accidental injury. Determination of board reinstated granting ordinary disability retiremant and denying accidental disability retirement.-Michael Tarr v. Board of Trustees of Police Pension Fund of NYC Police Dept., 98 A.D. 2d 687 [1983].

¶ 22. Petitioner hurt his back doing a task not ordinarily his duty and was retired for ordinary disability. He seeks accidental disability. Denied. For there to be a determination of accidental disability "there must be an intervening, external and unusual event which causes the injury, and not a routine movement causing a preexisting condition to flare up."-In Re Aiello v. McGuire, 124 Misc. 2d 415 [1984].

¶ 23. In order to obtain accident disability retirement, a petitioner must establish that he suffered physical or mental incapacitation "as a natural and proximate result of an accidental injury received in . . . city-service" as outlined in this section and must be sudden, unexpected, out of the ordinary and injurious in impact. A loss of balance and fall to the floor or a slip on wet pavement and fall are both within the scope of this section.-Matter of McCambridge v. McGuire, 62 N.Y. 2d 563 [1984].

**CASE NOTES**

¶ 1. The determination by the Police Pension Fund trustees that petitioner's psychological disability, resulting in part from stress and other traumatic events related to his police work was not an "accidental injury" within the meaning of Ad Cd §13-252, was not arbitrary, capricious or an abuse of discretion. Trustees were entitled to rely on the opinion of the Medical Board regarding medical testimony. Matter of Casiano v. Brown, 209 AD2d 182, 617 N.Y.S.2d 477, leave to appeal denied, 85 N.Y.2d 804, 626 N.Y.S.2d 755 [1994].

¶ 2. Disability retirement under Ad Cd §13-252 was properly disallowed when the Medical Board repeatedly addressed the issue whether smoke inhalation by running up and down stairs while evacuating a building could have caused the chronic condition of premature ventricular contractions sometime later. Matter of Stegmuller v. Brown, 216 AD2d 23, 627 N.Y.S.2d 638, leave to appeal denied 87 N.Y.2d 807, 641 N.Y.S.2d 598 [1995].

¶ 3. Accidential disability, for purposes of pension and retirement, must meet the common sense definition of a sudden and unexpected event, as opposed to an injury resulting from routine performance of duty. It is the precipitating cause of the injury, rather than the job assignment at the time, that determines entitled to accidental disability benefits. Hallihan v. Ward, 169 A.D.2d 542, 564 N.Y.S.2d 395 (1st Dept. 1991).

¶ 4. In an accidental disability case, where the Board of Trustees has a determination by a tie vote, this will result in ordinary disability retirement. That finding will be disturbed only if entitlement to greater benefits can be show as a matter of law. Hallihan v. Ward, supra.

¶ 5. The Medical Board may properly consider the length of time which passes between a line of duty injury and the onset of back pain in making its recommendation that there is no causal connection between the line of duty injury and the current disability. Schmidt v. McGuire, 119 A.D.2d 532, 501 N.Y.S.2d 55 (1st Dept. 1986); Matter of Scotto v. Board of Trustees, 76 A.D.2d 774, 429 N.Y.S.2d 3 (1st Dept. 1980), aff'd 54 N.Y.2d 918, 445 N.Y.S.2d 134.

¶ 6. A fall down a flight of stairs as a result of one's own misstep is not an out-of-the ordinary or unexpected event as to constitute an accidental injury within the meaning of the statute. Starnella v. Bratton, 92 N.Y.2d 836, 677 N.Y.S.2d 62 (1998), reargument denied, 92 N.Y.2d 921, 680 N.Y.S.2d 461 (1998). Accord, Rosenthal v. Board of Trustees of Police Pension Fund, Article II, 252 A.D.2d 388, 675 N.Y.S.2d 350 (App.Div. 1st Dept. 1998), leave to appeal denied, 93 N.Y.2d 801, 687 N.Y.S.2d 625 (1999) (police officer fell on stairs, allegedly because lights over a revolving door were not working).

¶ 7. A police officer fell in a precinct parking lot after he stepped out of a patrol car and was walking towards the station house. The fall was allegedly due to a construction hole. The court held that the occurrence was an "accident" within the meaning of the statute. Finazzo v. Safir, 273 A.D.2d 75; 708 N.Y.S.2d 410 (App.Div. 1st Dept. 2000).

¶ 8. Petitioner, who was employed at the time as a New York City police officer, was injured when she fell from a second-story window ledge to which she had climbed to gain access, via a window, to an adjoining office at the Queens Narcotic District Office. The court held that petitioner's injury was not the result of an "accident" within the meaning of the statute, but was the result of her conscious and highly imprudent decision to attempt to gain entry by means of a window ledge. Thus, petitioner was retired on ordinary disability rather than on accidental disability. Sullivan-Dorsey v. Board of Trustees of the New York City Police Pension Fund, 288 A.D.2d 131, 733 N.Y.S.2d 399 (1st Dept. 2001).

¶ 9. In Baird v. Kelly, 25 A.D.3d 311, 806 N.Y.S.2d 578 (1st Dept. 2006), a police officer contended that he developed post-traumatic stress disorder after being harassed by reason of his anti-corruption activities. He had been an investigator for the Commission to Investigate Allegations of Police Corruption (Mollen Commission). The court held that the campaign of harassment was not an "accident" for purposes of accidental disability retirement. The behavior arose out of purposeful conduct, not accidental happenstance. Petitioner's proper remedy for the campaign of harassment is a civil rights action, the court said.

¶ 10. A police officer developed cancer of the right tonsil and soft palate area. He claimed that the cancer had been environmentally induced as a result of his prolonged exposure to and inhalation of toxic debris without protective respiratory apparatus, during the collapse of the World Trade Center, and thereafter, when he was involved in the rescue and recovery operation. He brought an Article 78 proceeding after the Board of Trustees denied his application for accidental disability retirement. The court held that where the officer presented medical documentation that petitioner's cancer was aggravated by the service related injury, and the Board of Trustees had no credible evidence of lack of causation, the officer was entitled to accidental disability retirement. Thus, where a line of duty incident aggravates a pre-existing condition, accidental disability retirement must be awarded. Lahm v. Bloomberg, 2004 WL 1381060, N.Y.L.J., Apr. 27, 2004, at 18, col. 1 (Sup.Ct. New York Co.).

¶ 11. A court upheld a determination by respondent Board of Trustees that petitioner's knee injury was not caused by an "accident" within the meaning of the statute. The injury occurred when petitioner moved her chair away from her desk, and the chair slid backwards out from under her, causing her to fall. There were no visible hazards in the office. The court said that the fall was analogous to a fall down stairs as a result of one's own misstep, i.e., not so out-of-the-ordinary or unexpected as to constitute an accidental injury as a matter of law. Gamman v. Kelly, 11 A.D.3d 389, 784 N.Y.S.2d 44 (1st Dept. 2004).

¶ 12. The court upheld a determination by the Board of Trustees denying petitioner accidental disability retirement benefits. Petitioner had twisted and felt a snap in his knee as he exited his patrol car to direct traffic. The officer's stepping out of his car to direct traffic did not, without more, constitute the sort of sudden, fortuitous mischance that could be deemed accidental within the meaning of the statute. Gray v. Kelly, 15 A.D.3d 275, 791 N.Y.S.2d 9 (1st Dept.

2005).

¶ 13. In one case, a police officer claimed that she worked for a day at the 9/11 disaster site, and that when she refused to do another tour of duty at the site, a superior officer handcuffed and humiliated her, after whch she was psychologically unable to function as a police officer. She therefore sought accidental disability retirement. The court, however, found that the incident was not qualified by the statute, and upheld the Trustee's denial of accidental disability retirement. In re Stephanie Picciurro v. Bd. of Trustees of the NYC Police Pension Fund 2007 NY Slip Op. 9914, 46 AD3d 346, 847 NYS2d 553, 2007 NY App. Div. Lexis 12744 (App. Div. 1st Dept).



Administrative Code of the City of New York



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

*NYC Administrative Code 13-252.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-252.1 Accidental disability retirement; World Trade Center presumption.

1. (a) Notwithstanding any provisions of this code or of any general, special or local law, charter or rule or regulation to the contrary, if any condition or impairment of health is caused by a qualifying World Trade Center condition as defined in section two of the retirement and social security law, it shall be presumptive evidence that it was incurred in the performance and discharge of duty and the natural and proximate result of an accident not caused by such member's own willful negligence, unless the contrary be proved by competent evidence.

(b) The New York City Police Pension Fund (NYCPPF) board of trustees is hereby authorized to promulgate rules and regulations to implement the provisions of this paragraph.

2. (a) Notwithstanding the provisions of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a member who participated in World Trade Center rescue, recovery or cleanup operations as defined in section two of the retirement and social security law, and subsequently retired on a service retirement, an ordinary disability retirement, an accidental disability retirement, or a performance of duty disability retirement and subsequent to such retirement is determined by the NYCFDPF board of trustees to have a qualifying World Trade Center condition, as defined in section two of the retirement and social security law, upon such determination by the NYCFDPF board of trustees, it shall be presumed that such disability was incurred in the performance and discharge of duty as the natural and proximate result of an accident not caused by such member's own willful negligence, and that the member would have been physically or mentally incapacitated for the performance and

discharge of duty of the position from which he or she retired had the condition been known and fully developed at the time of the member's retirement, unless the contrary is proven by competent evidence.

(b) The NYCPPF board of trustees shall consider a reclassification of the member's retirement as an accidental disability retirement effective as of the date of such reclassification.

(c) Such member's retirement option shall not be changed as a result of such reclassification.

(d) The member's former employer at the time of the member's retirement shall have an opportunity to be heard on the member's application for reclassification by the NYCPPF board of trustees according to procedures developed by the NYCPPF board of trustees.

(e) The NYCPPF board of trustees is hereby authorized to promulgate rules and regulations to implement the provisions of this paragraph.

3. Notwithstanding any other provision of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a retiree who: (1) has met the criteria of subdivision one of this section and retired on a service or disability retirement, or would have met the criteria if not already retired on an accidental disability; and (2) has not been retired for more than twenty-five years; and (3) dies from a qualifying World Trade Center condition, as defined in section two of the retirement and social security law, as determined by the applicable head of the retirement system or applicable medical board, then unless the contrary be proven by competent evidence, such retiree shall be deemed to have died as a natural and proximate result of an accident sustained in the performance of duty and not as a result of willful negligence on his or her part. Such retiree's eligible beneficiary, as set forth in section 13-244 of this subchapter, shall be entitled to an accidental death benefit as provided by section 13-244 of this subchapter, however, for the purposes of determining the salary base upon which the accidental death benefit is calculated, the retiree shall be deemed to have died on the date of his or her retirement. Upon the retiree's death, the eligible beneficiary shall make a written application to the head of the retirement system within the time for filing an application for an accidental death benefit as set forth in section 13-244 of this subchapter requesting conversion of such retiree's service or disability retirement benefit to an accidental death benefit. At the time of such conversion, the eligible beneficiary shall relinquish all rights to the prospective benefits payable under the service or disability retirement benefit, including any post-retirement death benefits, since the retiree's death. If the eligible beneficiary is not the only beneficiary receiving or entitled to receive a benefit under the service or disability retirement benefit (including, but not limited to, post-retirement death benefits or benefits paid or payable pursuant to the retiree's option selection), the accidental death benefit payments to the eligible beneficiary will be reduced by any amounts paid or payable to any other beneficiary.

4. Notwithstanding any other provision of this code or of any general, special or local law, charter, or rule or regulation to the contrary, if a member who: (1) has met the criteria of subdivision one of this section; and (2) dies in active service from a qualifying World Trade Center condition, as defined in section two of the retirement and social security law, as determined by the applicable head of the retirement system or applicable medical board to have been caused by such member's participation in the World Trade Center rescue, recovery or cleanup operations, as defined in section two of the retirement and social security law, then unless the contrary be proven by competent evidence, such member shall be deemed to have died as a natural and proximate result of an accident sustained in the performance of duty and not as a result of willful negligence on his or her part. Such member's eligible beneficiary, as set forth in section 13-244 of this subchapter, shall be entitled to an accidental death benefit provided he or she makes written application to the head of the retirement system within the time for filing an application for an accidental death benefit as set forth in section 13-244 of this subchapter.

**HISTORICAL NOTE**

Section amended chap 489/2008 § 15, eff. Aug. 5, 2008 and deemed to

have been in full force and effect Sept. 11, 2001.

**DERIVATION**

Formerly § Section amended chap 93/2005 § 11, eff. June 14, 2005 and deemed to have been in full force and effect on and after Sept. 11, 2001 per chap 93/2005 § 14 and chap 104/2005 § A14 of § 1.

Section added chap 104/2005 § 11, eff. June 14, 2005 and deemed to have been in full force and effect on and after Sept. 11, 2001.

Subd. 1 par (e) amended chap 495/2007 § 23, eff. Aug. 1, 2007 and deemed to have been in full force and effect on and after June 14, 2007.

Subd. 2 par (b) subpar (i) amended chap 495/2007 § 24, eff. Aug. 1, 2007 and deemed to have been in full force and effect on and after June 14, 2007.

Subd. 2 par (b) subpar (i) amended chap 444/2006 § 11, eff. Aug. 14, 2006.

Subd. 3 amended chap 5/2007 § 19, eff. Mar. 13, 2007 and deemed to have been in full force and effect Sept. 11, 2001.

Subd. 3 added chap 445/2006 § 12, eff. Aug. 14, 2006 and deemed to have been in full force and effect Sept. 11, 2001.

Subd. 4 added chap 5/2007 § 19, eff. Mar. 13, 2007 and deemed to have been in full force and effect Sept. 11, 2001.

**CASE NOTES**

¶ 1. In Serrano v. Kelly, 14 Misc.3d 1203(A), 2006 WL 3691277 (Sup.Ct. New York Co.), a police officer had worked at the Fresh Kills landfill and at the morgue during the 9/11 recovery efforts. He later suffered from atrial fibrillation (irregular heartbeat) and sought accidental disability retirement. Although the Medical Board granted ordinary disability retirement (ODR), it denied petitioner accidental disability retirement (ADR). In a subsequent Article 78 action, the court sustained the Medical Board's determination. The court explained that § 13-152.1 creates a presumption of accidental disability for any condition or impairment of health caused by a **qualifying condition**, where the officer participated in the World Trade Center recovery operation for a minimum of 40 hours. However, atrial fibrillation does not come within the definition of "qualifying condition or impairment of health." Petitioner attempted to show that his condition falls under diseases of the upper or lower respiratory tract, which does come within the definition of qualifying condition. Petitioner pointed out that the Mayo Clinic states that atrial fibrillation can be caused by lung disease. However, where petitioner had no pulmonary complaints at the time of his appearance before the Medical Board, the court sustained the Medical Board's finding that petitioner did not qualify for ADR (note-although

petitioner's own physician found the pulmonary function tests to be somewhat abnormal, that physician did not say that the pulmonary evaluation was "not significantly revealing").

¶ 2. Traumatic stress disorder can be a basis for recovery of accidental disability benefits. Where a police officer who worked at the World Trade Center site following 9/11 has such a disorder, there is a presumption in favor of accidental disability. In order for the presumption to be rebutted, there must be some credible evidence to support a "no causation" finding. In Jefferson v. Kelly, 14 Misc.3d 191, 829 N.Y.S.2d 418 (Sup.Ct. New York Co. 2006), where there was evidence that the stress disorder was related to the death of petitioner's mother and his cardiac disease, the court held that the Medical Board had a reasonable basis for finding that the presumption had been rebutted.

¶ 3. The City Fire Department cannot refuse to process a firefighter's application for disability retirement merely because a disciplinary proceeding is pending against the firefighter. Benson v. City of NY, 15 Misc.3d 1022, 834 N.Y.S.2d 647 (Sup.Ct. Kings Co. 2007).

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Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-253 Dependent benefits for surviving spouses and orphans.

a. The board shall pay a dependent benefit to the surviving spouse, child or children or dependent parent or parents of any deceased member if the death of such member occur during his or her service or after he or she was retired from service. The amount of any such dependent benefit to be paid by the board to each of the several representatives of such member, in case there shall be more than one, from time to time, may be determined by such board according to the circumstances of each case. The annual dependent benefit to the representative or representatives of such member, however, shall be six hundred dollars, and no part of such sum shall be paid to any such surviving spouse who shall remarry, after such remarriage, or to any child after it shall have reached the age of eighteen years.

b. Dependent benefits shall be granted to the surviving spouse, child or children or dependent parent or parents of a member pursuant to this section only if such member, upon becoming a member, shall elect to contribute the additional deductions provided by subdivision d of section 13-227 of this subchapter.

c. The benefits granted pursuant to this section shall be in addition to any other benefit provided for by this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-44.0 added LL 2/1940 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. Evidence that plaintiff's former husband had disappeared in the spring of 1921, under circumstances indicating that he had taken his life shortly thereafter, inasmuch as he had been gassed in the World War, was in poor health and threatened suicide, that he was never thereafter heard from although inquiry was made at morgues, hospitals and among friends and relatives, that plaintiff and her second husband, who was a New York City police officer, commenced to live together as man and wife in 1924, believing that plaintiff's former husband was dead, and continued to live together in such relationship without interruption openly and in good faith until the second husband died in 1940, and that at a formal gathering of friends and relatives they had acknowledged themselves as married in 1930, **held** to establish that plaintiff was the lawful wife of the second husband until his death, and was entitled to a pension from the City of New York Police Pension Fund on ground she was his widow.-Cavanaugh v. Valentine, 109 (71) N.Y.L.J. (3-27-43) 1205, Col. 5 F.

¶ 2. A policeman in 1938 entered into a separation agreement with his first wife pursuant to which he agreed not to change beneficiary in any of his insurance policies or "benefits on his life". In 1940, he nominated his first wife as the person to receive a return of deductions in accordance with § B18-7.0. In 1944 he retired to Florida, divorced his first wife and remarried. **Held,** the right to the widow's allowance was not an insurance policy or benefit. Such a right depends upon the statute and not upon the terms of a separation agreement. Also the right to receive deductions had no bearing upon the question, since upon retirement no one had any right to deductions.-Kriedler v. Kreidler, 1 Misc. 2d 85, 146 S 2d 160 [1955].

**CASE NOTES**

¶ 1. Where the Board of Trustees denies an application for accident disability pension by a tie vote based on the procedural practice set forth in Matter of City of New York v. Schoeck, 294 N.Y. 559, a reviewing court may set aside that determination only if it can conclude as a matter of law that the disability was the natural and proximate result of a service related accident. Although the Board of Trustees is not bound by the determination of the medical board on the issue of causation, it may, at its discretion, rely on the medical board's opinion. So long as there is no indication that the medical board disregarded the proper rule of causation, the Board of Trustees is not required to conduct an independent investigation as to whether a service related accident precipitated the development of a latent condition or aggravated a pre-existing condition. Shedd v. Board of Trustees of the New York City Fire Dept., 177 A.D.2d 632, 575 N.Y.S.2d 336 (2nd Dept. 1991).

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-254 Safeguards on disability retirement.

a. Once each year the board may, and upon his or her application shall, require any disability pensioner, under the minimum age or period for service retirement elected by him or her, to undergo medical examination. Such examination shall be made at the place of residence of such beneficiary or other place mutually agreed upon. Upon the completion of such examination the medical board shall report and certify to the board whether such beneficiary is or is not totally or partially incapacitated physically or mentally and whether he or she is or is not engaged in or able to engage in a gainful occupation. If the board concurs in a report by the medical board that such beneficiary is able to engage in a gainful occupation, he or she shall certify the name of such beneficiary to the appropriate civil service commission, state or municipal, and such commission shall place his or her name as a preferred eligible on such appropriate lists of candidates as are prepared for appointment to positions for which he or she is stated to be qualified. Should such beneficiary be engaged in a gainful occupation, or should he or she be offered city-service as a result of the placing of his or her name on a civil service list, such board shall reduce the amount of his or her disability pension and his or her pension-for-increased-take-home-pay, if any, to an amount which, when added to that then earned by him or her, or earnable by him or her in city-service so offered him or her, shall not exceed the current maximum salary for the title next higher than that held by him or her when he or she was retired. Should the earning capacity of such beneficiary be further altered, such board may further alter his or her pension and his or her pension-for-increased-take-home-pay, if any, to an amount which shall not exceed the rate of pension and his or her pension-for-increased-take-home-pay, if any, upon which he or she was originally retired but which, subject to such limitation, shall equal, when added to that

earnable by him or her, the current maximum salary for the title next higher than that held by him or her when he or she was retired. The provisions of this section shall be executed, any provision of the charter or the code to the contrary notwithstanding.

b. Should any disability pensioner, under the minimum age or period for service retirement elected by him or her, refuse to submit to one medical examination in any year by a physician or physicians designated by the medical board, his or her pension and his or her pension-for-increased-take-home-pay, if any, may be discontinued until his or her withdrawal of such refusal. Should such refusal continue for one year, all his or her rights in and to such pension and his or her pension-for-increased-take-home-pay, if any, may be revoked by such board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 438/1986 § 2. [See Note after § 13-171.]

**DERIVATION**

Formerly § B18-44.1 added LL 2/1940 § 2

Amended chap 223/1963 § 5

Sub a amended chap 274/1977 § 2

**CASE NOTES**

¶ 1. The court upheld the denial by the Board of Trustees of an application of a police officer for reinstatement. The Board found that petitioner, while able to engage in gainful employment, was not mentally fit to cope with the stresses of full-time police work. The finding of unfitness was supported by some credible evidence, including clinical interviews of petitioner by a Police Department psychologist. The Medical Board was entitled to rely on its own findings rather than the conflicting findings of petitioners' physicians. Holzberg v. Kelly, 13 A.D.3d 280, 788 N.Y.S.2d 46 (1st Dept. 2004).

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

*NYC Administrative Code 13-255*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-255 Retirement allowances; for service.

Upon retirement for service, a member shall receive a retirement allowance which shall consist of:

1. An annuity based on his or her required annuity savings at the termination of his or her required minimum period of service, and in addition, a pension which when added to the annuity shall be equal to one-half of his or her annual earnable compensation on the date of retirement, for his or her minimum period of service. For the purpose only of determining the pension portion of the retirement allowance for minimum service, the member's annuity shall be computed as it would be, (a) if it were not reduced by the actuarial equivalent of any outstanding loan, (b) if it were not increased by the actuarial equivalent of any additional contributions, (c) if it were not reduced by reason of the member's election to decrease his or her annuity contributions in order to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage, (d) as it would be without any optional modification;

2. For each additional year of service in the police force, or fraction thereof, beyond his or her required minimum service, a member shall be entitled to, in addition to the benefits provided in subdivision one of this section:

(a) a pension of one-sixtieth of his or her average annual earnings from his or her date of eligibility for retirement to the actual date of retirement; and

(b) a pension-providing-for-increased-take-home-pay which shall be the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may be entitled, if any, for all periods of such service in the police force rendered both (1) after the completion of such required minimum service in such police force and (2) after December thirty-first, nineteen hundred sixty-six.

3. For each year, or fraction thereof, of service credit transferred from the New York city employees' retirement system, a pension of fiftyfive per cent of one-sixtieth of his or her final compensation if such service credit was for service rendered prior to October first, nineteen hundred fifty-one, or seventy-five per cent of one-sixtieth of his or her final compensation if such service was rendered subsequent to October first, nineteen hundred fifty-one.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-45.0 added LL 2/1940 § 2

Repealed and added LL 99/1951 § 3

(Special provision LL 99/1951 § 4)

Sub 2 par d added chap 223/1963 § 6

Repealed and added chap 1065/1965 § 2

Sub 2 amended chap 587/1968 § 1

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

*NYC Administrative Code 13-256*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-256 Vested retirement rights.

a. Any member who:

(1) discontinues police service on or after July first, nineteen hundred sixty-nine, other than by death, retirement or dismissal; and

(2) prior to such discontinuance, completed five or more years of allowable police service; and

(3) does not withdraw his or her accumulated deductions in whole or in part; and

(4) at least thirty days prior to the date of such discontinuance, files a duly executed application for a deferred retirement allowance hereunder; shall have a vested right to receive a deferred retirement allowance as provided in this section.

b. (1) Upon such discontinuance under the conditions and in compliance with the provisions of subdivision a of this section, such deferred retirement allowance shall vest automatically.

(2) Such retirement allowance shall become payable on the earliest date on which such discontinued member could have retired for service if discontinuance had not occurred.

c. Such deferred retirement allowance shall consist of:

(1) an annuity which is the actuarial equivalent of an amount equal to the member's accumulated deductions for the period of his or her police service, plus any accumulated contributions transferred to his or her credit pursuant to section forty-three of the retirement and social security law, as the total of such accumulated deductions and contributions is on the earliest date on which such member could have retired for service; and

(2) a pension, which together with his or her annuity shall be equal to:

(i) in the case of any discontinued member whose minimum period for service retirement is twenty years, two and one-half per cent of his or her annual earnable compensation on the date of his or her discontinuance of police service, multiplied by a number equal to the number of years of allowable police service credited to him or her on the date of such discontinuance, plus the number of his or her years of service for which credit was transferred pursuant to section forty-three of the retirement and social security law; or

(ii) in the case of any discontinued member whose minimum period for service retirement is twenty-five years, two per cent of his or her annual earnable compensation on the date of his or her discontinuance of police service, multiplied by a number equal to the number of years of allowable police service credited to him or her on the date of his or her discontinuance of police service, plus the number of years of his or her service for which credit was transferred pursuant to section forty-three of the retirement and social security law; and

(3) for each year, or fraction thereof, of his or her service credit transferred from the New York city employees' retirement system, a pension of fifty-five per cent of one-sixtieth of his or her final compensation if such service credit was for service rendered prior to October first, nineteen hundred fifty-one, or seventy-five per cent of one-sixtieth of his or her final compensation if such service was rendered on or after October first, nineteen hundred fifty-one.

d. For the purpose only of determining the pension portion of such retirement allowance pursuant to paragraphs one and two of subdivision c of this section, the annuity referred to in such paragraph one shall be computed as it would be (1) if it were not reduced by the actuarial equivalent of any outstanding loan, (2) if it were not increased by the actuarial equivalent of any additional contributions, (3) if it were not reduced by reason of the member's election to decrease his or her annuity contributions in order to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage and (4) as it would be without any optional modification.

e. Regular interest on the accumulated deductions of a discontinued member and on his or her reserve-for-increased-take-home-pay shall be credited after discontinuance of police service at the rate which would be applicable if he or she had not discontinued service.

f. If a discontinued member dies before attaining the earliest age at which he or she could have retired for service if discontinuance had not occurred, his or her accumulated deductions shall be paid (1) to the beneficiary designated by him or her pursuant to section 13-243 of this subchapter to receive his or her accumulated deductions in the event that such deductions were to become payable under such section, or (2) if such member had made no such designation, to his or her estate.

g. A discontinued member may elect any option under section 13-261 of this subchapter at any time prior to the first payment on account of his or her retirement allowance under this section.

h. Withdrawal of accumulated deductions, in whole or in part, after discontinuance of police service, shall terminate the right to a deferred retirement allowance under this section.

i. If a discontinued member who has not withdrawn his or her accumulated deductions in whole or in part shall subsequently re-enter police service before the earliest date on which such discontinued member could have retired for service if discontinuance had not occurred, he or she shall be entitled to the service credit and status to which he or she

was entitled immediately prior to his or her discontinuance of police service and shall be credited with regular interest on his or her accumulated deductions and his or her reserve-for-increased-take-home-pay from the time of such discontinuance to the time of his or her re-entry into service, at the rate which would have been applicable if he or she had not discontinued service.

j. (1) If a discontinued member who has not withdrawn his or her accumulated deductions in whole or in part shall subsequently and on or after the earliest date on which such discontinued member could have retired for service if discontinuance had not occurred, re-enter police service, the payment of his or her pension only shall be suspended and forfeited during the period of such police service, except as herein otherwise provided.

(2) Such member may again become a member of the pension fund if, within ninety days after his or her return to service, he or she files a duly executed and acknowledged application for such membership.

(3) If such beneficiary shall again become a member of the pension fund, the payment of his or her annuity shall also be suspended and forfeited and his or her annuity reserve shall be transferred to his or her credit in the annuity savings fund and he or she shall become such member as a new entrant; provided, however, that he or she shall contribute to such fund at the rate (before modification, if any, to which such discontinued member may be entitled pursuant to section 13-226 of this subchapter) at which he or she would have been contributing if he or she had not discontinued police service. Upon his or her subsequent retirement, he or she shall be credited with all of his or her service as a member subsequent to his or her last restoration to membership and he or she shall receive therefor a retirement allowance, payable in such form as he or she shall select under section 13-261 of this subchapter, consisting of:

(i) an annuity which is the actuarial equivalent of his or her accumulated deductions at the time of such retirement; and

(ii) a pension equal to one-sixtieth of his or her average annual earnings from the date of his or her re-entry into membership to the date of his or her subsequent retirement, multiplied by the number of years of his or her allowable service in the police force rendered by him or her from such date of re-entry; and

(iii) a pension-providing-for-increased-take-home-pay which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may be entitled, if any, for the period of his or her allowable service in the police force rendered by him or her from such date of re-entry.

(4) In addition, upon his or her subsequent retirement, he or she shall receive the pension which he or she was receiving or entitled to receive immediately prior to his or her last restoration.

(5) In lieu of suspension during restoration to police service of any benefits payable in the event of his or her death by reason of any optional selection in respect to his or her pension, any such beneficiary may pay to the fund or funds from which his or her ordinary pension was payable, the amount by which his or her ordinary pension exceeded the optional pension heretofore granted to him or her, in which event such optional benefit shall continue and be payable in the event of his or her death as though no payment was suspended.

k. Notwithstanding any other provision of law, a discontinued member with ten or more years of credited service in the pension fund who dies before a retirement benefit becomes payable and who is otherwise not entitled to a death benefit from the pension fund shall be deemed to have died on the last day that he or she was in service upon which his or her membership was based for purposes of eligibility for the payment of a death benefit pursuant to the provisions of section 13-243 of this title. The death benefit payable in such case shall be one-half of that which would have been payable had such member died on the last day that service was rendered.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 659/1999 § 6, eff. Feb. 4, 2000 and applicable only to members who discontinue service on or after Feb. 4, 2000.

Subd. k added chap 659/1999 § 7, eff. Feb. 4, 2000 and applicable to the death of any member occurring on or after Jan. 1, 1997.

**DERIVATION**

Formerly § B18-45.1 added chap 827/1969 § 3

**CASE NOTES FROM FORMER SECTION**

¶ 1. Police officer who was convicted for misconduct and dismissed from force on August 12, 1976 after serving as police officer since 4/27/62, and who was reinstated as a police officer solely for the limited purpose of resigning effective 10/19/77 with a loss of all back pay but did not resign after reinstatement was not entitled to benefits under this section since section excludes both dismissal and retirement and police officer ceased to be a member of the force on 8/12/76, the date of his dismissal and as of that time he had not completed the required 15 years of service and thus his rights under this section had not vested.-Fuoto v. McGuire, 101 Misc. 2d 132 [1979].

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

*NYC Administrative Code 13-257*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-257 Retirement allowances; for ordinary disability.

Upon retirement for ordinary disability, a member shall receive a retirement allowance which shall consist of:

1. An annuity which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

2. A pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

3. A pension, which, together with his or her annuity and the pension-providing-for-increased-take-home-pay, if any, shall be equal to:

a. In the case of a member who contributes on the basis of retirement after twenty years of city-service, a retirement allowance equal to one-fortieth of his or her annual earnable compensation on the date of retirement multiplied by the number of years of city-service credited to him or her, but not less than (i) one-half of his or her annual earnable compensation on the date of retirement, if the years of city-service credited to him or her are ten or more, or (ii) one-third of his or her annual earnable compensation on the date of retirement, if the years of city-service credited to him or her are less than ten; or

b. In the case of a member who contributes on the basis of retirement after twenty-five years of city-service, a retirement allowance equal to one-fiftieth of his or her annual earnable compensation on the date of retirement, multiplied by the number of years of city-service credited to him or her, but not less than (i) one-half of his or her annual earnable compensation on the date of retirement, if the years of city-service credited to him or her are ten or more, or (ii) one-third of his or her annual earnable compensation on the date of retirement, if the years of city-service credited to him or her are less than ten; or

c. (1) In the case of a member who contributes on the basis of retirement at age fifty-five the retirement allowance that would be payable to him or her after a like amount of total-service and annual earnable compensation on the date of retirement, had he or she attained his or her minimum age for service retirement if such retirement allowance exceeds one-quarter of his or her annual earnable compensation on the date of retirement; otherwise,

(2) The retirement allowance not exceeding one-quarter of his or her annual earnable compensation on date of retirement, that would be paid to him or her were his or her service and present annual earnable compensation on the date of retirement to continue until attainment by him or her of his or her minimum age of service retirement.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-46.0 added LL 2/1940 § 2

Amended chap 223/1963 § 7

Amended chap 1065/1965 § 3

Amended chap 827/1969 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Petitioners, members of the N.Y.C. Police Department who retired for ordinary disability after more than 20 years of service, were not entitled under this section to a pension for increased take-home pay beyond 20 years service when they claimed that under collective bargaining agreement with city a member would receive an additional pension providing for increased take home pay for each additional year of service in the police force beyond his required minimum service since the agreement was intended to benefit officers who retired for service rather than disability.-Matter of DiGiacomo v. City of N.Y., 46 N.Y. 2d 894 [1979].

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

*NYC Administrative Code 13-258*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-258 Retirement allowances; for accident disability.

Upon retirement for accident disability, a member shall receive a retirement allowance which shall consist of:

1. An annuity, which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

2. A pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

3. A pension, of three-quarters of his or her annual earnable compensation on the date of retirement, in addition to the annuity and pension provided for by subdivisions one and two of this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-47.0 added LL 2/1940 § 2

Amended chap 223/1963 § 7

Amended chap 1065/1965 § 4

**CASE NOTES FROM FORMER SECTION**

¶ 1. A difference of opinion between medical witnesses as to whether the condition which required retirement was the proximate result of an injurious disability suffered in the performance of police duty was insufficient to require court review of the Police Board determination.-Hunter v. City of N.Y., 132 (106) N.Y.L.J. (12-3-54) 9, Col. 1 M.

¶ 2. Determination of the trustees of the Police Pension Fund to retire petitioner on one-half salary on the ground his disability was not service-incurred **held** neither arbitrary nor capricious although there was a difference of opinion between the trustees' physicians and petitioner's physicians.-Herbst v. Monaghan, 133 (7) N.Y.L.J. (1-11-55) 7, Col. 4 M.

¶ 3. After a series of accidents a police officer was detailed to clerical work and shortly thereafter while on duty "blacked out" and thereafter for six months was on sick pay until his retirement. **Held:** petitioner was entitled to the trial of the medical issue presented by his application for retirement on three-fourths pay, notwithstanding that the Medical Board found his disability not service-connected.-Matter of Connolly, 9 Misc. 2d 49, 169 N.Y.S. 2d 541 [1957].

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

*NYC Administrative Code 13-259*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-259 Accidental disability benefits in the case of retirements prior to July first, nineteen hundred sixty-five.

a. Notwithstanding the provisions of section 13-258 of this subchapter, in any case where a retirement allowance was or is awarded under the provisions of such section, by reason of the retirement for accidental disability of a member occurring before July first, nineteen hundred sixty-five, such retirement allowance shall not be less than three-fourths the annual salary or compensation payable to a first grade patrolman on July first, nineteen hundred sixty-five. In the case of a member receiving a lesser retirement allowance than three-fourths the annual salary or compensation of a first grade patrolman as of July first, nineteen hundred and sixty-five, there shall be added to the pension portion of his or her retirement allowance an amount which when added to his or her retirement allowance provided for under section 13-258 of this subchapter, shall equal three-fourths the annual salary or compensation payable to a first grade patrolman as of July first, nineteen hundred and sixty-five. For the purpose of computing the annuity portion of such retirement allowance, his or her accumulated deductions shall be the required amount of such deductions at the time of his or her retirement from the police force, without any increase resulting from excess contributions and without any decrease resulting from withdrawals, loans, optional modification, payment of his or her contributions for old age and survivors insurance coverage, or from any other transaction authorized by law.

b. Such retirement allowance shall be payable to the same persons and shall be subject to the same terms and conditions, including provisions as to terminations, as the retirement allowance which would otherwise be payable to the member under section 13-258 of this subchapter or any other law.

c. The retirement allowance payable pursuant to the provisions of subdivisions a and b of this section shall be in lieu of any retirement allowance which would otherwise be payable on and after the effective date of this section pursuant to the provisions of section 13-258 of this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-47.1 added LL 36/1966 § 1

Amended LL 95/1973 § 1

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

*NYC Administrative Code 13-260*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-260 Retirement allowances; restrictions on.

a. If a lump sum which has been paid or which is payable under the provisions of the workers' compensation law equals or exceeds the present value of all amounts otherwise payable out of moneys provided or to be provided by the city under the provisions of this subchapter on account of the same disability of the same person, no payment shall be made to such person under the provisions of this subchapter. If such lump sum be a percentage less than one hundred per cent of the present value of all such amounts, there shall be paid as it becomes due under the provisions of this subchapter, in lieu of each amount otherwise payable, an amount equal to the percentage thereof which is the difference between such lesser per cent and one hundred per cent.

b. If an amount which is payable throughout a period under the provisions of the workers' compensation law equals or exceeds the amounts otherwise payable during the same period out of the moneys provided or to be provided by the city under the provisions of this article on account of the same disability of the same person, no payment shall be made to such person under the provisions of this subchapter during such period nor thereafter, until the total amount of such omitted payments, together with the regular interest which they would have accumulated, equals the amount paid under the workers' compensation law, together with the regular interest which it would have accumulated. If an amount which is payable throughout a period under the provisions of the workers' compensation law be a percentage less than one hundred per cent of the amounts otherwise payable during the same period out of moneys provided or to be provided by the city under the provisions of this subchapter on account of the same disability of the same person, there shall be paid during such period as it becomes due under the provisions of this subchapter, in lieu of each amount

otherwise payable, the percentage thereof which is the difference between such lesser per cent and one hundred per cent.

c. No decision of the workers' compensation board shall be binding on the medical board or on the board in the determination of eligibility of a claimant for an accident disability or an accidental death benefit.

d. Notwithstanding any of the foregoing provisions of this section or any other law to the contrary, pending the final determination of a claim for workers' compensation benefits, the board may authorize payment of all or any part of the benefits which are payable under this subchapter and to which any of the foregoing provisions of this section apply, and in that event the pension fund shall be entitled to reimbursement out of the unpaid installment or installments of compensation due under the workers' compensation law provided that claim therefor is filed with the workers' compensation board, together with proof of the fact and amount of payment.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-48.0 added LL 2/1940 § 2

Sub d added chap 1007/1972 § 2



Administrative Code of the City of New York



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

*NYC Administrative Code 13-261*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-261 Retirement; options in which retirement allowances may be taken.

a. Until the first payment on account of any benefit is made, except pursuant to the provisions of section 13-261.2 of this subchapter, the beneficiary, or, if such beneficiary is an incompetent, then the husband or wife of such beneficiary, or, if there be no husband or wife, a committee of the estate, may elect to receive such benefit in a retirement allowance payable throughout life, or the beneficiary or the husband or wife or committee so electing may then elect to receive the actuarial equivalent at that time of his or her annuity, his or her pension, or his or her retirement allowance in a lesser annuity or a lesser pension or a lesser retirement allowance, payable throughout life with the provision that:

Option 1. If he or she die before he or she has received in payments the present value of his or her annuity, his or her pension, or his or her retirement allowance, as it was at the time of his or her retirement, the balance shall be paid to his or her legal representatives or to such person as the beneficiary, or the husband or wife or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board.

Option 2. Upon his or her death, his or her annuity, his or her pension, or his or her retirement allowance, shall be continued throughout the life of and paid to such person as the beneficiary, or the husband or wife or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board at the time of his or her retirement.

Option 3. Upon his or her death, one-half of his or her annuity, his or her pension, or his or her retirement allowance, shall be continued throughout the life of and paid to such person as the beneficiary, or the husband or wife or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board at the time of his or her retirement.

Option 4. Upon his or her death, some other benefit or benefits shall be paid to such other person or persons as the beneficiary, or the husband or wife or committee so electing, has nominated or shall nominate, provided such other benefit or benefits, together with such lesser annuity, or lesser pension, or lesser retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to his or her annuity, his or her pension or his or her retirement allowance, and shall be approved by such board.

b. For purposes of this section, the terms "pension" and "retirement allowance" shall be deemed to include the pension-providing-for-increased-take-home-pay, if any.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a open par amended chap 775/1987 § 3

**DERIVATION**

Formerly § B18-49.0 added LL 2/1940 § 2

Amended chap 223/1963 § 8

Amended chap 770/1983 § 1

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

*NYC Administrative Code 13-261.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-261.1 Modified Option 1 pension computation formula.

a. The board may by resolution direct that under such circumstances as are designated in such resolution, benefits under Option 1 which consist of or are derived from the pension component of a retirement allowance and which are payable to or on account of members who:

(1) became members prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this section; and

(2) retired or retire, on or after August first, nineteen hundred eighty-three, for service or superannuation or for ordinary or accident disability, or on or after such August first, discontinued or discontinue service so as to become a discontinued member;

shall be determined under the modified Option 1 pension computation formula (as defined in subdivision twenty-eight of section 13-214 of the code).

b. If the board makes a direction, pursuant to the provisions of subdivision a of this section, for use of such formula, it may also direct by resolution:

(1) that any member who is subject to the modified Option 1 pension computation formula may elect, at such

time and in accordance with such procedures as are prescribed in such resolution, that such formula shall not apply to such member and that the initial reserve determined for the purpose of providing the benefits payable by reason of his or her selection of Option 1 and the pension component of his or her Option 1 allowance shall be determined on the basis of gender-neutral mortality tables and regular interest of seven per centum per annum, compounded annually; and

(2) that the benefit payable, upon the death of the member making such election, to his or her beneficiary or estate shall be the difference between such Option 1 initial reserve and the total of the payments of such pension component received by or payable to such member for the period prior to his or her death; and

(3) that where any member subject to the modified Option 1 pension computation formula retired before the effective date of the board resolution adopted pursuant to subdivision a of this section, and where the first payment on account of the retirement allowance of any discontinued member subject to such formula was made before the effective date of such resolution, such retiree or discontinued member, within such period of time after such effective date and in accordance with such procedures as are prescribed in such resolution, may elect the method of Option 1 benefit determination set forth in the preceding paragraphs of this subdivision b.

c. In any case, where, pursuant to board resolution, a benefit is required to be determined under the modified Option 1 pension computation formula and the determination of such benefit is also required by a board resolution adopted pursuant to sub-item (3) of item (A) of subparagraph (ii) of paragraph (g) of subdivision eight of section 13-214 of the code to reflect different computations of separate portions of such benefit, the methods of computation under the modified Option 1 pension computation formula shall be appropriately adjusted so as to give effect to the provisions of such resolution adopted pursuant to such sub-item (3).

**HISTORICAL NOTE**

Section added chap 910/1985 § 32, section number supplied by the

Legislative Bill Drafting Commission

**DERIVATION**

Formerly § B18-49.1 added chap 910/1985 § 32



Administrative Code of the City of New York



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

*NYC Administrative Code 13-261.2*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-261.2 Death of applicant before effective date of retirement.

a. If a member who is otherwise eligible for retirement pursuant to sections 13-251 and 13-252 of this subchapter dies within thirty days after the filing with the pension board of the application for retirement pursuant to section 13-251 or 13-252 of this subchapter and it is established that the physical or mental impairment or incapacitation of the applicant specified in such application was directly related to the cause of the applicant's death, such application shall be approved by the pension board effective one day before the date of the applicant's death, provided, however, that:

1. if a member is entitled to an ordinary disability retirement allowance under the provisions of this subchapter, the benefits provided pursuant to section 13-251 of this subchapter shall be payable unless the member would otherwise be entitled to a greater benefit pursuant to section 13-243 of this subchapter, in which event the greater benefit shall be payable; or

2. if a member is entitled to an accidental disability retirement allowance under the provisions of this subchapter, the benefits provided pursuant to section 13-252 of this subchapter shall be payable unless the member would otherwise be entitled to a greater benefit pursuant to section 13-244 of this subchapter, in which event the greater benefit shall be payable.

b. Notwithstanding any law to the contrary, for the purpose of electing an option pursuant to section 13-261 of this subchapter, the pension board shall notify the surviving spouse of any applicant described in subdivision a of this

section, or, if no such spouse exists, the personal representative of the estate of such applicant of the right of election pursuant to said section 13-261 and such surviving spouse or personal representative of such estate may elect any such option within thirty days after receipt of such notice.

**HISTORICAL NOTE**

Section added chap 775/1987 § 4



Administrative Code of the City of New York



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

*NYC Administrative Code 13-261.3*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-261.3 Retired employees; change of options.

Notwithstanding any other provision of law to the contrary, no beneficiary shall be permitted to change any optional selection after it has become effective, provided, however, that if:

(a) a retired member nominates the spouse of such member as the survivor beneficiary under option two or three of section 13-261 of the code, or if a retired member nominates the spouse of such member under option four of such section to receive payment of an annual benefit as a survivor; and

(b) such person so nominated ceases by causes other than death to be his or her spouse or is divorced from or separated pursuant to a judicial decree from such spouse, then the board of trustees shall have the authority to permit the change of the optional benefit to the maximum benefit that is the actuarial equivalent by and with the consent of all parties.

**HISTORICAL NOTE**

Section added chap 582/1997 § 4, eff. Sept. 17, 1997.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-262*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-262 Benefits upon re-entry into membership; after retirement.

a. (1) Should a beneficiary receiving or entitled to receive a retirement allowance under the provisions of section 13-246, 13-247 or 13-248 of this subchapter, re-enter city service, his or her retirement allowance and his or her pension-providing-for-increased-take-home-pay, if any, shall cease.

(2) If he or she had not served the period of service elected by him or her or is under the minimum service retirement age elected by him or her, he or she shall again become a member of the pension system. Except as otherwise provided in paragraph three of this subdivision a, if he or she has served the minimum period of service elected by him or her or has attained the minimum service retirement age elected by him or her he or she may file a duly executed and acknowledged application therefor within ninety days after his or her return to service and thereupon again become a member of such fund.

(3) In the case of any such beneficiary who is appointed police commissioner or a deputy police commissioner, he or she shall again become a member of the pension system and shall remain such a member while serving as police commissioner or deputy police commissioner.

(4) The annuity reserve of any such member whose membership is restored as above provided in this section shall be transferred to his or her credit in the annuity savings fund, and he or she shall contribute to such fund as if he or she were a new entrant.

(5) Upon the subsequent retirement of any such member whose membership is so restored, he or she shall be credited with all his or her service as a member subsequent to his or her last restoration to membership, and shall receive a retirement allowance therefor as if he or she were a new entrant, payable in such form as he or she shall select under section 13-261 of this subchapter.

(6) In lieu of suspension during restoration to city-service of any benefits payable in the event of his or her death by reason of any optional selection in respect to his or her pension and the pension-providing-for-increased-take-home-pay, if any, a beneficiary may pay to the fund or funds from which his or her ordinary pension and his or her pension-providing-for-increased-take-home-pay, if any, were payable, the amount by which his or her ordinary pension and the pension-providing-for-increased-take-home-pay, if any, exceeded the optional pension and the pension-providing-for-increased-take-home-pay, if any, heretofore granted to him or her, in which event such optional benefit shall continue and be payable in the event of his or her death as though no payment were suspended.

(7) In addition, upon his or her subsequent retirement, he or she shall receive the pension and the pension-providing-for-increased-take-home-pay, if any, which he or she was receiving or entitled to receive immediately prior to his or her last restoration.

b. (1) Subject to the provisions of paragraph two of this subdivision, where any beneficiary mentioned in subdivision a of this section, other than a beneficiary serving as police commissioner or deputy police commissioner, shall have earned at least five years of member credit for service in the police force after restoration to active service, and where any beneficiary serving as police commissioner or deputy police commissioner shall have earned at least three years of member credit for service during restoration to membership pursuant to this section, the total service credit to which he or she was entitled at the time of his or her earlier retirement may, at his or her election, again be credited to him or her and upon his or her subsequent retirement he or she shall be credited in addition with all member service earned by him or her subsequent to his or her last restoration to membership.

(2) Such total service credit to which he or she was entitled at the time of his or her earlier retirement shall be credited as provided in paragraph one of this subdivision b only in the event that he or she returns to the pension fund with regular interest the actuarial equivalent of the amount of the retirement allowance he or she received; provided, however, that in the event that such amount is not so repaid, the actuarial equivalent thereof shall be deducted from his or her subsequent retirement allowance.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-50.0 added LL 2/1940 § 2

Amended chap 223/1963 § 9

Amended chap 841/1970 § 1

Amended chap 1009/1972 § 6

(Special provisions chap 1009/1972 §§ 7, 8)

**CASE NOTES FROM FORMER SECTION**

¶ 1. Petitioner who was the beneficiary of a deceased former member of the Police Pension Fund who died during his twentieth year of service was entitled to be credited with accrued terminal leave in calculating retirement benefits

but not with each day he was on the force rather than each day of service.-Ziegler v. Lindsay, 163 (15) N.Y.L.J. (1-22-70) 14, Col. 1  M.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-263*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-263 Monthly payments.

A pension-providing-for-increased-take-home-pay, an annuity, a dependent benefit, or a retirement allowance granted under the provisions of this subchapter shall be paid in equal monthly instalments or in ratably smaller amounts when the benefit begins after the first day of the month or ends before the last day of the month.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-51.0 added LL 2/1940 § 2

Amended chap 223/1963 § 10



Administrative Code of the City of New York



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

*NYC Administrative Code 13-264*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-264 Exemption from tax and legal process.

The right of a person to a pension-providing-for-increased-take-home-pay, an annuity, a dependent benefit, or a retirement allowance, to the return of contribution, the pension-providing-for-increased-take-home-pay, annuity, dependent benefit, or a retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the various funds provided for by this chapter are hereby exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this chapter specifically provided.

Notwithstanding the foregoing provisions of this section, a retired member shall have the right, at any time after the retired member's retirement, to execute and file a dues deduction authorization card or an authorization in writing with the New York city police pension fund authorizing the deduction from the retired member's retirement allowance of membership dues or premiums for employee organization sponsored group insurance plans and the payment thereof to a retiree organization of which the retired member certifies he or she is then a member and which the retired member certifies is then affiliated with either an employee organization certified or recognized as the collective bargaining representative of all employees in the negotiating unit of which the retired member was a part prior to his or her retirement or an employee organization with which such employee organization is then affiliated. The comptroller shall thereafter deduct from the retirement allowance of such retired member the amount of membership dues required to be paid by such retired member or premiums for employee organization sponsored group insurance plans and shall transmit the sum so deducted to said retiree organization. Such authorization shall continue in effect until revoked in

writing by such retired member. The board shall determine the cost of administering deductions for premiums for employee organization sponsored group insurance plans and the cost incurred by the pension fund and the comptroller in administering the same shall be paid by the employee organization.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Opening par amended chap 479/1993 § 21 retro. to Jan. 1, 1993

Closing par amended chap 146/1992 § 2, eff. Jan. 1, 1992 added chap 359/1990 § 1 eff. July 2, 1990

**DERIVATION**

Formerly § B18-52.0 added LL 2/1940 § 2

Reenacted chap 437/1940 § 1

Amended chap 223/1963 § 11

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where defendant had removed from the State for purpose of avoiding payment of alimony, a receiver would be appointed of his property, including his pension received as a retired policeman of the New York City police force, as such pension monies are subject to the payment of alimony.-Hagen v. Hagen, 112 (139) N.Y.L.J. (12-16-44) 1737, Col. 1 M.

¶ 2. New York City Police Department Pension Service Fund could be compelled to pay wife of retired police officer one-third of her ex-husband's pension benefits pursuant to property agreement between parties which was incorporated into divorce decree in which petitioner waived her rights to alimony partly in consideration for her share of the pension for this section should not be construed to deprive a wife of her legal and moral right to support from her husband.-Spadaro v. N.Y.C. Police Dept. Pension Service, 115 Misc. 2d 494 [1982].

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

*NYC Administrative Code 13-264.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-264.1 Eligible rollover distributions.

a. Notwithstanding anything to the contrary contained in section 13-264 of this subchapter, in the event that, under the terms of this subchapter, a person becomes entitled to a distribution from the pension fund which constitutes an "eligible rollover distribution" within the meaning of paragraph thirty-one of subsection a of section four hundred one of the internal revenue code, such distributee may elect, subject to any rules and regulations adopted pursuant to subdivision b of this section, to have such distribution, or a portion thereof, paid directly to an "eligible retirement plan" within the meaning of paragraph thirty-one of subsection a of section four hundred one of the internal revenue code.

b. The board of trustees is authorized to adopt such rules and regulations as it finds to be necessary in administering the provisions of this section, provided that they are not inconsistent with the applicable provisions of the internal revenue code and the rules and regulations thereunder.

**HISTORICAL NOTE**

Section added chap 510/1993 § 2 retro. to Jan. 1, 1993



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

*NYC Administrative Code 13-265*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-265 Protection against fraud or mistake.

Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of this pension fund, shall be guilty of a misdemeanor. Should any change of error in records result in any member or beneficiary receiving from the pension fund more or less than he or she would have been entitled to receive otherwise, on the discovery of any such error such board shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which he or she was entitled shall be paid.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-53.0 added LL 2/1940 § 2



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

*NYC Administrative Code 13-266*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-266 State supervision.

The pension fund shall be subject to the supervision of the department of insurance in accordance with the provisions of sections three hundred seven through three hundred twelve of the insurance law, so far as the same are applicable thereto, and are not inconsistent with the provisions of this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-54.0 added LL 2/1940 § 2

Reenacted chap 437/1940 § 1

Amended chap 805/1984 § 102

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

*NYC Administrative Code 13-267*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-267 Limitation on other statutes; application of article.

No other provision of law which provides wholly or partly at the expense of the city for pensions or retirement benefits for employees in the city-service, shall apply to such employees who are entitled to be members or beneficiaries of the pension fund provided for by this subchapter, their surviving spouses or their other dependents.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-55.0 added LL 2/1940 § 2

Reenacted chap 437/1940 § 1

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*NYC Administrative Code 13-267.1*

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 2 [POLICE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-267.1 Excess benefit plan.

a. As used in this section, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

(1) "Retirement benefits" shall mean benefits payable to a beneficiary by the pension fund or a variable supplements fund established pursuant to subchapter three or four of this chapter which are subject to the limitations imposed by section 415(b) of the Internal Revenue Code.

(2) "Beneficiary" shall mean a person who is receiving retirement benefits from the pension fund.

(3) "Excess benefit plan" shall mean the excess benefit plan established by this section for the sole purpose of paying benefits as permitted under section 415(m) of the Internal Revenue Code.

(4) "Eligible participant" shall mean a beneficiary who is entitled to replacement benefits from the excess benefit plan for a plan year in accordance with subdivisions d and e of this section.

(5) "Replacement benefits" shall mean the benefits payable by the excess benefit plan to an eligible participant as determined pursuant to subdivision e of this section.

(6) "Internal Revenue Code" shall mean the Federal Internal Revenue Code of 1986, as amended.

(7) "Plan year" shall mean the limitation year of the pension fund as provided in section six hundred twenty of the retirement and social security law.

b. There is hereby established an excess benefit plan, the sole purpose of which shall be to provide replacement benefits, as permitted by section 415(m) of the Internal Revenue Code, to beneficiaries whose annual retirement benefits have been reduced because such benefits exceed the limitations imposed by section 415(b) of the Internal Revenue Code. The excess benefit plan shall be administered by the board of trustees of the pension fund.

c. There is hereby established a fund to be known as the excess benefit fund which shall be maintained for the sole purpose of providing replacement benefits to eligible participants in the excess benefit plan established by this section, as permitted under section 415(m) of the Internal Revenue Code. Such fund shall consist of such employer contributions as shall be made thereto pursuant to subdivision f of this section. Such contributions to the excess benefit fund shall be held separate and apart from the assets held by the other funds of the pension fund, provided, however, that the assets of the excess benefit fund may be invested with the other pension fund assets, but such excess benefit fund assets shall be accounted for separately from the other pension fund assets.

d. All beneficiaries of the pension fund whose retirement benefits for a plan year are being reduced because of section 415(b) of the Internal Revenue Code shall be eligible participants in the excess benefit plan for that plan year. Participation in the excess benefit plan shall be determined for each plan year. No beneficiary of the pension fund shall be an eligible participant in the excess benefit plan for any plan year for which his or her retirement benefits are not reduced because of section 415(b) of the Internal Revenue Code.

e. (1) For each plan year in which a beneficiary is an eligible participant in the excess benefit plan, such eligible participant shall receive replacement benefits from the excess benefit plan equal to the difference between the full amount of the retirement benefits otherwise payable to the eligible participant for that plan year prior to any reduction because of section 415(b) of the Internal Revenue Code, and the retirement benefits payable to the eligible participant for that plan year as reduced because of section 415(b) of the Internal Revenue Code. No replacement benefits for any plan year shall be paid pursuant to this subdivision to any beneficiary who is not receiving retirement benefits from the pension fund for that plan year.

(2) Replacement benefits pursuant to this section shall be paid at the same time and in the same manner as the retirement benefits which are being replaced. At no time shall an eligible participant be permitted directly or indirectly to defer compensation under the excess benefit plan.

f. (1) The required employer contributions to the excess benefit fund for each plan year shall be an amount, as determined by the actuary, which is necessary to pay the total amount of replacement benefits that are payable pursuant to this section to eligible participants for that plan year.

(2) Such required employer contributions shall be paid into the excess benefit fund from an allocation of the employer contribution amounts paid pursuant to section 13-228 of this subchapter and other applicable provisions of law. Such allocation of employer contribution amounts shall be paid into the excess benefit fund at such times and in such amounts as determined by the actuary.

(3) The benefit liabilities of the excess benefit plan shall be funded on a plan year to plan year basis, provided, however, that any employer contributions to the excess benefit fund, including any investment earnings on such contributions, which are not used to pay replacement benefits for the current plan year shall be used to pay replacement benefits for future plan years.

g. The right of an eligible participant to receive replacement benefits pursuant to this section, and the replacement benefits received pursuant to this section, shall be exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment or any other process whatsoever, and shall be unassignable, except as otherwise specifically provided for benefits payable by the pension fund.

h. Nothing contained in this section shall be construed to mean or imply that variable supplements payments from a variable supplements fund established pursuant to subchapter three or four of this chapter constitute pension or retirement allowance payments, or that any such variable supplements fund constitutes a pension or retirement system or fund.

i. Nothing contained in this section shall be construed as affecting in any way the eligibility of any person for variable supplements pursuant to applicable provisions of subchapter three or four of this chapter.

**HISTORICAL NOTE**

Section added chap 623/2004 § 2, eff. Oct. 19, 2004 and shall be deemed

to have been in full force and effect on and after July 1, 2000. [See

§ 13-196 Note 1]



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

*NYC Administrative Code 13-268*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 3*7 [POLICE OFFICER'S VARIABLE SUPPLEMENTS FUND]

§ 13-268 Definitions.

As used in this subchapter, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

1. "Variable supplements fund". The police officer's variable supplements fund established by this subchapter.

1-a. "Minimum period". The minimum period of credited service which a member of pension fund, subchapter one or pension fund, subchapter two is required by law to perform in order to be eligible to retire for service with immediate payability of retirement allowance.

1-b. "Police officer". A member of either pension fund referred to in subdivision one-a of this section who, at the time of retirement for service by reason of fulfillment of the minimum period, was not a police superior officer as defined in subdivision four of section 13-278 of subchapter four of this chapter.

2. "Association". The patrolmen's benevolent association of the city of New York.

3. "Fiscal year". Any year commencing with the first day of July and ending with the thirtieth day of June next following.

4. "Board". The board of trustees provided for in section 13-270 of this subchapter.

5. "Pension fund beneficiary". Any person who receives a retirement allowance by reason of having retired, on or after October first, nineteen hundred sixty-eight, for service (with credit for twenty or more years of service creditable toward the minimum period) as a member of pension fund, subchapter one or pension fund, subchapter two and as a police officer.

6. "Variable supplement". Any sum authorized to be paid to a pension fund beneficiary pursuant to the provisions of this subchapter.

7. "Pension fund, subchapter one". The New York police department pension fund maintained pursuant to subchapter one of chapter two of this title.

8. "Pension fund, subchapter two". The New York police department pension fund maintained pursuant to subchapter two of chapter two of this title.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subds. 1-a, 1-b added chap 247/1988 § 1

Subds. 5, 6 amended chap 247/1988 § 2

**DERIVATION**

Formerly § B18-60.0 added chap 876/1970 § 1

**CASE NOTES**

¶ 1. Petitioner is a former police officer retired with a disability. As such he is not a "pension fund beneficiary" as defined in § 13-268(5), because he is not "retired for service". This makes him ineligible for these supplemental payments. Petitioner asserts this clause is discriminatory because he contributed to the police pension fund for 22 years and is ineligible for variable supplements simply because of his disabled status. Distinction between service and disability retirees is an economic one. Allocation of Variable Supplements Fund payments are based on rational and reasonable classification. Ryan v. Board of Trustees, 138 Misc. 2d 826 [1988].

**FOOTNOTES**

7

[Footnote 7]: * Note provisions of chap 247/1988 § 12.

§ 12. Commencing with the collective bargaining agreement period next following the year two thousand seven, and not earlier, the city and the patrolmen's benevolent association of the city of New York may bargain collectively over changes in the provisions of subchapter three of chapter two of title thirteen of the administrative code of such city; provided, however, that no changes in any such provision shall be made except by an act of the legislature.

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*NYC Administrative Code 13-269*

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 3*7 [POLICE OFFICER'S VARIABLE SUPPLEMENTS FUND]

§ 13-269 Police officer's variable supplements fund.

a. There is hereby established a fund, to be known as the police officer's variable supplements fund. Such fund shall consist of such monies as may be paid thereto from pension fund, subchapter two, pursuant to the provisions of sections 13-232 and 13-232.1 of this chapter and all other monies received by such fund from any other source pursuant to law.

b. It is hereby declared by the legislature that the police officer's variable supplements fund shall not be, and shall not be construed to constitute, a pension or retirement system or fund, and that it shall function as a means whereby payments, not constituting a pension or retirement allowance, shall be made in accordance with the provisions of this subchapter, to eligible pension fund beneficiaries as a supplement to benefits received by them under subchapter one or two of chapter two of this title. The legislature hereby reserves to the state of New York and itself the right and power to amend, modify or repeal any or all of the provisions of this subchapter.

**HISTORICAL NOTE**

Section amended chap 247/1988 § 3

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-61.0 added chap 876/1970 § 1

**FOOTNOTES**

7

[Footnote 7]: * Note provisions of chap 247/1988 § 12.

§ 12. Commencing with the collective bargaining agreement period next following the year two thousand seven, and not earlier, the city and the patrolmen's benevolent association of the city of New York may bargain collectively over changes in the provisions of subchapter three of chapter two of title thirteen of the administrative code of such city; provided, however, that no changes in any such provision shall be made except by an act of the legislature.



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

*NYC Administrative Code 13-270*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 3*7 [POLICE OFFICER'S VARIABLE SUPPLEMENTS FUND]

§ 13-270 Board of trustees.

a. The variable supplements fund shall be administered by a board of trustees which shall, subject to applicable provisions of law and to the prior approval of the board of estimate, from time to time establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof.

b. Such board shall consist of:

1. The representative of the mayor who is a member of the board of trustees of pension fund, subchapter two, who shall be entitled to cast one vote. The mayor may, by instrument in writing filed in his or her office and with the board, designate one or more members of his or her office to act in the place of such representative at meetings of the board, in the event of such representative's absence therefrom.

2. The comptroller of the city, who shall be entitled to cast one vote. Any deputy comptroller authorized pursuant to subdivision b of section ninety-four of the New York city charter, to act in the place of the comptroller as a member of the board of trustees of pension fund, subchapter two, may be authorized by the comptroller, in accordance with the provisions of such subdivision b, to act in the place of the comptroller as a member of the board.

2-a. The commissioner of finance, who shall be entitled to cast one vote. Such commissioner may, by instrument in writing filed in his or her office and with the board, designate one or more members of his or her office to act in his

or her place at meetings of the board, in the event of such commissioner's absence therefrom.

3. Two members of the association designated by it, who shall each be entitled to cast one vote. The members so designated shall be officers of the association who are members of the board of trustees of pension fund, subchapter two. Each such designee may at any time, by written authorization filed with the board, authorize any other officer of the association to act in his or her place as a member of the board in the event of such designee's absence from any meeting thereof; provided that the by-laws or constitution of the association provide for the designation of a representative for such purpose.

c. Every act of the board shall be by resolution which shall be adopted only by a vote of at least three-fifths of the whole number of votes authorized to be cast by all of the members of such board.

d. The actuary appointed pursuant to section 13-121 of the code shall be the technical advisor of the board.

e. (1) As of June thirtieth of the nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year and as of June thirtieth of each succeeding fiscal year, the actuary referred to in subdivision d of this section shall make a valuation of the assets and liabilities of the variable supplements fund in accordance with the requirements of the succeeding paragraphs of this subdivision e.

(2) The actuary shall base such annual valuation of liabilities only (A) upon the person who, as of each such June thirtieth, are pension fund beneficiaries and (B) upon the persons who, being police officers in service as of such June thirtieth, may be actuarially expected to retire thereafter as police officers for service with twenty or more years of service creditable toward the minimum period.

(3) The liabilities determined in such valuation shall be equal to the actuarial present value of accumulated plan benefits. The actuarial assumptions used by the actuary in making such annual valuation of liabilities, including assumptions as to interest rate, mortality of pension fund beneficiaries and number of police officers in service as of June thirtieth who will retire for service with twenty or more years of service creditable toward the minimum period, shall be adopted by the board on the recommendation of the actuary.

(4) For the purposes of such annual valuation of the assets of the variable supplements fund, such assets shall be valued at their fair market value as of each June thirtieth.

f. The police commissioner shall assign to the board such number of clerical and other assistants as may be necessary for the performance of its functions.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b par 2-a added chap 247/1988 § 4

Subd. c amended chap 247/1988 § 5

Subd. d relettered and amended chap 247/1988 § 7 (formerly Subd. e)

Subd. d repealed chap 247/1988 § 6

Subd. e added chap 247/1988 § 8

**DERIVATION**

Formerly § B18-62.0 added chap 876/1970 § 1

**FOOTNOTES**

7

[Footnote 7]: * Note provisions of chap 247/1988 § 12.

§ 12. Commencing with the collective bargaining agreement period next following the year two thousand seven, and not earlier, the city and the patrolmen's benevolent association of the city of New York may bargain collectively over changes in the provisions of subchapter three of chapter two of title thirteen of the administrative code of such city; provided, however, that no changes in any such provision shall be made except by an act of the legislature.

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Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 3*7 [POLICE OFFICER'S VARIABLE SUPPLEMENTS FUND]

§ 13-271 Payment of supplemental benefits.

a. (1) The variable supplements fund shall pay variable supplements to pension fund beneficiaries in accordance with the provisions of the succeeding paragraphs of this subdivision a.

(2) Subject to the provisions of paragraphs three and four of this subdivision a, and the provisions of subpragraphs (i) and (ii) of paragraph one of subdivision b of this section, for the period from January first, nineteen hundred eighty-eight to December thirty-first, nineteen hundred eighty-eight, variable supplements shall be payable monthly for each month of eligibility therefor under the provisions of this subchapter and the benefit plan and payment resolution as in effect immediately prior to July first, nineteen hundred eighty-eight:

(i) to persons who, having retired on or before June thirtieth, nineteen hundred eighty-eight, were or are pension fund beneficiaries eligible for monthly payments with respect to such period from January first, nineteen hundred eighty-eight to December thirty-first, nineteen hundred eighty-eight, or a part thereof, under such prior law, benefit plan and resolution; and

(ii) to persons who, as of June thirtieth, nineteen hundred eighty-eight, were in service as members of the police pension fund, subchapter two and who retired during the period from July first, nineteen hundred eighty-eight to November thirtieth, nineteen hundred eighty-eight so as to become pension fund beneficiaries who would be entitled, if such prior law, plan and resolution were in effect for such period, to receive monthly payments thereunder for such

period from such July first or a part thereof.

(3) The number of full calendar months in the calendar year nineteen hundred eighty-eight for which each such pension fund beneficiary referred to in paragraph two of this subdivision a is entitled to receive monthly payments under such prior law, plan and resolution in accordance with the provision of such paragraph two shall be multiplied by one-twelfth of the sum of twenty-five hundred dollars.

(4) The total of the monthly amounts payable to each such pension fund beneficiary for full calendar months in such calendar year under the provisions of such paragraph two shall be subtracted from the applicable product computed pursuant to paragraph three of this subdivision a.

(5) Subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, on or about December fifteenth, nineteen hundred eighty-eight, the variable supplements fund shall pay to each such eligible beneficiary referred to in paragraph two of this subdivision a, an amount equal to the remainder resulting from the subtraction prescribed by paragraph four of this subdivision, as applicable to such pension fund beneficiary.

(6) Nothing contained in the preceding paragraphs of this subdivision a shall be construed as entitling any pension fund beneficiary therein described to any payment for any month in which the retirement or death of such pension fund beneficiary occurred or occurs.

(7) For calendar years succeeding December thirty-first, nineteen hundred eighty-eight, the variable supplements fund, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, shall pay to each pension fund beneficiary who retired prior to July first, nineteen hundred eighty-eight, variable supplements payments as follows:

(i) for each calendar year following calendar year nineteen hundred eighty-eight, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about December fifteenth of such year, as follows:

| Calendar Year | Supplement |
|---|---|
| 1989 | $ 3,000 |
| 1990 | $ 3,500 |
| 1991 | $ 4,000 |
| 1992 | $ 4,500 |
| 1993 | $ 5,000 |
| 1994 | $ 5,500 |
| 1995 | $ 6,000 |
| 1996 | $ 6,500 |
| 1997 | $ 7,000 |
| 1998 | $ 7,500 |
| 1999 | $ 8,000 |
| 2000 | $ 8,500 |
| 2001 | $ 9,000 |
| 2002 | $ 9,500 |
| 2003 | $10,000 |
| 2004 | $10,500 |
| 2005 | $11,000 |
| 2006 | $11,500 |
| 2007 and each calendar year thereafter | $12,000 |

(ii) for the calendar year of the beneficiary's death (for those pension fund beneficiaries who die on or after

February first, nineteen hundred eighty-nine), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided in the chart set forth in subparagraph (i) of this paragraph seven, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death.

(8) For calendar years succeeding December thirty-first, nineteen hundred eighty-eight, the variable supplements fund, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, shall pay to each person who, as of June thirtieth, nineteen hundred eighty-eight, was in service as a member of pension fund, subchapter two and who retired for service thereafter so as to become a pension fund beneficiary, variable supplements payments as follows:

(i) for the calendar year of retirement (for those beneficiaries who retire on or after January first, nineteen hundred eighty-nine), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of retirement, as provided for in the chart set forth in subparagraph (i) of paragraph seven of this subdivision a, by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(ii) for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment equal to the supplement provided for with respect to each such calendar year as set forth in the chart in subparagraph (i) of such paragraph seven, which payment shall be made on or about December fifteenth of such year;

(iii) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, nineteen hundred eighty-nine), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided for in the chart set forth in subparagraph (i) of such paragraph seven, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death; and

(iv) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under (i) and (iii) above shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(9) The variable supplements fund, subject to the provisions of subparagraphs (i) and (iii) of paragraph one of subdivision b of this section, shall pay to each person who becomes a member of pension fund, subchapter two on or after July first, nineteen hundred eighty-eight, and who retires for service so as to become a pension fund beneficiary, variable supplements payments as follows:

(i) (A) subject to the provisions of subparagraph (iv) of this paragraph, for the calendar year of retirement, where such retirement occurs before January first, two thousand eight, an amount calculated by multiplying one-twelfth times the sum of twenty-five hundred dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(B) subject to the provisions of subparagraph (iv) of this paragraph, for the calendar year of retirement, where such retirement occurs on or after January first, two thousand eight, an amount calculated by multiplying one-twelfth times the sum of twelve thousand dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(ii) subject to the provisions of subparagraph (ii-a) of this paragraph, for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about December fifteenth of such year, as follows:

| CALENDAR YEAR OF ANNIVERSARY OF RETIREMENT (references hereinafter to "anniversary year" mean calendar year of anniversary) | SUPPLEMENT |
|---|---|

| | |
|---|---|
| First anniversary year | The sum of (1) a lower-based component equal to one-twelfth of the base sum of $2500 multiplied by the number of whole calendar months from and including the first month of such calendar year to and including the month in which the anniversary of the date of retirement occurs, and (2) a higher-based component equal to one-twelfth of the base sum of $3000 multiplied by the number of months remaining in such calendar year |
| Second anniversary year and each succeeding anniversary year to and including the nineteenth anniversary year | The sum of a lower-based component and a higher-based component computed pursuant to the formula, above, for the first anniversary year, except that for each such anniversary year succeeding the first, the lower-based component shall be computed on a base sum $500 higher than the base sum required to be used in computing the lower-based component for the next preceding anniversary year and the higher based component shall be computed on a base sum $500 higher than the base sum required to be used in computing the higher-based component for such next preceding anniversary year |
| Twentieth anniversary year and each succeeding anniversary year | $12,000 |

(ii-a) for each calendar year which occurs both after the year of retirement and after December thirty-first, two thousand seven (but not including the calendar year of the beneficiary's death), notwithstanding any provision of subparagraph (ii) of this paragraph which otherwise would be applicable, a single annual payment of twelve thousand dollars, which payment (A) shall be in lieu of any other amount which otherwise would be payable under subparagraph (ii) of this paragraph for such calendar year and (B) shall be made on or about December fifteenth of such year; (iii) (A) for the calendar year of the beneficiary's death, where such death occurs both after the year of retirement and prior to January first, two thousand eight, an amount calculated in accordance with the formula which would apply to the year of death under subparagraph (ii) of this paragraph nine if such death had not occurred, but prorated on the basis of the number of full calendar months the beneficiary lived during the year of death prior to the month of his or her death;

(B) for the calendar year of the beneficiary's death, where such death occurs both after the year of retirement and in the calendar year two thousand eight or thereafter, an amount calculated by multiplying one-twelfth of twelve thousand dollars by the number of months the beneficiary lived during the year of death prior to the month of his or her death; and

(iv) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs (i) and (iii) above shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

b. (1) (i) Subject to the provisions of subparagraphs (ii), (iii) and (iv) of this paragraph one, on or after July first, nineteen hundred eighty-eight, where a pension fund beneficiary is entitled to receive variable supplements payments pursuant to subdivision a of this section, and that beneficiary is also entitled to receive a supplemental retirement allowance or cost-of-living adjustment pursuant to any other provision of law enacted on or after July first, nineteen hundred eighty-eight (hereinafter referred to as "other supplemental retirement allowance"), the amount of such variable supplement payable for a calendar year or a part of such calendar year to such beneficiary shall be reduced by the amount of such other supplemental retirement allowance that is payable to such beneficiary to the extent that such other supplemental retirement allowance is attributable to the same calendar year or part of such calendar year.

(ii) For any pension fund beneficiary referred to in paragraph two or paragraph seven or paragraph eight of subdivision a of this section, whose variable supplements payments are being reduced pursuant to subparagraph (i) of this paragraph one because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such subparagraph (i) shall cease as to such beneficiary on the later of (A) the first day of the month next following the month in which such beneficiary attains age sixty-two; or (B) January first, two thousand

seven.

(iii) For any pension fund beneficiary referred to in paragraph nine of subdivision a of this section, whose variable supplements payments are being reduced pursuant to subparagraph (i) of this paragraph one because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such subparagraph (i) shall cease as to such beneficiary on the later of (A) the first day of the month following the month in which such beneficiary attains age sixty-two; or (B) the earlier of (1) the first day of the month next following the month in which the nineteenth anniversary of the retirement of such beneficiary occurs or (2) January first, two thousand eight.

(iv) In any case where the reduction of variable supplements payments to a pension fund beneficiary has ceased pursuant to subparagraph (ii) or subparagraph (iii) of this paragraph one, that beneficiary, for the purpose of determining his or her eligibility for and the amount of any other supplemental retirement allowance, shall be deemed to have retired on the date of the cessation of such reduction specified in the applicable provisions of such subparagraph (ii) or subparagraph (iii).

(v) The payment of all variable supplements payable pursuant to subdivision a of this section are hereby made obligations of the city, and the city hereby guarantees that such supplements shall be paid to all eligible pension fund beneficiaries.

(2) The legislature hereby declares that the variable supplements authorized by this subchapter and the granting and receipt thereof:

(i) shall not create or constitute membership in a pension or retirement system and shall not create or constitute a contract with any pension fund beneficiary or with any member of pension fund, subchapter one or pension fund, subchapter two; and

(ii) shall not constitute a pension or retirement allowance or benefit under pension fund, subchapter one or pension fund, subchapter two or otherwise.

(3) Except as otherwise provided in sections 13-232 and 13-232.1 of this chapter, nothing contained in this subchapter shall create or impose any obligation on the part of pension fund, subchapter one or pension fund, subchapter two or the funds or monies thereof, or authorize such funds or monies to be appropriated or used for any payment under this subchapter or for any purpose thereof.

c. Pension fund beneficiaries shall be eligible to receive variable supplements pursuant to this subchapter, notwithstanding any other provision of law to the contrary.

d. The monies or assets of the variable supplements fund shall not be used for any purpose, other than payment of variable supplements pursuant to the provisions of this subchapter, except that they may be invested as authorized by section 13-273 of this subchapter.

e. In addition to the payments set forth in paragraphs eight and nine of subdivision a of this section, there shall be paid to each pension fund beneficiary, on or about the December fifteenth next succeeding his or her date of retirement, an amount equal to the variable supplements payments, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, that he or she would have received, had he or she retired on the date of his or her earliest eligibility for service retirement, in the period measured from (1) the later of (i) such earliest eligibility date and (ii) January 1, 2002, and (2) his or her date of retirement.

**HISTORICAL NOTE**

Section amended chap 247/1988 § 9

Section added chap 907/1985 § 1

Subd. a par (9) amended chap 503/1995 § 13, eff. Aug. 2, 1995.

Subd. b par (1) subpar (i) amended chap 125/2000 § 6, eff. July 11, 2000.

Subd. b par (1) subpar (iii) amended chap 503/1995 § 14, eff. Aug. 2, 1995.

Subd. e added chap 216/2002 § 1, eff. July 30, 2002.

**DERIVATION**

Formerly § B18-63.0 added chap 876/1970 § 1

**CASE NOTES**

¶ 1. Transfers from transit police force to New York City police department "shall be governed by the provisions of applicable law, L. 1991, ch 675, § 5, including applicable law providing officer must be a member of Police Pension Fund in order to receive POVSF benefits, § 13-271 (a)(1), § 13-268 (5) and as transferees would not become members until 1992, and then would qualify for Tier B benefits and not Tier A benefits upon retirement, § 13-271. Nor can the law allowing for retroactive credit in the pension fund assist petitioners herein, § 13-143 (b), as the statute creating the POVSF specifically provides that it is not to be construed as a pension fund, § 13-269 (b). Poggi v City of New York, 109 AD 2d 265, affd. 67 NY2d.794; Duffy v Dinkins, 190 AD 2d 619 [1993].

**FOOTNOTES**

7

[Footnote 7]: * Note provisions of chap 247/1988 § 12.

§ 12. Commencing with the collective bargaining agreement period next following the year two thousand seven, and not earlier, the city and the patrolmen's benevolent association of the city of New York may bargain collectively over changes in the provisions of subchapter three of chapter two of title thirteen of the administrative code of such city; provided, however, that no changes in any such provision shall be made except by an act of the legislature.



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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 3*7 [POLICE OFFICER'S VARIABLE SUPPLEMENTS FUND]

§ 13-272 Variable supplements fund; a corporation.

The variable supplements fund shall have the powers and privileges of a corporation and by its name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property held.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-64.0 added chap 876/1970 § 1

**FOOTNOTES**

7

[Footnote 7]: * Note provisions of chap 247/1988 § 12.

§ 12. Commencing with the collective bargaining agreement period next following the year two thousand seven, and not earlier, the city and the patrolmen's benevolent association of the city of New York may bargain collectively over changes in the provisions of subchapter three of chapter two of title thirteen of the administrative code of such city; provided, however, that no changes in any such provision shall be made except by an act of the legislature.

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 3*7 [POLICE OFFICER'S VARIABLE SUPPLEMENTS FUND]

§ 13-273 Trustees of funds; investments.

a. The members of the board shall be the trustees of the monies received by or belonging to the variable supplements fund pursuant to this subchapter and, subject to the provisions of subdivision b of this section, shall have full power to invest same, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of such monies shall have been invested as well as of the proceeds of such investments and of any monies belonging to such fund.

b. The members of the board shall have the same investment powers and power to delegate such powers as are vested by the code and the retirement and social security law in the members of the board of trustees of the pension fund, subchapter two.

**HISTORICAL NOTE**

Section amended chap 247/1988 § 10

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-65.0 added chap 876/1970 § 1

**FOOTNOTES**

7

[Footnote 7]: * Note provisions of chap 247/1988 § 12.

§ 12. Commencing with the collective bargaining agreement period next following the year two thousand seven, and not earlier, the city and the patrolmen's benevolent association of the city of New York may bargain collectively over changes in the provisions of subchapter three of chapter two of title thirteen of the administrative code of such city; provided, however, that no changes in any such provision shall be made except by an act of the legislature.

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 3*7 [POLICE OFFICER'S VARIABLE SUPPLEMENTS FUND]

§ 13-274 Annual reports.

The board shall publish annually in the City Record a report for the preceding year showing the assets of the variable supplements fund and a statement as to the accumulated cash and securities of such fund as certified by the comptroller, and shall set forth in such reports such other facts, recommendations and data as the board may deem pertinent.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-66.0 added chap 876/1970 § 1

**FOOTNOTES**

7

[Footnote 7]: * Note provisions of chap 247/1988 § 12.

§ 12. Commencing with the collective bargaining agreement period next following the year two thousand seven, and not earlier, the city and the patrolmen's benevolent association of the city of New York may bargain collectively over changes in the provisions of subchapter three of chapter two of title thirteen of the administrative code of such city; provided, however, that no changes in any such provision shall be made except by an act of the legislature.



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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 3*7 [POLICE OFFICER'S VARIABLE SUPPLEMENTS FUND]

§ 13-275 Custodian of funds.

The comptroller shall be custodian of the monies and assets of the variable supplements fund. All such monies and assets included in such fund or which shall hereafter accrue to such fund shall be in his or her custody for the purposes of this subchapter subject to the direction, control and approval of such board as to disposition, investment, management and report. All payments from such fund shall be made by the comptroller upon a voucher signed by the secretary of the board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-67.0 added chap 876/1970 § 1

**FOOTNOTES**

7

[Footnote 7]: * Note provisions of chap 247/1988 § 12.

§ 12. Commencing with the collective bargaining agreement period next following the year two thousand seven, and not earlier, the city and the patrolmen's benevolent association of the city of New York may bargain collectively over changes in the provisions of subchapter three of chapter two of title thirteen of the administrative code of such city; provided, however, that no changes in any such provision shall be made except by an act of the legislature.

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CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 3*7 [POLICE OFFICER'S VARIABLE SUPPLEMENTS FUND]

§ 13-276 Prohibitions with respect to trustees and employees.

Except as provided in this subchapter, the trustees and employees assigned to the board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment of the variable supplements fund or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-68.0 added chap 876/1970 § 1

**FOOTNOTES**

7

[Footnote 7]: * Note provisions of chap 247/1988 § 12.

§ 12. Commencing with the collective bargaining agreement period next following the year two thousand seven, and not earlier, the city and the patrolmen's benevolent association of the city of New York may bargain collectively over changes in the provisions of subchapter three of chapter two of title thirteen of the administrative code of such city; provided, however, that no changes in any such provision shall be made except by an act of the legislature.



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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 3*7 [POLICE OFFICER'S VARIABLE SUPPLEMENTS FUND]

§ 13-277 State supervision.

The superintendent of insurance may examine the affairs of the variable supplements fund with the same powers and jurisdiction as are applicable in the case of an examination of a life insurance company by the superintendent under article three of the insurance law. The variable supplements fund shall be subject to assessment for expenses pursuant to the provisions of section three hundred thirteen of the insurance law, but shall not be subject to assessment for expenses under any of the provisions of section three hundred thirty-two of such law.

**HISTORICAL NOTE**

Section amended chap 247/1988 § 11

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-69.0 added chap 876/1970 § 1

Sub b amended chap 854/1980 § 1

Sub b amended chap 805/1984 § 103

**FOOTNOTES**

7

[Footnote 7]: * Note provisions of chap 247/1988 § 12.

§ 12. Commencing with the collective bargaining agreement period next following the year two thousand seven, and not earlier, the city and the patrolmen's benevolent association of the city of New York may bargain collectively over changes in the provisions of subchapter three of chapter two of title thirteen of the administrative code of such city; provided, however, that no changes in any such provision shall be made except by an act of the legislature.

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 4*8 [POLICE SUPERIOR OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-278 Definitions.

As used in this subchapter, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

1. "Variable supplements fund". The police superior officers' variable supplements fund established by this subchapter.

1-a. "Minimum period". The minimum period of credited service which a member of pension fund, subchapter one or pension fund, subchapter two is required by law to perform in order to be eligible to retire for service with immediate payability of retirement allowance.

1-b. "Police officer". A member of either pension fund referred to in subdivision one-a of this section who, at the time of retirement for service by reason of fulfillment of the minimum period, was not a police superior officer.

2. "Fiscal year". Any year commencing with the first day of July and ending with the thirtieth day of June next following.

3. "Board". The board of trustees provided for in section 13-280 of this subchapter.

4. "Police superior officer". Any member of the uniformed force of the police department who (a) hold the

position of sergeant or any position of higher rank in such force, or (b) is a detective.

5. "Pension fund beneficiary". Any person who receives a retirement allowance by reason of having retired, on or after October first, nineteen hundred sixty-eight, for service (with credit for twenty or more years of service creditable toward the minimum period) as a member of pension fund, subchapter one or pension fund, subchapter two and as a police superior officer.

6. "Variable supplement". Any sum authorized to be paid to a pension fund beneficiary pursuant to the provisions of this subchapter.

7. "Pension fund, subchapter two". The New York police department pension fund maintained pursuant to subchapter two of chapter two of this title.

8. "Pension fund, subchapter one". The New York police department pension fund maintained pursuant to subchapter two of this title.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subds. 1-a, 1-b added chap 479/1993 § 1 retro. to Jan. 1, 1993

Subds. 5, 6 amended chap 479/1993 § 2 retro. to Jan. 1, 1993

**DERIVATION**

Formerly § B18-80.0 added chap 876/1970 § 1

**FOOTNOTES**

8

[Footnote 8]: * Subchapter 4 designated chap 247/1988 § 13.

(§§ 13-278-13-287)

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 4*8 [POLICE SUPERIOR OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-279 Police superior officers' variable supplements fund.

a. There is hereby established a fund, to be known as the police superior officers' variable supplements fund. Such fund shall consist of such monies as may be paid thereto from pension fund, subchapter two, pursuant to the provisions of sections 13-232, 13-232.2 and 13-232.3 of this chapter and all other monies received by such fund from any other source pursuant to law.

b. It is hereby declared by the legislature that the police superior officers' variable supplements fund shall not be, and shall not be construed to constitute, a pension or retirement system or fund, and that it shall function as a means whereby payments, not constituting a pension or retirement allowance, shall be made in accordance with the provisions of this subchapter, to eligible pension fund beneficiaries as a supplement to benefits received by them under subchapter one or two of this chapter. The legislature hereby reserves to the state of New York and itself the right and power to amend, modify or repeal any or all of the provisions of this subchapter.

**HISTORICAL NOTE**

Section amended chap 479/1993 § 3 retro. to Jan. 1, 1993

Section added chap 907/1985 § 1

Subd. a amended chap 247/1988 § 23

**DERIVATION**

Formerly § B18-81.0 added chap 876/1970 § 1

**FOOTNOTES**

8

[Footnote 8]: * Subchapter 4 designated chap 247/1988 § 13.

(§§ 13-278-13-287)



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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 4*8 [POLICE SUPERIOR OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-280 Board of trustees.

a. The variable supplements fund shall be administered by a board of trustees which shall, subject to applicable provisions of law and to the prior approval of the board of estimate, from time to time establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof.

b. Such board shall consist of:

1. The representative of the mayor who is a member of the board of trustees of pension fund, subchapter two, who shall be entitled to cast two votes. The mayor may, by instrument in writing filed in his or her office and with the board, designate one or more members of his or her office to act in the place of such representative at meetings of the board, in the event of such representative's absence therefrom.

2. The comptroller of the city, who shall be entitled to cast two votes. Any deputy comptroller authorized, pursuant to subdivision b of section ninety-four of the New York city charter, to act in the place of the comptroller as a member of the board of trustees of pension fund, subchapter two, may be authorized by the comptroller, in accordance with the provisions of such subdivision, to act in the place of the comptroller as a member of the board.

2-a. The commissioner of finance, who shall be entitled to cast two votes. Such commissioner may, by instrument in writing filed in his or her office and with the board, designate one or more members of his or her office to

act in his or her place at meetings of the board, in the event of such commissioner's absence therefrom.

3. Four representatives of the police superior officers, who shall each be entitled to cast one vote, and who shall be the four members of the board of trustees of pension fund, subchapter two, serving as such pursuant to paragraphs nine, ten, eleven and twelve of subdivision a of section 13-216 of this chapter.

c. Every act of the board shall be by resolution adopted only by a vote of at least six-tenths of the whole number of votes authorized to be cast by all of the members of such board.

d. The actuary appointed pursuant to section 13-121 of the code shall be the technical advisor of the board.

e. (1) As of June thirtieth of the nineteen hundred ninety-two-nineteen hundred ninety-three fiscal year and as of June thirtieth of each succeeding fiscal year, the actuary referred to in subdivision d of this section shall make a valuation of the assets and liabilities of the variable supplements fund in accordance with the requirements of the succeeding paragraphs of this subdivision e.

(2) The actuary shall base such annual valuation of liabilities only (A) upon the persons who, as of each such June thirtieth, are pension fund beneficiaries and (B) upon the persons who, being police officers or police superior officers in service as of such June thirtieth, may be actuarially expected to retire thereafter as police superior officers for service with twenty or more years of service creditable toward the minimum period.

(3) The liabilities determined in such valuation shall be equal to the actuarial present value of accumulated plan benefits. The actuarial assumptions used by the actuary in making such annual valuation of liabilities, including assumptions as to interest rate, mortality of pension fund beneficiaries and number of police officers and police superior officers in service as of June thirtieth who will retire for service as police superior officers with twenty or more years of service creditable toward the minimum period, shall be adopted by the board on the recommendation of the actuary.

(4) For the purposes of such annual valuation of the assets of the variable supplements fund, such assets shall be valued at their fair market value as of each such June thirtieth.

f. The police commissioner shall assign to the board such number of clerical and other assistants as may be necessary for the performance of its functions.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended chap 839/1990 § 1 eff. July 25, 1990 par 2-a added chap 479/1993 § 4 retro. to Jan. 1, 1993

Subd. c amended chap 479/1993 § 5 retro. to Jan. 1, 1993 amended chap 839/1990 § 2 eff. July 25, 1990

Subd. d relettered and amended chap 479/1993 § 7 retro. to Jan. 1, 1993. (formerly subd. e) repealed chap 479/1993 § 6 retro. to Jan. 1, 1993 pars (1), (2) amended chap 839/1990 § 3 eff. July 25, 1990 Subd. e added chap 479/1993 § 8 retro. to Jan. 1, 1993

**DERIVATION**

Formerly § B18-82.0 added chap 876/1970 § 1

**FOOTNOTES**

8

[Footnote 8]: * Subchapter 4 designated chap 247/1988 § 13.

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 4*8 [POLICE SUPERIOR OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-281 Payment of supplemental benefits.

a. (1) The variable supplements fund shall pay variable supplements to pension fund beneficiaries in accordance with the provisions of the succeeding paragraphs of this subdivision a.

(2) For calendar years succeeding December thirty-first, nineteen hundred ninety-two, the variable supplements fund, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, shall pay to each pension fund beneficiary who retired prior to July first, nineteen hundred eighty-eight, and to each person who, having been in service as a member of pension fund, subchapter two on June thirtieth, nineteen hundred eighty-eight, retired for service prior to January first, nineteen hundred ninety-three so as to become a pension fund beneficiary, varible supplements payments as follows:

(i) for each calendar year following calendar year nineteen hundred ninety-two, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about December fifteenth of such year, as follows:

| Calendar Year | Supplement |
|---|---|
| 1993 | $ 5,000 |
| 1994 | $ 5,500 |

| | |
|---|---|
| 1995 | $ 6,000 |
| 1996 | $ 6,500 |
| 1997 | $ 7,000 |
| 1998 | $ 7,500 |
| 1999 | $ 8,000 |
| 2000 | $ 8,500 |
| 2001 | $ 9,000 |
| 2002 | $ 9,500 |
| 2003 | $10,000 |
| 2004 | $10,500 |
| 2005 | $11,000 |
| 2006 | $11,500 |
| 2007 and each calendar year thereafter | $12,000 |

(ii) for the calendar year of the beneficiary's death (for those pension fund beneficiaries who die on or after February first, nineteen hundred ninety-three), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided in the chart set forth in subparagraph (i) of this paragraph two, by the number of full calendar months the beneficiary lives during that calendar year prior to the month of his or her death.

(3) For calendar years succeeding December thirty-first, nineteen hundred ninety-two, the variable supplements fund, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, shall pay to each person who, as of June thirtieth, nineteen hundred eighty-eight, was in service as a member of pension fund, subchapter two and who retired for service on or after January first, nineteen hundred ninety-three, so as to become a pension fund beneficiary, variable supplements payments as follows:

(i) for the calendar year of retirement, an amount calculated by multiplying one-twelfth times the supplement applicable to the year of retirement, as provided for in the chart set forth in subparagraph (i) of paragraph two of this subdivision a, by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(ii) for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment equal to the supplement provided for with respect to each such calendar year as set forth in the chart in subparagraph (i) of such paragraph two, which payment shall be made on or about December fifteenth of such year;

(iii) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, nineteen hundred ninety-three), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided for in the chart set forth in subparagraph (i) of such paragraph two, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death; and

(iv) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs (i) and (iii) above shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(4) The variable supplements fund, subject to the provisions of subparagraphs (i) and (iii) of paragraph one of subdivision b of this section, shall pay to each person who became or becomes a member of pension fund, subchapter two on or after July first, nineteen hundred eighty-eight, and who retires for service so as to become a pension fund beneficiary, variable supplements payments as follows:

(i) (A) subject to the provisions of subparagraph (iv) of this paragraph, for the calendar year of retirement,

where such retirement occurs before January first, two thousand eight, an amount calculated by multiplying one-twelfth times the sum of twenty-five hundred dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(B) subject to the provisions of subparagraph (iv) of this paragraph, for the calendar year of retirement, where such retirement occurs on or after January first, two thousand eight, an amount calculated by multiplying one-twelfth times the sum of twelve thousand dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(ii) subject to the provisions of subparagraph (ii-a) of this paragraph, for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about December fifteenth of such year, as follows:

| CALENDAR YEAR OF ANNIVERSARY OF RETIREMENT (references hereinafter to "anniversary year" mean calendar year of anniversary) | SUPPLEMENT |
|---|---|
| First anniversary year | The sum of (1) a lower-based component equal to one-twelfth of the base sum of $2,500 multiplied by the number of whole calendar months from and including the first month of such calendar year to and including the month in which the anniversary of the date of retirement occurs, and (2) a higher-based component equal to one-twelfth of the base sum of $3,000 multiplied by the number of months remaining in such calendar year |
| Second anniversary year and each succeeding anniversary year to and including the nineteenth anniversary year | The sum of a lower-based component and a higher-based component computed pursuant to the formula, above, for the first anniversary year, except that for each such anniversary year succeeding the first, the lower-based component shall be computed on a base sum $500 higher than the base sum required to be used in computing the lower-based component for the next preceding anniversary year and the higher-based component shall be computed on a base sum $500 higher than the base sum required to be used in computing the higher-based component for such next preceding anniversary year |
| Twentieth anniversary year and each succeeding anniversary year | $12,000 |

(ii-a) for each calendar year which occurs both after the year of retirement and after December thirty-first, two thousand seven (but not including the calendar year of the beneficiary's death), notwithstanding any provision of subparagraph (ii) of this paragraph which otherwise would be applicable, a single annual payment of twelve thousand dollars, which payment (A) shall be in lieu of any other amount which otherwise would be payable under subparagraph (ii) of this paragraph for such calendar year and (B) shall be made on or about December fifteenth of such year;

(iii) (A) for the calendar year of the beneficiary's death, where such death occurs both after the year of retirement and prior to January first, two thousand eight, an amount calculated in accordance with the formula which would apply to the year of death under subparagraph (ii) of this paragraph if such death had not occurred, but prorated on the basis of the number of full calendar months the beneficiary lived during the year of death prior to the month of his or her death;

(B) for the calendar year of the beneficiary's death, where such death occurs both after the year of retirement and in the calendar year two thousand eight or thereafter, an amount calculated by multiplying one-twelfth of twelve thousand dollars by the number of months the beneficiary lived during the year of death prior to the month of his or her death; and

(iv) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs (i) and (iii) of this paragraph shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

b. (1) (i) Subject to the provisions of subparagraphs (ii), (iii) and (iv) of this paragraph one, on or after January first, nineteen hundred ninety-three, where a pension fund beneficiary is entitled to receive variable supplements payments pursuant to subdivision a of this section, and that beneficiary is also entitled to receive a supplemental retirement allowance or cost-of-living adjustment pursuant to any other provision of law enacted on or after January first, nineteen hundred ninety-three (hereinafter referred to as "other supplemental retirement allowance"), the amount of such variable supplement payable for a calendar year or a part of such calendar year to such beneficiary shall be reduced by the amount of such otther supplemental retirement allowance that is payable to such beneficiary to the extent that such other supplemental retirement allowance is attributable to the same calendar year or part of such calendar year.

(ii) For any pension fund beneficiary referred to in paragraph two or paragraph three of subdivision a of this section, whose variable supplements payments are being reduced pursuant to subparagraph (i) of this paragraph one because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such subparagraph (i) shall cease as to such beneficiary on the later of (A) the first day of the month next following the month in which such beneficiary attains age sixty-two; or (B) January first, two thousand seven.

(iii) For any pension fund beneficiary referred to in paragraph four of subdivision a of this section, whose variable supplements payments are being reduced pursuant to subparagraph (i) of this paragraph one because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such subparagraph (i) shall cease as to such beneficiary on the later of (A) the first day of the month next following the month in which such beneficiary attains age sixty-two; or (B) the earlier of (1) the first day of the month next following the month in which the nineteenth anniversary of the retirement of such beneficiary occurs or (2) January first, two thousand eight.

(iv) In any case where the reduction of variable supplements payments to a pension fund beneficiary has ceased pursuant to subparagraph (ii) or subparagraph (iii) of this paragraph one, that beneficiary, for the purpose of determining his or her eligibility for and the amount of any other supplemental retirement allowance, shall be deemed to have retired on the date of the cessation of such reduction specified in the applicable provisions of such subparagraph (ii) or subparagraph (iii).

(v) The payments of all variable supplements payable pursuant to subdivision a of this section are hereby made obligations of the city, and the city hereby guarantees that such supplements shall be paid to all eligible pension fund beneficiaries.

(2) The legislature hereby declares that the variable supplements authorized by this subchapter and the granting and receipt thereof:

(i) shall not create or constitute membership in a pension or retirement system and shall not create or constitute a contract with any pension fund beneficiary or with any member of pension fund, subchapter one or pension fund, subchapter two; and

(ii) shall not constitute a pension or retirement allowance or benefit under pension fund, subchapter one or pension fund, subchapter two or otherwise.

(3) Except as otherwise provided in sections 13-232, 13-232.2 and 13-232.3 of this chapter, nothing contained in this subchapter shall create or impose any obligation on the part of pension fund, subchapter one or pension fund, subchapter two or the funds or monies thereof, or authorize such funds or monies to be appropriated or used for any payment under this subchapter or for any purpose thereof.

c. Pension fund beneficiaries shall be eligible to receive variable supplements pursuant to this subchapter, notwithstanding any other provision of law to the contrary.

d. The monies or assets of the variable supplements fund shall not be used for any purpose, other than payment of variable supplements pursuant to the provisions of this subchapter, except that they may be invested as authorized by section 13-283 of this subchapter.

e. In addition to the payments set forth in paragraphs three and four of subdivision a of this section, there shall be paid to each pension fund beneficiary, on or about the December fifteenth next succeeding his or her date of retirement, an amount equal to the variable supplements payments, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, that he or she would have received, had he or she retired on the date of his or her earliest eligibility for service retirement, in the period measured from (1) the later of (i) such earliest eligibility date and (ii) January 1, 2002, and (2) his or her date of retirement.

**HISTORICAL NOTE**

Section amended chap 479/1993 § 9 retro. to Jan. 1, 1993

Section added chap 907/1985 § 1

Subd. a par (4) amended chap 444/2001 § 1, eff. Nov. 13, 2001.

Subd. b par (1) subpar (i) amended chap 125/2000 § 7, eff. July 11, 2000.

Subd. b par (1) subpar (iii) amended chap 444/2001 § 2, eff. Nov. 13, 2001.

Subd. b par (3) amended chap 247/1988 § 24

Subd. e added chap 216/2002 § 2, eff. July 30, 2002.

**DERIVATION**

Formerly § B18-83.0 added chap 876/1970 § 1

**FOOTNOTES**

8

[Footnote 8]: * Subchapter 4 designated chap 247/1988 § 13.

(§§ 13-278-13-287)



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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 4*8 [POLICE SUPERIOR OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-282 Variable supplements fund; a corporation.

The variable supplements fund shall have the powers and privileges of a corporation and by its name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property held.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-84.0 added chap 876/1970 § 1

**FOOTNOTES**

8

[Footnote 8]: * Subchapter 4 designated chap 247/1988 § 13.

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CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 4*8 [POLICE SUPERIOR OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-283 Trustees of funds; investments.

a. The members of the board shall be the trustees of the monies received by or belonging to the variable supplements fund pursuant to this subchapter and, subject to the provisions of subdivision b of this section, shall have full power to invest same, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of such monies shall have been invested as well as of the proceeds of such investments and of any monies belonging to such fund.

b. The members of the board shall have the same investment powers and power to delegate such powers as are vested by the code and the retirement and social security law in the members of the board of trustees of the pension fund, subchapter two.

**HISTORICAL NOTE**

Section amended chap 505/1990 § 1 eff. July 18, 1990

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-85.0 added chap 876/1970 § 1

**FOOTNOTES**

8

[Footnote 8]: * Subchapter 4 designated chap 247/1988 § 13.

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CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 4*8 [POLICE SUPERIOR OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-284 Annual reports.

The board shall publish annually in the City Record a report for the preceding year showing the assets of the variable supplements fund and a statement as to the accumulated cash and securities of such fund as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as the board may deem pertinent.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-86.0 added chap 876/1970 § 1

**FOOTNOTES**

8

[Footnote 8]: * Subchapter 4 designated chap 247/1988 § 13.

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Title 13 Retirement and Pensions

CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 4*8 [POLICE SUPERIOR OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-285 Custodian of funds.

The comptroller shall be custodian of the monies and assets of the variable supplements fund. All such monies and assets included in such fund or which shall hereafter accrue to such fund shall be in his or her custody for the purposes of this subchapter subject to the direction, control and approval of such board as to disposition, investment, management and report. All payments from such fund shall be made by the comptroller upon a voucher signed by the secretary of the board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-87.0 added chap 876/1970 § 1

**FOOTNOTES**

8

[Footnote 8]: * Subchapter 4 designated chap 247/1988 § 13.

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CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 4*8 [POLICE SUPERIOR OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-286 Prohibitions with respect to trustees and employees.

Except as provided in this subchapter, the trustees and employees assigned to the board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment of the variable supplements fund or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-88.0 added chap 876/1970 § 1

**FOOTNOTES**

8

[Footnote 8]: * Subchapter 4 designated chap 247/1988 § 13.

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CHAPTER 2 POLICE PENSION FUNDS

SUBCHAPTER 4*8 [POLICE SUPERIOR OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-287 State supervision.

The superintendent of insurance may examine the affairs of the variable supplements fund with the same powers and jurisdiction as are applicable in the case of an examination of a life insurance company by the superintendent under article three of the insurance law. The variable supplements fund shall be subject to assessment for expenses pursuant to the provisions of section three hundred thirteen of the insurance law, but shall not be subject to assessment for expenses under any of the provisions of section three hundred thirty-two of such law.

**HISTORICAL NOTE**

Section amended chap 479/1993 § 10 retro. to Jan. 1, 1993

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B18-89.0 added chap 876/1970 § 1

Sub b amended chap 854/1980 § 2

Sub b amended chap 805/1984 § 104

**FOOTNOTES**

8

[Footnote 8]: * Subchapter 4 designated chap 247/1988 § 13.

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CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 1 NEW YORK FIRE DEPARTMENT PENSION FUND

§ 13-301 Definitions.

As used in this subchapter the following terms shall mean and include:

1. "Member." A person who was an officer, member or probationary member of the uniformed force of the department at the time when this section shall take effect.

2. "Board of trustees." The board of trustees provided for in section 13-302 of this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-1.0 added LL 3/1940 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. The 1940 amendment to Admin. Code § 319-6.0, subd. a, so as to provide that the Board of Trustees of the pension fund shall pay a pension to the widow of any deceased member of the uniformed forces, did not affect the rights

of the widow of a person who had ceased to be a member of the Department 25 years before the amendment took effect, inasmuch as § B19-1.0 which forms part of the 1940 amendment, defines a "member" as a person who was a member of the force at the time the section took effect.-Gilshion v. Walsh, 183 Misc. 172, 53 N.Y.S. 2d 564 [1944].

¶ 2. That the old New York City Fire Department Pension Fund Law was repealed and a new statute enacted in 1940 before any action was taken by the trustees of the fund on the medical report respecting petitioner's proposed retirement, did not render such report ineffective nor preclude the trustees from thereafter acting upon it, since Local Law No. 3 of 1940, § 5, contained an express saving clause, the effect of which was to continue pending proceedings, and in any event such result would follow under the rule of statutory construction relating to statutes simultaneously repealed and re-enacted, and which are substantial re-enactments of the prior law.-In re Balacek (Bd. of Trustees of Fire Department Pension Funds), 26 N.Y.S. 2d 419 [1941], rev'd on other grounds, 263 App. Div. 712, 30 N.Y.S. 2d 1007 [1941], aff'd 288 N.Y. 640, 43 N.E. 2d 740 [1942].

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 1 NEW YORK FIRE DEPARTMENT PENSION FUND

§ 13-302 Board of trustees.

a. A board of trustees shall be the head of the New York fire department pension fund and, subject to the provisions of law and to the prior approval of the board of estimate, from time to time shall establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof. Such board shall consist of:

1. The fire commissioner who shall be chairperson of the board and who shall be entitled to cast three votes.

2. The comptroller of the city who shall be entitled to cast three votes.

3. A representative of the mayor who shall be appointed by the mayor and who shall be entitled to cast three votes.

4. The commissioner of finance of the city who shall be entitled to cast three votes.

5. The president of the uniformed firemen's association of greater New York who shall be entitled to cast two votes.

6. The vice-president of the uniformed firemen's association of greater New York who shall be entitled to cast two votes.

7. The treasurer of the uniformed firemen's association of greater New York who shall be entitled to cast two votes.

8. The chairperson of the board of trustees of the uniformed firemen's association of greater New York who shall be entitled to cast two votes.

9. Three elected members of the executive board of the uniformed fire officers' association of the fire department, city of New York, of whom one shall be an officer of the said department with rank above that of captain and shall be entitled to cast one vote; another shall be a captain of the said department and shall be entitled to cast one vote; another shall be a lieutenant of the said department and shall be entitled to cast one and one-half votes.

10. The president of the uniformed pilots and marine engineers association, fire department, city of New York, who shall be entitled to cast one-half vote.

b. Every act of the board of trustees shall be by resolution which shall be adopted only by a vote of at least seven-twelfths of the whole number of votes authorized to be cast by all of the members of such board.

c. The board of trustees shall receive all moneys applicable to such fund and deposit the same to the credit of such fund, in banks or trust companies to be selected by it, and continue to receive and deposit the funds applicable to the same, as received, to the credit of such fund, and shall have full power to invest the same, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks, and, subject to like terms, conditions, limitations and restrictions, such board of trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the funds provided for by this subchapter shall have been invested as well as of the proceeds of such investments and of any moneys belonging to such fund, and such board of trustees shall have the power to make all necessary contracts and to take all necessary remedies in the premises.

d. The fire commissioner shall assign to the board of trustees a sufficient number of clerical and other assistants to permit the board efficiently to exercise their powers and to perform their duties.

e. On or before the first day of September of each year, the board of trustees shall make a detailed verified report to the mayor.

f. Any member of the board referred to in paragraphs five, six, seven, eight and ten, respectively, of subdivision a of this section, shall be members of the uniformed force and may authorize in writing at any time any other officer of the respective associations to represent him or her on such board in the event of his or her absence or disability, provided, however, that the by-laws or constitution of such respective associations provide for the designation of a representative in such event.

g. Notwithstanding any other provision of law to the contrary, on July first, nineteen hundred ninety-five, the duties and responsibilities of the board of trustees of administering the provisions of this subchapter shall be transferred in accordance with the provisions of subdivision f of section 13-312.1 of this subchapter to the board of trustees of the fire department pension fund provided for in subchapter two of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. g added chap 500/1995 § 1, eff. Aug. 2, 1995.

**DERIVATION**

Formerly § B19-2.0 added LL 3/1940 § 1

Amended LL 21/1946 § 1

Sub f added LL 65/1952 § 1

Sub c amended chap 929/1958 § 1

Sub a par 4 amended chap 100/1963 § 409

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where the Medical Board had found that petitioner member of the uniformed force of the Fire Department was physically disqualified for performance of his duties in the uniformed force, the peremptory statutory duty was imposed upon the board of trustees of the Fire Department Pension Fund to retire the member even though the board could not agree whether such retirement should be on one-half pay on ground the disability was not caused by actual performance of the duties of his position, or whether it should be at three-fourths pay on ground it was so induced. However, since there was no room for discretion in the performance of the board's duty to retire a member who was physically disqualified from performance of his duties, the court might direct the board to retire the member so that he would become entitled to payment of a pension of at least one-half his previous salary, but since there was room for the exercise of discretion in the board's determination of the amount of the salary he should receive, the court could not direct the board to determine that amount which the court might deem wise.-City of N.Y. v. Schoeck, 294 N.Y. 559, 63 N.E. 2d 104 [1945], aff'g 268 App. Div. 979, 51 N.Y.S. 2d 899 [1944].



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 1 NEW YORK FIRE DEPARTMENT PENSION FUND

§ 13-303 Composition.

The New York fire department pension fund shall consist of:

1. The capital, interest, income, dividends,cash deposits, securities and credits in such fund on the first day of January, nineteen hundred forty.

2. All forfeitures and fines imposed by the fire commissioner, from time to time, upon any member or members by way of discipline.

3. All rewards, in money, fees, gifts, testimonials and emoluments that may be paid or given for extraordinary services by any members, except such as have been or shall be allowed by such commissioner, to be retained by such member or members, and such as have been or shall be given to endow a medal or other permanent or competitive reward.

4. All fines and proceeds of suit for penalties under title fifteen and chapter four of title twenty-seven and all license fees payable thereunder which may be paid in from or collected in the boroughs of Manhattan, Brooklyn, Bronx, Queens and Staten Island except as is otherwise provided in section 13-381 of this chapter.

5. All moneys, pay, compensation or salary or any part thereof forfeited, deducted or withheld from any member

or members, for or on account of absence from duty, to be paid semi-monthly to the board of trustees of such fund by the comptroller.

6. All gifts, grants, devises or bequests to such fund of any money, real or personal property, right of property or other valuable thing.

7. All moneys received pursuant to section 11-909 of the code.

8. a. A sum of money equal to but not greater than:

(1) Five per cent of the semi-monthly pay, salary or compensation of each member of the force who shall elect to contribute on the basis of retirement after twenty-five years of service in such force, or

(2) Six per cent of the semi-monthly pay, salary or compensation of each member of the force who shall elect to contribute on the basis of retirement after twenty years of service in such force which sum shall be deducted semi-monthly by the comptroller from the pay, salary, or compensation of each such member and forthwith paid to the board of trustees of such fund. Every member shall be deemed to consent and agree to such deductions and shall receipt in full for his or her pay, salary or compensation, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such member during the period covered by such payment, except his or her claim to the benefits to which he or she may be entitled under the provisions of this subchapter.

b. Each member shall signify in writing to the board of trustees on or before the fifteenth day of May, nineteen hundred forty-one, his or her election to contribute on the basis of retirement either after twenty years of service or after twenty-five years of service.

9. If the amount derived from the above-mentioned sources included in this section shall be insufficient to pay the pensions, allowances, benefits and returns of salary deductions which have been or which may hereafter be granted, it shall be the duty of the commissioner each year at the time of submitting the departmental estimate to the director of the budget, to submit a full and detailed statement of the assets of such fund and the amount required to pay all such sums in full. There shall annually be included in the budget a sum sufficient to provide for such deficiency. The comptroller shall pay the money so provided to the board of trustees.

10. Notwithstanding any other provision of law to the contrary, on and after July first, nineteen hundred ninety-five, the composition of this pension fund shall be as modified by the provisions of section 13-312.1 of this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. 10 added chap 500/1995 § 2, eff. Aug. 2, 1995.

**DERIVATION**

Formerly § B19-3.0 added LL 3/1940 § 1

Special provision LL 3/1940 § 2

Sub 8 par b amended LL 14/1941 § 1

Special provision LL 14/1941 § 3

Sub 4 amended LL 130/1952 § 3

Sub 9 amended chap 100/1963 § 410

**CASE NOTES FROM FORMER SECTION**

¶ 1. City fireman's written agreement with the City of New York that the cost of living bonus granted him should not be regarded as salary for the purpose of computing his pension, was supported by consideration in that he was granted an increase which he would otherwise have had no legal right to demand or compel. Moreover, his agreement that the bonus would not be calculated in establishing the amount of his pension was in full conformity with the public policy of the State and the Constitution, which recognizes membership in a retirement system as a "contractual relationship" and thus obviously authorizes agreements with respect thereto.-Carroll v. Grumet, 281 App. Div. 35, 117 N.Y.S. 2d 553 [1952].

¶ 2. The pension statute, which constitutes part of the contract between the parties, leaves open to the City the discretion to fix the salary upon which the amount of an employer's pension is to be computed.-Id.

¶ 3. Art. V, § 7 of the Constitution, making membership in a pension or retirement system a contractual relationship, did not prevent the Board of Estimate from conditioning a cost of living adjustment for employees on the employee agreeing that such adjustment should not be included in pension computations. Moreover, the withholding of consent by any one employee could not prevent the resolution of the Board of Estimate relative to the cost of living adjustment going into effect as to other employees. That a clerk inadvertently gave plaintiff-employee his check including the cost of living adjustment without receiving a signed waiver from him, could not be deemed a waiver by the City of the condition attached to the payment of additional compensation.-Schwartz v. Sampson, 114 N.Y.S. 2d 730 [1952].

¶ 4. Although it would have been preferable that the action of the trustees of the Fire Department Pension Fund in fixing the salary of the plaintiff for pension purposes be reviewed in the Supreme Court, particularly in view of constitutional and other important questions raised, nevertheless the language of the Court of Appeals in a somewhat similar case was susceptible of a construction that an action at law was maintainable to recover a pension wrongfully withheld, and accordingly, in face of such uncertainty, court would determine the matter on the merits.-Id.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-304*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 1 NEW YORK FIRE DEPARTMENT PENSION FUND

§ 13-304 Payment of pensions; disability; retirement for service.

a. The board of trustees shall retire any member who, upon an examination, as provided in subdivision d of this section, may be found to be disqualified, physically or mentally, for the performance of his or her duties. Such member so retired shall receive from such pension fund an annual allowance or pension as provided in this section. In every case such board shall determine the circumstances thereof, and such pension or allowance so allowed is to be in lieu of any salary received by such member at the time of his or her being so retired. The department shall not be liable for the payment of any claim or demand for services thereafter rendered, and the amount of such pension or allowance shall be determined upon the following conditions:

1. In case of total permanent disability at any time caused in or induced by the actual performance of the duties of his or her position, the amount of annual pension to be allowed shall be not less than three-fourths of the annual compensation allowed such member as salary at the date of his or her retirement and in the case of a member acting in a higher rank, an amount not to exceed three-quarters of the compensation of such rank on the day such injury was suffered.

1-a. In any case where a member is allowed, pursuant to paragraph one of this subdivision a, a pension equal to but not exceeding three-fourths of the annual compensation allowed such member as salary at the date of his or her retirement, such member shall receive, in addition, the amount of the deductions, without interest, made from his or her pay, salary or compensation pursuant to subdivision eight of section 13-303 of this chapter, such amount to be paid

either in a lump sum or in the form of an annuity which is the actuarial equivalent of such amount of deductions, as the member may elect. Such annuity, if so elected, shall be computed on the basis of the mortality tables adopted pursuant to section 13-321 of this chapter, as in effect on the date of retirement of such member, and on the basis of regular interest.

2. In case of partial permanent disability at any time caused in or induced by the actual performance of the duties of his or her position, which disqualifies him or her only from performing active duty in the uniformed force, the member so disabled shall be relieved by the commissioner from active service at fires and assigned to the performance of such light duties as a medical officer of such department may certify him or her to be qualified to perform, or he or she shall be retired on his or her own application at not less than three-fourths of his or her salary at the date of his or her retirement from the service, on an examination, as provided by subdivision d of this section, showing that his or her disability is permanent.

2-a. Notwithstanding any other provisions of this code to the contrary, any condition of impairment of health caused by diseases of the lung, resulting in total or partial disability or death to a member of the uniformed force, who successfully passed a physical examination on entry into the service of such department, which examination failed to reveal any evidence of such condition, shall be presumptive evidence that it was incurred in the performance and discharge of duty, unless the contrary be proved by competent evidence.

2-b. In any case where a member is allowed, pursuant to paragraph two of this subdivision a, a pension equal to but not exceeding three-fourths of his or her salary at the date of his or her retirement from the service, such member shall receive, in addition, the amount of the deductions, without interest, made from his or her pay, salary or compensation pursuant to subdivision eight of section 13-303 of this chapter, such amount to be paid either in a lump sum or in the form of an annuity which is the actuarial equivalent of such amount of deductions, as the member may elect. Such annuity, if so elected, shall be computed on the basis of the mortality tables adopted pursuant to section 13-321 of this title, as in effect on the date of retirement of such member, and on the basis of regular interest.

3. In case of total permanent disability not caused in or induced by the actual performance of the duties of his or her position, which shall occur after the expiration of ten years' service in such department, but before he or she has performed service in the force for a period greater than the minimum period for service retirement elected by him or her, the amount of annual pension to be allowed shall be one-half of the annual compensation allowed such member at the date of his or her retirement from the service.

4. In case of partial permanent disability not caused in or induced by the actual performance of the duties of his or her position, which may occur after ten years' service in such department, the member so disabled may be relieved by the commissioner from active service at fires, but shall remain a member of the uniformed force, subject to the rules governing such force, and be assigned to the performance of such light duties as a medical officer of such department may certify him or her to be qualified to perform, or, if such member be retired after the expiration of ten years' service, but before he or she has performed service in the force for a period greater than the minimum period for service retirement elected by him or her, the annual allowance to be paid to such member shall be one-half of the annual compensation allowed such member at the date of his or her retirement from the service.

5. In case of total permanent disability not caused in or induced by the actual performance of the duties of his or her position, which may occur before the expiration of ten years' service in such department, the amount of annual pension to be allowed shall be one-third of the annual compensation allowed such member at the date of his or her retirement from the service.

6. In case of partial permanent disability not caused in or induced by the actual performance of the duties of his or her position, which may occur before ten years' service in such department, the member so disabled shall be relieved by the commissioner from active service at fires, but shall remain a member of the uniformed force, subject to the rules governing such force, and be assigned to the performance of such light duties as a medical officer of such department

may certify him or her to be qualified to perform, or, if such member be retired before the expiration of ten years' service, the annual allowance to be paid to such member, shall be one-third of the annual compensation allowed such member at the date of his or her retirement from the service.

b. Any member of such department, who has or shall have performed duty therein for a period of twenty years or upwards, upon a medical examination, as provided in subdivision d of this section, showing that such member is permanently disabled, physically or mentally, so as to be unfit for duty, shall be retired from such force and service, and placed on the roll of the pension fund, and awarded and granted, to be paid from such fund:

1. an annual pension during his or her lifetime, of a sum not less than one-half his or her full salary or compensation at the date of his or her retirement from the service; and

2. if such member is awarded and granted, pursuant to paragraph one of this subdivision b, an annual pension equal to but not exceeding one-half of his or her full salary or compensation at the date of his or her retirement from the service, and if such member, at the time of such retirement, has performed service in the force for a number of years greater than the minimum period for service retirement elected by him or her, an annual pension, in addition to the pension provided for by paragraph one of this subdivision b, which shall be equal to:

(i) one-fortieth of his or her full salary or compensation on the date of his or her retirement from the service, multiplied by the number of years of service in the force performed by him or her after completion of such minimum period of service elected by him or her, if such member elected a minimum period of twenty years; or

(ii) one-fiftieth of his or her full salary or compensation on the date of his or her retirement from the service, multiplied by the number of years of service in the force performed by him or her after completion of such minimum period of service elected by him or her, if such member elected a minimum period of twenty-five years.

c. Any member who:

1. Shall have elected to contribute on the basis of retirement after twenty years of service and who has or shall have performed service in the force for at least twenty years, or

2. Shall have elected to contribute on the basis of retirement after twenty-five years of service and who has or shall have performed service in the force for at least twenty-five years, upon his or her own application in writing to and filed with the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, shall be retired as of the date specified in said application from such force and service, and placed on the roll of the pension fund, and awarded and granted, to be paid from such fund, an annual pension during his or her lifetime, not less than one-half his or her full salary or compensation at the date of his or her retirement from the service, and provided further that at the time so specified for his or her retirement his or her term or tenure of office or employment shall not have terminated or have been forfeited, provided further that upon his or her request in writing the member shall be granted a leave of absence from the date of filing said application until the date the retirement becomes effective.

d. All medical examinations required by or made pursuant to the provisions of this subchapter shall be conducted by a medical board appointed by the commissioner, provided, however, that any member, within thirty days after receipt of the decision of such medical board, in writing may request that the decision of such board be reviewed by a special medical board which shall consist of one doctor of the medical board and a doctor selected and compensated by such member. The decision of such special board shall supersede the decision of the medical board. In the event that the two doctors of the special board shall disagree, a recognized specialist on the condition, disease or injury for which such member has been examined or for which disability is claimed shall be selected by such doctors to be a third member of the special board. The decision of a majority of the three members of such special board shall supersede the decision of the medical board. The specialist selected by the two doctors of the special board shall be compensated by the city. Such compensation shall be fixed by the comptroller and shall be subject to his or her audit.

e. The board of trustees shall have the power to grant, award or pay a pension on account of physical or mental disability or disease, only upon a certificate of a medical board or a special medical board after examination as provided in subdivision d of this section. Such certificate shall set forth the cause, nature and extent of the disability, disease or injury of such member.

f. The granting of a pension on severance from service for fault or delinquency shall not be a matter of right, but such a pension may be granted in consideration of special circumstances by the board of trustees and a vote of at least two-thirds of the whole number of votes authorized to be cast by all of the members of such board.

g. The terms "total permanent disability" and "partial permanent disability" as used in this section may be defined in the rules and regulations of the board of trustees.

h. Notwithstanding any other provision of this code, and in lieu of any lesser amount otherwise provided, any member of the department who has or shall have performed duty therein for a period of at least thirty-five years may elect to be retired and placed on the roll of the pension fund, and awarded and granted, to be paid from such fund, an annual pension during his or her lifetime, of a sum equal to his or her full salary at the date of his or her retirement from service.

i. Except as otherwise provided, the pensions granted under this section shall be for the life of the pensioner, and shall not be revoked, repealed or diminished.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-4.0 added LL 3/1940 § 1

Sub c amended LL 72/1951 § 1

Sub h added chap 391/1967 § 1

Sub i relettered chap 391/1967 § 2

(formerly sub h)

Sub a par 1 amended chap 803/1969 § 1

Sub a par 1-a added chap 869/1969 § 1

Sub a par 2-a added chap 869/1969 § 2

Sub a pars 3, 4 amended chap 869/1969 § 3

Sub b amended chap 869/1969 § 4

Sub a par 2-a added chap 1106/1969 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Under Greater New York Charter § 790 providing that a retired fireman was entitled to an annual pension of not less than three-quarters of his annual salary upon a finding that his total permanent disability was caused by actual performance of duties of his position, finding of the Medical Board as to whether disability was caused by performance

of duties was not conclusive upon Fire Commissioner but was merely advisory and hence court might review the findings of the Board and of the Commissioner. However, papers upon which review in immediate case was sought were insufficient inasmuch as no facts were set forth and no affidavit of a physician was presented to show that the permanent disability was caused by performance of duties, and as a matter of fact the diagnosis made at hospital and incorporated in moving papers indicated illness, not trauma, as basis of the condition claimed.-Matter of Walsh (McElligott), 169 Misc. 457, 8 N.Y.S. 2d 101 [1938].

¶ 2. A policeman and a fireman retired for service-connected total permanent disability may not be allowed "extra service pension credits".-Lowe v. Police Pension Fund, 141 (68) N.Y.L.J. (4-9-59) 13, Col. 3 F.

¶ 3. Award to fireman of a retirement allowance for ordinary disability rather than for disability in the line of duty was proper where the injury was a cardiac condition and the Board had before it evidence, including hospital records and electrocardiograms upon which it based its judgment.-In re Keogh (Cavanagh), 149 (14) N.Y.L.J. (1-21-63) 15, Col. 4 T.

¶ 4. No statutory provision grants to a member of the Fire Department the right to a formal hearing upon the question of his retirement for physical disability, and consequently, even though a hearing had been accorded a fireman who had been retired, the App. Div. had no power to examine into the question as to whether, under Civil Practice Act § 1296, subds. 6 or 7, the weight of the evidence sustained the determination.-Doherty v. McElligott, 258 App. Div. 257, 16 N.Y.S. 2d 489 [1939].

¶ 5. Where it is demonstrated that the Fire Commissioner or the Medical Board of the Fire Department, in retiring a member of the Fire Department for disability, has acted on false information or through fraud or mistake, or without evidence to support its determination, the member would be entitled to relief under Civil Practice Act, Art. 78, since it would clearly be improper for administrative officials to remove the member from his position by retiring him if there were no basis in fact for such an order.-Id.

¶ 6. In proceeding by fireman for an order under Civil Practice Act, Art. 78, to review determination of Fire Commissioner finding the fireman permanently physically disqualified, petition of fireman alleging that he was making an excellent recovery from his injury, that report of the Medical Board was contrary to the facts and unsupported by any evidence and that no ground existed for his retirement, **held** sufficient, on motion to dismiss for insufficiency, and the Commissioner would be required to make answer to the petition as required by Civil Practice Act, § 1291.-Id.

¶ 7. Fire Commissioner, by failing to answer petition of retired member of Fire Department in proceeding under Civil Practice Act, Art. 78, to review the order of the Commissioner retiring him at half-pay, and by moving under Civil Practice Act § 1293 for an order dismissing the petition for failure to state a cause of action, admitted the facts alleged in the petition, including the allegations that the medical officers and the Commissioner's order based thereon were not founded on fact and were in derogation of valuable property rights which had accrued to petitioner, and were in violation of law, arbitrary, capricious and an abuse of discretion.-Schwab v. McElligott, 282 N.Y. 182, 26 N.E. 2d [1940], rev'g 257 App. Div. 808, 12 N.Y.S. 2d 587 [1939].

¶ 8. In proceeding by member of Fire Department who had been retired at half-pay, for an order seeking reinstatement in the Department or retirement at three-fourths pay on ground his injuries were sustained in performance of duties, petition which alleged that report of the medical officers and order of the Fire Commissioner based thereon were not founded on fact and were in violation of law, arbitrary, and an abuse of any discretion, **held** to state a cause of action, where Commissioner had failed to answer the petition and had admitted the allegations by moving to dismiss the petition, since the courts may review the exercise of discretionary power vested in an administrative officer to determine whether the case discloses circumstances which leave no possible scope for reasonable exercise of discretion in the manner in which it was exercised, and in immediate case it was admitted that Commissioner's acts were arbitrary.-Id.

¶ 9. Fireman, alleging the circumstances of his retirement, that he developed bronchial asthma in performance of

his duty, that he was only partially disqualified so as to prevent him from performing active duty in the uniformed force, that the Fire Commissioner had failed to inquire whether he was able to perform any duties of the uniformed force and had failed to examine into the circumstances in connection with his disqualification, and that his action in retiring him for total permanent disability was in violation of law, arbitrary and capricious, **held** to state a sufficient cause of action in a proceeding under Civil Practice Act Art. 78 for reinstatement and assignment to light duties. Respondents should serve upon the fireman a verified answer containing proper denials and statements of matter, with an opportunity to the fireman to reply thereto, and if a triable issue should be raised proof might be adduced to establish whether there was evidence to sustain the order retiring the fireman.-Id.

¶ 10. Where a report of the Special Medical Board stated that petitioner was "found totally, physically unfit for any duty in the department", and such certificate was based on all the records of prior physical examinations of petitioner made over a six-month period by some 11 physicians, and the finding was amply supported by the reports in the case, the trustees of the Fire Department Pension Fund were fully justified in retiring petitioner as unable to perform any services in the Department, and in refusing to assign him to light duties.-Balacek v. Board of Trustees of Fire Department Pension Fund, 263 App. Div. 712, 30 N.Y.S. 2d 1007 [1941], rev'g 26 N.Y.S. 2d 419 [1941], aff'd without opinion, 228 N.Y. 640, 42 N.E. 2d 740 [1942].

¶ 11. Petitioner, a member of the uniformed force of the Fire Department, **held** entitled to have set aside an order of the Fire Commissioner granting him an indefinite leave of absence without pay as result of the finding of a special medical board, pursuant to Admin. Code § B19-4.0, that petitioner was disqualified physically because of coronary thrombosis not induced in the performance of duty, and the subsequent report of the chief medical officer of the Department who, without further examination, had reported to the Commissioner that petitioner was disqualified for the performance of any duty in the Fire Department. Petitioner had not received the fair and impartial hearing to which he was entitled on the question of his ability to perform light duty, as to which question he was entitled to a jury trial, particularly in view of the claim of a member of the Special Medical Board that he was induced to sign the report because of his reliance on alleged misstatements of the chief medical officer relative to the retirement law.-In re Kullmann (Walsh), 112 (80) N.Y.L.J. (10-4-44) 750, Col. 5 T, modified, 268 App. Div. 980, 51 N.Y.S. 2d 778 [1944], to extent of reinstating determinations of the Medical Boards and directing re-examination before a special medical board, on ground Special Term's finding that petitioner's rights were not properly safeguarded upon the examination was supported by some evidence, 294 N.Y. 557, 63 N.E. 2d 103.

¶ 12. Order annulling determinations of the Fire Department's Medical Board and Special Medical Board in proceeding by a veteran against the Fire Department for reinstatement as a member of the Department, was modified by eliminating a provision directing that he should be continued on sick leave pending the determination at trial of the issues remaining unsettled.-Mack v. Walsh, 268 App. Div. 979, 51 N.Y.S. 2d 901 [1944], modified on other grounds, 294 N.Y. 554, 63 N.E. 2d 102 [1945].

¶ 13. Proceeding seeking to have trustees of the Fire Department Pension Fund "revaluate and determine the petitioner's medical condition" as of time of his retirement, on ground that the Medical Board of the Department was mistaken in its diagnosis of petitioner's ailment, was dismissed on ground petitioner had waived his right to review by a special medical review board pursuant to Admin. Code § B19-4.0 when he chose not to avail himself of such review, and moreover the proceeding was not commenced within four months from the determination as required by C.P.A. § 1286.-Heiberger v. Monaghan, 126 (29) N.Y.L.J. (8-10-51) 234, Col. 7 M.

¶ 14. Petitioner, seeking an order directing the Fire Commissioner to restore him to his former position as lieutenant in the Fire Department, from which position he was removed for alleged disability, **held** entitled to a jury trial of issues raised by the petition and answer, where some members of the Medical Board of the Fire Department believed that petitioner's injuries might have been caused by the active performance of his duties, and this appeared to be a fair inference from the record submitted to the court. Petitioner should be given an opportunity by cross-examination to probe into the reasoning behind the opinion of the majority of the Medical Board.-Schwab v. McElligott, 175 Misc. 840, 26 N.Y.S. 2d 364 [1941].

¶ 15. Petitioners were retired for disability after more than 20 years of service. The Special Medical Board found that their disabilities were service incurred. The Board of Trustees divided evenly on the question of whether the disabilities were service incurred. As a result the petitioners were retired at only one-half salary, instead of at three-quarters salary. **Held,** The Board of Trustees had discretion to accept or reject the findings of the Medical Board. In the absence of a majority vote by the Board of Trustees that the disabilities were service connected, petitioners were entitled to only one-half salary.-Matter of Pilkington, 12 N.Y. 2d 888, 237 N.Y.S. 2d 998, 188 N.E. 2d 264 [1962].

¶ 16. If the Fire Commissioner's determination that respondent fireman was totally permanently disqualified by bronchial asthma and that such disqualification was a nonservice-connected disability was correct, the Commissioner's direction that respondent be retired from the Department at one-third pay was proper, where the disability occurred before the end of ten years' service, and court should then not have directed his reinstatement to light duties at full pay. However, if respondent could establish that his disability was caused by continuous exposure to smoke, fire, cold and wetness in the performance of his duties, then his pension should be not less than three-fourths of his salary.-Maresca v. McElligott, 262 App. Div. 179, 28 N.Y.S. 2d 280 [1941].

¶ 17. Fireman claiming right to disability pension for pulmonary disorders allegedly caused by inhalation of smoke, was required to show that such injury was a predominant cause of disability and not merely a secondary contributing cause, which it would seem to be in the present case.-Cullen v. McElligott, 101 (134) N.Y.L.J. (6-10-39) 2689, Col. 4 M.

¶ 18. Where medical board of Fire Department found that petitioner's claimed disability did not exist, mere existence of a contrary opinion on part of petitioner's physician was an insufficient basis for interference by the court with the finding of the medical board.-In re Bondy (McElligott), 102 (114) N.Y.L.J. (11-16-39) 1655, Col. 1 F, aff'd without opinion, 261 App. Div. 896, 26 N.Y.S. 2d 315 [1941].

¶ 19. Where petitioner had been retired as permanently disabled by the Fire Commissioner by reason of blindness in one eye due to cataract, and the medical board had found that his injury was not caused by performance of his duties but such opinion was based upon the statement of the board's medical officer and included in his report was the opinion of an oculist stating that he would consider his disability to have been caused in line of duty inasmuch as constant heat was known to cause cataract, and the board had refused petitioner the opportunity to present the opinions of eye specialists, there was presented an issue as to whether the board had acted arbitrarily. Hence petitioner was entitled to an order, in the alternative, for a trial of the issue before a jury.-Siefring v. McElligott, 103 (92) N.Y.L.J. (4-19-40) 1781, Col. 4 M.

¶ 20. The Board of Trustees is not bound by the findings of the Medical Board as to the "circumstances" of a disability and must make a finding as to whether or not the disability was service-incurred. Thus, where the Medical Board and a Special Medical Board found that the disability was not incurred in the performance of the petitioner's duties, and the Board of Trustees were deadlocked, the Court could not make its own determination of the "circumstances" nor could it direct the Board of Trustees to accept the Medical Board's finding. The ordinary rule as to trustees has no application where, as here, the powers and duties of the Board of Trustees are defined and regulated by statute. The Court directed that the petitioner be retired at one-half pay until the Board should, by resolution, determine the cause of his disqualification.-Matter of City of New York (Schoeck), 294 N.Y. 559, 63 N.E. 2d 104 [1945].

¶ 21. Fireman who, after more than 20 years service had met with an accident in the course of performance of his duty which resulted in a permanent partial disability and his assignment to light duty pursuant to Admin. Code § B19-4.0, subd. 2, might not be retired pursuant to subd. b of § B19-4.0, which permits retirement of a permanent disabled member of the department who has had 20 years' service. Retirement under subd. b would be at half pay, and would penalize the member as he could have elected, upon suffering his disability, to retire at three-fourths pay instead of accepting employment at light duty.-Breen v. Bd. of Trustees of N.Y. Fire Dept. Pension Fund, 299 N.Y. 8, 85 N.E. 2d 161 [1949], rev'g 273 App. Div. 689, 79 N.Y.S. 2d 548 [1948], aff'g 190 Misc. 661, 74 N.Y.S. 2d 442 [1947].

¶ 22. While it is the duty of the Board of Trustees of the Fire Department Pension Fund to determine the circumstances of the disability of a member of the Department, and whether it was incurred in the performance of duty, it was nevertheless their duty to accept the Medical Board's determination as to the nature and extent of the disability and whether it disqualified the member for performance of his duties. The Medical Board's determination in this respect is final and binding on the trustees. However, the determination must be the result of an examination by a medical board duly appointed or selected in the manner prescribed by statute.-In re Shaw (Quayle), 120 (97) N.Y.L.J. (11-19-48) 1215, Col. 2 T, aff'd 275 App. Div. 758, 88 N.Y.S. 2d 894 [1949].

¶ 23. Where, after Medical Board had disapproved petitioner's application for retirement based on an alleged permanent disability of his right hand permanently disabling him from performing active duty, the Special Medical Board disagreed as to whether the mild deformity of petitioner's little finger disqualified him for performance of his duties and thereupon a traumatic surgeon was chosen as a third or neutral member of the Special Board, the majority report thereupon rendered certifying that petitioner was mentally and physically disqualified for performance of active duty by reason of a psychoneurosis and causalgia of the little finger, **held** properly rejected by the Board of Trustees, as the third member of the board had been selected as a recognized specialist on traumatic surgery and not as a neuro-psychiatrist.-Id.

¶ 24. Court would not upset action of Board of Trustees which, by tie vote, refused to retire heart attack victim at three-quarters pay and issue was whether disability was service connected.-Feibusch v. Thompson, 153 (18) N.Y.L.J. (1-27-65) 15, Col 1 F.

¶ 25. A finding that the rights of the petitioner were not properly safeguarded upon the examination by the Special Medical Board, required that a new examination be had. The Medical Board had determined that petitioner was disqualified but that the disability was not caused in the performance of duty. Thereafter, a Special Medical Board made the same determination. The Commissioner, thereupon, placed petitioner on indefinite leave of absence without pay. The Court of Appeals directed a new examination by the Special Medical Board but otherwise affirmed a lower court order including the act of the Commissioner in placing the petitioner on leave of absence without pay.-Matter of Kullman (Walsh), 294 N.Y. 557, 63 N.E. 2d 103 [1945].

¶ 26. Members of the Fire Department may retire at three-quarters of their annual salary for service connected disability but only upon a resolution to that effect by a vote of at least seven-twelfths of the board of trustees. The board voted to retire but divided 12-12 on the question of service connected disability and petitioner was retired at half-pay. Argument that where the board of trustees failed to reach a determination by a seven-twelfths vote the opinion of the Special Medical Board shall control is rejected. Such opinion has been held to be merely advisory.-Matter of Pilkington (Cavanagh), 145 (30) N.Y.L.J. (2-14-61) 14, Col. 1 T.

¶ 27. Where deceased member of the Fire Department had designated his mother and father as the beneficiaries of his life insurance benefit, and his father had predeceased him, the designation lapsed and the father's share would go to the widow pursuant to Admin. Code § B19-8.0, subd. d, as the designation of the mother and father was as individuals and not as a class, and they took as tenants in common and shared distributively and not collectively.-Cuchal v. Walsh, 185 Misc. 1008, 59 N.Y.S. 2d 435 [1945], modified 186 Misc. 131, 60 N.Y.S. 2d 776 [1945], aff'd 270 App. Div. 1001, 63 N.Y.S. 2d 828 [1946].

¶ 28. Propriety of act of Fire Commissioner as sole trustee of the Fire Department's Pension Fund in retiring member of the Department at an allowance greatly in excess of one-half pay, **held** not triable by the court notwithstanding the charge that the application for retirement was granted in anticipation of the effect of new pension laws and that the present Commissioner had not theretofore granted any pensions in excess of one-half pay. There was no showing that the Commissioner in fixing the pension did so in bad faith or in fraud of the rights of the City or other beneficiaries of the Pension Fund, the gist of the complaint being that the duty cast on the Commissioner, as trustee, was not properly exercised in the particular case.-Heffernan v. McGoldrick, 259 App. Div. 671, 20 N.Y.S. 2d 341 [1940].

¶ 29. Under § 791 of the Former Greater New York Charter, the Fire Commissioner was authorized or required to stop pension payments to a widow whenever there was a showing to him of misconduct by her so grave as, in his judgment to call for such action, and whether such a revocation should be ordered was a matter for the Commissioner's discretion, and the exercise thereof was not subject to court review.-Curtin v. Dorman, 293 N.Y. 505, 58 N.E. 2d 515 [1944].

¶ 30. Even if the widow, whose pension was revoked for alleged misconduct, had rights such as to entitle her to an opportunity to appear before the Commissioner and state her side of the case, she was not barred from relief in the courts because she had waited several years before bringing suit after exhausting her efforts to see the Fire Commissioner. Even before the enactment of C.P.A. § 1286 in 1937, the courts had for years prior to that applied to mandamus proceedings a four-month period of limitations.-Id.

¶ 31. A retired New York City fireman may not have his pension recomputed on the ground that a "cost-of-living" bonus should have been treated as part of his "full salary or compensation" where more than three months before he retired, he had received the bonus and voluntarily executed an agreement with the City, that it would not constitute salary for the purpose of computing his pension. Under the agreement, neither the City nor the petitioner was required to make payment into the pension system on account of such additional compensation.-Matter of Carroll (Grumet), 281 App. Div. 35, 117 N.Y.S. 2d 553 [1952].

¶ 32. Article 78 proceeding brought by fireman who was retired for nonservice connected disability to set aside his retirement and for reinstatement was barred by four month limitation where determination to retire him had been made at a meeting of the Board of Trustees of the pension fund on June 21, 1967 and this proceeding was commenced on December 7. Court also found that petitioner was not denied due process because he was not permitted to have counsel appear before the pension board. Matter of Stokes (City of N.Y.), 160 (61) N.Y.L.J. (9-25-68) 2, Col. 8 T.

¶ 33. Determination of Trustees of the Fire Department Pension Fund that back injuries due to a fall were not service connected was reversed as factually unfounded although petitioner had a back injury prior to entering the fire department.-In re Skeele (Board of Trustees, Fire Dept. Pension Fund), 165 (47) N.Y.L.J. (3-1-71) 17, Col. 1 M.

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 1 NEW YORK FIRE DEPARTMENT PENSION FUND

§ 13-305 Service-incurred disability benefits in the case of retirements prior to July first, nineteen hundred sixty-five.

a. Notwithstanding the provisions of section 13-304 of this chapter, in any case where a pension was awarded under the provisions of such section, or any predecessor section, by reason of the retirement of a member for disability caused or induced by the actual performance of the duties of his or her position, prior to July first, nineteen hundred sixty-five, such member shall be entitled to a pension of not less than three-fourths the annual salary or compensation payable to a first grade fireman as of July first, nineteen hundred sixty-five. In the case of any member receiving a pension less than three-fourths the annual salary or compensation of a first grade firefighter as of July first, nineteen hundred sixty-five, his or her pension will be increased to an amount which will equal three-fourths the annual salary or compensation of a first grade fireman as of July first, nineteen hundred sixty-five.

b. Such pension shall be payable to the same persons and shall be subject to the same terms and conditions, including provisions as to termination as the pension which would otherwise be payable under section 13-304 of this chapter or any other law.

c. The pension payable under this section shall be in lieu of any pension which would otherwise be payable to the member under section 13-304 of this chapter.

d. Nothing in this chapter shall be construed as creating any rights on behalf of any person who dies prior to October twenty-seventh, nineteen hundred sixty-six, and benefits due thereunder shall be calculated and paid only from

such date.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-4.1 added LL 33/1966 § 1

Amended LL 92/1973 § 1

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 1 NEW YORK FIRE DEPARTMENT PENSION FUND

§ 13-306 Reduction of contributions by members.

a. The mayor, by executive order, adopted prior to the first day of June, nineteen hundred sixty-four, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-four, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-five, the deduction from the pay, salary or compensation of a member pursuant to the provisions of this subchapter shall be reduced by two and one-half per centum of such pay, salary or compensation of such member.

b. The mayor, by executive order, adopted prior to June nineteenth, nineteen hundred sixty-five, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-five and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-six, the deduction from the pay, salary or compensation of a member pursuant to the provisions of this subchapter shall be reduced by two and one-half per centum of such pay, salary or compensation of such member.

c. The mayor, by executive order adopted prior to June nineteenth, nineteen hundred sixty-six, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-six and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-seven, the deduction from the pay, salary or compensation of a member pursuant to the provisions of this subchapter shall be reduced by two and one-half per centum of such pay, salary or compensation of such member.

d. The mayor, by executive order adopted prior to June seventeenth, nineteen hundred sixty-seven, may direct that beginning with the payroll period, the first day of which is nearest to July first, nineteen hundred sixty-seven, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight, the deduction from the pay, salary or compensation of a member pursuant to the provisions of this subchapter shall be reduced by two and one-half per centum of such pay, salary or compensation of such member.

e. (1) Subject to the provisions of paragraph two of this subdivision, beginning with the first full payroll period following January first, nineteen hundred sixty-seven, and ending with the payroll period immediately prior to that, the first day of which is nearest June thirtieth, nineteen hundred sixty-eight, the deduction from the pay, salary or compensation of a member pursuant to the provisions of this subchapter shall be reduced by two and one-half per centum of such pay, salary or compensation of such member.

(2) The reduction provided for by paragraph one of this subdivision shall be in addition to any reduction made during the period mentioned in such paragraph one pursuant to subdivision c or d of this section. The amount of the reduction made pursuant to paragraph one of this subdivision in the deductions of any such member for such portion of the period mentioned in such paragraph one as precedes the effective date of this subdivision shall be refunded without interest.

(3) Beginning with the payroll period the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight, and ending with the payroll period immediately prior to that the first day of which is nearest June thirtieth, nineteen hundred seventy-one, the deduction from the pay, salary or compensation of a member pursuant to the provisions of this subchapter shall be reduced by five percentum of such pay, salary or compensation of such member.

f. The mayor, by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-one, may direct that beginning with the payroll period, the first day of which is nearest to June thirtieth, nineteen hundred seventy-one, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred seventy-two, the deduction from the pay, salary or compensation of a member pursuant to the provisions of this subchapter shall be reduced by five per centum of such pay, salary or compensation of such member.

g. The mayor, by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-two or June seventeenth of such year, whichever is later, may direct that beginning with the payroll period, the first day of which is nearest to June thirtieth, nineteen hundred seventy-two, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred seventy-three, the deduction from the pay, salary or compensation of a member pursuant to the provisions of this subchapter shall be reduced by five per centum of such pay, salary or compensation of such member.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-4.2 added chap 596/1964 § 1

Amended chap 382/1965 § 7

Sub c added chap 611/1966 § 6

Sub d added chap 379/1967 § 6

Sub e added chap 129/1968 § 1

Sub e par 3 amended chap 870/1969 § 9

Sub e par 3 amended chap 960/1970 § 10

Sub f added chap 615/1971 § 14

Sub g added chap 921/1972 § 11

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 1 NEW YORK FIRE DEPARTMENT PENSION FUND

§ 13-307 Extra service pension credits.

Except as provided in subdivisions a and b of section 13-304 of this chapter, a member who has served the minimum period of time elected by him or her for retirement may continue in the service. In such event and upon his or her retirement for any cause whatsoever, there shall be added to his or her annual pension to which he or she shall upon his or her retirement be entitled an additional amount computed at the rate of one-sixtieth of his or her final salary for each year of such additional service. Any such member who has elected to contribute on the basis of retirement after twenty years of service and who thereafter continues in the service shall have his or her deductions made at the rate of five per cent per annum after completing twenty-five years of service.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-5.0 added LL 3/1940 § 1

Sub a par 1 amended LL 14/1941 § 2

Repealed and added chap 917/1963 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. The Supreme Court may not review the issue of the propriety of the act of the Fire Commissioner in granting a pension in excess of one-half of the salary of a retired member unless the facts show that the Commissioner was not exercising his discretion but was acting in bad faith or fraud.-Matter of Heffernan (McGoldrich), 259 App. Div. 671, 20 N.Y.S. 2d 341 [1940].

¶ 2. A court order directing the Fire Commissioner to modify a one-half pay pension paid to petitioner and grant a service-incurred disability retirement was reversed on Commissioner's contention that there was no showing of fraud, accident or mistake and that, at most, the testimony taken at trial court presented divergent medical opinions as to the nature and cause of the disability and that such evidence was insufficient to warrant interference with the order of retirement.-Matter of Lonergan (McElligott), 294 N.Y. 720, 61 N.E. 2d 453 [1945].

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 1 NEW YORK FIRE DEPARTMENT PENSION FUND

§ 13-308 Credit for certain prior city service.

Any person who was a member of the New York city employees' retirement system, and whose membership therein was terminated by his or her attaining membership in the fire department pension fund, subchapter one, and who had withdrawn his or her contributions to the New York city employees' retirement system, shall receive credit in the said fire department pension fund for prior creditable city service by paying into the said fire department pension fund the amount of the employee contributions required to have been paid into the New York city employees' retirement system for such prior creditable city service, within two years after this act shall take effect, provided, however, that no member of the said fire department pension fund shall be eligible for retirement for service until he or she has served in the fire department for a minimim period of twenty or twenty-five years, according to the minimum period of retirement elected by such member prior to the certification of his or her rate of contribution.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-5.1 added chap 471/1967 § 1

Amended chap 790/1968 § 1

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Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 1 NEW YORK FIRE DEPARTMENT PENSION FUND

§ 13-309 Payment of pensions; death.

a. The board of trustees of the pension fund shall pay a pension out of such fund to the surviving spouse, child or children or dependent parent or parents of any deceased member of the uniformed force of such department, if the death of such member occur during his or her service in such uniformed force, or after he or she was retired from service in such uniformed force. The amount of any such pension to be paid by the board of trustees to each of the several representatives of such member, in case there shall be more than one, from time to time, may be determined by such board according to the circumstances of each case. The annual allowance to the representative or representatives of such member, however, shall be six hundred dollars, and no part of such sum shall be paid to any such surviving spouse who shall remarry, after such remarriage, or to any child after it shall have reached the age of eighteen years.

b. In case any member of the uniformed force of such department is killed while actually engaged in the performance of duty, or if death ensues, or results from a disease, as the immediate effect of injuries received, the board of trustees of such fund, upon evidence submitted to it, shall have power to decide whether death so occurred and upon such decision shall award to the surviving spouse of such member an annual allowance as a pension, to be paid out of such fund in an amount not to exceed, except as herein provided, one-half of the salary or compensation of such member at the date of his or her decease and in the case of a member acting in a higher rank an amount not to exceed one-half the salary or the compensation of such rank. If such member, dying, leaves no surviving spouse surviving him or her, but leaves a child or children, under the age of eighteen years, or dependent parent or parents, such board shall award to the legal guardian of such child or children, or dependent parent or parents, for its or their support and

maintenance, an annual allowance out of such fund, in an amount not to exceed one-half of the salary or allowance of such member at the date of his or her decease. The amount of such allowance to any surviving spouse shall cease upon his or her death. Such annual allowance shall cease upon the death or marriage of such child, or upon his or her reaching the age of eighteen years. If such payment to the surviving spouse of any such member shall cease by reason of his or her death, such board shall make payments to the child or children, or dependent parent or parents of such member, if any, as though he or she had died without leaving a surviving spouse.

c. (1) Notwithstanding the provisions of subdivision b of this section, in any case where a pension was or is awarded under the provisions of such subdivision, or any predecessor provision by reason of the death of any such member, occurring before July first, nineteen hundred and sixty-five, such pension, subject to the provisions of paragraphs two and three of this subdivision c, shall consist:

(a) For each full calendar year, on and after January first, nineteen hundred and sixty-five, of a sum as a pension to be paid out of such fund and in an amount not to exceed, except as herein provided, one-half of the annual salary or compensation payable, on July first, nineteen hundred and sixty-five, to a member of the uniformed force of rank, seniority, and other salary-determining status, equal to that of the deceased member on the date of his or her decease, but in no case less than one-half of the salary payable to a firefighter first grade on July first, nineteen hundred and sixty-five, and

(b) For any portion of a calendar year, on and after January first, nineteen hundred and sixty-five, the appropriate pro rata portion of the amount which would be payable, under the provisions of subparagraph (a) of this paragraph one, for the full calendar year which includes such portion of a year, if a pension were payable under this subdivision c for such full calendar year.

(2) Such pension shall be payable to the same persons and shall be subject to the same terms and conditions, including provisions as to termination, as the pension which would otherwise be payable, on and after January first, nineteen hundred and sixty-five, pursuant to subdivision b of this section or any applicable predecessor provision, by reason of the death of such member.

(3) The pension payable pursuant to the provisions of paragraphs one and two of this subdivision c shall be in lieu of any pension which would otherwise be payable on or after January first, nineteen hundred sixty-five, pursuant to the provisions of such subdivision b, or predecessor provision, and, except as otherwise provided in paragraph one of subdivision e of section 13-686 of this chapter, shall be in lieu of any supplemental retirement allowance which would otherwise be payable, on and after such date, under the provisions of subchapter six of chapter five of this title or any other law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended chap 764/90 § 3 eff. July 22, 1990 and applying on and

after April 1, 1990

**DERIVATION**

Formerly § B19-6.0 added LL 3/1940 § 1

Sub b amended chap 100/1963 § 411

Sub c added LL 69/1965 § 1

Sub b amended chap 803/1969 § 2

Sub c par 3 amended LL 994/1973 § 4

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where it was found that the fireman had come to his death as the result of a disease which was the immediate effect of injuries sustained in performance of his duties, Fire Commissioner's denial of a full pension to his widow was arbitrary, entitling her to peremptory mandamus order.-Sheridan v. McElligott, 97 (135) N.Y.L.J. (6-11-37) 2947, Col. 3 F.

¶ 2. This section imposes a duty upon the Board of Trustees to award a pension upon a determination of a service-connected death and that determination is reviewable by the courts. In any event, since the Board exercised the power given it by the Code and denied the petitioner's application, there was a clear right of review. Matter of Sheridan v. McElligott (278 N.Y. 59) distinguished.-Matter of Martucci, 18 App. Div. 2d 3, 237 N.Y.S. 2d 818 [1963].

¶ 3. Upon the rehearing of an application for a service-connected death award the petitioner was not entitled to a complete adversary procedure.-Id.

¶ 4. C.P.A. § 1286, providing that a proceeding "to compel performance of a duty specifically enjoined by law" must be commenced within four months after respondent's refusal upon demand to perform his duty, **held** not to bar proceeding by widow of deceased fireman to compel Fire Commissioner to grant widow a pension, notwithstanding Commissioner's refusal to grant pension took place on December 14, 1936 and proceeding was not commenced by widow until September, 1937. However, if court were not bound by precedent **it would be inclined** to view that widow had no right to a pension at time C.P.A. § 1286 was enacted, in view of fact that Greater New York Charter § 791 appears to make granting of pension discretionary with Fire Commissioner, and hence widow, having no right to pension, could not have lost any right by enactment of § 1286 and no valid reason would then exist for refusing to apply such section.-In re Murtagh (McElligott), 98 (91) N.Y.L.J. (10-18-37) 1203, Col. 5 M.

¶ 5. Fire Commissioner was vested with discretionary powers to deny a pension in the first instance to widow of former fireman, and his decision would not be disturbed by the Court in absence of arbitrary action.-In re Gilmartin (McElligott), 101 (98) N.Y.L.J. (4-28-39) 1955, Col. 4 F.

¶ 6. Action of Fire Commissioner in denying pension to widow of former fireman **held** not to have been arbitrary where such widow was a foreigner, was married to the deceased fireman fifteen years after his retirement from the department, was married to him only ten months and never was a resident or citizen of the United States, was the owner of a farm assumed to be conducted profitably, had four adult children by a former marriage, and no such destitution was shown for which the fund was created and no satisfactory explanation was made of the delay of ten years in bringing the proceeding.-Id.

¶ 7. The Court will not overrule or set aside a tie vote decision of the Board of Trustees refusing to overrule a finding by a Special Medical Board that the death of a fireman 10 years after a fire was not service-incurred.-Matter of Mandracchia, 36 Misc. 2d 936, 234 N.Y.S. 2d 22 [1962].

¶ 8. A fireman died of aortic insufficiency and rheumatic heart disease. Ten years before his death, he had experienced severe chest pains while releasing the bow line on a fireboat. He suffered from a rheumatic heart condition when he was appointed. **Held,** the fireman's death was not "immediate" within the meaning of this section and his widow was not entitled to a pension.-Mandracchia v. Cavanagh, 147 (120) N.Y.L.J. (6-21-62) 10, Col. 5 F.

¶ 9. Under the statute plaintiff's right to a pension rested in the discretion of the trustees of the relief fund, so that neither of the parties claiming the pension as widow was entitled to it as a matter of right, except to extent that plaintiff was declared the deceased's widow and his duly designated beneficiary.-Imbrioscia v. Quayle, 278 App. Div. 144, 103 N.Y.S. 2d 593 [1951], aff'd 303 N.Y. 841, 104 N.E. 2d 378 [1952].

¶ 10. The refusal of the Board of Trustees to grant a pension application in 1943 was not unreasonable where the widow of the deceased fireman was confined to a State institution for the insane and as such was a public charge requiring no pension for her support. The children of the deceased fireman were all over 18 years of age and under § 791 had no right to receive a pension. Contention that the Board of Trustees did not deny petitioner's demand for a pension because the vote upon the resolution to grant her relief was 6 to 6, was without merit, since, unless the resolution was affirmatively carried, the Board, by its own inaction, in effect was refusing to comply with petitioner's demand.-Gilshion v. Walsh, 183 Misc. 172, 53 N.Y.S. 2d 564 [1944].

¶ 11. Under Greater New York Charter § 791 authorizing trustee of Relief Fund to pay widow of member of the uniformed service who was killed in the line of duty an amount annually "not to exceed * * * one-half of the salary or compensation of such officer or member at the date of his decease * * *," trustee possessed power to award less than one-half of the salary, and his award of an annual pension in the instant case which was only $350 less than the maximum one-half would not be disturbed for insufficiency.-Seeman v. McElligott, 99 (119) N.Y.L.J. (5-23-38) 2492, Col. 3 M.

¶ 12. Greater New York Charter § 791 merely **empowers** the Fire Commissioner to grant a pension in excess of the minimum pension of $600 therein authorized, and the Commissioner can not be mandamused to exercise his discretion even as to a requested pension of an unspecified amount.-Matter of Monaco (McElligott), 99 (132) N.Y.L.J. (6-8-38) 2767, Col. 3 T.

¶ 13. The 1940 amendment of Admin. Code § B19-6.0, subd. a, so as to provide that the Board of Trustees of the Pension Fund **shall** pay a pension to the widow of any deceased member of the uniformed force, did not affect the rights of the widow of a person who had ceased to be a member of the Department 25 years before the amendment took effect, inasmuch as § B19-1.0, which forms part of the 1940 amendment, defines member as a person who was a member of the force at the time the section took effect.-Gilshion v. Walsh, 183 Misc. 172, 53 N.Y.S. 2d 564 [1944].

¶ 14. Admin. Code § B19-6.0, directing payment of a pension to the widow or other dependent of a deceased member, does not apply to one who was not a member of the force on February 1, 1940, and hence motion for order directing trustees of the Pension Fund to pay pension to widow of deceased member who retired from active service in the Department on April 1, 1921, was denied. The widow's pension rights were governed by § 791 of the Greater New York Charter (278 App. Div. 59).-Mathews v. City of N.Y., 126 (114) N.Y.L.J. (12-14-51) 1650, Col. 3 F.

¶ 15. Under provisions of Greater New York Charter § 791, which was in effect in 1916 when the fireman died, providing that the trustee of the Relief Fund "is authorized and empowered" to pay a pension to the widow of a fireman provided that such pension "may be ordered to cease and terminate at any time if, in the opinion of the trustee, the circumstances should warrant the same", the power of the trustee of the Pension Fund to revoke the pension of a widow was discretionary and immune to judicial review.-Gilshion v. Walsh, 183 Misc. 172, 53 N.Y.S. 2d 564 [1944].

¶ 16. The authorization in § 791 to terminate a widow's pension for improper conduct was intended to apply only to the immediately preceding provisions relating to pensions of widows of members dying in connection with the performance of their duty.-Id.

¶ 17. Determination of Board of Trustees of Fire Department that petitioner failed to establish her status as widow of deceased fireman so as to be entitled to the widow's pension as provided in Admin. Code § B19-6.0, would not be disturbed, as the Board of Trustees had no duty to determine at its peril the validity of the divorce decree obtained by deceased in Mexico after a four months residence there. Burden rested upon petitioner to establish invalidity of the decree and her status as widow by a plenary suit brought for such purpose.-Imbrioscia v. Quayle, 197 Misc. 1049, 96 N.Y.S. 2d 635 [1950], rev'd on ground the evidence established that decedent did not intend to, and had not in fact, established a bona fide domicile in Mexico sufficient to give the Mexican court jurisdiction to grant a divorce, 278 App. Div. 144, 103 N.Y.S. 2d 593 [1951], aff'd 303 N.Y. 841, 104 N.E. 2d 378 [1952].

¶ 18. A proceeding under C.P.A. Art. 78, brought by the first wife of a deceased, retired fireman, seeking to reach certain pension and life insurance funds, was dismissed. Her claim depends upon her ability to establish the invalidity of a Mexican divorce obtained by the decedent, and this she can do only by a plenary suit brought for that purpose. There was no duty upon the Board of Trustees to determine at its peril the status of said divorce. The Board did not err in denying her the life insurance proceeds, since the decedent had made a specific written designation of his second wife as beneficiary thereof. The "cross-petition" of said second wife is in effect a counter-claim, is therefore improper in this proceeding, and is dismissed.-Matter of Imbrioscia v. Quayle, 2 Misc. 2d 327, 91 N.Y.S. 2d 86 [1949].

¶ 19. The plaintiff, the second wife of a deceased, retired City fireman brings this action for declaratory judgment establishing her as the decedent's lawful wife and the rightful claimant to certain pension and insurance funds. Her success depends upon establishing the validity of a Mexican divorce procured by the decedent against his first wife, who also lays claim to the funds in question. While there was some slight testimony that showed that the decedent contemplated remaining permanently in Mexico, the weight of the credible evidence clearly proved that he did not intend to, nor did he in fact, establish a bona fide domicile there so as to give the Mexican court jurisdiction. The judgment in plaintiff's favor is reversed, and judgment is hereby awarded on the counterclaim declaring the first wife to be the lawful widow of the decedent.-Matter of Imbrioscia v. Quayle, 278 A.D. 144, 103 N.Y.S. 2d 593 [1951], aff'd without opinion 303 N.Y. 841, 104 N.E. 2d 378 [1952].

¶ 20. Evidence that, after being separated from his wife some three years, the decedent in 1925 went to Mexico, stating to a co-employee that he thought he could do better in Mexico and that he was not feeling too good and wanted to quit his job, that at the suggestion of the fellow employee he did not resign from his position but obtained an indefinite leave of absence, that he tried hard to find work in Mexico but was unsuccessful, and that when he returned to New York shortly after obtaining the divorce, he was obliged to work in a lesser capacity, **held** to indicate that deceased had intended to settle in Mexico permanently, and accordingly the Mexican divorce obtained by him would be deemed valid and his subsequent marriage to plaintiff sustained, to the extent that she would be declared his legal widow so far as his rights as a retired fireman were concerned. Moreover, the equities were with plaintiff, as she and decedent had lived together for over 20 years, he had been separated and divorced from the former wife for 33 years, and she had never contested the validity of his divorce and remarriage.-Imbrioscia v. Quayle, 278 App. Div. 144, 103 N.Y.S. 2d 593 [1951], aff'd 303 N.Y. 841, 104 N.E. 2d 378 [1952].

¶ 21. In a death benefit proceeding before the Pension Board, petitioner was not entitled to a complete adversary proceeding. However, she was entitled to have the statements made by the chief medical officer and others made under oath, and an opportunity to rebut them.-Martucci v. Fire Dept. Pension Fund, 150 (123) N.Y.L.J. (12-26-63) 7, Col. 1 M.



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

*NYC Administrative Code 13-310*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 1 NEW YORK FIRE DEPARTMENT PENSION FUND

§ 13-310 Return of deductions on discontinuance of membership or on death.

a. Should a member discontinue service in the force, except by death or retirement, he or she shall be paid the amount of the deductions without interest made from his or her pay, salary or compensation pursuant to subdivision eight of section 13-303 of this subchapter.

b. In the event that a member shall die before retirement and a pension or allowance is not paid by the board of trustees pursuant to section 13-309 of this subchapter, the amount of the deductions without interest made from the pay, salary or compensation of such member pursuant to subdivision eight of section 13-303 of this subchapter shall be paid by such board to the beneficiary or beneficiaries, as such member shall have nominated by signed designation and filed with such board. Such designation shall be made within thirty days after this section shall take effect, and may be changed from time to time, by such member upon filing with the board a new signed designation.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-6.1 added LL 3/1940 § 1

Sub b amended LL 39/1957 § 4



Administrative Code of the City of New York



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

*NYC Administrative Code 13-311*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 1 NEW YORK FIRE DEPARTMENT PENSION FUND

§ 13-311 Time of payment of pensions.

All pensions and allowances payable out of the fire department pension fund pursuant to the provisions of this subchapter shall be paid in equal monthly installments, each one-twelfth, in amount, of the sum allowed as the annual pension or allowance or in ratably smaller amounts when the benefit begins after the first day of the month or ends before the last day of the month.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-6.2 added LL 3/1940 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-312*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 1 NEW YORK FIRE DEPARTMENT PENSION FUND

§ 13-312 Exemption from tax and legal process.

The right of a person to a pension, an allowance, to the return of contributions, the pension or allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this subchapter and the right to any benefit under subchapter five or subchapter six of this chapter and any such benefit itself, and the moneys in the fund provided for by this subchapter and in the funds provided for by such subchapter five and subchapter six, are hereby exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in any such subchapter specifically provided.

**HISTORICAL NOTE**

Section amended ch. 480/1993 §21 retro to Jan. 1, 1993

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-6.3 added LL 3/1940 § 1

Reenacted chap 419/1940 § 1

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*NYC Administrative Code 13-312.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 1 NEW YORK FIRE DEPARTMENT PENSION FUND

§ 13-312.1 Transfer of assets, liabilities and administration of pension fund, subchapter one to pension fund, subchapter two; payment of certain benefits by pension fund, subchapter two.

a. The following terms, as used in this section, shall have the following meanings unless a different meaning is plainly required by the context:

1. "Pension fund, subchapter one". The fire department pension fund provided for in this subchapter.

2. "Pension fund, subchapter two". The fire department pension fund provided for in subchapter two of this chapter.

3. "Fire subchapter one beneficiary". Any person who is entitled under the laws in effect immediately prior to July first, nineteen hundred ninety-five to receive benefits from pension fund, subchapter one.

b. Subject to the provision of subdivision g of this section, and notwithstanding any other provision of law to the contrary, on July first, nineteen hundred ninety-five, all assets held by pension fund, subchapter one shall be transferred to pension fund, subchapter two, and shall be credited to the contingent reserve fund of pension fund, subchapter two.

c. Subject to the provisions of subdivision g of this section, and notwithstanding any other provision of law to the contrary, on and after July first, nineteen hundred ninety-five, all moneys which otherwise would be paid to pension

fund, subchapter one pursuant to the provisions of section 13-303 of this subchapter or any other provision of law, or from any other source whatsoever, shall instead be paid to the general fund of the city established pursuant to section one hundred nine of the charter.

d. Subject to the provision of subdivision g of this section, and notwithstanding any other provision of law to the contrary, on July first, nineteen hundred ninety-five, all liabilities of pension fund, subchapter one as of such date, including, but not limited to, liability for the payment of all benefits required under laws in effect immediately prior to such date to be paid on and after such date by pension fund, subchapter one to fire subchapter one beneficiaries, shall be transferred to and assumed by pension fund, subchapter two, and such benefits payable to fire subchapter one beneficiaries on and after such date shall be paid to such beneficiaries by pension fund, subchapter two.

e. Subject to the provisions of subdivision g of this section, and notwithstanding any other provision of law to the contrary, on July first, nineteen hundred ninety-five, the liability of the city supplemental pension fund established under section 13-650 of this title for the payment of all supplemental benefits required under laws in effect immediately prior to such date to be paid on and after such date by such supplemental pension fund to fire subchapter one beneficiaries shall be transferred to and assumed by pension fund, subchapter two, and such supplemental benefits payable to such fire subchapter one beneficiaries on and after such date shall be paid to such beneficiaries by pension fund, subchapter two.

f. Notwithstanding any other provision of law to the contrary, on July first, nineteen hundred ninety-five, the duties and responsibilities of administering the provisions of this subchapter conferred upon the board of trustees of pension fund, subchapter one by the provisions of this subchapter in effect immediately prior to such date shall be transferred to and assumed by the board of trustees of pension fund, subchapter two.

g. Notwithstanding any other provision of law to the contrary, for all funding or accounting purposes, including but not limited to, the funding or accounting purposes associated with the implementation of the provisions of this section, the provisions of subparagraph (d) of paragraph two of subdivision b of section 13-331 of this chapter or the provisions of paragraph six of subdivision b of such section 13-331, the transfer of certain assets or liabilities to pension fund, subchapter two as required by subdivision b, d or e of this section to be made on July first, nineteen hundred ninety-five shall be deemed to have been made on July first, nineteen hundred ninety-four, and the payment of certain moneys to the general fund of the city as required by subdivision c of this section to be made on and after July first, nineteen hundred ninety-five shall be deemed to have been made on and after July first, nineteen hundred ninety-four.

**HISTORICAL NOTE**

Section added chap 500/1995 § 3, eff. Aug. 2, 1995 with subd. g

retroactive to July 1, 1994.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-313*

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-313 Definitions.

The following words and phrases as used in this subchapter unless a different meaning is plainly required by the context, shall have the following meanings:

1. "Pension fund" shall mean the fire department pension fund subchapter two provided for in this chapter.

2. "Medical board" shall mean the board of physicians provided for in section 13-323 of this subchapter.

3. (a) "City-service", in the case of an original plan member, (as defined in subdivision four-b of this section), shall mean service in the uniformed force of the department and shall include service credit acquired by transfer pursuant to section 15-111 of this code.

(b) "City-service", in the case of an improved benefits plan member (as defined in subdivision four-f of this section), shall mean service in the uniformed force of the department and shall include service credit acquired (i) by transfer pursuant to section 15-111 of this code, or (ii) by transfer pursuant to section forty-three or three hundred forty-three of the retirement and social security law, or (iii) by transfer from another pension or retirement system, of funds actuarially determined in a manner similar to that provided by these sections of the retirement and social security law.

(c) An "accident" sustained by such original plan member or such improved benefits plan member, while off-duty and within the geographic limits of the city of New York, shall be deemed to have occurred while in the performance of duty and in the performance of city service for the purpose of granting retirement for accident disability pursuant to the provisions of section 13-353 of this subchapter in cases in which:

(i) a substantial and imminent danger to life or property occasioned the off-duty intervention of the member;

(ii) the conduct of the member was reasonable in the circumstances; and

(iii) the member, in the course of his or her off-duty intervention, utilized skills within the scope of his or her employment by the New York city fire department.

(d) In any case where a member, after completing his or her minimum period for service retirement, is appointed fire commissioner, and in any case where a person who retired from service as a member of the pension fund is thereafter appointed fire commissioner, his or her service as fire commissioner shall constitute city-service.

(e) In any case where a member, after completing his or her minimum period for service retirement, is appointed a deputy fire commissioner, and in any case where a person who retired for service as a member of the pension fund is thereafter appointed a deputy fire commissioner, his or her service as deputy fire commissioner shall constitute city-service.

4. "Member" shall mean any person included in the membership of the pension fund as provided in section 13-314 of this subchapter.

4-a. "Original plan" shall mean all the terms and conditions of this subchapter, and of all other laws, applicable to original plan members.

4-b. "Original plan member" shall mean any member of the original plan pursuant to the provisions of subdivision a of section 13-315 of this subchapter or other applicable provisions of this subchapter.

4-c. "Original plan member not subject to article eleven" shall mean an original plan member to whom, under the provisions of law governing the applicability of article eleven of the retirement and social security law, such article eleven does not apply.

4-d. "Original plan member subject to article eleven" shall mean an original plan member to whom, under the provisions of law governing the applicability of article eleven of the retirement and social security law, such article eleven applies.

4-e. "Improved benefits plan" shall mean all the terms and conditions of this subchapter, and all other laws, applicable to improved benefits plan members.

4-f. "Improved benefits plan member" shall mean any member who, under the applicable provisions of subdivisions b, c, d, e and f of section 13-315 of this subchapter or other applicable provisions of this subchapter, is entitled to the rights, privileges, and benefits of the improved benefits plan and is subject to the obligations thereof, as applicable to him or her.

4-g. "Elective improved benefits plan member" shall mean a member who became an improved benefits plan member as a result of filing an election application pursuant to section 13-315 of this subchapter.

4-h. "Non-elective improved benefits plan member" shall mean a member who became an improved benefits plan member pursuant to the provisions of subdivision b of section 13-315 of this subchapter.

4-i. "Improved benefits plan member not subject to article eleven" shall mean any improved benefits plan

member who, under the provisions of law governing the applicability of article eleven of the retirement and social security law, is not subject to such article eleven.

4-j. "Improved benefits plan member subject to article eleven" shall mean any improved benefits plan member to whom, under the provisions of law governing the applicability of article eleven of the retirement and social security law, such article eleven applies.

5. "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance, a dependent benefit, a death benefit or any other benefit provided by this subchapter.

6. "Final compensation", in the case of an original plan member, shall mean the annual compensation earnable by a member for city-service upon the date of his or her retirement.

6-a. "Five-year-average compensation", in the case of an improved benefits plan member, shall mean the average annual compensation earnable by such member for city-service during his or her last five years of city-service, or during any other five consecutive years of city-service since he or she last became a member which such member shall designate.

6-b. "Prior original plan member accumulated contributions" shall mean the sum of all the amounts, deducted from the compensation of an original plan member or contributed by him or her while such a member, standing to the credit of his or her individual account in the retirement allowance accumulation fund (as such fund existed prior to the starting date of the improved benefits plan (as such date is defined in subdivision twenty-seven of this section)), without interest thereon.

6-c. "Subsequent original plan member accumulated contributions" shall mean the sum of all amounts, if any, deducted from the compensation of an original plan member or contributed by him or her on or after the starting date of the improved benefits plan (as such date is defined in subdivision twenty-seven of this section) and while he or she is such a member, standing to the credit of his or her individual account in the contingent reserve fund, without interest thereon.

7. "Total accumulated contributions" shall mean, with respect to an original plan member, the amount obtained by adding together his or her prior original plan member accumulated contributions (as defined in subdivision six-b of this section) and his or her subsequent original plan member accumulated contributions (as defined in subdivision six-c of this section) if any, without interest on any of such contributions.

7-a. "Accumulated deductions", with respect to an improved benefits plan member, shall mean the sum of all the amounts, deducted from the compensation of such member or contributed by him or her, standing to the credit of his or her individual account in the annuity savings fund, together with regular interest and special interest, if any, thereon, provided that nothing contained in this subdivision shall be construed as providing or requiring that where any original plan member elects to become an improved benefits plan member, regular interest shall accrue or be credited for any period prior to the effective date of such election on the accumulated contributions of such member transferred to the credit of his or her account in the annuity savings fund pursuant to the applicable provisions of this subchapter.

8. (a) "Regular interest", in the cases of persons who are members on the thirtieth day of June, nineteen hundred forty-seven, shall mean, subject to the provisions of paragraphs (b), (e), (f), (g), (h) and (j) of this subdivision, interest at four per centum per annum, compounded annually, and in the cases of persons becoming members thereafter, shall mean, subject to the provisions of such paragraphs, interest at three per centum per annum, compounded annually to and including the thirty-first day of December, nineteen hundred sixty-seven, and interest at four per centum, compounded annually, from and after the first day of January, nineteen hundred sixty-eight.

(b) The provisions of paragraph (a) of this subdivision shall not apply to any non-elective improved benefits plan member (as defined in subdivision four-h of this section). Such provisions shall not apply to any elective improved

benefits plan member (as defined in subdivision four-g of this section) during any period wherein he or she is such a member.

(c) "Regular interest", in the case of each non-elective improved benefits plan member, shall mean, subject to the provisions of paragraphs (e), (f), (g), (h), (i) and (j) of this subdivision, interest at four per centum per annum, compounded annually.

(d) "Regular interest", in the case of each elective improved benefits plan member, shall mean, subject to the provisions of paragraphs (e), (f), (g), (h), (i) and (j) of this subdivision, interest at four per centum per annum, compounded annually, during the period wherein he or she is such a member. Nothing contained in this paragraph shall be construed as providing or requiring that regular interest shall accrue or be credited, for any period prior to the effective date of the election of any such member to be an elective improved benefits plan member, on the accumulated contributions of such member transferred to the credit of his or her account in the annuity savings fund pursuant to the provisions of section 13-315 of this subchapter.

(e) The provisions of paragraphs (a), (c) and (d) of this subdivision shall not apply to any actuarial valuation, determination or appraisal which (i) is made pursuant to this subchapter and (ii) is used to determine the amount of any contribution required to be paid by the city into the contingent reserve fund of the pension fund in the nineteen hundred eighty-nineteen hundred eighty-one fiscal year of the city or any subsequent fiscal year thereof.

(f) (A) Subject to the provisions of subparagraph (B) of paragraph i of this subdivision, and except as otherwise provided in paragraph four of subdivision b of section 13-331 of this subchapter with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this subchapter and which is used to determine the amount of any contribution required to be paid by the city into the contingent reserve fund of the pension fund in the nineteen hundred eighty-nineteen hundred eighty-one fiscal years and nineteen hundred eighty-one-nineteen hundred eighty-two of the city, "regular interest" shall mean interest at the rate of seven and one-half per centum per annum, compounded annually.

(B) Subject to the provisions of subparagraph (B) of paragraph (i) of this subdivision, and except as otherwise provided in paragraph four of subdivision b of section 13-331 of this subchapter with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this subchapter and which is used to determine the amount of any contribution required to be paid by the city into the contingent reserve fund of the pension fund in the nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year of the city and in each succeeding fiscal year thereof to and including the nineteen hundred eighty-seven-nineteen hundred eighty-eight fiscal year thereof, "regular interest" shall mean interest at the rate of eight per centum per annum, compounded annually.

(C) Subject to the provisions of subparagraph (B) of paragraph (i) of this subdivision, and except as otherwise provided in paragraph four of subdivision b of section 13-331 of this subchapter with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this subchapter and which is used to determine the amount of any contribution required to be paid by the city into the contingent reserve fund of the pension fund in the nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year of the city and the nineteen hundred eighty-nine-nineteen hundred ninety fiscal year thereof, "regular interest" shall mean interest at the rate of eight and one-quarter per centum per annum, compounded annually.

(g) Subject to the provisions of subparagraph (B) of paragraph (i) of this subdivision, and except as otherwise provided in paragraph four of subdivision b of section 13-331 of this subchapter with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability

contributions, for the purpose of any actuarial valuation, determination or appraisal which (i) is made pursuant to this subchapter and (ii) is used to determine the amount of any contribution required to be paid by the city into the contingent reserve fund of the pension fund in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year of the city and in any subsequent fiscal year thereof, "regular interest" shall mean interest at such rate per annum, compounded annually, as shall be prescribed by the legislature in section 13-638.2 of*1 title.

(h) On or after May first, nineteen hundred eighty-nine and not later than October thirty-first of such year, the board shall submit to the governor, the temporary president and minority leader of the senate, the speaker of the assembly, the majority and minority leaders of the assembly, the state superintendent of insurance, the chairperson of the permanent commission on public employee pension and retirement systems, the mayor of the city and the members of the board of estimate and city council thereof, the written recommendations of the board as to the rate of interest and effective period thereof which should be established by law as "regular interest" for the purpose specified in paragraph (g) of this subdivision.

(i) (A) Subject to the provisions of subparagraph (c) of paragraph two of subdivision b of section 13-331 of this subchapter, nothing contained in paragraphs (e), (f), (g) and (h) of this subdivision shall be construed as prescribing, for the purpose of crediting interest to individual accounts of improved benefits plan members in the annuity savings fund or to reserves-for-increased-take-home-pay of such members or for any other purpose besides that specified in such paragraphs, a rate of regular interest other than as prescribed by the applicable provisions of paragraph (c) or paragraph (d) or paragraph (j) of this subdivision.

(B) Subject to the provisions of section 13-638.2 of this title, nothing contained in paragraphs (f) and (g) of this subdivision shall be construed as requiring the unfunded accrued liability contribution, as defined in paragraph three of subdivision b of section 13-331 of this subchapter, to be determined in any manner other than as prescribed in such paragraph three. Subject to the provisions of section 13-638.2 of this title, nothing contained in paragraphs (f) and (g) of this subdivision shall be construed as requiring any balance sheet liability or balance sheet liability contribution computed pursuant to the provisions of paragraph four of subdivision b of section 13-331 of this subchapter to be determined in any manner other than as prescribed in such paragraph four.

(j) (i) Commencing on August first, nineteen hundred eighty-three, and continuing thereafter, "regular interest", in the cases of persons who were members on July thirty-first, nineteen hundred eighty-three or who thereafter became or become members, shall mean, subject to the provisions of subparagraphs (ii) to (x), inclusive, of this paragraph (j), interest at seven per centum per annum, compounded annually.

(ii) (A) (1) Subject to the provisions of sub-items (2) and (3) of this item (A), regular interest at the rate of seven per centum per annum, compounded annually, shall be used as the actuarial interest assumption for determining any actuarial equivalent benefit payable to or on account of any seven percent member for actuarial equivalent benefit purposes.

(2) Where an actuarial equivalent benefit is required by board resolution to be determined for any seven percent member for actuarial equivalent benefit purposes through the use of the modified Option 1 pension computation formula (as defined in subdivision thirty-two of this section) the actuarial interest assumptions used in making such determination shall be as prescribed in such formula.

(3) Where it is provided by board resolution that a portion of an actuarial equivalent benefit shall be determined for any seven percent member for actuarial equivalent benefit purposes on the basis of gender-neutral mortality tables, and that the remainder of such benefit shall be determined on the basis of mortality tables which are not gender-neutral, regular interest at the rate of seven per centum per annum, compounded annually, shall be used as the actuarial interest assumption for determining the portion of such benefit required by such resolution to be determined on the basis of gender-neutral mortality tables and such rate of regular interest shall not apply to the determination of the remainder of such benefit.

(B) Notwithstanding that the process of determining whether a member is a seven percent member for actuarial benefit purposes may include, for the purpose of ascertaining the higher applicable benefit, alternative hypothetical benefit calculations utilizing a rate of regular interest other than such rate of seven per centum, nothing contained in subparagraph (i) of this paragraph (j) or in item (A) of this subparagraph (ii) shall be construed as requiring that in the determination of any actuarial equivalent benefit payable to or on account of any member who is not a seven percent member for actuarial equivalent benefit purposes, any rate of interest be used as the actuarial interest assumption other than regular interest, compounded annually, as prescribed by the applicable provisions of paragraph (a) or paragraph (c) or paragraph (d) of this subdivision eight.

(iii) The provisions of item (A) of subparagraph (ii) of this paragraph (j) shall not apply to any person who, prior to August first, nineteen hundred eighty-three, retired as a member of the pension fund for service or superannuation or for ordinary or accident disability and was such a retiree immediately prior to such August first; provided, however, that if any such retiree returned or returns to city-service and, on or after July thirty-first, nineteen hundred eighty-three, was or is restored to membership in the pension fund as required or permitted by law, the provisions of such item (A), from and after the date of such restoration to membership, shall apply to such restored member with respect to determination of any actuarial equivalent benefit which is both (A) a benefit to which he or she became or becomes entitled upon his or her subsequent retirement or subsequent discontinuance of service so as to qualify for benefits, and (B) a benefit which is not a continuation, without change, of a benefit which had previously become payable to him or her by reason of his or her prior retirement; provided further that nothing contained in the preceding provisions of this subparagraph (iii) shall be construed as making the provisions of such item (A) applicable to any such restored member who was not or is not a seven percent member for actuarial equivalent benefit purposes at the time of such subsequent retirement or subsequent discontinuance of service.

(iv) (A) Subject to the provisions of items (B) and (C) of this subparagraph (iv), the provisions of item (A) of subparagraph (ii) of this paragraph (j) shall not apply to any member who, (1) prior to August first, nineteen hundred eighty-three, discontinued service under such circumstances that such member became an original plan discontinued member (as defined in subdivision sixteen of this section 13-313) or an improved benefits plan discontinued member immediately prior to such August first.

(B) If such a discontinued member returned or returns to city-service and on or after July thirty-first, nineteen hundred eighty-three and before payability of his or her retirement allowance as such member began or begins, again became or becomes an active member pursuant to the applicable provisions of section 13-360 or 13-361, the provisions of item (A) of subparagraph (ii) of this paragraph (j) shall apply to him or her on and after the date of such resumption of active membership; provided that nothing contained in the preceding provisions of this item (B) shall be construed as making the provisions of item (A) of such subparagraph (ii) applicable to any such member who was not or is not a seven percent member for actuarial equivalent benefit purposes at the time of subsequent retirement or subsequent discontinuance of service so as to qualify for benefits.

(C) If such an original plan discontinued member or improved benefits plan discontinued member returned or returns to city-service and on or after July thirty-first, nineteen hundred eighty-three and on or after the date on which payability of his or her retirement allowance as such member began or begins, again became or becomes an active member pursuant to the applicable provisions of section 13-360 or 13-361 of this subchapter, the provisions of item (A) of such subparagraph (ii), on and after the date of such resumption of active membership, shall apply to him or her with respect to determination of any actuarial equivalent benefit which is both (1) a benefit to which he or she became or becomes entitled upon his or her subsequent retirement or subsequent discontinuance of service so as to qualify for benefits, and (2) a benefit which is not a continuation, without change, of a benefit which had previously become payable to him by reason of his or her prior discontinuance of service; provided that nothing contained in the preceding provisions of this item (C) shall be construed as making item (A) of such subparagraph (ii) applicable to any such member who was not or is not a seven percent member for actuarial equivalent benefit purposes at such time of subsequent discontinuance of service.

(v) (A) Subject to the provisions of item (B) of this subparagraph (v) and to the provisions of subparagraph (viii) of this paragraph (j), the selection of mode of benefit (as defined in subdivision thirty-three of this section 13-313) made prior to the date of enactment (as such date is certified pursuant to section forty-one of the legislative law) of this paragraph (j) by a person entitled to a recomputation of benefits pursuant to the better-of-two-computations method (as defined in subdivision thirty-five of this section) in relation to the retirement allowance (or any component thereof) which became payable to him or her prior to such date of enactment shall be the selection of mode of benefit applicable to the recomputed retirement allowance (or any corresponding component thereof) to which he or she is entitled under the better-of-two-computations method (as defined in subdivision thirty-four of this section), and any such person entitled to a recomputation of benefits pursuant to the better-of-two-computations method shall not be entitled to make any change in such selection of mode of benefit.

(B) (1) Notwithstanding the provisions of item (A) of this subparagraph (v), a person entitled to a recomputation of benefits pursuant to the better-of-two-computations method shall be entitled, to the extent and in the manner prescribed in the succeeding sub-items of this item (B), to change the original selection of mode of benefit applicable to the retirement allowance (or any component thereof) which became payable to him or her prior to the date of enactment of this paragraph (j).

(2) In any case where the original selection of mode of benefit of a person entitled to a recomputation of benefits pursuant to the better-of-two-computations method was a selection of a joint and survivor option (as defined in subdivision thirty-six of this section), no change from such original selection of a joint and survivor option may be made under this item (B) to any other selection of mode of benefit if the designated beneficiary selected with respect to such joint and survivor option by such person entitled to a recomputation is not alive at the time of filing of the form whereby such person entitled to a recomputation seeks to change, pursuant to this item (B), his or her original selection of such joint and survivor option.

(3) Except for a change of selection of mode of benefit prohibited by sub-item two of this item (B), any original selection of mode of benefit may be changed pursuant to this item (B) to another selection of mode of benefit, provided all of the conditions set forth in sub-items four, six and eight of this item (B) are met.

(4) Subject to the provisions of sub-items seven and eight of this item (B), a person entitled to a recomputation of benefits pursuant to the better-of-two-computations method may, pursuant to this item (B), effect any such permissible change of his or her original selection of mode of benefit by executing, acknowledging and filing with the pension fund, within the applicable period of time prescribed by sub-item six of this item, a new selection of mode of benefit. If the original selection of mode of benefit of the person filing such new selection was a selection of a joint and survivor option, such new selection shall be void and of no effect unless (a) the designated beneficiary named in such original selection of a joint and survivor option signs and acknowledges, in the form for such new selection of mode of benefit, a consent to such changed selection of mode of benefit, and (b) such original designated beneficiary is alive on the date of filing of such new selection.

(5) The pension fund shall mail to each person entitled to a recomputation of benefits pursuant to the better-of-two-computations method a letter showing amounts of benefits, as recomputed for such person under the better-of-two-computations method for modes of benefit other than joint and survivor options, together with a statement advising such person that upon request, the amounts of recomputed benefits under joint and survivor options will be provided.

(6) The period of time within which any such person entitled to a recomputation may file a new selection of mode of benefit as provided for in sub-items three and four of this item (B) shall be sixty days after the date of issuance set forth in such letter mailed to such person pursuant to sub-item five of this item; provided, however, that if, pursuant to the request of such person, a later letter setting forth benefits information in relation to new selection of a mode of benefit is mailed to such person by the pension fund, such period of time for filing a new selection of mode of benefit shall be thirty days after the date of issuance set forth in such later letter.

(7) Upon the filing of a new selection of mode of benefit pursuant to this item (B) by any such person entitled to a recomputation, such new selection shall be irrevocable and such person shall not be entitled to file any other selection of mode of benefit with respect to such retirement allowance (or any component thereof) which became payable to him or her prior to the date of enactment of paragraph (j).

(8) No new selection of mode of benefit filed pursuant to the preceding sub-items of this item (B) shall be valid or effective as a change of mode of benefit or for any other purpose unless the person entitled to a recomputation of benefits pursuant to the better-of-two-computations method who files such new selection is alive on the date (hereinafter referred to as the "validating date") three hundred sixty-five days after the date of filing of such new selection of mode of benefit. If such person filing such new selection of mode of benefit is alive on the validating date with respect to such new selection, such new selection shall become valid and effective on such validating date; provided, however, that from and after the effective date of retirement of such person making such valid and effective new selection of mode of benefit (if he or she retired for service or superannuation or for ordinary or accident disability) or from and after the date on which payability of the original benefits of such person began (if he or she was a discontinued member), such new selection of mode of benefit shall supersede such original selection of mode of benefit and shall apply to and govern the amount of benefits payable to such person or to his or her designated beneficiary or estate.

(vi) Subject to the provisions of subparagraph (viii) of this paragraph (j), in any case where a member who retired before August first, nineteen hundred eighty-three for service or superannuation or for ordinary or accident disability returned or returns to city-service and on or after July thirty-first, nineteen hundred eighty-three re-entered or re-enters membership in the pension fund, nothing contained in subparagraphs (i) to (iv), inclusive, of this paragraph (j) shall be construed as authorizing or permitting him or her to change any selection of mode of benefit (as defined in subdivision thirty-three of this section 13-313) made by him or her with respect to any benefit which, upon his or her subsequent retirement or discontinuance of service so as to qualify for benefits, is payable to him or her as a continuation, without change, of a benefit which had previously become payable to him or her by reason of his or her prior retirement.

(vii) Subject to the provisions of subparagraph (viii) of this paragraph (j), in any case where a discontinued member referred to in item (A) of subparagraph (iv) of this paragraph (j) returned or returns to city-service and, on or after July thirty-first, nineteen hundred eighty-three, again became or becomes an active member pursuant to applicable provisions of law, nothing contained in subparagraphs (i) to (iv), inclusive, of this paragraph shall be construed as authorizing or permitting him or her to change any selection of mode of benefit (as defined in subdivision thirty-three of this section 13-313) made by him or her with respect to any benefit which, upon his or her subsequent retirement or discontinuance of service so as to qualify for benefits, is payable to him or her as a continuation, without change, of a benefit which had previously become payable to him or her by reason of his or her prior discontinuance of service.

(viii) Nothing contained in subparagraphs (v), (vi) and (vii) of this paragraph (j) shall be construed as preventing:

(A) any person subject to such subparagraph (v) who, on or after July thirty-first, nineteen hundred eighty-three, re-entered or re-enters city-service and again became or becomes an active member; or

(B) any re-entered member referred to in such subparagraph (vi) or subparagraph (vii);

upon his or her subsequent retirement, from exercising any right which any other applicable law grants to him or her under such circumstances to make a selection of mode of benefit (as defined in subdivision thirty-three of section 13-313).

(ix) Notwithstanding the provisions of subparagraph (i) of this paragraph (j) prescribing a rate of regular interest of seven per centum per annum, compounded annually, for specified members described in such subparagraph (i), the

rate of regular interest which shall be applied to fix the rate of interest on any loan to any such member eligible to borrow shall be four per centum per annum, compounded annually.

(x) (A) Subject to the provisions of item (B) of this subparagraph (x), the rate of regular interest applicable to determination of the rate of member contribution of any member whose last membership began prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this paragraph (j) shall be the rate of regular interest which was applicable, under the provisions of law in effect prior to such date of enactment, to the determination of the rate of member contribution of such member, and nothing contained in the preceding subparagraphs of this paragraph (j) shall be construed as applicable to the determination of the rate of member contribution of any such member whose last membership so began or as changing or affecting the rate of member contribution of any such member.

(B) The rate of regular interest applicable to determination of the rate of member contribution of any elective improved benefits plan member who became or becomes such a member by reason of an election made on or after August first, nineteen hundred eighty-three shall be the rate of regular interest, as prescribed by the applicable provisions of paragraph (a) of subdivision eight of section 13-214 of the code, which is required by the provisions of subdivision (i) of section 13-315 to be applied to the determination of such rate of member contribution. Nothing contained in the preceding subparagraphs of this paragraph (j) shall be construed as applicable to the determination of the rate of member contribution of any such elective improved benefits plan member or as changing or affecting the rate of the member contribution of any such member.

8-a. "Pension", with respect to any retired or deceased improved benefits plan member and with respect to any improved benefits plan discontinued member and with respect to the beneficiaries of any such member, shall mean payments for life derived from appropriations made by the city as provided in this subchapter.

8-b. "Annuity", with respect to any retired or deceased improved benefits plan member and with respect to any improved benefits plan discontinued member and with respect to the beneficiaries of any such member, shall mean payments for life derived from contributions made by such member as provided in this subchapter.

9. "Retirement allowance", in the case of a retired or deceased original plan member and in the case of an original plan discontinued member and in the case of the beneficiaries of any such member, shall mean payments for life derived from appropriations made by the city as provided in this subchapter and from contributions made by a member as provided in this subchapter.

9-a. "Retirement allowance", in the case of a retired or deceased improved benefits plan member and in the case of an improved benefits plan discontinued member and in the case of the beneficiaries of any such member, shall mean pension plus the annuity and the pension-providing-for-increased-take-home-pay, if any.

10. "Dependent benefit" shall mean payments derived from contributions made by a member as provided in sections 13-329 and 13-355 of this subchapter.

11. "Retirement allowance reserve", with respect to any original plan member or his or her beneficiaries, shall mean the present value of all payments to be made on account of any retirement allowance, payable to or on account of a person who retired as an original plan member, or benefit in lieu of any retirement allowance, granted under the provisions of this subchapter, computed upon the basis of such mortality tables as shall be adopted by the board with regular interest.

11-a. "Pension reserve", with respect to any improved benefits plan member or his or her beneficiaries, shall mean the present value of all payments to be made on account of any pension, or benefit in lieu of any pension, granted under the provisions of this subchapter, computed upon the basis of such mortality tables as shall be adopted by the board, with regular interest.

11-b. "Annuity reserve", with respect to any improved benefits plan member or his or her beneficiaries, shall mean the present value of all payments to be made on account of any annuity, or benefit in lieu of any annuity, granted under the provisions of this subchapter computed on the basis of such mortality tables as shall be adopted by the board, with regular interest.

12. "Fiscal year" shall mean any year commencing with the first day of July and ending with the thirtieth day of June next following.

13. "Total service", in the case of an original plan member, shall mean all service of such member allowable with respect to such member as provided in subdivision three of this section and section 13-318 of this subchapter.

13-a. "Total service", in the case of an improved benefits plan member, shall mean all service of such member allowable with respect to such member as provided in subdivision three-a of this section and section 13-318 of this subchapter.

14. "Board" shall mean the board of trustees provided for in section 13-316 of this subchapter.

15. "Accumulation-for-increased-take-home-pay", with respect to any original plan member, shall mean a sum consisting of the total of all products obtained by multiplying the compensation of such member, during each period of reduction of his or her member contributions pursuant to the provisions of section 13-326 of this subchapter and subdivision b of section four hundred eighty of the retirement and social security law, occurring while he or she is an original plan member, by the percentage of reduction of his or her contributions applicable under such provisions with respect to such period, without interest thereon.

15-a. "Pension-providing-for-increased-take-home-pay", with respect to any improved benefits plan member, shall mean the annual allowance for life payable in monthly installments derived from contributions which the city made to the contingent reserve fund, pursuant to section 13-326 of this subchapter and subdivision b of section four hundred eighty of the retirement and social security law, with respect to the period wherein he or she was an improved benefits plan member.

15-b. "Reserve-for-increased-take-home-pay", with respect to an improved benefits plan member, shall mean:

(a) the amount of the reserve provided by the city which shall be a sum consisting of the total of all products obtained by multiplying the compensation of the member, during each period of reduction of member contributions under the provisions of section 13-326 of this subchapter and subdivision b of section four hundred eighty of the retirement and social security law while he or she is an improved benefits plan member, by the percentage of reduction of his or her contributions applicable under such provisions with respect to such period, plus regular interest, and additional interest, if any, thereon; plus

(b) in the case of any elective improved benefits plan member, the amount of the accumulation-for-increased-take-home-pay, if any, of such member, as such accumulation was on the date next preceding the effective date of his or her election to be such a member, plus regular interest and additional interest, if any, on and after such effective date on the amount of such accumulation; plus

(c) in the case of any non-elective improved benefits plan member who is credited, immediately prior to becoming such a member, with an accumulation-for-increased-take-home-pay, the amount of such accumulation-for-increased-take-home-pay, as such accumulation was on the date next preceding the date on which such member became a nonelective improved benefits plan member, plus regular and additional interest, if any, on and after such date on which he or she became a nonelective improved benefits plan member, on the amount of such accumulation.

16. "Original plan discontinued member" shall mean an original plan member who has a vested right to a

deferred retirement allowance under section 13-360 of this subchapter.

16-a. "Original plan discontinued member not subject to article eleven" shall mean an original plan member not subject to article eleven (as defined in subdivision four-c of this section) who has a vested right to a deferred retirement allowance under section 13-360 of this subchapter.

16-b. "Original plan discontinued member subject to article eleven" shall mean an original plan member subject to article eleven (as defined in subdivision four-d of this section) who has a vested right to a deferred retirement allowance under section 13-360 of this subchapter.

16-c. "Fire uniformed force service" shall for purposes of section 13-361 of this subchapter mean service in the uniformed force of the fire department, as a member of such force, including service for which credit is granted by section 15-111 of the code, but excluding any service credit acquired by transfer or otherwise under any provision of law.

16-d. "Improved benefits plan discontinued member" shall mean any improved benefits plan member who has discontinued fire uniformed force service (as defined in subdivision sixteen-c of this section) and who has a vested right to a deferred retirement allowance under section 13-361 of this subchapter.

16-e. "Improved benefits plan discontinued member not subject to article eleven" shall mean an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of this section) who has a vested right to a deferred retirement allowance under section 13-361 of this subchapter.

16-f. "Improved benefits plan discontinued member subject to article eleven" shall mean an improved benefits plan member subject to article eleven (as defined in subdivision four-j of this section) who has discontinued fire uniformed force service and who has a vested right to a deferred retirement allowance under section 13-361 of this subchapter.

17. "Normal rate of contribution as an original plan member" shall mean:

(a) in the case of any original plan member who is required to make member contributions as such a member under the applicable provisions of this subchapter, the proportion of his or her earnable compensation which is required to be deducted from the compensation of such member by the applicable provisions of section 13-325 of this subchapter as his or her member contributions, exclusive of any reduction of such proportion on account of any program for increased-take-home-pay in effect.

(b) in the case of any original plan member who heretofore completed, or who, on or after the effective date of this subdivision, shall complete, his or her minimum period for service retirement, the proportion of his or her earnable compensation (exclusive of any reduction of such proportion on account of any program of increased-take-home-pay in effect) which, as of the date on which he or she completed his or her minimum period for service retirement, was required to be deducted from the compensation of such member by the applicable provisions of section 13-325 of this subchapter, as in effect on such date.

18. "Normal rate of contribution as an improved benefits plan member" shall mean:

(a) in the case of any improved benefits plan member who is not eligible to elect to discontinue making member contributions under the applicable provisions of this subchapter, the proportion required to be deducted from the compensation of such member by the applicable provisions of section 13-315 and/or section 13-327 of this subchapter as his or her member contributions, exclusive of any increase in such proportion pursuant to subdivision c or subdivision d of section 13-327 of this subchapter or any reduction thereof on account of any program for increased-take-home-pay in effect or pursuant to subdivision one of section one-hundred thirty-eight-b of the retirement and social security law (relating to election to decrease member contributions by contributions due on account of social

security coverage).

(b) in the case of any improved benefits plan member who completed his or her minimum period for service retirement before becoming an improved benefits plan member and who is eligible under the provisions of this subchapter to elect to discontinue making member contributions or has made such election, the proportion of his or her earnable compensation (exclusive of any increase in such proportion pursuant to subdivision c or subdivision d of section 13-327 of this subchapter or any reduction thereof on account of any program of increased-take-home-pay in effect) which, as of the date on which he or she completed his or her minimum period for service retirement, would have been required to be deducted from his or her compensation by the applicable provisions of sections 13-315 and/or 13-327 of this subchapter if the improved benefits plan had been in effect on his or her date of inception of pension fund membership (as defined in subdivision twenty of this section) and he or she had become an improved benefits plan member on such date of inception.

19. "Date of commencement of contributions as an improved benefits plan member" shall mean the first day (on or after the last commencement of the status of an improved benefits plan member as such member) for which deductions from the compensation of such member are required by the applicable provisions of subdivision i of section 13-315 of this subchapter and/or section 13-327 of this subchapter to be made on account of his or her contributions as an improved benefits plan member.

20. "Date of inception of pension fund membership", in the case of any original plan member (as defined in subdivision four-b of this section) or elective improved benefits plan member (as defined in subdivision four-g of this section), shall mean the earliest date on which such member last became eligible for membership in any pension fund established pursuant to former article one-A repealed by chapter three hundred eighty-five of nineteen hundred eighty-one or subchapter two of this chapter. Nothing herein provided shall limit member service credit restoration pursuant to section 13-319 of this subchapter.

20-a. "Date of commencement of credited member service in the fire uniformed force" shall mean, with respect to any improved benefits plan member, the date of commencement of the period of service in the uniformed force of the fire department as a member of the pension fund which is credited to such member as of the date on which any benefit under this subchapter becomes payable to such member.

21. (a) "Contribution rate deficiency" shall mean with respect to each elective improved benefits plan member (as defined in subdivision four-g of this section) and shall mean with respect to any non-elective improved benefits plan member (as defined in subdivision four-h of this section) who is subject to such a deficiency, an amount equal to the excess, if any, of (ii) over (i) hereof where: (i) is the amount of the total accumulated contributions (as defined in subdivision seven of this section) of such member (as such amount would be in the absence of a loan) as of the earlier of (1) the date next preceding his or her date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of this section) or (2) the date of completion of his or her minimum period for service retirement; and (ii) is the amount (i) would be if the contribution rate of the member to the date specified in (i) had been his or her normal rate of contribution as an improved benefits plan member.

(b) "Contribution rate deficiency" shall mean, with respect to an improved benefits plan discontinued member (as defined in subdivision sixteen-d of this section) who is subject to such a deficiency, an amount equal to the excess, if any, of (ii) over (i) hereof where: (i) is the amount of the total accumulated contributions of such discontinued member (as such amount would be in the absence of a loan) as of the date next preceding his or her date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of this section); and (ii) is the amount (i) would be if the contribution rate of the member to the date specified in (i) had been his or her normal rate of contribution as an improved benefits plan member.

22. "Subsequent period for election of the improved benefits plan" shall mean any of the following three-month periods: the period of three months beginning on the date next succeeding the date which is the last day of a period of

thirty months next succeeding the starting date of the improved benefits plan (as defined in subdivision twenty-seven of this section), and subsequent, successive periods of three months' duration, such period for the calendar year nineteen hundred eighty-six beginning on September first, nineteen hundred eighty-six, and ending three months thereafter, and for successive calendar years, beginning with the calendar year nineteen hundred eighty-seven, such periods beginning on June first and ending on August thirty-first of each such year.

23. "Pension fund one-A" shall mean the pension fund provided for by article one-A of title B of chapter nineteen of the code, as in effect immediately prior to July first, nineteen hundred eighty-one.

24. "Special interest" shall mean a distribution to the annuity savings fund, in addition to regular interest, which distribution (a) for each of the periods as to which the provisions of section 13-337 of this subchapter or section 13-638.2 of this title grant special interest, consists of the amount prescribed by such provisions for such period and (b) for each such period, is credited in such applicable amount to the accounts in the annuity savings fund of improved benefits plan members who are eligible under such provisions for crediting of such amount for such period.

25. "Additional interest", with respect to any improved benefits plan member, shall mean a distribution to the reserve-for-increased-take-home-pay in addition to regular interest, which distribution (a) for each of the periods, if any, as to which the provisions of section 13-337 of this subchapter or section 13-638.2 of this title grant additional interest, consists of the amount prescribed by such provisions for such period and (b) for each such period, is included in such applicable amount in the reserve-for-increased-take-home-pay of each member who is eligible under such provisions for inclusion of such amount for such period.

26. "Supplementary interest" shall mean an annual allowance, in addition to regular interest, of interest on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter (excluding, however, the annuity savings fund and the amounts of total accumulated contributions, accumulations-for-increased-take-home-pay and reserve-for-increased-take-home-pay in the contingent reserve fund), which allowance, (a) for each of the periods as to which the provisions of section 13-337 of this subchapter or section 13.638.2*2 of this title grant supplementary interest, consists of the amount prescribed by such provisions for such period and (b) for each such period, is credited in such applicable amount to such funds at the time, in the manner, to the extent and subject to the exclusions prescribed by the provisions of such section.

27. "Starting date of the improved benefits plan" shall mean the date of enactment of the act which added this subdivision twenty-seven, as such date is certified pursuant to section forty-one of the legislative law.

28. "Five-year-average-salary", in the case of an original plan member, shall mean the average annual compensation earnable by such member for city-service during his or her last five years of city-service, or during any other five consecutive years of city-service since he or she last became a member which such member shall designate.

29. "Actuarial equivalent benefit." Any benefit which by law is required to be an actuarial equivalent or by law is required to be determined on the basis of an actuarial equivalent.

30. "Seven percent member for actuarial equivalent benefit purposes." (a) A member who meets all of the following conditions:

(i) subparagraph (i) of paragraph (j) of subdivision eight of this section (relating to the definition of members as to whom regular interests at seven per centum per annum, compounded annually applies) applies to such member; and

(ii) an actuarial equivalent benefit has become payable to or on account of such member; and

(iii) it is provided by a resolution of the board (A) that a mortality table which takes effect on or after the date of enactment (as certified pursuant to section forty-one of the legislative law) of this subdivision and which does not differentiate on the basis of sex shall be used to calculate such actuarial equivalent benefit or a portion of such benefit,

or (B) that the modified Option 1 pension computation formula (as defined in subdivision thirty-two of this section) shall be used to calculate such actuarial equivalent benefit.

(b) Except in cases to which the modified Option 1 pension computation formula applies pursuant to a resolution adopted by the board, nothing contained in subparagraph (iii) of paragraph (a) of this subdivision thirty shall be construed as referring to or including any calculation of an actuarial equivalent benefit (or portion of such benefit) payable to any person where such calculation is required by such resolution to be made through the use of a mortality table in effect prior to such date of enactment.

31. "Tier I member." A member whose benefits (other than a supplemental retirement allowance) are prescribed by this article and who is not subject to the provisions of article eleven, article fourteen or article fifteen of the retirement and social security law.

32. "Modified Option 1 pension computation formula." (a) The method, as set forth in the succeeding paragraphs of this subdivision, of computing the following benefits:

(i) the Option 1 retirement allowance payable to a Tier I member who retired as an original plan member for service or superannuation or for ordinary or accident disability or who became an original plan discontinued member not subject to article eleven (as defined in subdivision sixteen-a of this section); and

(ii) the pension component of an Option 1 retirement allowance payable to a member who retired as an improved benefits plan member for service or superannuation or ordinary or accident disability or who became an improved benefits plan discontinued member (as defined in subdivision sixteen-d of this section); and

(iii) the method of computing the amount of the Option 1 benefit payable to the beneficiary or estate of any such member above referred to in this paragraph.

(b) The initial reserve for such original plan retirement allowance or improved benefits plan pension component shall be computed through use of mortality tables which are adopted on or after the date of enactment (as certified pursuant to section forty-one of the legislative law) of this subdivision and which do not differentiate on the basis of sex (hereinafter referred to as "gender-neutral mortality tables") and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually.

(c) Solely for the purpose of use as the minuend from which the payments of such original plan retirement allowance or improved benefits plan pension component to such member are subtracted in order to determine the amount of the Option 1 benefit payable, upon such member's death, to such member's beneficiary or estate by reason of such Option 1 selection in relation to such retirement allowance or pension component, the present value of such member's maximum original plan retirement allowance or maximum improved benefits plan pension, as it was at the time of such member's retirement, shall be deemed to be the greater of:

(i) such present value determined on the basis of gender-neutral mortality tables and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually; or

(ii) such present value determined on the basis of the mortality tables and the regular interest applicable to such member in effect immediately prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this subdivision.

(d) The original plan retirement allowance or improved benefits plan pension component payable to such member shall be computed on the basis of gender-neutral mortality tables and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually, so that:

(i) the present value, as it was at the time of such member's retirement, of such retirement allowance or pension

component; plus

(ii) the present value, as it was at the time of such member's retirement, of the amount payable to such member's Option 1 beneficiary or estate upon the death of the member as provided for by the applicable provisions of paragraph (e) of this subdivision; shall be equal to the Option 1 initial reserve determined for such original plan retirement allowance or improved benefits plan pension component with respect to such member pursuant to the provisions of paragraph (b) of this subdivision.

(e) Where such member dies before he or she has received payments on account of such original plan retirement allowance or improved benefits plan pension component equal to the present value of such member's maximum original plan retirement allowance or maximum improved benefits plan pension as computed pursuant to paragraph (c) of this subdivision, the Option 1 benefit payable to the beneficiary or estate of such deceased member, by reason of such Option 1 selection in relation to such retirement allowance or pension component, shall be the remainder obtained by subtracting from such present value determined pursuant to such paragraph (c) in relation to such retirement allowance or pension component, the total of such Option 1 payments on account of such retirement allowance or pension component received by or payable to such member for the period prior to his or her death.

(f) In relation to the Option 1 benefits determined pursuant to the method of computation set forth in this subdivision by reason of discontinuance of service by an original plan discontinued member or an improved benefits plan discontinued member, the phrase "time of such member's retirement," as set forth in paragraphs (c) and (d) of this subdivision, shall be deemed, for the purpose of this subdivision, to mean the date of commencement of the retirement allowance of such discontinued original plan member or discontinued improved benefits plan member.

33. "Selection of mode of benefit." The choice made by a member (as permitted by and pursuant to the requirements of law governing such choice by such member) as to whether the maximum amount of his of her retirement allowance of a component thereof shall be payable or such retirement allowance or a component thereof shall be payable under an option selected by the member. The term "selection of mode of benefit" shall include a case where the maximum retirement allowance or a maximum component thereof becomes payable because of a member's omission, within the time permitted by law, to select the maximum benefit or an option.

34. "Better-of-two-computations method." (a) A method (as prescribed by a resolution of the board) under which a retirement allowance (or portion thereof) payable to a member is required to be determined for such member so as to be the greater of:

(i) such retirement allowance (or portion thereof) determined on the basis of gender-neutral mortality tables and regular interest at the rate of seven per centum per annum, or

(ii) such retirement allowance (or portion thereof) determined on the basis of the mortality tables and the regular interest applicable to such member, as such tables and interest were in effect as of a time prescribed in such resolution.

(b) Where, under the provisions of any such resolution of the board, the modified Option 1 pension computation formula (as defined in subdivision thirty-two of this section) applies to any member, the term, "better-of-two-computations method," where used in relation to such member, shall be deemed to include such modified Option 1 pension computation formula, to the extent that such formula governs the determination of (i) such member's retirement allowance (or portion thereof), in the case of an original plan member, or (ii) the pension component (or portion thereof) of such member's retirement allowance in the case of an improved benefits plan member.

35. "Person entitled to a recomputation of benefits pursuant to the better-of-two-computations method." Any person who meets all of the conditions stated below in this subdivision:

(a) such person, during the period beginning on August first, nineteen hundred eighty-three and ending on the date next preceding the date of enactment (as such date is certified pursuant to section forty-one of the legislative law)

of this subdivision, (i) retired for service or superannuation or for ordinary or accident disability, or (ii) discontinued service so as to become an original plan discontinued member (as defined in subdivision sixteen of this section) or an improved benefits plan discontinued member (as defined in subdivision sixteen-d of this section); and

(b) such person's retirement allowance (or a portion thereof), by reason of such retirement or discontinuance of service, is required by a resolution adopted by the board to be redetermined pursuant to the better-of-two-computations method (as defined in subdivision thirty-four of this section); and

(c) a first payment on account of his or her retirement allowance (as such retirement allowance was determined prior to the date of enactment of this subdivision) was made prior to such date of enactment.

36. "Joint and survivor option." (a) Any option under which, at the time when such option is selected, a choice is made which includes both:

(i) a benefit payable for the lifetime of the retired or vested member by whom or in whose behalf such option is selected; and

(ii) a benefit (A) which consists of an amount equal to or constituting a percentage of such retired or vested member's benefit and (B) which is payable for the lifetime of a designated beneficiary selected at the time when such option is selected.

(b) In any case where an option described in paragraph (a) of this subdivision includes a provision prescribing that if the designated beneficiary predeceases such retired or vested member, a maximum benefit shall become payable to such member, such option shall nevertheless be deemed to be a joint and survivor option.

37. "Original plan member contributions eligible for pick up by the employer." (a) With respect to any payroll period for an original plan member who is required to make member contributions during such payroll period under the provisions of section 13-325 of this subchapter, the term "original plan member contributions eligible for pick up by the employer" shall mean the amount of member contributions which, in the absence of an employer pick up program applicable to such member pursuant to section 13-327.1 of this subchapter (providing for pick up of required member contributions), would be required by law to be deducted, on account of such member's normal rate of contribution (as defined in subdivision seventeen of this section) from the compensation of such member for such payroll period, after (1) giving effect to any reduction in such payroll period, after (1) giving effect to any reduction in such contributions required under any program for increased-take-home-pay and (2) excluding any deductions from such compensation (or redeposits or payments) on account of (i) loans or withdrawals of contributions or (ii) any election by such member to increase his or her contributions pursuant to subdivision d of section 13-325 of this subchapter or (iii) any other cause not attributable to the member's normal rate of contribution, after reduction, if any, in such rate, as described in subparagraph one of this paragraph (a).

(b) If no deductions on account of an original plan member's normal rate of contribution are required by law to be made from the compensation of such member for any payroll period, such member shall not have, for such payroll period, any original plan member contributions eligible for pick up by the employer. The amount of an original plan member's original plan member contributions eligible for pick up by the employer for any payroll period shall be determined solely on the basis of compensation paid to such member for such payroll period by his or her public employer. An original plan member shall not have any original plan member contributions eligible for pick up by the employer with respect to any payroll period for which he or she is not paid compensation by his or her public employer.

38. "Improved benefits plan member contributions eligible for pick up by the employer." (a) With respect to any payroll period for an improved benefits plan member (other than any such member who is not required to contribute during such payroll period because of his or her currently effective election to discontinue member contributions pursuant to subdivision b of section 13-327 of this subchapter), the term "improved benefits plan member contributions eligible for pick up by the employer" shall mean the amount of member contributions which, in the absence of an

employer pick up program applicable to such member pursuant to section 13-327.1 of this subchapter (providing for pick up of required member contributions), would be required by law to be deducted, on account of such member's normal rate of contribution, from the compensation of such member for such payroll period, after (1) giving effect to any reduction in such contributions required under any program for increased-take-home-pay or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law and (2) excluding any deductions from such compensation (or redeposits, restorations or payments) on account of (i) loans or withdrawals of excess contributions or (ii) any contribution rate deficiency (as defined in subdivision twenty-one of this section) of such member or (iii) any election by such member to increase his or her member contributions pursuant to subdivision c or subdivision d of section 13-327 of this subchapter or (iv) any other cause not attributable to the member's normal rate of contribution after reduction, if any, in such rate as described in subparagraph one of this paragraph (a).

(b) If no deductions on account of an improved benefits plan member's normal rate of contribution are required by law to be made from the compensation of such member for any payroll period, such member shall not have, for such payroll period, any improved benefits plan member contributions eligible for pick up by the employer. The amount of an improved benefits plan member's improved benefits plan member contributions eligible for pick up by the employer for any payroll period shall be determined solely on the basis of compensation paid to such member for such payroll period by his or her public employer. An improved benefits plan member shall not have any improved benefits plan member contributions eligible for pick up by the employer with respect to any payroll period for which he or she is not paid compensation by his or her public employer.

39. "Starting date for pick up." The first day of the first whole payroll period commencing after the date which is three months after the internal revenue service shall have issued a ruling that member contributions picked up pursuant to section 13-327.1 of this subchapter are not includible as gross income for federal income tax purposes until distributed or made available.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. 3 amended chap 683/1989 § 1

Subd. 8 par (f) subpar (B) amended chap 581/1989 § 51 subpar (C) added chap 581/1989 § 52

Subd. 8 par (g) amended chap 878/1990 § 13 eff. July 25, 1990 applying on and after July 1, 1989

Subd. 8 par (i) subpar (B) amended chap 878/1990 § 14 eff. July 25, 1990 applying on and after July 1, 1989

Subd. 22 amended chap 860/1986 § 1

Subds. 24, 25, 26 amended chap 878/1990 § 15 eff. July 25, 1990

applying on and after July 1, 1989

Subds. 37, 38, 39 added chap 114/1989 § 3

**DERIVATION**

Formerly § B19-7.54 added LL 53/1941 § 16

Sub 8 amended chap 626/1947 § 4

Sub 15 added chap 224/1963 § 2

Sub 6 amended chap 356/1965 § 1

Sub 8 amended chap 575/1967 § 5

Sub 16 added chap 867/1969 § 1

Sub 15 amended chap 870/1969 § 9-a

Sub 3 amended chap 1010/1972 § 1

(Special provision chap 1010/1972 §§ 4, 6, 7)

Amended chap 385/1981 § 1

Sub 8 pars f, g, i amended chap 914/1982 § 14

Sub 8 pars a, c, d, i amended chap 910/1985 § 18

Subs 29-36 added chap 910/1985 § 19

Sub 8 par j added chap 910/1985 § 20

Sub 8 par f subpar B amended chap 911/1985 § 20

Sub 8 par g amended chap 911/1985 § 21

Sub 8 par h amended chap 911/1985 § 22

**CASE NOTES FROM FORMER SECTION**

¶ 1. Petitioner who transferred from the Sanitation Department to the Fire Department was not entitled to credit for "city-service" for his prior service since city service includes only credit acquired by transfer from the Police Department and not the Sanitation Department.-Fontone v. Lowery, 36 App. Div. 2d 119, 318 N.Y.S. 2d 640 [1971], aff'd 30 N.Y. 2d 975, 287 N.E. 2d 625, 335 N.Y.S. 2d 836 [1972].

**CASE NOTES**

¶ 1. "Earnable" compensation at time of retirement is that at which employee is being compensated (depending on raises in final year) plus overtime actually earned in final year. Recomputation was not allowed for a no-fault insurance award for "loss of earnings" during medical leave. Clanton v. Spinnato, 131 A.D. 2d 475 [1987].

**FOOTNOTES**

1

[Footnote 1]: * So in original.

2

[Footnote 2]: * So in original.

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-314*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-314 Membership; composition and eligibility.

The membership of the pension fund shall consist of:

a. all persons in city-service, as defined in this subchapter, in positions in the competitive class of the civil service, who shall have served the required probationary period and shall have been appointed medical officers of the fire department or who shall have served the required probationary period and shall have been appointed as fourth grade firefighters after March twenty-ninth, nineteen hundred forty and prior to the date on which this section as hereby amended takes effect, and shall have elected to become a member of the fire department pension fund pursuant to this subchapter prior to such appointment as a fourth grade firefighter or such medical officer; and

b. (1) all persons in city-service, as defined in this subchapter, in positions in the competitive class of the civil service:

(A) who shall have been appointed probationary medical officers of the fire department or probationary firefighters on or after April fourteenth, nineteen hundred fifty-six and prior to the starting date of the improved benefits plan (as defined in subdivision twenty-seven of section 13-313 of this subchapter), and shall have elected to become a member of the fire department pension fund pursuant to this subchapter prior to such appointment as probationary firefighters or probationary medical officers; and

(B) who shall have been appointed on or after such starting date as probationary medical officers of the fire department or probationary firefighters; and

(2) all persons in city-service, as defined in this subchapter, who hold a position of medical officer of the fire department classified in the non-competitive class of the civil service; and

(3) all persons in city-service, as defined in this subchapter, who, during the period commencing on July first, nineteen hundred ninety-five and ending on June thirtieth, nineteen hundred ninety-six, are appointed as provisional firefighters; and

(4) a person in city-service in the position of chief of department in the exempt class of the civil service.

c. in determining the terms of service of any member of the fire department, service as a physician and surgeon in the classified service in any other department in the city; service not exceeding three years as an interne duly appointed and removable by the city of New York in any hospital owned and operated by such city, provided further that such interne shall pay into the pension fund an amount equal to the amount he or she would have paid during such period of service if he or she had been a medical officer in such fire department receiving compensation based on an annual amount of five thousand dollars per year; and temporary service in the fire department as a medical officer, and subsequently thereafter in the fire department shall be counted and held to be service in the fire department of the city. Any person, however, becoming a member of the fire department, in the manner herein provided, shall not be entitled to participate in the benefits of the fire department pension fund, unless he or she shall pay into such fund the total amount he or she would have been required to pay in order to participate therein had he or she been a member of the fire department during the time he or she shall have served in the same or such other department.

d. (1) Notwithstanding any other provision of this subchapter or any other law to the contrary, but subject to the provisions of paragraph two of this subdivision d, in any case where a member who has completed his or her minimum period for service retirement is appointed fire commissioner or deputy fire commissioner he or she shall, while serving as fire commissioner or deputy fire commissioner, continue to be a member of the pension fund. Such member, if he or she was an original plan member at the time of his or her appointment as fire commissioner, shall continue to be an original plan member while serving as fire commissioner, unless he or she elects to become an improved benefits plan member pursuant to the provisions of section 13-315 of this subchapter, and if he or she was an improved benefits plan member at the time of his or her appointment as fire commissioner, he or she shall continue to be an improved benefits plan member while serving as fire commissioner.

(2) Notwithstanding any other provision of this subchapter or any other law to the contrary, but subject to the provisions of paragraph three of this subdivision, in any case where an improved benefits plan member who is eligible to retire for service is appointed a deputy fire commissioner, he or she shall, while serving as a deputy fire commissioner, continue to be an improved benefits plan member of the pension fund.

(3) The status of any member referred to in paragraph one or paragraph two of this subdivision with respect to applicability or inapplicability of the provisions of article eleven of the retirement and social security law to him or her as a member of the pension fund shall not be affected or changed by his or her appointment as fire commissioner or deputy fire commissioner, as the case may be.

(4) For the purposes of this subchapter, an improved benefits plan member serving as a fire commissioner or deputy fire commissioner whose membership is continued pursuant to the applicable provisions of paragraph one or paragraph two of this subdivision or whose membership is restored pursuant to the applicable provisions of section 13-371 or section 13-372 of this subchapter shall, during the period of such continuance or restoration of membership, be deemed to be a member of the uniformed force of the fire department and his or her service as fire commissioner or deputy fire commissioner during such period shall be deemed service in such force.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended chap 712/2006 § 3, eff. Sept. 13, 2006. [See § 15-103.1 Note 1]

Subd. b amended chap 500/1995 § 17, eff. Aug. 2, 1995.

Subd. b amended chap 229/1988 § 2

**DERIVATION**

Formerly § B19-7.55 added LL 53/1941 § 16

Amended chap 122/1955 § 2

(Special provision chap 122/1955 §§ 3, 4)

Amended chap 591/1956 § 2

(Special provision chap 591/1956 § 3)

Sub c added chap 706/1959 § 1

Sub d added chap 1010/1972 § 2

Subs b, d amended chap 385/1981 § 2

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-315*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-315 Plan membership; original plan, improved benefits plan.

a. Each person who is a member of the pension fund on the date next preceding the starting date of the improved benefits plan (as such starting date is defined in subdivision twenty-seven of section 13-313 of this subchapter) shall be entitled to the rights, benefits and privileges and be subject to the obligations of the original plan (as defined in subdivision four-a of such section 13-313), unless and until he or she elects, pursuant to the applicable provisions of this subchapter, to be an improved benefits plan member (as defined in subdivision four-f of such section 13-313).

b. Except in the case of re-entry pursuant to section 13-319 and as otherwise provided in this subchapter, each person who becomes or again becomes a member of the pension fund on or after the starting date of the improved benefits plan shall be entitled to the rights, privileges and benefits and be subject to the obligations of the improved benefits plan and shall not be entitled to the rights, privileges and benefits or be subject to the obligations of the original plan.

c. Any original plan member, who is in city-service at the time of filing an application to become an improved benefits plan member as hereinafter provided in this subdivision c, may, by a written application duly executed and filed with the board on or after the starting date of the improved benefits plan (as such starting date is defined in subdivision twenty-seven of section 13-313 of this subchapter) and prior to the date next succeeding the date six months after such starting date, or on or after the effective date of subdivision m of this section and prior to January first, nineteen hundred eighty-three, elect to terminate his or her status as an original plan member and become entitled to the rights, benefits

and privileges and be subject to the obligations of the improved benefits plan.

d. Any original plan member who files an application pursuant to subdivision c of this section shall cease to be an original plan member at the end of the day next preceding the starting date of the improved benefits plan and shall become an improved benefits plan member as of such starting date.

e. Any original plan member, who is in city-service at the time of filing an application to become an improved benefits plan member as hereinafter provided in this subdivision e, may, by a written application duly executed and filed with the board during any subsequent period for election of the improved benefits plan (as defined in subdivision twenty-two of section 13-313 of this subchapter), elect to terminate his or her status as an original plan member and become entitled to the rights, privileges and benefits and be subject to the obligations of the improved benefits plan.

f. Any original plan member who files an application pursuant to subdivision e of this section shall cease to be an original plan member at the end of the day next preceding the date of filing of such application and shall become an improved benefits plan member commencing on such date of filing.

g. Any election to be an improved benefits plan member made pursuant to the provisions of this section shall be irrevocable.

h. The status of an original plan member, who elects to become an improved benefits plan member pursuant to the provisions of this section, with respect to applicability or inapplicability of the provisions of article eleven of the retirement and social security law to him or her as a member of the pension fund, shall not be affected or changed by such election.

i. Beginning with the payroll period, the first day of which coincides with or next occurs after the date or commencement of the status of an elective improved benefits plan member as such a member, as prescribed by the applicable provisions of this subchapter, there shall be deducted from the compensation of each such member on each and every payroll of such member for each and every payroll period a proportion of his or her earnable compensation equal to the proportion which would have been determined by the actuary, as of his or her date of inception of pension fund membership (as defined in subdivision twenty of section 13-313 of this subchapter), as his or her rate of member contribution (before reduction on account of increased-take-home-pay) as a member of the police pension fund maintained pursuant to subchapter two of chapter two of this title, if, as of such date of inception of pension fund membership, he or she had not become a member of this pension fund and had instead become a member of such police pension fund; provided, however, that if the foregoing provisions of this subdivision i would otherwise require that such proportion be determined pursuant to the provisions of subdivision a of section 13-225 of this title, as enacted by local law number two of the city for nineteen hundred forty, such proportion shall be determined by the actuary in the same manner as if, as of such date of inception of pension fund membership, the provisions of such subdivision a, as amended by local law number eighty-nine of the city for nineteen hundred fifty-one, and been in effect, so that the fraction to be used in such computation shall be twenty-five seventy-fifths. Such proportion of compensation determined for any elective improved benefits plan member pursuant to the provisions of this subdivision i shall be computed to remain constant. The provisions of section 13-327 of this subchapter shall apply to such deductions and to each elective improved benefits plan member, except insofar as the provisions of such section 13-327 are inconsistent with the provisions of this subdivision i.

j. (1) Each elective improved benefits plan member shall be subject to a contribution rate deficiency (as defined in subdivision twenty-one of section 13-313 of this subchapter) unless and until the amount thereof is paid in full to the pension fund.

(2) Each non-elective improved benefits plan member (as defined in subdivision four-h of section 13-313 of this subchapter) who is or becomes entitled under any provision of this subchapter to credit for member service in the uniformed force of the fire department with respect to any period:

(i) which precedes the date of the last commencement of his or her membership in the pension fund as a non-elective improved benefits plan member; and

(ii) with respect to which period he or she was required to make member contributions to the pension fund; and

(iii) with respect to which period he or she made required member contributions determined pursuant to section 13-325 of this subchapter, as in effect before or on or after the effective date of this subdivision; shall be subject to a contribution rate deficiency, unless and until the amount thereof has been paid in full to the pension fund.

(3) Any improved benefits plan discontinued member (as defined in subdivision sixteen-d of such section 13-313) who, immediately prior to the discontinuance of service which qualified him or her to become such a member, was subject to a contribution rate deficiency, shall be subject to such deficiency while he or she is an improved benefits plan discontinued member, unless and until the amount thereof has been paid in full to the pension fund.

(4) In any case where an original plan discontinued member (as defined in subdivision sixteen of such section 13-313) becomes an improved benefits plan discontinued member pursuant to the provisions of paragraph six of subdivision i of section 13-360 of this subchapter, he or she shall be subject to a contribution rate deficiency unless and until the amount thereof has been paid in full to the pension fund.

(5) For the purpose of payment of a contribution rate deficiency or any part thereof to the pension fund by an improved benefits plan member who is subject to such a deficiency, such deficiency shall be deemed to consist of:

(i) the amount thereof, without regular interest thereon, if such member completed his or her minimum period for service retirement before becoming an improved benefits plan member; or

(ii) the amount thereof, plus regular interest and special interest, if any, thereon, from his or her date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of such section ) 13-313 to (A) the date of completion of his or her minimum period for service retirement, or (B) the date of payment, if such member becomes an improved benefits plan member before completion of his or her minimum period for service retirement.

(6) For the purpose of payment of a contribution rate deficiency or any parts thereof to the pension fund by an improved benefits plan discontinued member who is subject to such deficiency, such deficiency shall be deemed to consist of the amount thereof, plus regular interest and special interest, if any, thereon from the date of commencement of contributions as an improved benefits plan member, as applicable to such member, to and including the date next preceding the date of payment.

(7) No contribution rate deficiency which includes regular interest and special interest, if any, thereon as provided for by paragraphs five and six of this subdivision j shall be deemed paid unless the amount thereof, together with such regular interest and special interest, if any, is paid in full to the pension fund.

(8) Subject to the provisions of paragraphs five, six and seven of this subdivision, each improved benefits plan member who is subject to a contribution rate deficiency may, at any time while he or she is a member, at his or her election pay to the pension fund the amount of such deficiency or so much thereof as remains unpaid.

(9) Subject to the provisions of paragraph five of this subdivision, at any time before the date of required commencement of payment of any benefit payable to an improved benefits plan discontinued member who is subject to a contribution rate deficiency, he or she may at his or her election pay to the pension fund the amount of such deficiency or so much thereof as remains unpaid.

(10) The board shall adopt rules and regulations governing the payment of a contribution rate deficiency or the unpaid portion thereof in a lump sum, in periodic installments or in such other manner as the board shall prescribe;

provided, however, that such rules and regulations shall not conflict with the provisions of paragraphs five to nine, inclusive, of this subdivision j.

k. For the purposes of section 13-342 of this subchapter (relating to loans to members), the accumulated deductions of any elective improved benefits plan member shall not be deemed to include any part of his or her contribution rate deficiency remaining unpaid.

l. (1) Upon the filing of an application by an original plan member to become an elective improved benefits plan member, an amount equal to his or her accumulated contributions (as defined in subdivision seven of section 13-313 of this subchapter), as such contributions were as of the date next preceding the date of commencement of his or her status as an elective improved benefits plan member, shall be transferred from the contingent reserve fund to the credit of such member's account in the annuity savings fund.

(2) In any case where a non-elective improved benefits plan member is credited, immediately prior to becoming such a member, with accumulated contributions, such contributions, upon his or her becoming such a member, shall be transferred from the contingent reserve fund to the credit of such member's account in the annuity savings fund.

m. (1) For the purposes of this subdivision m, the term "additional contribution rate deficit" shall mean with respect to a retiree subject to such a deficit under the provisions of paragraph four of this subdivision m, an amount equal to the excess, if any, of (b) over (a), where: (a) is the amount of the subsequent original plan member accumulated contributions (as defined in subdivision six-c of section 13-313 of this subchapter) of such retiree (as such amount would be in the absence of a loan), and (b) is the amount (a) would be if (i) the contribution rate of such retiree on and after July first, nineteen hundred eighty-one had been the rate which would be his or her normal rate of contribution as an improved benefits plan member (as defined in subdivision eighteen of such section 13-313 of this subchapter) and (ii) regular and special interest had been credited on and added to such retiree's hypothetical member contributions on and after such July first resulting from such normal rate.

(2) For the purposes of this subdivision m, the term "additional contribution rate deficit" shall mean with respect to a person who is deemed to be an improved benefits plan discontinued member (as defined in subdivision sixteen-d of section 13-313 of this subchapter) under the provisions of paragraph eight of this subdivision and who is subject to such a deficit under the provisions of paragraph nine of this subdivision, an amount equal to the excess of (b) over (a), where: (a) is the amount of the subsequent original plan member accumulated contributions (as defined in subdivision six-c of such section 13-313) of such person (as such amount would be in the absence of a loan) and (b) is the amount (a) would be if (i) the contribution rate of such person on and after July first, nineteen hundred eighty-one had been the rate which would be his or her normal rate of contribution as an improved benefits plan member (as defined in subdivision eighteen of such section 13-313) and (ii) regular and special interest had been credited on and added to such person's hypothetical member contributions on and after such July first resulting from such normal rate.

(3) Notwithstanding any other provision of law to the contrary, in any case where, during the period beginning on July second, nineteen hundred eighty-one and ending on the date thirty days after the effective date of this subdivision m, any member was or shall be retired for service or superannuation or for ordinary or accident disability, and at the time of such retirement, such member was or shall be an original plan member, such retiree may, by a written application duly executed and filed with the board on or after the effective date of this subdivision and prior to January first, nineteen hundred eighty-three, elect the applicable benefits of this subdivision. Any retiree who makes such election (a) shall be deemed to have become an improved benefits plan member, effective July first, nineteen hundred eighty-one, (b) shall be deemed to have been retired, on the effective date of his or her retirement, as an improved benefits plan member and (c) shall be entitled to receive, as of the effective date of his or her retirement and in lieu of any other retirement allowance to which he or she would have been entitled if he or she had not made such election, a retirement allowance determined (subject to the provisions of paragraph four of this subdivision m) for him or her in the same manner as if, where such retirement occurred during the period beginning on July second, nineteen hundred eighty-one and ending on January first, nineteen hundred eighty-two, such retiree, on the date next preceding the

effective date of his or her retirement, had elected to be an improved benefits plan member, or as if, where such retirement occurred or occurs during the period beginning on January second, nineteen hundred eighty-two and ending on the date thirty days after the effective date of this subdivision m, the provisions of this subchapter had permitted such retiree, on the date next preceding the effective date of his or her retirement, to elect to be an improved benefits plan member, effective July first, nineteen hundred eighty-one, and he or she had made such election on such next preceding date.

(4) A retiree who makes such election pursuant to paragraph three of this subdivision m shall be subject to a contribution rate deficiency (as defined in subdivision twenty-one of section 13-313 of this subchapter) unless and until the amount thereof is paid to the pension fund in the manner provided for in paragraph five of this subdivision, and in any case where any such retiree had not completed his or her minimum period for service retirement prior to July first, nineteen hundred eighty-one, he or she shall also be subject to an additional contribution rate deficit (as defined in paragraph one of this subdivision m ), unless and until the amount thereof is paid to the pension fund in the manner provided for in such paragraph five. The provisions of paragraphs five and seven of subdivision j of this section shall apply to the determination and payment of the amount of the contribution rate deficiency of any retiree making such election. The rules and regulations adopted pursuant to paragraph ten of subdivision j of this section shall not apply to payment of any such contribution rate deficiency.

(5) A retiree who makes such election may elect to pay to the pension fund, in the manner hereinafter provided for in this paragraph five, the whole or any part of the contribution rate deficiency to which he or she is subject or the whole or any part of any additional contribution rate deficit to which he or she is subject. Any such payment, if elected by such retiree, shall be completed no later than the date of filing of such retiree's applicable under paragraph three of this subdivision m electing the application benefits hereof.

(6) For the purpose only of determining the pension portion of the retirement allowance for the required minimum period of service of any retiree retired for service or superannuation who has filed an election application pursuant to paragraph three of this subdivision m:

(i) in any case where such retiree is subject to a contribution rate deficiency which remains unpaid in whole or in part, the annuity computed for such retiree pursuant to paragraph one of subdivision a of section 13-359 of this subchapter shall be computed as it would be under assumptions (i) to (iv) inclusive, of subparagraph (a) of such paragraph one and in addition, as such annuity would be if an amount equal to the whole or any part of such contribution rate deficiency remaining unpaid as of the date of the filing of such retiree's election of the applicable benefits of this subdivision pursuant to paragraph three thereof had been paid to the pension fund on the earlier of (A) such member's date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of section 13-313 of this subchapter) or (B) the date next following the date of termination of such member's required minimum period of service; and

(ii) in any case where such retiree is subject to an additional contribution rate deficit which remains unpaid in whole or in part, such annuity computed for such retiree shall be computed as it would be under assumptions (i) to (iv), inclusive, of such subparagraph (a) and in addition, as such annuity would be if an amount equal to the whole or any part of such additional contribution rate deficit remaining unpaid as of the date of the filing of such member's election of the applicable benefits of this subdivision pursuant to paragraph three thereof had been paid to the pension fund on the date next following the date of completion of such member's required minimum period of service.

(7) For the purpose only of determining the pension portion of the retirement allowance payable to any retiree retired for ordinary disability who has filed an election application pursuant to paragraph three of this subdivision m:

(i) in any case where such retiree is subject to a contribution rate deficiency which remains unpaid in whole or in part, the annuity computed for such retiree pursuant to paragraph one of subdivision a of section 13-363 of this subchapter shall be computed as it would be under assumptions (i) to (iv), inclusive, of subdivision b of such section,

and in addition, as such annuity would be if an amount equal to the whole or any part of such contribution rate deficiency remaining unpaid as of the date of filing of such member's election of the applicable benefits of this subdivision pursuant to paragraph three thereof had been paid to the pension fund on the earlier of (A) the date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of section 13-313 of this subchapter) or (B) the date next following the date of completion of such member's minimum period for service retirement; and

(ii) in any case where such retiree is subject to an additional contribution rate deficit which remains unpaid in whole or in part, such annuity computed for such retiree shall be computed as it would be under assumptions (i) to (iv), inclusive, of such subdivision b and in addition, as such annuity would be if an amount equal to the whole or any part of such additional contribution rate deficit remaining unpaid as of the date of such member's election of the applicable benefits of this subdivision pursuant to paragraph three thereof had been paid to the pension fund on the earlier of (A) the date of completion of such retiree's minimum period for service retirement or (B) the day next preceding the effective date of such retiree's retirement.

(8) Notwithstanding any other provision of law to the contrary, in any case where, during the period beginning on July second, nineteen hundred eighty-one and ending on the date thirty days after the effective date of this subdivision m, any original plan member discontinued or shall discontinue service so as to acquire a vested right to a deferred retirement allowance under section 13-360 of this subchapter, such original plan discontinued member (as defined in subdivision sixteen of section 13-313 of this subchapter) may, by a written application duly executed and filed with the board on or after the effective date of this subdivision and prior to January first, nineteen hundred eighty-three, elect the applicable benefits of this subdivision. Any such person making such election (a) shall be deemed to have elected to become an improved benefits plan member, effective July first, nineteen hundred eighty-one, (b) shall be deemed to have discontinued service, as of the date of such discontinuance of service as an original plan member, so as to become an improved benefits plan discontinued member (as defined in subdivision sixteen-d of such section 13-313) and (c) shall be entitled to receive, in lieu of any other deferred retirement allowance to which he or she would have been entitled if he or she had not made such election, a deferred retirement allowance determined for him or her (subject to the provisions of paragraph nine of this subdivision) in the same manner as, and payable at the same time as if, where such discontinuance of service occurred during the period beginning on July second, nineteen hundred eighty-one and ending on January first, nineteen hundred eighty-two, such person, on the date next preceding the date of his or her discontinuance of service, had elected to be an improved benefits plan member, or as if, where such discontinuance of service occurred or occurs during the period beginning on January second, nineteen hundred eighty-two and ending on the date thirty days after the effective date of this subdivision, the provisions of this subchapter had permitted such person, on the date next preceding the date of his or her discontinuance of service, to elect to be an improved benefits plan member, effective July first, nineteen hundred eighty-one, and he or she had made such election on such next preceding date.

(9) A person who is deemed to be an improved benefits plan discontinued member by reason of an election made pursuant to paragraph eight of this subdivision m shall be subject to a contribution rate deficiency (as defined in subdivision twenty-one of section 13-313 of this subchapter) and he or she shall also be subject to an additional contribution rate deficit (as defined in paragraph two of this subdivision), unless and until the amounts of such deficiency and deficit are paid to the pension fund in the manner provided for in paragraph ten of this subdivision. The provisions of paragraphs six and seven of subdivision j of this section shall apply to the determination and payment of the amount of the contribution rate deficiency of any such person deemed to be an improved benefits plan discontinued member.

(10) (i) A person deemed to be an improved benefits plan discontinued member by reason of an election made pursuant to paragraph eight of this subdivision m may elect to pay to the pension fund, in the manner prescribed by subparagraph (ii) of this paragraph ten the whole or any part of the contribution rate deficiency and/or additional contribution rate deficit to which he or she is subject.

(ii) The board shall adopt rules and regulations governing the payment of any such contribution rate deficiency or additional contribution rate deficit or unpaid portion thereof in a lump sum, in periodic installments or in such other manner as the board shall prescribe, provided, however, that any such payment, if elected by any such person deemed to be an improved benefits plan discontinued member, shall be completed no later than the later of (A) the date of filing of such person's application under paragraph eight of this subdivision electing the applicable benefits hereof, or (B) the date of required commencement of payment of benefits to such person under the provisions of section 13-361 of this subchapter.

(11) For the purpose only of determining the pension portion (payable pursuant to paragraph two of subdivision c of section 13-361 of this subchapter) of the deferred retirement allowance payable to a person deemed to be an improved benefits plan discontinued member by reason of an election made pursuant to paragraph eight of this subdivision m, the annuity computed for such person pursuant to paragraph one of such subdivision c shall be computed as it would be under assumptions one to five, inclusive, of subdivision d of such section 13-361 and in addition, as it would be in an amount equal to the additional contribution rate deficit of such person had been paid to the pension fund on the day next preceding the date of such person's discontinuance of service which qualified him or her as an original plan discontinued member.

(12) An election made pursuant to paragraph three or paragraph eight of this subdivision m shall be irrevocable.

(13) Nothing contained in this subdivision m shall affect the applicability of section eleven hundred seventeen of the charter or section 13-356 or section 13-357 of this subchapter or article seven of the retirement and social security law to any person making such an election.

(14) The privilege of making an election pursuant to paragraph three or paragraph eight of this subdivision m shall not apply to and may not be exercised by the estate, personal representatives, distributees or beneficiaries of any deceased person.

(15) (i) In any case where a retiree files an application electing the applicable benefits of this subdivision m pursuant to the provisions of paragraph three hereof, or an original plan discontinued member (as defined in subdivision sixteen of section 13-313 of this subchapter) files an application electing the applicable benefits of this subdivision pursuant to the provisions of paragraph eight hereof, and prior to the filing of such application, the period had expired wherein such retiree or original plan discontinued member was entitled to select an option with respect to the original plan retirement allowance to which he or she was entitled prior to the filing of such application, neither such retiree nor discontinued member nor any person who would otherwise be entitled to select an option in behalf of such retiree or discontinued member shall have any other or further period for selection of an option or for a choice or election that a maximum retirement allowance be paid.

(ii) In any such case wherein the period for selection of an option expired as described in subparagraph (a) of this paragraph fifteen, any option selected prior to such expiration by or on behalf of any such retiree or discontinued member in relation to his or her original plan retirement allowance or any choice or election prior to such expiration by or on his or her behalf that the maximum of such original plan retirement allowance shall be paid, shall apply to the improved benefits plan retirement allowance to which such retiree or discontinued member becomes entitled by reason of the filing of such application under paragraph three or paragraph eight, as the case may be, of this subdivision.

(16) The status of any person who files an application electing the applicable benefits of this subdivision m pursuant to the provisions of paragraph three or paragraph eight hereof with respect to applicability or inapplicability of the provisions of article eleven of the retirement and social security law shall not be affected or changed by such election.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.551 added chap 385/1981 § 3

Sub c amended chap 799/1982 § 1

Sub m added chap 799/1982 § 2

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

*NYC Administrative Code 13-316*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-316 Board of trustees.

a. A board of trustees shall be the head of the New York fire department pension fund subchapter two, and, subject to the provisions of law and to the prior approval of the board of estimate, from time to time shall establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof. Such board shall consist of:

1. The fire commissioner who shall be chairperson of the board and who shall be entitled to cast three votes.

2. The comptroller of the city who shall be entitled to cast three votes.

3. A representative of the mayor who shall be appointed by the mayor and who shall be entitled to cast three votes.

4. The commissioner of finance of the city who shall be entitled to cast three votes.

5. The president of the uniformed firefighters' association of greater New York who shall be entitled to cast two votes.

6. The vice-president of the uniformed firefighters' association of greater New York who shall be entitled to cast two votes.

7. The treasurer of the uniformed firefighters' association of greater New York who shall be entitled to cast two votes.

8. The chairperson of the board of trustees of the uniformed firefighters' association of greater New York who shall be entitled to cast two votes.

9. Three elected members of the executive board of the uniformed fire officers' association of the fire department, city of New York, of whom one shall be an officer of the said department with rank above that of captain and shall be entitled to cast one vote; another shall be a captain of the said department and shall be entitled to cast one vote; another shall be a lieutenant of the said department and shall be entitled to cast one and one-half votes.

10. The president of the uniformed pilots and marine engineers association, fire department, city of New York, who shall be entitled to cast one-half vote.

11. (i) Where, during any six-month period during a fiscal year, as defined in subdivision three of section 13-382 of the code, the equity portion of the assets of the pension fund is less than forty-five percent, subparagraph (ii) of this paragraph eleven shall be effective during the succeeding fiscal year.

(ii) Two investment representatives, one of whom shall be appointed by the mayor and one of whom shall be appointed by the comptroller upon the occurrence of the condition specified in subparagraph (i) of this paragraph eleven. Each such representative shall be entitled to cast two votes only in relation to determinations of the board:

(A) as to whether the assets of the pension fund shall be invested in equities or fixed income securities and the proportion of the assets of the pension fund to be invested in equities and fixed income securities; and

(B) as to the identity, nature, character and amounts of the equities (within the proportion as determined under item (A) of this subparagraph) to be acquired, held, sold, disposed of or otherwise dealt with by the pension fund; and

(C) as to any steps necessary to effectuate any of the functions set forth in items (A) and (B) of this subparagraph; and

(D) as to delegation by the board, pursuant to law, of the functions described in items (A), (B) and (C) of this subparagraph.

b. Subject to the provisions of subdivision b-1 of this section, every act of the board of trustees shall be by resolution which shall be adopted only by a vote of at least seven-twelfths of the whole number of votes authorized to be cast by all of the members of such board.

b-1. Every act of the board of trustees in relation to the investment matters referred to in paragraph thirteen of subdivision a of this section shall be by resolution which shall be adopted only by a vote of at least eight-fourteenths of the whole number of votes authorized to be cast by all of the members of the board empowered to vote on such investment matters.

c. The fire commissioner shall assign to the board of trustees a sufficient number of clerical and other assistants to permit the board efficiently to exercise their powers and to perform their duties.

d. Any member of the board referred to in paragraphs five, six, seven, eight and ten, respectively, of subdivision a of this section, shall be members of the uniformed force and may authorize in writing at any time any other officer of the respective associations to represent him or her on such board in the event of his or her absence or disability, provided, however, that the by-laws or constitution of such respective associations provide for designation of a representative in such event.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd a par 11 added chap 583/1989 § 18

Subd. b amended chap 583/1989 § 19

Subd. b-1 added chap 583/1989 § 20

**DERIVATION**

Formerly § B19-7.56 added LL 53/1941 § 16

Amended LL 23/1946 § 1

Sub d added LL 65/1952 § 3

Sub a par 4 amended chap 100/1963 § 416

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

*NYC Administrative Code 13-317*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-317 Rules and regulations.

Each member shall be subject, until retirement, to all the provisions of this subchapter and to all the rules and regulations adopted by such board applying to members.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.57 added LL 53/1941 § 16

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

*NYC Administrative Code 13-318*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-318 Credit for service.

a. Subject to the following and to all other provisions of this subchapter, including such rules and regulations as such board shall adopt in pursuance thereof, such board shall determine and may modify allowances for service.

b. Such board shall fix and determine how much service rendered in any year shall be the equivalent of a year of service and of parts thereof, but shall credit one year for two hundred fifty or more days of service and not more than one year for all service in any calendar year.

c. Time during which a member was absent on leave without pay shall not be allowed in computing service as a member except as to time subsequent to approval of such allowance for retirement purposes granted by the commissioner and approved by such board. Time during which a member was on a preferred civil service list for firefighter shall not be construed to form part of the period within which membership must begin.

d. (1) Any person who was a member of the New York city employees' retirement system and whose membership therein was terminated by his or her attaining membership in the fire department pension fund, subchapter two, and who had withdrawn his or her contributions to the New York city employees' retirement system shall receive credit in the said fire department pension fund for prior creditable city service by paying into the annuity savings fund of the said fire department pension fund the amount of the employee contributions required to have been paid into the New York city employees' retirement system for such prior creditable city service, prior to July first, nineteen hundred

eighty-two.

Subject to the provisions of paragraphs two and three of this subdivision, no member of the said fire department pension fund shall be eligible for retirement for service until he or she has served in the fire department for a minimum period of twenty or twenty-five years, or until he or she has reached the age of fifty-five, according to the minimum period or age of retirement elected by such member prior to the certification of his or her rate of contribution.

(2) (a) Subject to the provisions of subparagraph (b) of this paragraph any period of allowable service rendered as an "EMT member," as defined in paragraph one of subdivision a of section 13-157.2 of this title, as added by chapter five hundred seventy-seven of the laws of two thousand, which immediately precedes service in the uniformed force of the fire department, and any period of allowable service rendered (i) as a peace officer, as defined in section 2.10 of the criminal procedure law, (ii) in the title of sheriff, deputy sheriff, marshal or district attorney investigator, or (iii) in any position specified in appendix A of the agreement dated October twenty-seventh, two thousand five, among the city of New York, the uniformed firefighters association and the uniformed fire officers association, which immediately precedes service in the uniformed force of the fire department, and any period of allowable service in the uniformed transit police force, uniformed correction force, housing police service and the uniformed force of the department of sanitation immediately preceding service in the uniformed force of the fire department, credit for which immediately preceding allowable service was or is obtained pursuant to paragraph one of this subdivision, shall be deemed to be service in the uniformed force of the fire department for purposes of eligibility for benefits and to determine the amount of benefits under the fire department pension fund.

(b) In any case where by reason of credit for such immediately preceding service, the date of completion of such member's minimum period for service retirement under the fire department pension fund became or becomes earlier than such date would have been or would be if such credit for such immediately preceding service had not been so acquired, there shall be effected with respect to such member:

(i) such increase in such member's normal rate of contribution, effective as of the date on which such member last became a member of the fire department pension fund, as may be necessary to reflect such earlier date of eligibility for service retirement; and

(ii) the charging of such member who acquired or acquires such credit for such immediately preceding service with a contribution rate deficiency:

(A) which shall accrue from the date on which such member last became a member of the fire department pension fund; and

(B) which shall be in such amount as shall be the product of the increase provided in item (i) of this subparagraph (b) and the member's compensation during the period of time provided in sub-item (A) of this item (ii); and

(C) which, unless paid by such member in such manner as shall be prescribed by rules and regulations adopted by the board of trustees of such pension fund, shall require an appropriate adjustment of any benefit which may become payable to or on account of such member.

(3) Nothing contained in subparagraph (b) of paragraph two of this subdivision d shall cause a member who acquires or acquired service credit by reason of the provisions of subparagraph (a) of such paragraph two to be denied:

(a) the right or entitlement, if any, to terminate or reduce contributions to such pension fund or to a refund of or credit for contributions paid during a period when the member would have been entitled to terminate or reduce such contributions if he or she had such service credit on the date when he or she last became a member of the pension fund; or

(b) any other right, benefit or entitlement of a similarly situated member of such pension fund with equal total service credit consisting only of service in the uniformed force of the fire department, provided that the foregoing provisions of this paragraph three shall not be construed in a manner inconsistent with the provisions of subparagraph (b) of paragraph two of this subdivision d.

e. Any improved benefits plan member who was a member of the board of education retirement system and whose membership therein was terminated by his or her attaining membership in this pension fund shall receive credit in such pension fund for prior creditable city-service by paying into the annuity savings fund of such pension fund the amount of the employee contributions required to have been paid into the board of education retirement system for such prior creditable city-service, within one year after becoming a member of such pension fund, and shall have the period of such prior creditable city-service counted as service as a firefighter for the purpose only of determining the amount of his or her pension or retirement allowance, provided, however, that no member of such pension fund shall be eligible for retirement for service until he or she has served in the uniformed force of the department for a minimum period of twenty or twenty-five years, according to the minimum period elected by such member prior to the certification of his or her rate of contribution.

f. The rights and privileges of any original plan member subject to article eleven (as defined in subdivision four-d of section 13-313 of this subchapter) or improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313) under the preceding subdivisions of this section shall be as prescribed by such provisions, except to the extent and in the manner that any such provision is modified by article eleven.

g. (1) Upon election, any member of the fire department pension fund, of this subchapter, who was a member of the New York city employees' retirement system while employed as a New York city police department trainee shall receive credit in the said fire department pension fund, of this subchapter, for prior creditable service in the New York city employees' retirement system earned while employed as a New York city police department police trainee by paying into the annuity savings fund of said fire department pension fund additional member contributions plus interest which would have been paid or credited had such member been a member of the fire department pension fund, of this subchapter, from his or her last date of appointment as a New York city police department trainee or date of membership in the New York city employees' retirement system, whichever is later, provided such payment is made within one year after this subdivision shall take effect, and the period of such prior service credit shall be deemed to be service in the fire department for purposes of eligibility for benefits and to determine the amounts of benefits under the fire department pension fund.

(2) A member of the fire department pension fund, of this subchapter, who acquires service credit by reason of the provisions of paragraph one of this subdivision shall be entitled to any other right, benefit or entitlement of a similarly situated member of such pension fund with equal total service credit consisting only of service in the uniformed force of the fire department.

h. Any member of the city of New York fire department pension fund who by reason of simultaneous membership in two public retirement systems, would have been entitled to transfer membership in a public retirement system pursuant to any provision of law, but failed to make a timely election to do so shall be entitled to transfer such membership if written notice is given to the first retirement system joined no later than one year subsequent to the effective date of this subdivision. A member who provides such notice may file a written request for retroactive membership in the fire department pension fund within three years of the effective date of this subdivision. The additional cost due to the retroactive membership shall be borne by the first retirement system.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. d par (2) subpar (a) amended chap 637/2007 § 2, eff. Aug. 28,

2007.

Subd. g added chap 597/1997 § 1, eff. Sept. 17, 1997.

Subd. h added chap 404/1998 § 1, eff. July 22, 1998.

**DERIVATION**

Formerly § B19-7.58 added LL 53/1941 § 16

Sub d added chap 967/1964 § 1

Sub d amended chap 381/1967 § 1

Sub d amended chap 791/1968 § 1

Sub d amended chap 640/1980 § 2

Subs e, f added chap 385/1981 § 4

Sub d amended chap 941/1981 § 3



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

*NYC Administrative Code 13-319*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-319 Re-entry into membership after withdrawal of contributions.

a. Subject to the provisions of subdivision c of this section, if an original plan member has received benefits under subdivision a of section 13-343 of this subchapter, his or her member-service credit at the time of leaving service shall be restored in full provided such member return to service within five years after leaving service and redeposits the total amount so withdrawn.

b. Subject to the provisions of subdivision c of this section, if an improved benefits plan member has received benefits under subdivision b of such section 13-343, his or her member-service credit at the time of leaving service shall be restored in full provided such member return to service within five years after leaving service and redeposits the total amount so withdrawn. Subsequent contributions shall be at the rate applicable to his or her age on re-entry to service.

c. The rights and privileges of any original plan member subject to article eleven (as defined in subdivision four-d of section 13-313 of this subchapter) under subdivision a of this section and the rights and privileges of any improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313) under subdivision b of this section shall be as prescribed by the provisions of such subdivision a or subdivision b, as the case may be, except to the extent and in the manner that any such provision is modified by article eleven.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.59 added LL 53/1941 § 16

Amended chap 385/1981 § 5



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

*NYC Administrative Code 13-320*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-320 Pension fund; a corporation.

The pension fund shall have the powers and privileges of a corporation and by its name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property held.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.6 added LL 53/1941 § 16

Re-enacted chap 626/1942 § 1

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

*NYC Administrative Code 13-321*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-321 Pension fund; adoption of tables and certification of rates.

The actuary appointed by the board of estimate shall be the technical adviser of the board on all matters regarding the operation of the funds provided for by this subchapter and shall perform such other duties as are required of him or her. He or she shall keep in convenient form such data as shall be necessary for the actuarial valuation of such funds. Every five years, he or she shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries as defined by this subchapter and shall make a valuation, as of June thirtieth of each year, of the assets and liabilities of the various funds provided for by this subchapter. Upon the basis of such investigation and valuation such board shall:

1. Adopt for the pension fund such mortality, service and other tables as shall be deemed necessary; and

2. Certify the rates of deduction from compensation computed to be necessary to pay the annuities authorized under the provisions of this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.61 added LL 53/1941 § 16

Amended chap 100/1963 § 417

Amended chap 385/1981 § 6



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Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-322 Pension fund; reports.

Such board shall publish annually in the City Record a report for the preceding year showing a valuation of the assets and liabilities of the funds provided for by this subchapter as certified by the actuary, and a statement as to the accumulated cash and securities of the funds as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as may be of value in the advancement of knowledge concerning employees' pensions, annuities and retirement allowances.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.62 added LL 53/1941 § 16

Amended chap 385/1981 § 7



Administrative Code of the City of New York



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

*NYC Administrative Code 13-323*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-323 Medical board.

a. (1) There shall be a medical board of three physicians. One of such physicians shall be appointed by the board and shall hold office at the pleasure of such board, one shall be appointed by the commissioner of health and mental hygiene and shall hold office at the pleasure of such commissioner, and the third shall be appointed by the commissioner of citywide administrative services and shall hold office at the pleasure of such commissioner.

(2) The board, the commissioner of health and mental hygiene and the commissioner of citywide administrative services shall each have power to appoint three alternate physicians, who shall hold office at the pleasure of such appointing board or official. Whenever the board of trustees of the pension fund shall so direct, the functions, powers and duties of the medical board, in addition to being performed and exercised by the three physicians appointed pursuant to paragraph one of this subdivision, shall be performed and exercised by one or more groups of three physicians as hereinafter prescribed. Each such group of three physicians shall function separately as the medical board and each such group may consist partly of a physician or physicians appointed pursuant to such paragraph one and partly of one or more alternate physicians, or may consist entirely of alternate physicians; provided, however, that one of the physicians or alternate physicians in each such group shall be appointed by the board, one by the commissioner of health and mental hygiene and one by the commissioner of citywide administrative services.

b. The medical board shall arrange for and shall pass upon all medical examinations required under the provisions of this subchapter, shall investigate all essential statements and certifications by or on behalf of a member in

connection with an application for disability retirement, and shall report to the board its conclusions and recommendations thereon.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended L.L. 52/2007 § 1, eff. Nov. 5, 2007.

**DERIVATION**

Formerly § B19-7.63 added LL 53/1941 § 16

Sub a amended chap 100/1963 § 418

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*NYC Administrative Code 13-324*

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-324 The funds; component funds.

The funds provided for herein are the retirement allowance reserve fund, the annuity savings fund, the annuity reserve fund, the dependent benefit contingent reserve fund, the dependent benefit reserve fund, the contingent reserve fund and the pension reserve fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.64 added LL 53/1941 § 16

Amended chap 385/1981 § 8



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

*NYC Administrative Code 13-325*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-325 Contributions by original plan members.

a. (1) The retirement allowance accumulation fund, as established by the provisions of this subdivision as in effect prior to the starting date of the improved benefits plan (as such date is defined in subdivision twenty-seven of section 13-313 of this subchapter), shall cease to exist on such starting date.

(2) There shall be transferred from such retirement allowance accumulation fund to the contingent reserve fund established by sections 13-324 and 13-331 of this subchapter all assets of the retirement allowance accumulation fund as of such starting date, including the obligation represented by all unpaid amounts which are due and payable to the retirement allowance accumulation fund up to and including such date pursuant to the rates of member deduction and city contribution certified under section 13-321 of this subchapter prior to such date. Any such unpaid amounts which constitute assets of the retirement allowance accumulation fund as of such starting date and which are due from and payable by the city shall be appropriated and paid by the city pursuant to the provisions of this section and section 13-334 of this subchapter as in effect immediately prior to such date.

(3) Of such transferred amount, the prior original plan member accumulated contributions (as defined in subdivision six-b of section 13-313 of this subchapter), as of such starting date, of each original plan member shall be transferred to his or her credit in an individual account in the contingent reserve fund.

b. (1) Subject to the provisions of paragraph two of subdivision c of this section, on and after such starting date,

each original plan member shall contribute to the pension fund, through deductions from his or her compensation as provided for by paragraph one of such subdivision c, a proportion of his or her earnable compensation (before reduction of such proportion on account of any program for increased-take-home-pay in effect) equal to the proportion of his or her earnable compensation (before reduction on account of any program for increased-take-home-pay in effect) which he or she was required to contribute to the pension fund as of the date next preceding such starting date.

(2) The normal rate of contribution as an original plan member (as defined in subdivision seventeen of section 13-313 of this subchapter) of any original plan member shall continue unchanged while he or she is an original plan member.

(3) The cash benefits payable under the provisions of this subchapter to, or upon the death of, an original plan member in active service shall be paid from the contingent reserve fund. Upon the retirement of an original plan member, or upon his or her death in the performance of duty, an amount equal to the retirement allowance reserve for the retirement allowance payable on account of his or her city-service as a member, shall be transferred from the contingent reserve fund to the retirement allowance reserve fund.

c. (1) Such board shall certify to the commissioner who shall deduct from the compensation of each original plan member on each and every payroll of such member for each and every payroll period, the proportion of his or her earnable compensation which he or she is required to contribute to the pension fund as provided for by subdivision b of this section, provided that such proportion shall be reduced on account of any program for increased-take-home-pay to the extent and for the period prescribed by any laws providing for such a reduction for members of the pension fund, as applicable to such member. In determining the amount earnable by a member in a payroll period, such board may consider the rate of compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period and such board may omit deductions from compensation for any period less than a full payroll period if an employee was not a member on the first day of the payroll period. To facilitate the making of deductions, such board may modify the contribution required of any member by such an amount as shall not exceed one-tenth of one per cent of the compensation upon the basis of which such contribution is to be made. The deductions provided herein shall be made notwithstanding that the minimum compensation provided by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the reductions made and provided for herein and shall receipt in full for his or her salary or compensation, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except his or her claim to the benefits to which he or she may be entitled under the provisions of this subchapter. The commissioner shall certify to the comptroller on each and every payroll the amounts to be deducted. Each of such amounts shall be deducted and when deducted shall be paid into the contingent reserve fund, and shall be credited to an individual account of the member from whose compensation such deduction was made.

(2) Notwithstanding any other provision of law to the contrary, in the case of any original plan member whose years of fire service credited to him or her equal or exceed the minimum period for service retirement elected by him or her, that part of any earnable compensation of such member earned after completion of such minimum period and on or after July first, nineteen hundred sixty-nine, which part is obtained by multiplying such compensation by the excess, if any, of his or her normal rate of contribution as an original plan member (as defined in subdivision seventeen of section 13-313 of this subchapter) rate over five per cent, shall not be deducted under subdivision b of this section and paragraph one of this subdivision c. Nothing contained in this paragraph two shall affect or impair any rights conferred upon any such member by section 13-326 of this subchapter.

d. In addition to the contributions from compensation hereinbefore provided, any original plan member may redeposit in the contingent reserve fund by a single payment an amount equal to the total amount which he or she withdrew previously therefrom as provided in this subchapter. Such additional amount so deposited shall become a part of his or her accumulated contributions. The accumulated contributions of an original plan member withdrawn as provided in this subchapter shall be paid out of the contingent reserve fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.65 added LL 53/1941 § 16

Sub b amended LL 100/1951 § 1

(Special provision LL 100/1951 § 3)

Sub b amended chap 575/1967 § 6

Sub c amended chap 868/1969 § 3

Amended chap 385/1981 § 9

**CASE NOTES FROM FORMER SECTION**

¶ 1. The amendment in 1947 Legislature in enacting this, giving retroactive seniority to firemen by virtue of their war service, and providing that the City was to pay 100 per cent contributions for the Pension Fund, intended that after the war years, the veteran should pay 45 per cent of the annual contributions. A directive to that effect by the City Fire Department did not violate Article 5, § 7 of the State Constitution prohibiting the impairment of contracts.-Dunn v. City of New York, 7 N.Y. 2d 232, 196 N.Y.S. 2d 686, 164 N.E. 2d 709 [1959].

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*NYC Administrative Code 13-326*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-326 Pension-for-increased-take-home-pay.

a. 1. The mayor, by executive order adopted prior to the first day of June, nineteen hundred sixty-three, may direct that beginning with the first full payroll period following January first, nineteen hundred sixty-three, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-four, the contribution of each member made pursuant to section 13-325, shall be reduced by two and one half percentum of the compensation of such member. Such executive order may also provide a method or procedure for the refunding or crediting to a member by the pension fund of the amount of the reduction in his or her deductions for any period prior to the date of adoption of such executive order.

2. The mayor, by executive order adopted prior to the first day of June, nineteen hundred sixty-four, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-four, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-five, the contribution of each member made pursuant to section 13-325, shall be reduced by two and one-half percentum of the compensation of such member.

3. The mayor, by executive order adopted prior to June nineteenth, nineteen hundred sixty-five, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-five, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-six, the contribution of each member made pursuant to section 13-325 of this subchapter shall be reduced by two and one-half

percentum of the compensation of such member.

4. The mayor, by executive order adopted prior to June nineteenth, nineteen hundred sixty-six, may direct that beginning with the first full payroll period following July first, nineteen hundred sixty-six, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-seven, the contribution of each member made pursuant to section 13-325 of this subchapter shall be reduced by two and one-half percentum of the compensation of such member.

5. The mayor, by executive order adopted prior to June seventeenth, nineteen hundred sixty-seven, may direct that beginning with the payroll period, the first day of which is nearest to July first, nineteen hundred sixty-seven, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight, the contribution of each member made pursuant to section 13-325 of this subchapter shall be reduced by two and one-half percentum of the compensation of such member.

6. (a) Subject to the provisions of subparagraph b of this paragraph, beginning with the first full payroll period following January first, nineteen hundred sixty-seven, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight, the contribution of each member made pursuant to section 13-325 of this subchapter shall be reduced by two and one-half percentum of the compensation of such member.

(b) The reduction provided for by subparagraph a of this paragraph shall be in addition to any reduction made during the period mentioned in such subparagraph a pursuant to paragraphs four or five of this subdivision a. The amount of the reduction made pursuant to subparagraph a of this paragraph in the deductions of any such member for such portion of the period mentioned in such subparagraph as precedes the effective date of this paragraph shall be refunded without interest.

(c) Beginning with the payroll period the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred seventy-one, the contribution of each member made pursuant to section 13-325 of this subchapter shall be reduced by five percentum of the compensation of such member.

7. The mayor, by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-one, may direct that beginning with the payroll period, the first day of which is nearest to June thirtieth, nineteen hundred seventy-one, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred seventy-two, the contribution of each member made pursuant to section 13-326 of this subchapter shall be reduced by five per centum of the compensation of such member.

8. The mayor, by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-two or June seventeenth of such year, whichever is later, may direct that beginning with the payroll period, the first day of which is nearest to June thirtieth, nineteen hundred seventy-two, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred seventy-three, the contribution of each member made pursuant to section 13-326 of this subchapter shall be reduced by five percentum of the compensation of such member.

b. For such period of time as the reduction pursuant to the provisions of subdivision a of this section and subdivision b of section four hundred eighty of the retirement and social security law shall be in effect, contributions shall be made to the contingent reserve fund by the city, in addition to the city contributions required by section 13-331 of this subchapter, in an amount equal to the amount of the reduction in the contributions of such member pursuant to this section and subdivision b of section four hundred eighty of the retirement and social security law.

c. The benefits provided pursuant to paragraph one of subdivision a of this section shall apply only to members

of the pension fund who are in active service in the uniformed force of the fire department on or after the date of adoption of the executive order of the mayor pursuant to such paragraph one.

d. The reduction of the contribution of each original plan member on account of increase-take-home-pay shall be in the amount and for the period prescribed by the program provided for by the preceding subdivisions of this section and subdivision b of section four hundred eighty of the retirement and social security law.

e. (1) Subject to the provisions of the succeeding paragraphs of this subdivision e, the contribution of each improved benefits plan member pursuant to the applicable provisions of section 13-315 of this subchapter and/or subdivision b of section 13-327 of this subchapter shall be reduced in the amount and for the period prescribed by the program provided for by the preceding subdivisions of this section and subdivision b of section four hundred eighty of the retirement and social security law.

(2) (i) In the case of any elective improved benefits plan member (as defined in subdivision four-g of section 13-313 of this subchapter) whose election of such plan becomes effective on the starting date of the improved benefits plan (as such date is defined in subdivision twenty-seven of such section 13-313) and prior to the termination of such reduction as provided for in subdivision b of section four hundred eighty of the retirement and social security law, such reduction pursuant to paragraph one of this subdivision e shall begin on such starting date.

(ii) In the case of any elective improved benefits plan member whose election of such plan becomes effective after such starting date and prior to such time of termination, such reduction pursuant to paragraph one of this subdivision shall begin on the effective date of such election.

(iii) In the case of any non-elective improved benefits plan member (as defined in subdivision four-h of such section 13-313) whose membership in the pension fund begins on or after such starting date and prior to such time of termination, such reduction pursuant to paragraph one of this subdivision shall begin on the date of commencement of the membership of such member in the pension fund.

(iv) Such reduction shall end, in the case of each such elective improved benefits plan member or non-elective improved benefits plan member above referred to in this paragraph two, at such time of termination provided for in subdivision b of section four hundred eighty of the retirement and social security law.

(3) The contribution of each improved benefits plan member which is made pursuant to the applicable provisions of section 13-315 of this subchapter and/or subdivision b of section 13-327 of this subchapter and which is reduced as provided for in this subdivision e shall be exclusive of any increase thereof pursuant to subdivisions c and d of such section 13-327 or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law.

(4) The reduction of the contribution of each improved benefits plan member as prescribed by the preceding provisions of this subdivision shall be subject to waiver of such member as provided in paragraph seven of this subdivision and shall take precedence over the member's privilege under subdivision one of section one hundred thirty-eight-b of the retirement and social security law, to decrease his or her annuity contribution for the purpose of paying his or her contributions for old age, survivors and disability insurance coverage or the tax imposed upon him or her pursuant to the federal insurance contribution act.

(5) For such period of time as the reduction pursuant to the provisions of the preceding paragraphs of this subdivision shall be in effect with respect to an improved benefits plan member, contributions shall be made to the contingent reserve fund by the city at a rate fixed by the actuary, which shall be computed to be sufficient to provide (i) the pension-providing-for-increased-take-home-pay which is or may become payable on account of such member as an improved benefits plan member, and (ii) the death benefit which is or may become payable hereunder in the case of any such member who is an improved benefits member not subject to article eleven (as defined in subdivision four-i of section 13-313 of this subchapter).

(6) Such a death benefit and such a pension-providing-for-increased-take-home-pay payable with respect to an improved benefits plan member shall be based on a reserve-for-increased-take-home-pay, which shall be a sum consisting of the total of all products obtained by multiplying the compensation of the improved benefits plan member, during each period of reduction of member contributions under the preceding paragraphs of this subdivision by the percentage of reduction of his or her contributions applicable thereunder with respect of such period, plus regular interest on such sum, and additional interest, if any, thereon.

(7) Where an improved benefits plan member's rate of contribution is reduced because the city contributes towards the pension-providing-for-increased-take-home-pay pursuant to this section, such improved benefits plan member may by written notice duly acknowledged and filed with the pension fund within one year after such reduction or within one year after he or she last became a member, whichever is later, elect to waive such reduction. One year or more after the filing thereof, an improved benefits plan member may withdraw any such waiver by written notice duly acknowledged and filed with the pension fund. Where an improved benefits plan member makes an election to waive such reduction he or she shall contribute to the pension fund as otherwise provided by the applicable provisions of section 13-315 of this subchapter and/or section 13-322 of this subchapter.

(8) An improved benefits plan member who waives a reduction of contribution pursuant to paragraph seven of this subdivision or who elects or has elected to discontinue his or her contributions pursuant to subdivision b of section 13-327 of this subchapter shall be entitled to a pension-providing-for-increased-take-home-pay and death benefits in the same cases and to the same extent as if such waiver or election had not been made.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.651 added chap 224/1963 § 1

Sub a par 1 designated chap 636/1964 § 1

Sub a par 2 added chap 636/1964 § 1

Sub c amended chap 636/1964 § 1

Sub a par 3 added chap 382/1965 § 8

Sub a par 4 added chap 611/1966 § 7

Sub a par 5 added chap 379/1967 § 7

Sub a par 6 added chap 129/1968 § 2

Sub a par 6 subpar c amended chap 870/1969 § 9

Sub a par 6 subpar c amended chap 960/1970 § 10

Sub a par 7 added chap 615/1971 § 15

Sub a par 8 added chap 921/1972 § 12

Sub b amended chap 385/1981 § 10

Subs d, e added chap 385/1981 § 11

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-327 Contributions of improved benefits plan members and their use; annuity savings fund.

a. (1) The annuity savings fund shall be the fund in which shall be accumulated deductions from the compensation of improved benefits plan members to provide for their annuities and their withdrawal allowances.

(2) Upon the basis of the tables herein authorized, and regular interest, the actuary of such board shall determine for each non-elective improved benefits plan member (as defined in subdivision four-h of section 13-313 of this subchapter) the proportion of compensation which, when deducted from each payment of his or her prospective earnable compensation prior to his or her eligibility for retirement and accumulated at regular interest upon the attainment of the minimum period of service retirement elected by him or her, shall be computed to provide, at that time, an annuity equal to twenty-five seventy-fifths of the pension then allowable to him or her for service as a member. Such proportion of compensation shall be computed to remain constant.

(3) The proportion of earnable compensation required to be applied in making deductions from the compensation of an elective improved benefits plan member (as defined in subdivision four-g of section 13-313 of this subchapter) shall be computed as provided for in subdivision i of section 13-315 of this subchapter.

(4) In any case where the membership of any improved benefits plan member is terminated and he or she thereafter acquires a status whereby, under the applicable provisions of this subchapter, he or she is required to make member contributions as an improved benefits plan member consisting of a proportion of his or her earnable

compensation (before reduction on account of any program for increased-take-home-pay in effect) other than the proportion of his or her earnable compensation (before reduction on account of any such program) which, before such termination of membership, was required to be deducted from his or her earnable compensation as his or her member contributions, such new proportion of his or her earnable compensation required to be deducted as his or her member contributions as an improved benefits plan member shall be fixed pursuant to the provisions of paragraph two of this subdivision a and such subsequent required deductions from the compensation of such member shall be made on the basis of such new proportion of his or her earnable compensation.

b. Such board shall certify to the commissioner who shall deduct from the compensation of each improved benefits plan member on each and every payroll of such member for each and every payroll period, the proportion of his or her earnable compensation so computed. Such board shall not certify nor shall the commissioner make any deduction for annuity purposes from the compensation of an improved benefits plan member who elects not to contribute if his or her total service is such as would entitle a new entrant to retire for service on a pension not less than seventy-five per cent of one-half of his or her annual earnable compensation on the date of retirement. In determining the amount earnable by an improved benefits plan member in a payroll period, such board may consider the rate of compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period and such board may omit deductions from compensation for any period less than a full payroll period if such an employee was not a member on the first day of the period. To facilitate the making of deductions, such board may modify the deduction required by any such member of such amount as shall not exceed one-tenth of one per cent of the compensation upon the basis of which such deduction is to be made. The deductions provided herein shall be made notwithstanding that the minimum compensation provided by law for any improved benefits plan member shall be reduced thereby. Every improved benefits plan member shall be deemed to consent and agree to the deductions made and provided for by the applicable provisions of section 13-315 of this subchapter and/or this section and shall receipt in full for his or her salary or compensation, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except his or her claim to the benefits to which he or she may be entitled under the provisions of this subchapter. The commissioner shall certify to the comptroller on each and every payroll the amounts to be deducted. Each of such amounts shall be deducted and when deducted shall be paid into the annuity savings fund, and shall be credited, together with regular interest, to an individual account of the member from whose compensation such deduction was made. The method of computation and deductions prescribed by this subdivision and subdivision a of this section shall be appropriately modified in the case of an improved benefits plan member for whom a rate is otherwise fixed pursuant to section 13-326 of this subchapter.

c. In addition to the computed deductions, any improved benefits plan member may elect to contribute at a rate fifty percentum in excess of that heretofore provided, for the purpose of purchasing additional annuity. In computing the amount of such additional rate any modification of the normal rate pursuant to section 13-326 of this subchapter shall be disregarded. These additional contributions shall be credited to the annuity savings fund with regular interest. Such additional contributions shall not enter into the computation for allowance on ordinary disability retirement as described in section 13-352 of this subchapter. A member may elect to discontinue his or her additional contributions at any time.

d. In addition to the deductions from compensation hereinbefore provided, any improved benefits plan member may redeposit in the annuity savings fund by a single payment an amount equal to the total amount which he or she withdrew previously therefrom as provided in this subchapter. Such amount so deposited shall become a part of his or her accumulated deductions. The accumulated deductions of an improved benefits plan member withdrawn as provided in this subchapter shall be paid out of the annuity savings fund. Upon retirement of an improved benefits plan member, his or her accumulated deductions shall be transferred from such fund to the annuity reserve fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.652 added chap 385/1981 § 12



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-327.1 Employer pick up of member contributions.

a. Notwithstanding any other provision of law to the contrary, on and after the starting date for pick up, the city shall:

(1) pick up and pay into the contingent reserve fund the original plan member contributions eligible for pick up by the employer which each original plan member would otherwise be required to make on and after such starting date; and

(2) pick up and pay into the annuity savings fund the improved benefits plan member contributions eligible for pick up by the employer which each improved benefits plan member would otherwise be required to make on and after such starting date.

b. An amount equal to the amount of such picked up contributions shall be deducted by the city from the compensation of such member (as it would be in the absence of a pick up program applicable to him or her hereunder), and shall not be paid to such member. Such deduction shall be effected by means of subtraction from such member's current compensation (as so defined), or offset against future pay increases, or a combination of such methods.

c. (1) The member contributions picked up pursuant to this section, including any member contributions required to be made for the purchase of credit for previous service or credit for military service pursuant to subdivision

e of this section, provided, however, that contributions picked up for the purchase of credit for military service shall be deposited in the employer contribution account in accordance with the provisions of subdivision four of section one thousand of the retirement and social security law, for any member shall be paid by the city in lieu of an equal amount of the member contributions otherwise required to be paid by such member under the provisions of this subchapter and shall be deemed to be and treated as employer contributions pursuant to subsection h of section four hundred fourteen of the United States internal revenue code, as amended, for the purposes, under federal law, for which such subsection h so classifies such picked up contributions. Subject to the provisions of subdivision b of this section, for all other purposes, including but not limited to:

(i) the obligation of such member to pay New York state and New York city income and/or wages or earnings taxes and the withholding of such taxes; and

(ii) the determination of the amount of such member's original plan member contributions eligible for pick up by the employer or improved benefits plan member contributions eligible for pick up by the employer, as the case may be; and

(iii) the determination of the amount of any retirement allowance or other pension fund benefit payable to or on account of such member or any other pension fund right, benefit or privilege of such member; the amount of the member contributions picked up pursuant to this section shall be deemed to be a part of the employee compensation of such member, and such member's gross compensation (as such compensation would be in the absence of a pick up program applicable to him or her hereunder) shall not be deemed to be changed by such member's participation in such program.

(2) Nothing contained in paragraph one of this subdivision c shall be construed as superseding the provisions of section four hundred thirty-one of the retirement and social security law or any similar provision of law which limits the salary base for computing retirement benefits payable by a public retirement system.

d. (1) For the purpose of determining the pension fund rights, benefits and privileges (including the procurement of loans) of any member whose original plan member contributions eligible for pick up by the employer or improved benefits plan member contributions eligible for pick up by the employer are picked up pursuant to this section, such picked up member contributions shall be deemed to be and treated (i) as member contributions made by such member pursuant to law, and (ii) as included in the total accumulated contributions (as defined in subdivision seven of section 13-313 of this subchapter) of any such member who is an original plan member, and (iii) as included in the accumulated deductions (as defined in subdivision seven-a of such section 13-313) of any such member who is an improved benefits plan member.

(2) During any period wherein picked up member contributions of an original plan member remain in the contingent reserve fund to the credit of an individual account of such member pursuant to paragraph four of this subdivision, interest shall not accrue or be payable on such picked up contributions.

(3) Interest on the picked up member contributions of any improved benefits plan member shall accrue in favor of such member and be payable by the city at the same rate, for the same time periods, in the same manner and under the same circumstances as interest would be required to accrue in favor of the member and be payable by the city on such picked up contributions if they were made by the member in the absence of an employer pick up program applicable to such member under the provisions of this section.

(4) The picked up member contributions of any original plan member paid into the contingent reserve fund by the city pursuant to this section shall be credited to a separate account within the individual account of such member in such fund, so that a separate record of the amount of such picked up contributions is maintained.

(5) The picked up member contributions of any improved benefits plan member paid into the annuity savings fund by the city pursuant to this section shall be credited to a separate account within the individual account of such

member in such fund, so that a separate record of the amount of such picked up contributions is maintained.

(6) Nothing contained in this subdivision d shall be construed as granting member contributions picked up under this section any status, under federal law, other than as employer contributions, pursuant to subsection h of section four hundred fourteen of the United States internal revenue code, for the federal purposes for which such subsection h so classifies such picked up contributions.

e. Employer pick-up of contributions in respect of previous service or military service. Notwithstanding any other provision of law, any member eligible to purchase credit for previous service with a public employer pursuant to this chapter or to purchase credit for military service pursuant to article twenty of the retirement and social security law, may elect to purchase any or all of such service by executing a periodic payroll deduction agreement where and to the extent such elections are permitted by the retirement system by rule or regulation. Such agreement shall set forth the amount of previous service or military service being purchased, the estimated total cost of such service credit, and the number of payroll periods in which such periodic payment shall be made. Such agreement shall be irrevocable, shall not be subject to amendment or modification in any manner, and shall expire only upon completion of payroll deductions required therein. Notwithstanding the foregoing, any member who has entered into such a payroll deduction agreement and who terminates employment prior to the completion of the payments required therein shall be credited with any service as to which such member shall have paid the contributions required under the terms of such agreement.

f. No member whose member contributions are required to be picked up pursuant to this section shall have any right to elect that such pick up of contributions, with accompanying deduction from the compensation of such member as prescribed by subdivision b of this section, shall not be effectuated.

**HISTORICAL NOTE**

Section added chap 114/1989 § 4

Subd. c par (1) open par amended chap 627/2007 § 17, approved Aug. 28, 2007 eff. upon compliance with chap 627/2007 § 22. [See § 13-101 Note 1]

Subd. e added chap 627/2007 § 18, approved Aug. 28, 2007 eff. upon compliance with chap 627/2007 § 22. [See § 13-101 Note 1]

Subd. f relettered (former Subd. e) chap 627/2007 § 18, approved Aug. 28, 2007 eff. upon compliance with chap 627/2007 § 22. [See § 13-101 Note 1]

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-328 Contributions of improved benefits plan members and their use; annuity reserve fund.

The annuity reserve fund shall be the fund from which shall be paid all annuities and all benefits in lieu of annuities, payable to or on account of improved benefits plan members as provided in this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.653 added chap 385/1981 § 12



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-329 Contributions of members and their use; dependent benefit reserve funds.

a. The dependent benefit reserve fund shall be the fund from which shall be paid all dependent benefits payable as provided in section 13-355 of this subchapter.

b. The dependent benefit contingent reserve fund shall be the fund in which shall be accumulated the contributions of members to create the reserve necessary to pay all benefits provided in section 13-355 of this subchapter.

c. Upon the basis of the mortality and other tables herein authorized, and regular interest, the actuary shall compute the amount of contributions, expressed as a proportion of the compensation paid to each such member, which, if paid semi-monthly during the entire prospective cityservice of the member, would be sufficient to provide for the reserve required at the time of his or her death to cover the dependent benefits which might be payable pursuant to the provisions of section 13-355 of this subchapter. Such proportion of compensation shall be computed to remain constant during his or her prospective city-service. Upon the death of such a member, an amount equal to the reserve for such dependent benefits shall be transferred from the dependent benefit contingent reserve fund to the dependent benefit reserve fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.654 added chap 385/1981 § 12



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-330 Retirement allowance reserve fund for original plan members.

The retirement allowance reserve fund shall be the fund from which shall be paid all retirement allowances, and all benefits in lieu of retirement allowances, allowable by the pension fund to persons who retired as original plan members or to beneficiaries of such members on account of the city-service of original plan members. Such retirement allowances and benefits shall be paid from the contingent reserve fund in the event that the retirement allowance reserve fund shall be unable to make such payment. Should any retirement allowance payable from such retirement allowance reserve fund be cancelled, the retirement allowance reserve thereon shall thereupon be transferred from the retirement allowance reserve fund to the contingent reserve fund. Should any retirement allowance payable from the retirement allowance reserve fund be reduced, the amount of the annual reduction in such allowance shall be paid annually into the contingent reserve fund during the period of such reduction.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.66 added LL 53/1941 § 16

Amended chap 385/1981 § 13

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-331 Contributions of the city and their use; contingent reserve fund.

a. (1) The contingent reserve fund shall be the fund in which shall be accumulated the reserve necessary to pay all retirement allowances, withdrawal allowances and all death benefits allowable by the pension fund on account of the city-service of original plan members as provided in this subchapter and other applicable provisions of law.

(2) The contingent reserve fund shall be the fund in which shall be accumulated the reserve necessary to pay all pensions and the reserve-for-increased-take-home-pay, and all death benefits allowable by the city on account of the city-service of improved benefits plan members as provided in this subchapter and other applicable provisions of law.

b. (1) (a) Subject to the provisions of paragraph five of this subdivision, the city shall contribute to the contingent reserve fund:

(i) annually, beginning with fiscal year nineteen hundred eighty-nineteen hundred eighty-one, an amount to be known as the normal contribution; and

(ii) in each city fiscal year during the period beginning with fiscal year nineteen hundred eighty-nineteen hundred eighty-one, and ending on the last day of fiscal year two thousand fourteen-two thousand fifteen, the annual installment, applicable to such fiscal year, of an additional amount which shall be known as the unfunded accrued liability contribution and which shall be determined as provided for in subparagraphs (b), (c), (d) and (e) of paragraph

three of this subdivision; and

(iii) in each city fiscal year during the period beginning with fiscal year nineteen hundred eighty-one-nineteen hundred eighty-two, and ending on the last day of fiscal year two thousand twenty-two thousand twenty-one, the annual installment, applicable to such fiscal year, of an additional amount which shall be known as the balance sheet liability contribution and which shall be determined as provided for in paragraph four of this subdivision; and

(iv) in fiscal year nineteen hundred eighty-nineteen hundred eighty-one, the amount of one year's interest, at the rate of seven and one-half per centum per annum, on the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty, as determined pursuant to the provisions of paragraph four of this subdivision; and

(v) in each city fiscal year, beginning with fiscal year nineteen hundred eighty-nineteen hundred eighty-one and ending on the last day of fiscal year nineteen hundred ninety-four-nineteen hundred ninety-five, (A) the amount required to fulfill the public employer obligation, if any, which accrued in such fiscal year, to provide accumulations-for-increased-take-home-pay (as defined in subdivision fifteen of section 13-313 of this subchapter) of original plan members, and (B) the amount required to fulfill the public employer obligation, if any, which accrued in such fiscal year, to provide reserves-for-increased-take-home-pay (as defined in subdivision fifteen-b of such section 13-313) of improved benefits plan members; provided, however, that such amount to be contributed hereunder shall not include regular interest and additional interest, if any, required by other provisions of this subchapter to be included in such reserves-for-increased-take-home-pay; and

(vi) in each city fiscal year, beginning with fiscal year nineteen hundred eighty-nineteen hundred eighty-one and ending on the last day of fiscal year nineteen hundred ninety-four-nineteen hundred ninety-five, the amount required to fulfill the public employer obligation, which accrued in such fiscal year under the provisions of subdivision twenty of section two hundred forty-three of the military law, to pay in behalf of members qualifying for such benefit, member contributions with respect to certain periods of the military service of such members.

(b) (i) If the nineteen hundred eighty unfunded accrued liability adjustment determined pursuant to subparagraph (e) of paragraph three of this subdivision b is a credit, the total of the amounts required to be contributed by the city to the contingent reserve fund in each city fiscal year, commencing with the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and ending with the two thousand nine-two thousand ten fiscal year, pursuant to subparagraph (a) of this paragraph one and otherwise pursuant to law shall be reduced by the amount of one annual installment of such nineteen hundred eighty unfunded accrued liability adjustment.

(ii) If the nineteen hundred eighty unfunded accrued liability adjustment determined pursuant to such subparagraph (e) is a charge, the city shall contribute in each city fiscal year, commencing with the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and ending with the two thousand nine-two thousand ten fiscal year, in addition to the amounts required to be contributed under the provisions of subparagraph (a) of this paragraph, one annual installment of such nineteen hundred eighty unfunded accrued liability adjustment.

(iii) The total of the amounts required to be contributed to the contingent reserve fund in each city fiscal year commencing with the nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year and ending with the two thousand eleven-two thousand twelve fiscal year pursuant to items (i), (ii), (iii), (iv), (v) and (vi) of subparagraph (a) of this paragraph (1) and the applicable provisions of items (i) and (ii) of this subparagraph (b) and otherwise pursuant to law shall be reduced by the amount of one annual installment of the nineteen hundred eighty-two unfunded accrued liability adjustment determined pursuant to subparagraph (f) of paragraph (3) of this subdivision b.

(iv)*3 The total of the amounts required to be contributed to the contingent reserve fund in each city fiscal year commencing with the nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year and ending with the two thousand fourteen-two thousand fifteen fiscal year pursuant to items (i), (ii), (iii), (iv), (v) and (vi) of subparagraph (a) of this paragraph one and the applicable provisions of items (i) and (ii) of this subparagraph (b) and otherwise pursuant

to law shall be increased by the amount of one annual installment of the nineteen hundred eighty-five unfunded accrued liability adjustment determined pursuant to subparagraph (g) of paragraph three of this subdivision b.

(iv)* For the purpose of effectuating the nineteen hundred eighty-eight unfunded accrued liability adjustment provided for in section 13-638.1 of the code, contributions to the contingent reserve fund shall be made by the responsible obligor (as defined in paragraph six of subdivision a of such section) or credits shall be allowed to such obligor against contributions otherwise payable by such obligor, as the case may be, to the extent and in the manner provided for in such section. The annual determination of the normal contribution for fiscal years occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-eight shall appropriately take account of the nineteen hundred eighty-eight unfunded accrued liability adjustment and the provisions of subparagraph (b) of paragraph two of this subdivision b shall be deemed to be comformably modified for such purpose.

(c) (i) Any amount required by the provisions of items (ii), (iii), (iv), (v) and (vi) of subparagraph (a) of this paragraph one and subparagraph (b) of this paragraph one and section 13-704 of this title to be contributed to the contingent reserve fund in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year or any subsequent fiscal year shall be payable with interest on such amount at a rate per centum per annum equal to the rate per centum per annum required to be used for the purpose of any actuarial valuation, determination or appraisal made to determine the amount of the normal contribution payable in such fiscal year.

(ii) Any amount required to be contributed by the city to the retirement allowance accumulation fund prior to July first, nineteen hundred eighty-one, other than the contributions required to be made by the city prior to such date with regular interest as provided for by paragraph one of subdivision b of section 13-325 of this subchapter, as in effect prior to such July first, shall be deemed to have been required to be paid with regular interest on such amount.

(iii) It is hereby declared that the provisions of items (i) and (ii) of this subparagraph (c), in so far as they relate to provisions of this article or other laws requiring payment of employer contributions to the pension fund prior to such July first, express the intent of such provisions of this article or other laws requiring such payment.

(2) Normal contribution. (a)(i) Upon the basis of the latest mortality and other tables herein authorized and regular interest, the actuary shall determine, as of June thirtieth, nineteen hundred eighty and as of each succeeding June thirtieth, the amount of the total liability for all benefits provided in this subchapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the pension fund, on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions, if any, and the liability for benefits attributable to the annuity savings fund, provided, however, that in determining such total liability for all benefits as of June thirtieth, nineteen hundred ninety-five and as of each succeeding June thirtieth, the actuary shall include (A) the liability on account of future increased-take-home-pay contributions, if any, (B) the liability on account of future public employer obligations under the provisions of subdivision twenty of section two hundred forty-three of the military law, to pay in behalf of members qualifying for such benefit, member contributions with respect to certain periods of the military service of such members and (C) the liability for benefits attributable to the annuity savings fund.

(ii) For the purposes of subparagraphs (b) and (c) of this paragraph two, the actuary shall determine, as of June thirtieth, nineteen hundred ninety-five and as of each succeeding June thirtieth, the total liability of the pension fund which shall be an amount equal to the sum of (A) the total liability for all benefits as determined pursuant to item (i) of this subparagraph and (B) the amount, as estimated by the actuary, of the total liability of the pension fund on account of all payments which the pension fund may be required to make for base fiscal years (as defined by the applicable provisions of paragraph one of subdivision b of section 13-335.1 of this subchapter and paragraph one of subdivision b of section 13-335.3 of this subchapter) beginning on or after July first, nineteen hundred ninety-four to the firefighters' variable supplements fund, pursuant to subdivisions d, e and f of such section 13-335.1 and to the fire officers' variable supplements fund pursuant to subdivisions d, e and f of such section 13-335.3.

(a-1) Notwithstanding any other provision of law to the contrary, for the purpose of calculating the amount of the normal contribution due from the city to the contingent reserve fund pursuant to subparagraph (c) of this paragraph in fiscal year two thousand five-two thousand six, and in each fiscal year thereafter, both the total liability of the pension fund, as calculated by the actuary in accordance with subparagraph (a) of this paragraph, and the normal rate of contribution, as calculated by the actuary in accordance with subparagraph (b) of this paragraph, shall be determined as of June thirtieth of the second fiscal year preceding the fiscal year in which the normal contribution is payable, provided, however, that (i) the actuary shall use for such calculations the mortality and other tables that are applicable at the time he or she performs such calculations; (ii) the total funds on hand, as determined by the actuary pursuant to sub-item (G) of item (i) of subparagraph (b) of this paragraph, shall be adjusted by adding to such amount the present value of all employer contributions required to be paid into the contingent reserve fund in the fiscal year next preceding the fiscal year in which the normal contribution is payable, as determined by the actuary; and (iii) the present value of the prospective future salaries of all members, as computed by the actuary for the purposes of item (ii) of subparagraph (b) of this paragraph, shall be reduced by the present value of the salaries expected to be paid to all members in the fiscal year next preceding the fiscal year in which the normal contribution is payable, as determined by the actuary.

(b) The normal rate of contribution shall be the rate per centum obtained:

(i) by deducting from the amount of such total liability the sum of:

(A) (1) the amount obtained by adding together the present value of all required future revised unfunded accrued liability contributions and the present value of all required future payments of installments of the nineteen hundred eighty unfunded accrued liability adjustment, determined pursuant to subparagraph (e) of paragraph three of this subdivision b, if such adjustment is a charge; or

(2) the remainder obtained by subtracting from the present value of all required future unfunded accrued liability contributions, the present value of all future installments of the nineteen hundred eighty unfunded accrued liability adjustment required to be credited, if such nineteen hundred eighty adjustment is a credit;

(3) minus (whether (1) or (2) of this sub-item (A) is applicable) the present value of all future installments of the nineteen hundred eighty-two unfunded accrued liability adjustment; and

(A-1) the present value of all future installments of the nineteen hundred eighty-five unfunded accrued liability adjustment determined pursuant to subparagraph (g) of paragraph three of this subdivision b; and

(B) the present value of all required future balance sheet liability contributions, plus, in the case of the determination of the normal contribution payable in fiscal year nineteen hundred eighty-nineteen hundred eighty-one, the present value, as of June thirtieth, nineteen hundred eighty, of the payment of interest on the balance sheet liability as required by item (iv) of subparagraph (a) of paragraph one of this subdivision b; and

(C) the present value of all required future member contributions of original plan members (as defined in subdivision four-b of section 13-313 of this subchapter); and

(D) the present value of all future member contributions on account of dependent benefits; and

(E) the present value of all required future payments, pursuant to section 13-704 of this title, of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(F) in the case of the determination of the normal contribution payable in each fiscal year commencing with fiscal year nineteen hundred ninety-five-nineteen hundred ninety-six, the present value of future member contributions of all members; and

(G) the total funds on hand, including the amount of any unpaid moneys appropriated pursuant to section 13-334

of this subchapter and, in the case of the determination of the normal contribution payable in each fiscal year commencing with fiscal year nineteen hundred ninety-five-nineteen hundred ninety-six, including the amount in the annuity savings fund; and

(H) the present value of all other future installments of accrued liability contributions to the pension fund required by the applicable provisions of section 13-638.3 of this title which are not covered by the preceding subitems of this item (i); and

(ii) by dividing the remainder by one per centum of the present value of the prospective future salaries of all members, as computed by the actuary on the basis of the latest mortality and service tables adopted pursuant to section 13-321 of this subchapter, and on the basis of regular interest. The normal rate of contribution determined by the actuary shall not be less than zero, shall be certified by the actuary after each such valuation and shall continue in force until the next succeeding valuation and certification.

(c) The amount of the normal contribution due from the city to the contingent reserve fund in each city fiscal year, commencing with the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and ending with the two thousand four-two thousand five fiscal year, shall be the amount obtained by multiplying the normal rate of contribution, as determined by the actuary as of June thirtieth next preceding such fiscal year, by the aggregate annual salaries of the members on such next preceding June thirtieth, and shall be payable in such fiscal year next following such June thirtieth, together with such regular interest thereon which may be due, if any, as calculated by the actuary.

(ii) The amount of the normal contribution due from the city to the contingent reserve fund in each city fiscal year, commencing with the two thousand five-two thousand six fiscal year, shall be the amount obtained by multiplying the normal rate of contribution, as determined by the actuary as of the second June thirtieth preceding the fiscal year in which the normal contribution is payable, in accordance with the provisions of subparagraphs (a-1) and (b) of this paragraph, by the aggregate amount of the salaries expected to be paid to the members during the fiscal year in which the normal contribution is payable, as determined by the actuary, and such normal contribution shall be payable in the second fiscal year following the June thirtieth as of which the normal rate of contribution is determined, together with such regular interest thereon which may be due, if any, as calculated by the actuary.

(iii) In the case of the normal contribution payable in the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and in any subsequent fiscal year, the term "regular interest", as used in this subparagraph (c), shall mean regular interest as defined by the applicable provisions of paragraph (f) or paragraph (g) of subdivision eight of section 13-313 of this subchapter.

(d)(i) For the purposes of this subparagraph (d), the terms "pension fund, subchapter one" and "fire subchapter one beneficiary" shall have the meanings set forth in paragraphs one and three, respectively, of subdivision a of section 13-312.1 of this chapter.

(ii) The amount of the normal contribution due from the city to the contingent reserve fund in the city's nineteen hundred ninety-four-nineteen hundred ninety-five fiscal year shall be equal to the amount of the normal contribution for such fiscal year, as calculated in accordance with the provisions of subparagraph (c) of this paragraph, minus the sum (calculated by the actuary to reflect regular interest in accordance with the provisions of subparagraph (c) of this paragraph) of the following:

(A) the amount of the assets deemed to have been transferred on July first, nineteen hundred ninety-four from pension fund, subchapter one to this pension fund and credited to the contingent reserve fund in accordance with the provisions of subdivisions b and g of section 13-312.1 of this chapter, as if such transfer actually had been made on such July first; and

(B) the amount of the benefits payable during the nineteen hundred ninety-four-nineteen hundred ninety-five fiscal year by pension fund, subchapter one to fire subchapter one beneficiaries; and

(C) the amount of supplemental benefits payable during the nineteen hundred ninety-four-nineteen hundred ninety-five fiscal year, including the increase in certain of such benefits provided by paragraph four of subdivision a of section 13-687 of this title, as added by the chapter of the laws of nineteen hundred ninety-five which added this subparagraph, by the city supplemental pension fund established under section 13-650 of this title to fire subchapter one beneficiaries.

(3) (a) The unfunded accrued liability contribution shall be an amount determined as prescribed in subparagraphs (b), (c) and (d) of this paragraph three.

(b) (i) The "assumed original unfunded accrued liability contribution" shall be a hypothetical amount determined as provided for in this subparagraph (b).

(ii) On the basis of the actuarial tables adopted pursuant to section 13-321 of this subchapter for the purpose of determining the assumed original unfunded accrued liability contribution and interest at the rate of five and one-half per centum per annum, there shall be computed, as of June thirtieth, nineteen hundred seventy-five, the amount of the total liability for all benefits provided in this subchapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the pension fund, on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions.

(iii) From such total liability computed pursuant to item (ii) of this subparagraph (b), there shall be subtracted the sum of:

(A) the present value, as of such June thirtieth, of all then required future member contributions pursuant to the provisions of section 13-325 of this subchapter, as then in effect; and

(B) the sum obtained by adding together the total funds on hand and the balance sheet liability as of such June thirtieth, as such liability is determined pursuant to the provisions of subparagraphs (c) to (i), inclusive, of paragraph four of this subdivision b; and

(C) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this article (as then in effect) of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(D) the present value, as of such June thirtieth, of future normal costs of the pension fund, computed pursuant to the entry age normal cost method of determining such normal costs.

(iv) The assumed original unfunded accrued liability contribution shall be a hypothetical amount, which, if paid to the pension fund in forty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred seventy-seven-nineteen hundred seventy-eight fiscal year, would be the actuarial equivalent, on the basis of five and one-half per centum interest and the actuarial tables adopted pursuant to section 13-321 of this subchapter for the purpose of determining the assumed original unfunded accrued liability contributions, of the remainder computed pursuant to item (iii) of this subparagraph (b).

(c) (i) To the amount of the remainder computed pursuant to item (iii) of subparagraph (b) of this paragraph three, there shall be added interest thereon at the rate of five and one-half per centum per annum for the period from July first, nineteen hundred seventy-five to June thirtieth, nineteen hundred eighty.

(ii) There shall be computed in the manner provided for in item (iii) of this subparagraph (c), the discounted value of each of the installments of the assumed original unfunded accrued liability contribution which would have been hypothetically payable, pursuant to the provisions of item (iv) of subparagraph (b) of this paragraph three, in the city's nineteen hundred seventy-seven-nineteen hundred seventy-eight, nineteen hundred seventy-eight-nineteen hundred seventy-nine, nineteen hundred seventy-nine-nineteen hundred eighty, nineteen hundred eighty-nineteen hundred

eighty-one and nineteen hundred eighty-one-nineteen hundred eighty-two fiscal years.

(iii) Such discounted value of each such installment shall be computed as of January first of the city's second fiscal year preceding the fiscal year in which such installment would have been hypothetically payable and on the basis of five and one-half per centum interest per annum on the amount of such installment.

(iv) There shall be computed with respect to such discounted value of each such installment, interest thereon from January first of such second fiscal year preceding the fiscal year in which such installment would have been hypothetically payable to June thirtieth, nineteen hundred eighty at the rate of five and one-half per centum per annum.

(v) The discounted values of all of such installments with respect to such fiscal years, computed as provided for in items (ii) and (iii) of this subparagraph (c), together with interest on each such installment as provided for in item (iv) of this subparagraph, shall be added together.

(vi) From the sum computed pursuant to item (i) of this subparagraph (c), the sum computed pursuant to item (v) of this subparagraph shall be subtracted.

(d) (i) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty and ending on June thirtieth, nineteen hundred eighty-two, the revised unfunded accrued liability contribution shall be the annual installment, applicable to such fiscal year, of an amount which, if paid to the contingent reserve fund in thirty-five equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year, would be the actuarial equivalent, on the basis of seven and one-half per centum interest per annum, of the remainder computed pursuant to item (vi) of subparagraph (c) of this paragraph three.

(ii) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, the revised unfunded accrued liability contribution shall be the annual installment, applicable to such fiscal year, of an amount which, if paid to the contingent reserve fund in thirty-three equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-two on the basis of seven and one-half per centum interest per annum, of those installments of the unfunded accrued liability contribution computed pursuant to item (i) of this subparagraph (d), which installments are hypothetically allocated by such item (i) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-two.

(iii) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand fifteen, the revised unfunded accrued liability contributions shall be the annual installment, applicable to such fiscal year, of an amount which, when paid to the contingent reserve fund in twenty-seven equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the unfunded accrued liability contribution computed pursuant to item (ii) of this subparagraph (d), which installments are hypothetically allocated by such item (ii) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(e) (i) The nineteen hundred eighty unfunded accrued liability adjustment shall be an amount determined as prescribed in items (ii), (iii), (iv) and (v) of this subparagraph (e).

(ii) (A) Upon the basis of the actuarial tables in effect as of June thirtieth, nineteen hundred eighty for valuation purposes and interest at the rate of seven and one-half per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty, the amount of the total liability for all benefits provided in this subchapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the pension fund, on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay

contributions.

(B) From such total liability computed pursuant to sub-item (A) of this item (ii), there shall be subtracted the sum of:

(1) the present value, as of June thirtieth, nineteen hundred eighty, of all future normal costs, computed pursuant to the entry age normal cost method of determining such normal costs; and

(2) the present value, as of such June thirtieth, of all future installments of the balance sheet liability contribution (as defined in paragraph four of this subdivision b); and

(3) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this title, of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(4) the present value, as of such June thirtieth, of all required future member contributions at the rates of member contribution in effect as of such June thirtieth; and

(5) the total funds on hand as of such June thirtieth, including the amount of any unpaid moneys appropriated pursuant to section 13-334 of this subchapter.

(iii) (A) If the amount computed pursuant to item (ii) of this subparagraph (e) is larger than the amount computed pursuant to item (vi) of subparagraph (c) of this paragraph three, the latter amount shall be subtracted from the former amount and the remainder resulting from such subtraction shall constitute a charge.

(B) If the amount computed pursuant to item (ii) of this subparagraph (e) is smaller than the amount computed pursuant to item (vi) of subparagraph (c) of this paragraph, the former amount shall be subtracted from the latter amount and the remainder resulting from such subtraction shall constitute a credit.

(iv) (A) If the remainder computed pursuant to item (iii) of this subparagraph is a charge, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, if paid to the contingent reserve fund in thirty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year, would be the actuarial equivalent, on the basis of seven and one-half per centum interest per annum, of such remainder.

(B) If the remainder computed pursuant to item (iii) of this subparagraph is a credit, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, if credited in thirty equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year) in reduction of the amounts which the city would otherwise be required to pay to the contingent reserve fund pursuant to subparagraph (a) of paragraph one of this subdivision b or otherwise pursuant to law, would be the actuarial equivalent, on the basis of seven and one-half per centum interest per annum, of such remainder.

(v) (A) With respect to determination of the amount of contributions payable to the contingent reserve fund in each of the city's nineteen hundred eighty-nineteen hundred eighty-one and nineteen hundred eighty-one-nineteen hundred eighty-two fiscal years, the annual installment of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to item (iv) of this subparagraph (e), which installment is applicable to such fiscal year, shall be applied as a charge or a credit, as the case may be, in relation to such contributions payable in such fiscal year.

(B) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, if paid (if a charge) or credited (if a credit) in twenty-eight equal annual installments, commencing with

a payment or credit, as the case may be, in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-two on the basis of seven and one-half per centum interest per annum, of those installments of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to item (iv) of this subparagraph (e), which installments are hypothetically allocated by such item (iv) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-two.

(C) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand ten, the nineteen hundred eighty unfunded accrued liability adjustment shall be in an amount which, when paid (if a charge) or credited (if a credit) in twenty-two equal annual installments, commencing with a payment or credit, as the case may be, in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to sub-item (B) of this item (v), which installments are hypothetically allocated by such sub-item (B) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(D) With respect to determination of the amount of contributions payable to the contingent reserve fund in each of such city fiscal years referrred to in sub-item (B) or sub-item (C) of this item (v), the annual installment of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to sub-item (B) or sub-item (C) of this item (v), which installment is applicable to such fiscal year, shall be applied as a charge or credit, as the case may be, in relation to such contributions payable in such fiscal year.

(f) (i) The nineteen hundred eighty-two unfunded accrued liability adjustment shall be an amount determined as prescribed in items (ii), (iii), (iv) and (v) of this subparagraph (f).

(ii) Upon the basis of the actuarial tables in effect as of June thirtieth, nineteen hundred eighty-one for valuation purposes and interest at the rate of seven and one-half per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-two, the amount of the actuarial accrued liability of the pension fund, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(iii) Upon the basis of the actuarial tables in effect as of June thirtieth, nineteen hundred eighty-two for valuation purposes and interest at the rate of eight per centum per annum, there shall be determined, as of June thirteith, nineteen hundred eighty-two, the amount of the actuarial accrued liability of the pension fund, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(iv) With respect to determination of the amount of contributions payble to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, the nineteen hundred eighty-two unfunded accrued liability adjustment shall be an amount which, if credited in thirty equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year) in reduction of the amounts which the city would otherwise be required to pay to the contingent reserve fund pursuant to items (i), (ii), (iii), (v) and (vi) of subparagraph (a) of paragraph (1) of this subdivision b or otherwise pursuant to law, would be the actuarial equivalent, on the basis of eight per centum interest per annum of the excess of the amount computed pursuant to item (ii) of this subparagraph (f) over the amount computed pursuant to item (iii) of this subparagraph.

(v) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand twelve, the nineteen hundred eighty-two unfunded accrued liability adjustment shall be an amount which, when credited in twenty-four equal annual installments (the first of which installments is to be credited

in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the amounts which the city would otherwise be required to pay to the contingent reserve fund pursuant to items (i), (ii), (iii), (v) and (vi) of subparagraph (a) of paragraph (1) of this subdivision b or otherwise pursuant to law, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of the installments of the nineteen hundred eighty-two unfunded accrued liability adjustment computed pursuant to item (iv) of this subparagraph (f), which installments are hypothetically allocated by such item (iv) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(g) (i) The nineteen hundred eighty-five unfunded accrued liability adjustment shall be an amount determined as prescribed in items (ii), (iii) and (iv) of this subparagraph (g).

(ii) Upon the basis of the actuarial tables in effect for valuation purposes with respect to determination of the normal contribution to the contingent reserve fund in the city's nineteen hundred eighty-four-nineteen hundred eighty-five fiscal year, and interest at the rate of eight per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-five, the amount of the actuarial accrued liability of the pension fund, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(iii) Upon the basis of the actuarial tables in effect for valuation purposes with respect to determination of the normal contribution to the contingent reserve fund in the city's nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year, and interest at the rate of eight per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-five, the amount of the actuarial accrued liability of the pension fund, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(iv) (A) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight, the nineteen hundred eighty-five unfunded accrued liability adjustment shall be an amount which, if paid to the contingent reserve fund in thirty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year, would be the actuarial equivalent, on the basis of eight per centum interest per annum of the excess of the amount computed pursuant to item (iii) of this subparagraph (g) over the amount computed pursuant to item (ii) of this subparagraph.

(B) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand fifteen, the nineteen hundred eighty-five unfunded accrued liability adjustment shall be an amount which, when paid to the contingent reserve fund in twenty-seven equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the nineteen hundred eighty-five unfunded accrued liability adjustment computed pursuant to sub-item (A) of this item (iv), which installments are hypothetically allocated by such sub-item (A) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(4) (a) As used in this section, the following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:

(i) (A) "Normal contribution for balance sheet liability purposes." The hypothetical amount which the assumed normal contribution payable in each city fiscal year occurring during the period beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred eighty would have equalled if such assumed normal contribution had been required by law to be paid to the pension fund in the city fiscal year in which the obligation to make such assumed normal contribution accrued and such assumed normal contribution had been required

by law to be determined in the manner provided for in sub-items (B), (C) and (D) of this item (i).

(B) Upon the basis of the mortality and other tables adopted pursuant to section 13-321 of this subchapter for the purpose of determining the balance sheet liability contribution and interest at the rate of five and one-half per centum per annum, the actuary shall determine, as of June thirtieth next preceding each such fiscal year for which such assumed normal contribution is being determined (hereinafter referred to as the "subject fiscal year") the amount of the then total liability for all benefits provided in this subchapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the pension fund, on account of all then members and beneficiaries, excluding the then liability on account of future annual contributions, for balance sheet liability purposes, on account of accumulations-for-increased-take-home-pay (as defined in item (iv) of this subparagraph (a)), if any.

(C) The assumed normal rate of contribution with respect to the subject fiscal year shall be the rate per centum obtained:

(i) by deducting from the amount of such total liability, the sum of:

(A) the present value of all then required future unfunded accrued liability contributions for balance sheet liability purposes (as defined in item (ii) of this subparagraph (a)); and

(B) the present value of all then required future annual contributions, for balance sheet liability purposes, on account of amortization of losses on dispositions of certain securities within the meaning of section 13-704 of this article (as defined in item (iii) of this subparagraph (a)); and

(C) the present value of all then required future member contributions on account of dependent benefits; and

(D) the amount obtained by adding together the total funds on hand and the balance sheet liability as of such June thirtieth next preceding the subject fiscal year; and

(ii) by dividing the remainder by one per centum of the then present value of the prospective future salaries of all members, as computed on the basis of the mortality and service tables adopted pursuant to section 13-321 of this subchapter for the purpose of determining the balance sheet liability contribution, and on the basis of interest at the rate of five and one-half per centum per annum.

(D) The amount of the assumed normal contribution for balance sheet liability purposes hypothetically payable in the subject fiscal year shall be the amount obtained (1) by multiplying such assumed normal rate of contribution computed with respect to the subject fiscal year by the aggregate annual salaries of the members as of June thirtieth of the subject fiscal year and (2) by adding to the product of such multiplication interest on such product at the rate of five and one-half per centum per annum for a period of six months.

(ii) "Unfunded accrued liability contribution for balance sheet liability purposes." (A) With respect to the city's nineteen hundred seventy-four-nineteen hundred seventy-five fiscal year, such term shall mean a hypothetical amount which, if paid to the pension fund in forty equal annual installments, beginning with payment of a first installment in the city's nineteen hundred seventy-four-nineteen hundred seventy-five fiscal year, would be the actuarial equivalent, on the basis of interest at the rate of five and one-half per centum per annum, of the remainder computed in the manner prescribed by sub-items (B) and (C) of this item (ii).

(B) Upon the basis of the actuarial tables adopted pursuant to such section 13-321 for the purpose of determining the balance sheet liability contribution and interest at the rate of five and one-half per centum per annum, there shall be computed, as of June thirtieth, nineteen hundred seventy-four, the amount of the total liability for all benefits provided by this subchapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the pension fund, on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions.

(C) From such total liability computed pursuant to sub-item (B) of this item there shall be subtracted the sum of:

(1) the present value, as of such June thirtieth, of all then required future member contributions pursuant to the provisions of section 13-325 of this subchapter, as then in effect; and

(2) the sum obtained by adding together the total funds on hand and the balance sheet liability as of such June thirtieth, as such liability is determined pursuant to the provisions of subparagraph (b) of this paragraph four; and

(3) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this article (as then in effect) of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(4) the present value, as of such June thirtieth, of future normal costs of the pension fund, computed pursuant to the entry age normal cost method of determining such normal costs.

(D) With respect to each of the city's fiscal years occurring during the period from July first, nineteen hundred seventy-five to June thirtieth, nineteen hundred eighty, such term shall mean a hypothetical amount which, if paid to the pension fund in forty equal annual installments, beginning with payment of a first installment in the city's nineteen hundred seventy-five-nineteen hundred seventy-six fiscal year, would be the actuarial equivalent, on the basis of interest at the rate of five and one-half per centum per annum, of the remainder computed pursuant to sub-items (E) and (F) of this item (ii).

(E) Upon the basis of the actuarial tables adopted pursuant to section 13-321 of this subchapter for the purpose of determining the balance sheet liability contribution and interest at the rate of five and one-half per centum per annum, there shall be computed, as of June thirtieth, nineteen hundred seventy-five, the amount of the total liability for all benefits provided by this subchapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the pension fund, on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions.

(F) From such total liability computed pursuant to sub-item (E) of this item (ii), there shall be subtracted the sum of:

(1) the present value, as of such June thirtieth, of all then required future member contributions pursuant to the provisions of section 13-325 of this subchapter, as then in effect; and

(2) the sum obtained by adding together the total funds on hand and the balance sheet liability as of such June thirtieth, as such liability is determined pursuant to the provisions of subparagraphs (c) to (i), inclusive, of this paragraph four; and

(3) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this article (as then in effect) of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(4) the present value, as of such June thirtieth, of future normal costs of the pension fund, computed pursuant to the entry age normal cost method of determining such normal costs.

(iii) "Annual contribution, for balance sheet liability purposes, on account of amortization of losses on dispositions of certain securities within the meaning of section 13-704 of this article." A hypothetical annual payment to the retirement allowance accumulation fund in each of the city's fiscal years occurring during the period beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred eighty, of the amount of the excess of the installments (payable in such year) of losses on prior dispositions of securities within the meaning of section 13-704 of this article over the installments (creditable in such fiscal year) of gains on such prior dispositions,

which annual amount shall be determined in the manner provided in subdivision h of such section 13-704.

(iv) "Annual contribution, for balance sheet liability purposes, on account of accumulations-for-increased-take-home-pay." A hypothetical annual payment to the retirement allowance accumulation fund in each of the city's fiscal years occurring during the period from July first, nineteen hundred seventy-four to June thirtieth, nineteen hundred eighty, of the amount required to fulfill the public employer obligation, which accrued in such fiscal year, to provide accumulations-for-increased-take-home-pay (as defined in subdivision fifteen of section 13-313 of this subchapter).

(v) "Annual military law contribution or balance sheet liability purposes." A hypothetical annual payment to the retirement allowance accumulation fund in each of the city's fiscal years occurring during the period beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred eighty, of the amount required to fulfill the public employer obligation, which accrued in such year under the provisions of subdivision twenty of section two hundred forty-three of the military law, to pay in behalf of members qualifying for such benefit, member contributions with respect to certain periods of military service of such members.

(vi) "Contribution on account of amortization, pursuant to section 13-704 of this article, of losses on dispositions of certain securities." The total annual amount by which the sum of the installments of losses, payable pursuant to section 13-704 of this chapter (as in effect prior to July first, nineteen hundred eighty) in each of the city's fiscal years occurring during the period from July first, nineteen hundred seventy-four to June thirtieth, nineteen hundred eighty in relation to dispositions of securities within the meaning of such section, exceeds the sum of the installments of gains creditable in the same fiscal year in relation to the same dispositions of securities.

(b) The balance sheet liability as of June thirtieth, nineteen hundred seventy-four shall be the sum of eighty-seven million, sixty-four thousand, two hundred seventy-three dollars ($87,064,273), consisting of the sum of:

(i) the discounted value, as of June thirtieth, nineteen hundred seventy-four, of the sum of forty-two million, ninety thousand dollars ($42,090,000), which constituted the amount payable into the retirement allowance accumulation fund in the city's nineteen hundred seventy-four-nineteen hundred seventy-five fiscal year by the city in fulfillment of its obligations to make contributions to the pension fund payable in such fiscal year, such discounting being calculated on the basis of interest at the rate of five and one-half per centum per annum and a discount period of six months extending retroactively from January first, nineteen hundred seventy-five to June thirtieth, nineteen hundred seventy-four, and such discounted value being the sum of forty million, nine hundred seventy-eight thousand, one hundred ninety-three dollars ($40,978,193); and

(ii) the discounted value, as of June thirtieth, nineteen hundred seventy-four, of the sum of forty-nine million, nine hundred forty thousand dollars ($49,940,000), which constituted the amount payable to the retirment allowance accumulation fund in the city's nineteen hundred seventy-five-nineteen hundred seventy-six fiscal year by the city in fulfillment of its obligations to make contributions to the pension fund payable in such fiscal year, such discounting being calculated on the basis of interest at the rate of five and one-half per centum per annum and a discount period of eighteen months extending retroactively from January first, nineteen hundred seventy-six to June thirtieth, nineteen hundred seventy-four, and such discounted value being the sum of forty-six million, eighty-six thousand, eighty dollars ($46,086,080).

(c) The balance sheet liability, as of each June thirtieth succeeding June thirtieth, nineteen hundred seventy-four to and including June thirtieth, nineteen hundred eighty, shall be determined as provided for in subparagraphs (d) to (j), inclusive, of this paragraph four.

(d) To the amount of the balance sheet liability as of June thirtieth next preceding the June thirtieth (which last-mentioned June thirtieth is hereinafter referred to as the "subject June thirtieth") as of which the balance sheet liability is being determined as provided for in subparagraph (c) of this paragraph four, there shall be added one year's

interest on such amount at the rate of five and one-half per centum per annum.

(e) With respect to the city's fiscal year ending on the subject June thirtieth (hereinafter referred to as the "subject fiscal year") there shall be added together the contribution components hereinafter specified in this subparagraph (e), which components, for the purposes of this paragraph four, are hypothetically deemed to have accrued in the subject fiscal year and to have been payable therein, as follows:

(i) the amount of the normal contribution for balance sheet liability purposes (as defined in item (i) of subparagraph (a) of this paragraph four); and

(ii) the amount of the applicable installment of the unfunded accrued liability contribution for balance sheet liability purposes (as defined in item (ii) of subparagraph (a) of this paragraph); and

(iii) the amount of the annual contribution, for balance sheet liability purposes, on account of amortization of losses on dispositions of certain securities within the meaning of section 13-704 of this chapter (as defined in item (iii) of subparagraph (a) of this paragraph); and

(iv) the amount of the annual contribution, for balance sheet liability purposes, on account of accumulations-for-increased-take-home-pay (as defined in item (iv) of subparagraph (a) of this paragraph); and

(v) the amount of the annual military law contribution for balance sheet liability purposes (as defined in item (v) of subparagraph (a) of this paragraph).

(f) To the amount resulting from the addition prescribed by subparagraph (e) of this paragraph four, there shall be added interest thereon at the rate of five and one-half per centum per annum from January first of the subject fiscal year to June thirtieth of such fiscal year.

(g) The amount computed pursuant to subparagraph (d) of this paragraph four in relation to the balance sheet liability as of June thirtieth next preceding the subject June thirtieth (together with one year's interest on such balance sheet liability as provided for in such subparagraph) shall be added to the amount computed pursuant to subparagraph (f) of this paragraph in relation to the subject fiscal year.

(h) From the amount computed pursuant to subparagraph (g) of this paragraph, there shall be subtracted the sum of:

(i) the total amount of:

(A) the sum paid to the retirement allowance accumulation fund during the subject fiscal year by the city as contributions pursuant to the provisions of section 13-325 of this subchapter as then in effect; and

(B) the amount of the contribution on account of amortization, pursuant to section 13-704 of this chapter, of losses on dispositions of certain securities (as defined in item (vi) of subparagraph (a) of this paragraph four) payable in the subject fiscal year; and

(C) the amount payable in the subject fiscal year on account of accumulations-for-increased-take-home-pay; and

(D) the amount payable in the subject fiscal year in behalf of members pursuant to subdivision twenty of section two hundred forty-three of the military law; plus

(ii) interest on such total amount referred to in item (i) of this subparagraph (h) at the rate of five and one-half per centum per annum from January first of the subject fiscal year to June thirtieth thereof.

(i) The remainder resulting from the subtraction prescribed by subparagraph (h) of this paragraph four shall be

the balance sheet liability as of June thirtieth of the subject fiscal year.

(j) The balance sheet liability as of June thirtieth, nineteen hundred eighty shall be the amount resulting from the successive computations of the balance sheet liability as of each June thirtieth succeeding June thirtieth, nineteen hundred seventy-four up to and including June thirtieth, nineteen hundred eighty, as prescribed by subparagraphs (c) to (i), inclusive, of this paragraph four.

(k) The balance sheet liability contribution payable in the city's nineteen hundred eighty-one-nineteen hundred eighty-two fiscal year shall be the first annual installment of an amount which, if paid to the contingent reserve fund in forty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-one-nineteen hundred eighty-two fiscal year, would be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-one, on the basis of seven and one-half per centum interest per annum, of an amount equal to the balance sheet liability as of June thirtieth, nineteen hundred eighty.

(l) The balance sheet liability contribution payable in each city fiscal year during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight shall be one annual installment of an amount which, if paid to the contingent reserve fund in thirty-nine equal annual installments, commencing with a first payment in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year, would be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-two, on the basis of eight per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-two on the basis of seven and one-half per centum interest per annum, of those installments of the balance sheet liability contribution computed pursuant to subparagraph (k) of this paragraph four, which installments are hypothetically allocated by such subparagraph (k) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-two.

(m) The balance sheet liability contribution payable in each city fiscal year during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand twenty-one shall be one annual installment of an amount which, when paid to the contingent reserve fund in thirty-three equal annual installments, commencing with a first payment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-eight, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the balance sheet liability contribution computed pursuant to subparagraph (l) of this paragraph four, which installments are hypothetically allocated by such subparagraph (l) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(5) Contributions to the contingent reserve fund payable by the city in fiscal years of the city beginning on or after July first, nineteen hundred ninety shall be governed by the provisions of this section, as modified and supplemented by sections 13-638.2 and 13-638.3*4 of this title, and such other laws as may be applicable.

(6) (a) On the basis of interest at the rate of eight and one-half per centum per annum and the actuarial tables in effect as of July first, nineteen hundred ninety-four, the actuary shall determine the present value, as of such July first, of the future liability of the pension fund for paying all benefits and supplemental benefits on and after such date to fire subchapter one beneficiaries (as defined in paragraph three of subdivision a of section 13-312.1 of this chapter), which liability is deemed to have been transferred to and assumed by the fund pursuant to subdivisions d, e and g of section 13-312.1 of this chapter, as if such transfers actually had been made on such July first.

(b) The city shall pay to the contingent reserve fund in ten equal annual installments, commencing with payment of a first installment in the city's nineteen hundred ninety-four-nineteen hundred ninety-five fiscal year, an amount which, when paid in such installments, is the actuarial equivalent of the amount determined pursuant to subparagraph (a) of this paragraph.

c. Whenever the board, upon recommendation by the actuary, shall determine that it is necessary to increase the

reserves held in the retirement allowance reserve fund, the annuity reserve fund, the pension reserve fund or dependent benefit reserve fund, the board may direct that the amount so needed shall be transferred thereto from the contingent reserve fund.

d. The cash benefits payable under the provisions of this subchapter or other applicable laws to, or upon the death of, a member in active service shall be paid from such contingent reserve fund.

e. (1) Upon the retirement of such a member who is an original plan member, or upon his or her death in the performance of duty, an amount equal to the retirement allowance reserve for the retirement allowance payable on account of his or her city-service as a member, shall be transferred from the contingent reserve fund to the retirement allowance reserve fund.

(2) Upon the retirement of a member in active service who is an improved benefits plan member or upon his or her death in the performance of duty, an amount equal to the pension reserve for the pension payable by the city on account of his or her city-service as a member, together with the reserve-for-increased-take-home-pay, shall be transferred from the contingent reserve fund to the pension reserve fund. Contributions shall be paid into the contingent reserve fund, in the manner and to the extent specified by section 13-326 of this subchapter, to provide reserves-for-increased-take-home-pay.

f. Repealed.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b par (1) subpar (a) open clause amended chap 878/1990

§ 16, eff. July 25, 1990 applying on and after July 1, 1989

Subd. b par (1) subpar (a) items (v), (vi) amended chap 249/1996 § 7,

eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. b par (1) subpar (b) item (iv) added chap 579/1989 § 10

(laid out first)

Subd. b par (1) subpar (b) item (iv) separately added chap 580/1989

§ 10 and chap 581/1989 § 80 (laid out second)

Subd. b par (1) subpar (c) item (i) separately amended chap 579/1989

§ 11 and chap 580/1989 § 9

Subd. b par (2) subpar (a) amended chap 249/1996 § 8, eff. June 30, 1996

and deemed in effect on and after July 1, 1995

Subd. b par (2) subpar (a-1) added chap 152/2006 § 7, eff. July 7, 2006

and deemed to have been in full force and effect on and after July 1,

2005. [See § 13-103 Note 1]

Subd. b par (2) subpar (b) amended chap 579/1989 § 12

Subd. b par (2) subpar (b) item (i) subitem (E) separately amended chap 580/1989 § 11

Subd. b par (2) subpar (b) item (i) subitems (F), (G) amended chap 249/1996 § 9, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. b par (2) subpar (b) item (i) subitem (H) added chap 249/1996 § 10, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. b par (2) subpar (b) item (ii) amended chap 85/2000 § 4, eff. June 23, 2000 and deemed to have been in effect on and after July 1, 1999.

Subd. b par (2) subpar (b) item (ii) amended chap 249/1996 § 11, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. b par (2) subpar (c) amended chap 152/2006 § 8, eff. July 7, 2006 and deemed to have been in full force and effect on and after July 1, 2005. [See § 13-103 Note 1]

Subd. b par (2) subpar (c) amended chap 249/1996 § 12, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. b par (2) subpar (d) added chap 500/1995 § 4, eff. Aug. 2, 1995

Subd. b par (3) subpar (d) item (ii) amended chap 581/1989 § 53

Subd. b par (3) subpar (d) item (iii) added chap 581/1989 § 54

Subd. b par (3) subpar (e) items (i), (v) amended chap 581/1989 § 55

Subd. b par (3) subpar (f) amended chap 581/1989 § 56

Subd. b par (3) subpar (g) added chap 579/1989 § 13

Subd. b par (3) subpar (g) item (iv) amended chap 581/1989 § 57

Subd. b par (4) subpar (l) amended chap 581/1989 § 58

Subd. b par (4) subpar (m) added chap 581/1989 § 59

Subd. b par (5) amended chap 610/1991 § 8 retro to July 1, 1990

Subd. b par (5) added chap 878/1990 § 17 eff. July 25, 1990 applying

on and after July 1, 1989

Subd. b par (6) added chap 500/1995 § 5, eff. Aug. 2, 1995

Subd. f repealed chap 500/1995 § 6, eff. Aug. 2, 1995

**DERIVATION**

Formerly § B19-7.661 added chap 385/1981 § 14

Sub b pars 1, 2, 3 amended chap 914/1982 § 15

Sub b par 4 subpar a item iii amended chap 914/1982 § 16

Sub b par 4 subpar e item iv amended chap 914/1982 § 17

Sub b par 4 subpar h item i subitem C amended chap 914/1982 § 18

Sub b par 4 subpar k amended chap 914/1982 § 19

Sub b par 4 subpar l added chap 914/1982 § 20

**FOOTNOTES**

3

[Footnote 3]: * Note there are 2 items (iv).

4

[Footnote 4]: * As added by chap 610/1991 § 7.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-332*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-332 Contributions of the city and their use; pension reserve fund.

The pension reserve fund shall be the fund from which shall be paid all pensions, and all pensions-providing-for-increased-take-home-pay, and all benefits in lieu of pensions, and all benefits in lieu of pensions-providing-for-increased-take-home-pay, if any, allowable by the city on account of the city-service of improved benefit plan members. Should any pension or pension-providing-for-increased-take-home-pay payable from such pension reserve fund be cancelled, the pension reserve or reserve-for-increased-take-home-pay thereon shall thereupon be transferred from the pension reserve fund to the contingent reserve fund. Should any pension-providing-for-increased-take-home-pay payable from such fund be reduced, the amount of the annual reduction in such pension or pension-providing-for-increased-take-home-pay shall be paid annually into the contingent reserve fund during the period of such reduction.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.662 added chap 385/1981 § 14



Administrative Code of the City of New York



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

*NYC Administrative Code 13-333*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-333 Contributions of public benefit corporations and their use.

Notwithstanding the requirements of section 13-331 of this subchapter, of the amounts due from the city, all amounts due to the contingent reserve fund on account of any members of the pension fund during the period of their employment by any authority or body corporate and politic constituting a public benefit corporation or its successor, shall be paid by such employing authority or body corporate and politic or successor.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.67 added LL 53/1941 § 16

Reenacted chap 626/1942 § 1

Amended chap 385/1981 § 15



Administrative Code of the City of New York



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

*NYC Administrative Code 13-334*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-334 Guarantee of funds.

a. Regular interest, charges payable, the creation and maintenance of reserves in the contingent reserve fund, the retirement allowance reserve fund and the pension reserve fund and the maintenance of retirement allowance reserves with respect to original plan members, annuity reserves, pension reserves, dependent benefit reserves and reserves-for-increased-take-home-pay as provided for in this subchapter, maintenance of the accumulation-for-increased-take-home-pay and the payment of all retirement allowances payable to or on account of original plan members, pensions, pensions-providing-for-increased-take-home-pay, annuities, retirement allowances payable to or on account of improved benefits plan members, refunds, death benefits, dependent benefits and any other benefits granted under the provisions of this subchapter, are hereby made obligations of the city. Except as otherwise provided in sections 13-335, 13-335.1, 13-335.2 and 13-335.3 of this subchapter and section 13-391.1 of this chapter, all income, interest and dividends derived from deposits and investments authorized by this subchapter shall be used and disposed of in the manner prescribed by subdivision b of this section; provided, however, that nothing contained in this sentence shall diminish or impair the obligations of the city provided for by the preceding sentence of this subdivision a. Upon the basis of each actuarial determination and appraisal provided for in this subchapter, the commissioner shall prepare pursuant to section one hundred twelve of the charter and submit to the director of management and budget an itemized estimate of the amounts necessary to be appropriated by the city to the various funds to provide for payment in full during the ensuing fiscal year of all such obligations of the city accruing during the ensuing fiscal year. There shall annually be included in the budget a sum sufficient to provide for such obligations of

the city. The comptroller shall pay the sums so provided into the various funds provided for by this subchapter; subject to the provisions of subdivision b of this section.

b. (1) Subject to the provisions of paragraph two of this subdivision b, all income, interest and dividends derived from deposits and investments authorized by this chapter, which income, interest and dividends were heretofore or are hereafter received during any city fiscal year commencing on or after July first, nineteen hundred eighty, shall (after payment therefrom of the sum, if any, required to be paid pursuant to sections 13-335, 13-335.1, 13-335.2 and 13-335.3 of this subchapter and section 13-391.1 of this chapter) be used in such fiscal year for the purposes hereinafter specified in this paragraph one (to the extent that such income, interest and dividends are sufficient for such purposes), in the order or priority herein stated, as follows:

(A) first, to pay into the funds of the pension fund the amounts of regular interest which are required to be paid into such funds in such fiscal year by reason of being required to be allowed to such funds pursuant to the provisions of section 13-337 of this subchapter, and to pay into such funds the amounts of supplementary interest, if any, required to be so paid in such fiscal year under the applicable provisions of such section, and to pay into the annuity savings fund the amounts of special interest, if any, required to be so paid in such fiscal year under the applicable provisions of such section, and to pay into the contingent reserve fund the amounts of additional interest, if any, required to be paid in such fiscal year under the applicable provisions of such section;

(B) second, to pay into the contingent reserve fund the amount of any losses in excess of gains (i) which net losses the pension fund sustained during such fiscal year by reason of sales or other dispositions of securities, and (ii) for which net losses the pension fund is required to be reimbursed in such fiscal year, and (iii) to which net losses section 13-704 of this title, relating to graduated crediting of gains and amortization of losses on dispositions of certain securities, does not apply;

(C) third, if the total amount of such income, interest and dividends received during such fiscal year is in excess of the total amount required to make, in such fiscal year, the payment prescribed by subparagraphs (A) and (B) of this paragraph one, the amount of such excess shall be paid into the contingent reserve fund and shall become a part of the assets of such fund.

(2) Notwithstanding the provisions of paragraph one of this subdivision or any other law to the contrary, any such income, interest or dividends which are received by the pension fund may be used for the purpose specified in section 13-705 of this title (relating to expenses incurred in the acquisition, management and protection of investments), regardless of when received and prior to use for the purposes stated in such paragraph one.

(3) Subject to the provisions of paragraph four of this subdivision b, all income, interest and dividends which were derived from deposits and investments authorized by this chapter and which were received during each of the city's nineteen hundred seventy-eight-nineteen hundred seventy-nine and nineteen hundred seventy-nine-nineteen hundred eighty fiscal years shall be used (after payment therefrom of the sum, if any, required to be paid pursuant to section 13-335 of this subchapter) in each such fiscal year for the purposes hereinafter stated in this paragraph three, in the order of priority herein stated, as follows:

(A) first, to pay into the funds of the pension fund the amounts of regular interest which are required to be paid into such funds in such fiscal year wherein such income, interest and dividends were received, which interest is so payable by reason of being required to be allowed to such funds in such fiscal year pursuant to the provisions of section 13-337 of this subchapter; and

(B) second, to pay into the retirement allowance accumulation fund the amount of any losses in excess of gains (i) which net losses were sustained by the pension fund during such fiscal year in which such income, interest and dividends were received and which net losses were sustained by reason of sales or other dispositions of securities, and (ii) for which net losses the pension fund is required to be reimbursed in such fiscal year, and (iii) to which net losses

section 13-704 of this title, relating to graduated crediting of gains and amortization of losses on dispositions of certain securities, does not apply; and

(C) third, if the total amount of such income, interest and dividends received during such fiscal year is in excess of the total amount required to make, in the same fiscal year, the payments prescribed by subparagraphs (A) and (B) of this paragraph three, the amount of such excess shall be paid into the contingent reserve fund as of June thirtieth of such fiscal year and shall become a part of the assets of such fund as of such date.

(4) Notwithstanding the provisions of paragraph three of this subdivision b or any other law to the contrary, any such income, interest or dividends which were received by the pension fund in either such fiscal year referred to in such paragraph three may be used for the purpose specified in section 13-705 of this title (relating to expenses incurred in the acquisition, management and protection of investments) prior to use for the purposes stated in such paragraph three.

c. (1) The comptroller shall make monthly payments, in twelve equal installments, with respect to obligations which the city incurs to pay sums to the pension fund.

(2) The equal monthly payments in each city fiscal year shall be in respect of obligations which accrue in such fiscal year and shall be made in such fiscal year on or before the last day of each month.

(3) The board of trustees of the pension fund may waive the requirements of the foregoing provisions of this subdivision with respect to time of payment to such fund, provided that any such waiver of time of payment in any instance shall not apply to the time of subsequent payments unless there shall be a subsequent waiver.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 480/1993 § 19 retro. to Jan. 1, 1993 amended chap 583/1989 § 23

Subd. b par 1 amended chap 480/1993 § 20 retro. to Jan. 1, 1993 par 1 amended chap 583/1989 § 24

**DERIVATION**

Formerly § B19-7.68 added LL 53/1941 § 16

Amended LL 100/1951 § 2

(Special provision LL 100/1951 § 3)

Amended chap 100/1963 § 419

Amended chap 224/1963 § 3

Amended chap 877/1970 § 2

Amended chap 595/1974 § 5

(Legislative findings, investment earnings chap 595/1974 § 1)

(chap 595/1974 § 1 amended chap 801/1975 § 1)

Sub b pars 2, 3 amended chap 801/1975 § 5

Sub b pars 4, 5 repeal chap 801/1975 § 7

(Note amendments by chap 801/1975 expire and revert chap 801/1975 § 8)

Sub c added chap 785/1978 § 7

Amended chap 385/1981 § 16



Administrative Code of the City of New York



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

*NYC Administrative Code 13-335*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-335 Payments to variable supplements funds.

a. For the purposes of this section, the following terms shall mean and include:

1. "Base fiscal year". Any fiscal year of the city beginning on or after July first, nineteen hundred sixty-nine, with respect to which fiscal year a computation of earnings differential, based on equity investments made or held by the pension fund during such fiscal year, is being made pursuant to this section.

2. "Current fiscal year". The fiscal year of the city next succeeding the base fiscal year.

3. "Prior base fiscal year". Any fiscal year of the city which begins on or after July first, nineteen hundred sixty-nine and which precedes the base fiscal year.

4. "Earnings differential". The amount (expressed as a positive or negative quantity) by which the equity experience factor (expressed as a positive or negative quantity) with respect to the base fiscal year differs from the interest comparison factor with respect to the base fiscal year. If such equity experience factor is greater than such interest comparison factor, the difference between the two shall be expressed as a positive quantity. If such interest comparison factor is greater than such equity experience factor, the difference between the two shall be expressed as a negative quantity.

5. (a) "Equity experience factor". Subject to the provisions of subparagraph (c) of this paragraph five, an amount (expressed as a positive or negative quantity) equal to (i) the income earned by the pension fund during the base fiscal year from its investments in equities, plus (ii) the capital gains, realized or unrealized, occurring during such fiscal year by reason of such investments, less (iii) the capital losses, realized or unrealized, occurring during such fiscal year by reason of such investments.

(b) In the event that any equity is sold during the base fiscal year the expense of such sale, including by not limited to broker's commissions, shall be deducted from capital gain or added to capital loss, determining whether such sale produced a capital gain or a capital loss and the amount thereof.

(c) (i) The equity experience factor for any base fiscal year beginning on or after July first, nineteen hundred eighty-eight shall be determined pursuant to the provisions of this subparagraph (c).

(ii) There shall be computed the sum which would be the equity experience factor for such base fiscal year, if such factor were determined pursuant to subparagraphs (a) and (b) of this paragraph five.

(iii) There shall be computed the amount which would have been the sum computed pursuant to item (ii) of this subparagraph in the absence of the enactment of the act which added this subparagraph (c) to the paragraph five.

(iv) The amount required to be computed pursuant to the provisions of item (iii) of this subparagraph (c) shall be computed pursuant to scientific method recommended to the board by the actuary and approved by the board; provided that if the board is unable to approve, by the required majority vote, any such formula recommended by the actuary such amount shall be computed pursuant to a scientific formula recommended by the actuary and approved by an arbitrator designated pursuant to the procedure set forth in subparagraph (b) of paragraph eight of this subdivision a.

(v) The equity experience factor for such base fiscal year shall be the amount (expressed as a positive or negative quantity) computed pursuant to the provisions of item (iii) of this subparagraph.

6. "Income". Any yield of equities, including but not limited to dividends, other than capital gains.

7. "Hypothetical fixed income securities earnings". (a) Subject to the provisions of subparagraph (e) of this paragraph seven, the aggregate of the hypothetical interest yields computed pursuant to subparagraphs (b), (c) and (d) of this paragraph.

(b) The board shall compute with respect to each investment made or maintained by the pension fund in an equity during the base fiscal year, the amount of interest which would have been hypothetically earned during such fiscal year, under the methods of calculation prescribed in this subparagraph seven, if an amount equal to such investment had instead been hypothetically invested in fixed income securities and such securities had been held by such fund for a period (in the base fiscal year) co-extensive with the period during which such equity was held by such fund in the base fiscal year.

(c) For the purposes of this section, the amount of any such investment in an equity during the base fiscal year shall be deemed to be:

(i) the market value of the equity on the first day of the base fiscal year, in the case of any such equity acquired by the pension fund prior to the commencement of such fiscal year and held by such fund on the first day of such fiscal year; and

(ii) the total amount paid by such fund to acquire the equity, including but not limited to broker's commissions and other expenses of such acquisition, in the case of any such equity which is acquired by such fund during the base fiscal year.

(d) For the purposes of this section, the amount of interest which would have been earned by the pension fund on such hypothetical fixed income securities during the base fiscal year shall be deemed to be the amount obtained:

(i) by multiplying the amount of the investment in such equity, determined as prescribed by subparagraph (c) of this paragraph seven, by the assumed rate of interest for the base fiscal year; and

(ii) by prorating the interest so computed, in any case where the investment in such equity was maintained by the pension fund for a part of the base fiscal year.

(e) (i) The hypothetical fixed income securities earnings for any base fiscal year beginning on or after July first, nineteen hundred eighty-eight shall be determined pursuant to the provisions of this subparagraph (e).

(ii) There shall be computed the amount which the hypothetical fixed income securities earnings for such base fiscal year would be, if determined pursuant to the provisions of subparagraphs (a), (b), (c) and (d) of this paragraph seven.

(iii) The amount computed pursuant to item (ii) of this subparagraph shall be multiplied by a fraction, the numerator of which is the equity experience factor for such base fiscal year prescribed by item (v) of subparagraph (c) of paragraph five of this subdivision a and the denominator of which is the sum computed pursuant to item (ii) of such subparagraph (c).

(iv) The hypothetical fixed income securities earnings for such base fiscal year shall be the product of the multiplication prescribed by item (iii) of this subparagraph.

8. "Assumed rate of interest". (a) In relation to any base fiscal year, a hypothetical rate of interest, fixed as hereinafter in this paragraph eight prescribed, which shall be used for the purpose of computing, pursuant to paragraph seven of this subdivision a, amounts of interest which would have been hypothetically earned on hypothetical investments of the pension fund in fixed income securities during such fiscal year.

(b) The board shall fix the assumed rate of interest with respect to each base fiscal year. In the event of a tie vote with respect to the fixation of such rate, it shall be fixed by the arbitrator designated, for the purpose of resolving disputes, in the collective bargaining agreement then in effect between the city and the uniformed firefighters' association of greater New York. If such arbitrator is unable or unwilling to serve, or if there be no such agreement then in effect, such rate shall be fixed by an arbitrator designated by the board. If there is a tie vote as to the designation of such an arbitrator, such rate shall be fixed by an arbitrator appointed by the supreme court, on the application of any member of the board. The cost of any arbitration pursuant to the foregoing provisions of this subparagraph (b) shall be paid from transferable earnings.

9. "Six per cent interest offset". In relation to any base fiscal year, the excess, if any, of the hypothetical fixed income securities earnings with respect to such year, over the amount which such earnings would be if they had been computed on the basis of an interest rate of six per cent, rather than on the basis of the assumed rate of interest; provided, however, that there shall be no six per cent interest offset with respect to any base fiscal year unless the hypothetical fixed income securities earnings with respect to such fiscal year exceeds the equity experience factor with respect to such fiscal year; and provided further that no six percent interest offset with respect to any base fiscal year shall in any event exceed the amount obtained by subtracting the equity experience factor with respect to such fiscal year from the hypothetical fixed income securities earnings with respect to such fiscal year.

10. "Interest comparison factor". In relation to any base fiscal year, the amount obtained by subtracting the six per cent interest offset, if any, with respect to such fiscal year, from the hypothetical fixed income securities earnings with respect to such fiscal year.

11. "Cumulative earnings differential for the base fiscal year". In relation to a base fiscal year, the amount

(expressed as a positive or negative quantity) obtained by adding to the earnings differential for such base fiscal year, the total of all earnings differentials for all prior base fiscal years.

12. "Transferable earnings". In relation to a base fiscal year, the total amount required by the provisions of subdivision c of this section to be distributed, with respect to such base fiscal year, in the manner provided by subdivision d of this section.

13. "Cumulative distributions of transferable earnings for prior base fiscal years". In relation to a base fiscal year, the total of all payments of transferable earnings made or required to be made by the pension fund to the firefighters' variable supplements fund and the fire officers variable supplements fund with respect to all prior base fiscal years pursuant to subdivisions c and d of this section.

14. "Firefighters' variable supplements fund". The firefighters' variable supplements fund established by subchapter five of this chapter.

15. "Fire officers' variable supplements fund". The fire officers' variable supplements fund established by subchapter six of this chapter.

16. "Firefighters". (a) All firefighters and (b) all wipers (uniformed) who are members of the fire department pension fund subchapter two.

17. "Fire officers". (a) All members of the uniformed force of the fire department holding the rank of lieutenant or any position of higher rank in such force and (b) all pilots, marine engineers (uniformed) or assistant marine engineers (uniformed) who are members of the New York fire department pension fund subchapter two.

b. As soon as practicable after the close of each base fiscal year, but not later than August thirty-first of the current fiscal year, the board shall compute:

(1) the earnings differential with respect to such base fiscal year, and the interest offset, if any, with respect to such base fiscal year; (2) the total contributions made to the pension fund subchapter two with respect to such base fiscal year on behalf of all personnel who are firefighters, as of the last day of such base fiscal year; and

(3) the total contributions made to the pension fund subchapter two with respect to such base fiscal year on behalf of all personnel who are fire officers, as of such last day.

c. If the cumulative earnings differential for the base fiscal year is a positive quantity and exceeds the cumulative distributions of transferable earnings for prior base fiscal years, a sum equal to the amount of such excess shall be distributed by the pension fund in the manner provided by subdivision d of this section.

d. (1) If there be transferable earnings with respect to the base fiscal year, computed as hereinabove provided, such transferable earnings shall be divided into a firefighters' variable supplements fund share and a fire officers' variable supplements fund share in the ratio that the total contributions made to the pension fund subchapter two with respect to such base fiscal year on behalf of firefighters bears to the total contributions made to the pension fund subchapter two with respect to such base fiscal year on behalf of fire officers, as computed for such base fiscal year pursuant to the provisions of paragraphs two and three of subdivision b of this section.

(2) On or before August thirty-first, of the current fiscal year, the pension fund shall pay from the contingent reserve fund to the firefighters' variable supplements fund and the fire officers' variable supplements fund their respective shares of such transferable earnings with respect to the base fiscal year, as such shares are computed pursuant to paragraph one of this subdivision d.

e. The comptroller shall furnish to the board such information and data as it may request for the purpose of

carrying out the provisions of this section.

f. The firefighters' variable supplements fund and the fire officers' variable supplements fund shall not have any rights under this section to any payments by the pension fund to such variable supplements funds derived from or based upon the investment earnings of the pension fund in any fiscal year of the city commencing on or after July first, nineteen hundred eighty-eight. Any and all rights of the firefighters' variable supplements fund to payments from the pension fund derived from or based upon the investment earnings of the pension fund in any fiscal year of the city commencing on or after such July first shall be governed solely by the provisions of section 13-335.1 of this subchapter. Any and all rights of the fire officers' variable supplements fund to payments from the pension fund derived from or based upon the investment earnings of the pension fund in any fiscal year of the city included in the period commencing on such July first and ending on June thirtieth, nineteen hundred ninety-two shall be governed solely by the provisions of section 13-335.2 of this subchapter. Any and all rights of the fire officers' variable supplements fund to payments from the pension fund derived from or based upon the investment earnings of the pension fund in any fiscal year of the city commencing on or after July first, nineteen hundred ninety-two shall be governed solely by the provisions of section 13-335.3 of this subchapter. Any and all rights of the wiper variable supplements assets account to payments from the pension fund derived from or based upon the investment earnings of the pension fund in any fiscal year of the city included in the period commencing July first, nineteen hundred eighty-eight and ending June thirtieth, nineteen hundred ninety-two shall be governed solely by the provisions of section 13-391.1 of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par 5 amended chap 581/1989 § 84 par 7 subpar (a) amended chap 581/1989 § 85

Subd. a par 5 subpar (e) added chap 581/1989 § 86

Subd. f amended chap 480/1993 § 14 retro. to Jan. 1, 1993 added chap 583/1989 § 15

**DERIVATION**

Formerly § B19-7.681 added chap 877/1970 § 3

Sub d par 2 amended chap 385/1981 § 17



Administrative Code of the City of New York



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

*NYC Administrative Code 13-335.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-335.1 Payments to firefighters' variable supplements fund for base fiscal years commencing on or after July first, nineteen hundred eighty-eight.

a. For the purposes of this section, the definitions of terms set forth in paragraphs two, five, six, seven, eight and fourteen of subdivision a of section 13-335 of this subchapter shall apply to this section 13-335.1 with the same force and effect as if such definitions were specifically set forth in this section.

b. For the purposes of this section, the following terms shall mean and include:

1. "Base fiscal year". Any fiscal year of the city beginning on or after July first, nineteen hundred eighty-eight.

2. "Prior base fiscal year". Any fiscal year of the city which begins on or after July first, nineteen eighty-eight and which precedes the base fiscal year.

3. "Cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight". (a) An amount, expressed as a positive or negative quantity, as the case may be, which shall be determined in accordance with the method set forth in subparagraph (b) of this paragraph three.

(b) (i) The cumulative earnings differential for the base fiscal year (as defined in paragraph eleven of subdivision a of section 13-335 of this subchapter), as applicable to the nineteen hundred eighty-seven-nineteen hundred

eighty-eight base fiscal year (as so defined) shall be computed pursuant to the provisions of such section 13-335.

(ii) The cumulative distributions of transferable earnings for prior base fiscal years (as defined in paragraph thirteen of subdivision a of such section 13-335) shall be computed pursuant to such section 13-335 with respect to such nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year.

(iii) The amount of transferable earnings (as defined in paragraph twelve of subdivision a of such section 13-335), if any, for the nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year, determined pursuant to such section 13-335, shall be added to the cumulative distributions of transferable earnings computed pursuant to item (ii) of this subparagraph (b).

(iv) The sum resulting from the addition prescribed by item (iii) of this subparagraph (b) shall be subtracted from the amount computed pursuant to item (i) of this subparagraph. The remainder resulting from the subtraction shall be the cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight.

4. "Earnings differential". The amount (expressed as a positive or negative quantity) by which the equity experience factor (expressed as a positive or negative quantity) with respect to the base fiscal year differs from the hypothetical fixed income securities earnings with respect to the base fiscal year. If such equity experience factor is greater than such hypothetical fixed income securities earnings, the difference between the two shall be expressed as a positive quantity. If such hypothetical fixed income securities earnings are greater than such equity experience factor, the difference between the two shall be expressed as a negative quantity.

5. "Cumulative earnings factor." (a) The cumulative earnings factor for any base fiscal year shall be determined as follows:

(i) If the cumulative earnings factor for the immediately preceding base fiscal year was a positive quantity, the cumulative earnings factor for the base fiscal year shall be equal to the earnings differential for the base fiscal year.

(ii) If the cumulative earnings factor for the immediately preceding base fiscal year was a negative quantity, the cumulative earnings factor for the base fiscal year shall be equal to the sum of:

(A) the earnings differential for the base fiscal year; and

(B) the cumulative earnings factor for the immediately preceding base fiscal year, increased with interest at a rate equal to the assumed rate of interest fixed with respect to such base fiscal year pursuant to the provisions of paragraph eight of subdivision a of section 13-335 of this subchapter, as made applicable to this section 13-335.1 by subdivision a hereof.

(b) In applying the provisions of this paragraph five for the base fiscal year nineteen hundred eighty-eight-nineteen hundred eighty-nine the term defined in paragraph three of this subdivision b as "cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight" shall be substituted for the term "cumulative earnings factor for the immediately preceding base fiscal year".

6. "FVSF cumulative earnings factor". With respect to any base fiscal year, the amount obtained by multiplying the cumulative earnings factor for such base fiscal year by a fraction, the numerator of which shall be the total contributions made to the fire department pension fund subchapter two with respect to such base fiscal year on behalf of all members of the uniformed force of the fire department who are firefighters, fire marshals (uniformed) and wipers (uniformed), as of the last day of such base fiscal year, and the denominator of which shall be the total contributions made to such fire department pension fund with respect to such base fiscal year on behalf of all persons who are members of the uniformed force of the fire department as of the last day of such base fiscal year.

7. "FVSF unfunded accrued liability". In any case where the valuation of assets and liabilities of the firefighters'

variable supplements fund by the actuary pursuant to subdivision e of section 13-384 of this chapter shows that for any base fiscal year, such liabilities exceed such assets, the term "FVSF unfunded accrued liability" shall mean the amount of the excess of such liabilities over the amount of such assets for such base fiscal year.

8. "Firefighter". A member of either this pension fund or the fire department pension fund provided for in subchapter one of this chapter who, at the time of retirement for service, was a firefighter and was not a fire officer as defined in subdivision five of section 13-392 of this chapter.

c. As soon as practicable after the close of each base fiscal year, but not later than December thirty-first of the current fiscal year, the board shall compute the FVSF cumulative earnings factor with respect to such base fiscal year.

d. If the FVSF cumulative earnings factor for such base fiscal year is a positive quantity, the pension fund, on or before December thirty-first of the current fiscal year, shall pay from its contingent reserve fund to the firefighters' variable supplements fund, as the payment due for such base fiscal year under this section, an amount determined pursuant to the provisions of subdivision e of this section.

e. The amount payable for such base fiscal year as provided for in subdivision d of this section shall be the lesser of (1) the FVSF cumulative earnings factor for such base fiscal year referred to in such subdivision d or (2) the FVSF unfunded accrued liability for such base fiscal year.

f. No amount shall be due from or payable by the pension fund to such variable supplements fund under this section for any base fiscal year which shall exceed the FVSF unfunded accrued liability for such base fiscal year, regardless of the amount and character of the FVSF cumulative earnings factor for such base fiscal year.

g. The comptroller shall furnish to the board such information and data as it may request for the purpose of carrying out the provisions of this section.

**HISTORICAL NOTE**

Section added chap 583/1989 § 16

Subd. b par 6 amended chap 480/1993 § 35 retro to Jan. 1, 1993



Administrative Code of the City of New York



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

*NYC Administrative Code 13-335.2*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-335.2 Payments to fire officers' variable supplements fund for base fiscal years included in the period commencing on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-two.

a. For the purposes of this section, the definitions of terms set forth in paragraphs two, four, six, eight, nine and ten of subdivision a of section 13-335 of this subchapter shall apply to this section 13-335.2 with the same force and effect as if such definitions were specifically set forth in this section.

b. For the purposes of this section, the following terms shall mean and include:

1. "Base fiscal year". Any fiscal year of the city included in the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-two.

2. "Prior base fiscal year". Any fiscal year of the city which begins on or after July first, nineteen hundred eighty-eight and which precedes the base fiscal year.

3. "Cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight". (a) An amount, expressed as a positive or negative quantity, as the case may be, which shall be determined in accordance with the method set forth in subparagraph (b) of this paragraph three.

(b) (i) The cumulative earnings differential for the base fiscal year (as defined in paragraph eleven of

subdivision a of section 13-335 of this subchapter), as applicable to the nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year (as so defined) shall be computed pursuant to the provisions of such section 13-335.

(ii) The cumulative distributions of transferable earnings for prior base fiscal years (as defined in paragraph thirteen of subdivision a of such section 13-335) shall be computed pursuant to such section 13-335 with respect to such nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year.

(iii) The amount of transferable earnings (as defined in praragraph twelve of subdivision a of such section 13-335), if any, for the nineteen hundred eighty-seven-nineteen hundred eighty-eight base fiscal year, determined pursuant to such section 13-335, shall be added to the cumulative distributions of transferable earnings computed pursuant to item (ii) of this subparagraph (b).

(iv) The sum resulting from the addition prescribed by item (iii) of this subparagraph (b) shall be subtracted from the amount computed pursuant to item (i) of this subparagraph.

(v) The remainder resulting from the subtraction shall be the cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight.

4. "Equity experience factor." (a) An amount (expressed as a positive or negative quantity) which shall be determined for each base fiscal year in accordance with the method of computation set forth in the succeeding subparagraphs of this paragraph four.

(b) The amount of income earned by the pension fund during the base fiscal year from its investment in equities shall be computed.

(c) To each such amount of income for a base fiscal year there shall be added the capital gains, realized and unrealized, occurring during such base fiscal year of reason of such investments.

(d) From the sum resulting from the addition prescribed by subparagraph (c) of this paragraph there shall be subtracted the capital losses, realized or unrealized, occurring during such base fiscal year by reason of such investment.

(e) In the event that any equity is sold during the base fiscal year, the expense of such sale, including but not limited to broker's commissions, shall be deducted from capital gain or added to capital loss, in determining whether such sale produced a capital gain or a capital loss and the amount thereof.

(f) (i) With respect to base fiscal years occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety, the remainder resulting from the subtraction prescribed by subparagraph (d) of this paragraph shall be adjusted so that it equals the amount which it would have been in the absence of the enactment of chapters five hundred eighty-one and five hundred eighty-three of the laws of nineteen hundred eighty-nine.

(ii) With respect to each base fiscal year included in the period beginning on July first, nineteen hundred ninety and ending on June thirtieth, nineteen hundred ninety-two, the remainder resulting from the subtraction prescribed by subparagraph (d) of this paragraph shall be adjusted so that it equals the amount which it would have been in the absence of the enactment of chapter five hundred eighty-three of the laws of nineteen hundred eighty-nine.

(iii) For the purpose of determining the entitlement, with respect to any base fiscal year included in the period beginning on July first, nineteen hundred ninety and ending on June thirtieth, nineteen hundred ninety-two, of the fire officers' variable supplements fund to receive payment of any sum from the pension fund pursuant to this section, the cumulative earnings factor for such base fiscal year shall be calculated in the same manner as if (A) that part of this subparagraph, which part, prior to July twenty-sixth, nineteen hundred ninety-one, referred to chapter five hundred eighty-one of the laws of nineteen hundred eighty-nine, had never been enacted and (B) item (ii) of this subparagraph

and this item (iii), as such items were in effect immediately prior to such July twenty-sixth, had never been enacted.

(g) Any adjustment required to be made pursuant to the provisions of subparagraph (f) of this paragraph shall be computed pursuant to a scientific method recommended to the board by the actuary and approved by the board; provided that if the board is unable to approve, by the required majority vote, any such formula recommended by the actuary, such adjustment shall be computed pursuant to a scientific formula recommended by the actuary and approved by an arbitrator designated pursuant to the procedure set forth in subparagraph (b) of paragraph eight of subdivision a of section 13-335 of this subchapter.

(h) The equity experience factor for such base fiscal year shall be the amount remaining after the adjustment prescribed by subparagraphs (f) and (g) of this paragraph has been made.

5. "Hypothetical fixed income securities earnings". (a) The aggregate of the hypothetical interest yields computed pursuant to subparagraphs (b), (c) and (d) of this paragraph five.

(b) The board shall compute with respect to each investment made or maintained by the pension fund in an equity during the base fiscal year, the amount of interest which would have been hypothetically earned during such fiscal year, under the methods of calculation prescribed in this paragraph five, if an amount equal to such investment had instead been hypothetically invested in fixed income securities and such securities had been held by such fund for a period (in the base fiscal year) co-extensive with the period during which such equity was held by such fund in the base fiscal year.

(c) For the purposes of this section, the amount of any such investment in an equity during the base fiscal year shall be deemed to be:

(i) the market value of the equity on the first day of the base fiscal year, in the case of any such equity acquired by the pension fund prior to the commencement of such fiscal year and held by such fund on the first day of such fiscal year; and

(ii) the total amount paid by such fund to acquire the equity, including but not limited to broker's commissions and other expenses of such acquisition, in the case of any such equity which is acquired by such fund during the base fiscal year.

(d) For the purposes of this section, the amount of interest which would have been earned by the pension fund on such hypothetical fixed income securities during the base fiscal year shall be deemed to be the amount obtained:

(i) by multiplying the amount of the investment in such equity, determined as prescribed by subparagraph (c) of this paragraph five, by the assumed rate of interest for the base fiscal year; and

(ii) by prorating the interest so computed, in any case where the investment in such equity was maintained by the pension fund for a part of the base fiscal year; and

(iii) by multiplying the amount of interest computed for the full base fiscal year pursuant to items (i) and (ii) of this subparagraph by a fraction, the numerator of which is the amount designated as the equity experience factor with respect to such base fiscal year by subparagraph (h) of paragraph four of this subdivision b and the denominator of which is the remainder produced by the subtraction prescribed by subparagraph (d) of such paragraph four with respect to such base fiscal year; and (iv) by adding together the products of all such multiplications performed pursuant to item (iii) of this subparagraph in relation to all such equities held by the pension fund during such fiscal year.

6. "Cumulative earnings factor". (a) The cumulative earnings factor for any base fiscal year shall be determined as follows:

(i) If the cumulative earnings factor for the immediately preceding base fiscal year was a positive quantity, the cumulative earnings factor for the base fiscal year shall be equal to the earnings differential for the base fiscal year.

(ii) If the cumulative earnings factor for the immediately preceding base fiscal year was a negative quantity, the cumulative earnings factor for the base fiscal year shall be equal to the sum of:

(A) the earnings differential for the base fiscal year; and

(B) the cumulative earnings factor for the immediately preceding base fiscal year.

(b) In applying the provisions of this paragraph six for the base fiscal year nineteen hundred eighty-eight-nineteen hundred eighty-nine, the term defined in paragraph three of this subdivision b as "cumulative earnings factor as of June thirtieth, nineteen hundred eighty-eight" shall be substituted for the term "cumulative earnings factor for the immediately preceding base fiscal year".

7. "FOVSF cumulative earnings factor". With respect to any base fiscal year, the amount obtained by multiplying the cumulative earnings factor for such base fiscal year by a fraction, the numerator of which shall be the total contributions made to the pension fund with respect to such base fiscal year on behalf of all members of the uniformed force of the fire department who are fire officers, as of the last day of such base fiscal year, and the denominator of which shall be the total contributions made to the pension fund with respect to such base fiscal year on behalf of all persons who are members of the uniformed force of the fire department as of the last day of such base fiscal year.

8. "Fire officers". (a) All members of the uniformed force of the fire department holding the rank of lieutenant or any position of higher rank in such force, and (b) all pilots, marine engineers (uniformed) or assistant marine engineers (uniformed) who are members of the New York fire department pension fund subchapter two.

9. "Fire officers' variable supplements fund". The fire officers' variable supplements funds established by subchapter six of this chapter.

c. As soon as practicable after the close of each base fiscal year, but not later than August thirty-first of the current fiscal year, the board shall compute the FOVSF cumulative earnings factor with respect to such base fiscal year.

d. If the FOVSF cumulative earnings factor for the base fiscal year is a positive quantity, the pension fund, on or before August thirty-first of the current fiscal year, shall pay from its contingent reserve fund to the fire officers' variable supplements fund a sum equal to the amount of such factor.

e. The comptroller shall furnish to the board such information and data as it may request for the purpose of carrying out the provisions of this section.

**HISTORICAL NOTE**

Section added chap 583/1989 § 17

Section heading amended chap 480/1993 § 15 retro. to Jan. 1, 1993

Subd. b par 1 amended chap 480/1993 § 16 retro. to Jan. 1, 1993

Subd. b par 4 subpar (f) amended chap 480/1993 § 17 retro. to July 1, 1990 amended chap 610/1991 § 9 retro. to July 1, 1990 amended chap 878/1990 § 27 retro. to July 1, 1989

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*NYC Administrative Code 13-335.3*

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-335.3 Payments to fire officers' variable supplements fund for base fiscal years commencing on or after July first, nineteen hundred ninety-two.

a. For the purposes of this section, the definitions of terms set forth in paragraphs two, five, six, seven, eight and fifteen of subdivision a of section 13-335 of this subchapter shall apply to this section 13-335.3 with the same force and effect as if such definitions were specifically set forth in this section.

b. For the purposes of this section, the following terms shall mean and include:

1. "Base fiscal year". Any fiscal year of the city beginning on or after July first, nineteen hundred ninety-two.

2. "Prior base fiscal year". Any fiscal year of the city which begins on or after July first, nineteen hundred ninety-two and which precedes the base fiscal year.

3. "Cumulative earnings factor as of June thirtieth, nineteen hundred ninety-two". An amount, expressed as a positive or negative quantity, as the case may be, which shall be equal to the cumulative earnings factor for the nineteen hundred ninety-one-nineteen hundred ninety-two base fiscal year computed pursuant to section 13-335.2 of this subchapter.

4. "Earnings differential". The amount (expressed as a positive or negative quantity) by which the equity

experience factor (expressed as a positive or negative quantity) with respect to the base fiscal year differs from the hypothetical fixed income securities earnings with respect to the base fiscal year. If such equity experience factor is greater than such hypothetical fixed income securities earnings, the difference between the two shall be expressed as a positive quanity. If such hypothetical fixed income securities earnings are greater than such equity experience factor, the difference between the two shall be expressed as a negative quantity.

5. "Cumulative earnings factor". (a) The cumulative earnings factor for any base fiscal year shall be determined as follows:

(i) If the cumulative earnings factor for the immediately preceding base fiscal year was a positive quantity, the cumulative earnings factor for the base fiscal year shall be equal to the earnings differential for the base fiscal year.

(ii) If the cumulative earnings factor for the immediately preceding base fiscal year was a negative quantity, the cumulative earnings factor for the base fiscal year shall be equal to the sum of:

(A) the earnings differential for the base fiscal year; and

(B) the cumulative earnings factor for the immediately preceding base fiscal year, increased with interest at a rate equal to the assumed rate of interest fixed with respect to such base fiscal year pursuant to the provisions of paragraph eight of subdivision a of section 13-335 of this subchapter, as made applicable to this section 13-335.3 by subdivision a hereof.

(b) In applying the provisions of this paragraph five for the base fiscal year nineteen hundred ninety-two-nineteen hundred ninety-three, the term defined in paragraph three of this subdivision b as "cumulative earnings factor as of June thirtieth, nineteen hundred ninety-two" shall be substituted for the term "cumulative earnings factor for the immediately preceding base fiscal year".

6. "FOVSF cumulative earnings factor". With respect to any base fiscal year, the amount obtained by multiplying the cumulative earnings factor for such base fiscal year by a fraction, the numerator of which shall be the total contributions made to the pension fund with respect to such base fiscal year on behalf of all members of the uniformed force of the fire department who are fire officers, as of the last day of such base fiscal year, and the denominator of which shall be the total contributions made to the pension fund with respect to such base fiscal year on behalf of all persons who are members of the uniformed force of the fire department as of the last day of such base fiscal year.

7. "FOVSF unfunded accrued liability". In any case where the valuation of assets and liabilities of the fire officers' variable supplements fund by the actuary pursuant to subdivision e of section 13-394 of this chapter shows that for any base fiscal year, such liabilities exceed such assets, the term "FOVSF unfunded accrued liability" shall mean the amount of the excess of such liabilities over the amount of such assets for such base fiscal year.

8. "Fire officers". (i) All members of the uniformed force of the fire department holding the rank of lieutenant or any position of higher rank in such force and (ii) all pilots, marine engineers (uniformed) or assistant marine engineers (uniformed) who are members of the pension fund and (iii) any member of the pension fund holding a position in the fire marshal occupational group above the rank of fire marshal (uniformed).

c. As soon as practicable after the close of each base fiscal year, but not later than December thirty-first of the current fiscal year, the board shall compute the FOVSF cumulative earnings factor with respect to such base fiscal year.

d. If the FOVSF cumulative earnings factor for such base fiscal year is a positive quantity, the pension fund, on or before December thirty-first of the current fiscal year, shall pay from its contingent reserve fund to the fire officers' variable supplements fund, as the payment due for such base fiscal year under this section, an amount determined pursuant to the provisions of subdivision e of this section.

e. The amount payable for such base fiscal year as provided for in subdivision d of this section shall be the lesser of (1) the FOVSF cumulative earnings factor for such base fiscal year referred to in such subdivision d or (2) the FOVSF unfunded accrued liability for such base fiscal year.

f. No amount shall be due from or payable by the pension fund to such variable supplements fund under this section for any base fiscal year which shall exceed the FOVSF unfunded accrued liability for such base fiscal year, regardless of the amount and character of the FOVSF cumulative earnings factor for such base fiscal year.

g. The comptroller shall furnish to the board such information and data as it may request for the purose of carrying out the provisions of this section.

**HISTORICAL NOTE**

Section added chap 480/1993 § 18, retro. to Jan. 1, 1993

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*NYC Administrative Code 13-336*

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-336 Trustees of funds; investments.

a. The members of the board shall be the trustees of the several funds provided for by this subchapter, and shall have full power to invest the same, subject, except as otherwise provided in subdivision b of this section, to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the funds provided for by this subchapter shall have been invested as well as of the proceeds of such investments and of any moneys belonging to such funds.

b. Notwithstanding the provisions of subdivision two of section one hundred seventy-seven of the retirement and social security law, or any other provision of law to the contrary, the amounts which may be invested by the pension fund in securities pursuant to the provisions of paragraphs (a), (b), (c), (d), (e) and (f) of subdivision twenty-six of section two hundred thirty-five of the banking law, shall be subject to the following maximum limits, in lieu of any such limits imposed by any other provision of law:

(1) Not more than fifty per cent of the assets of the pension fund shall be invested in such securities; and

(2) Not more than five per cent of such assets shall be invested in the securities of any one corporation and its subsidiaries; and

(3) Not more than two per cent of the total issued and outstanding equity securities of any one corporation shall be owned by the pension fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.69 added LL 53/1941 § 16

Amended chap 929/1958 § 3

Amended chap 877/1970 § 4



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*NYC Administrative Code 13-337*

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-337 Allowance of interest.

a. Such board shall annually allow regular interest on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter. The amount so allowed shall be due and payable to such funds, and shall be annually credited thereto by such board.

b. (1) Subject to the provisions of subdivision d of this section, during the period commencing on July first, nineteen hundred eighty-one and ending on June thirtieth, nineteen hundred eighty-two, special interest at the rate of three and one-half per centum per annum, compounded annually, shall be allowed with respect to the individual account of each improved benefits plan member in the annuity savings fund.

(2) (i) Subject to the provisions of subdivision d of this section, during the period beginning on July first, nineteen hundred eighty-two and ending on July thirty-first, nineteen hundred eighty-three, special interest at the rate of four per centum per annum, compounded annually, shall be allowed with respect to the individual account of each improved benefits plan member in the annuity savings fund.

(ii) Subject to the provisions of subdivision d of this section, during the period beginning on August first, nineteen hundred eighty-three and ending on June thirtieth, nineteen hundred eighty-five, special interest at the rate of one per centum per annum, compounded annually, shall be allowed with respect to the individual account of each improved benefits plan member in the annuity savings fund.

(iii) Subject to the provisions of subdivision d of this section, during the period commencing on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight, special interest at the rate of one per centum per annum, compounded annually, shall be allowed with respect to the individual account of each improved benefits plan member in the annuity savings fund.

(iv) Subject to the provisions of subdivision d of this section, during the period commencing on July first, nineteen hundred eighty-eight and ending June thirtieth, nineteen hundred ninety, special interest at the rate of one and one-quarter per centum per annum, compounded annually, shall be allowed with respect to the individual account of each improved benefits plan member in the annuity savings fund.

(3) The special interest referred to in paragraphs one and two of this subdivision b shall be credited to such individual account of each such member entitled thereto in the same manner and at the same time as regular interest is required to be credited to such account with respect to the same period of time.

(4) Such special interest referred to in paragraphs one and two of this subdivision b shall not be considered in determining rates of contributions of such members. Nothing contained in this subdivision b shall be construed as applicable to any member who is subject to the provisions of article fourteen of the retirement and social security law.

c. (1) Subject to the provisions of subdivision d of this section, in determining the reserve-for-increased-take-home-pay of each improved benefits plan member entitled to such a reserve, additional interest at the rate of three and one-half per centum per annum compounded annually shall be included for the period commencing on July first, nineteen hundred eighty-one, and ending on June thirtieth, nineteen hundred eighty-two.

(2) (i) Subject to the provisions of subdivision d of this section, in determining the reserve-for-increased-take-home-pay of each improved benefits plan member entitled to such a reserve, additional interest at the rate of four per centum per annum compounded annually shall be included for the period commencing on July first, nineteen hundred eighty-two and ending on July thirty-first, nineteen hundred eighty-three.

(ii) Subject to the provisions of subdivision d of this section, in determining the reserve-for-increased-take-home-pay of each improved benefits plan member entitled to such a reserve, additional interest at the rate of one per centum per annum compounded annually shall be included for the period commencing on August first, nineteen hundred eighty-three and ending on June thirtieth, nineteen hundred eighty-five.

(iii) Subject to the provisions of subdivision d of this section, in determining the reserve-for-increased-take-home-pay of each improved benefits plan member entitled to such a reserve, additional interest at the rate of one per centum per annum compounded annually shall be included for the period commencing on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight.

(iv) Subject to the provisions of subdivision d of this section, in determining the reserve-for-increased-take-home-pay of each improved benefits plan member entitled to such a reserve, additional interest at the rate of one and one-quarter per centum per annum compounded annually shall be included for the period commencing on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety.

(3) Additional interest shall not be considered in determining rates of contribution of such members. Nothing contained in this subdivision c shall be construed as applicable to any member who is subject to the provisions of article fourteen of the retirement and social security law.

d. (1) The provisions of subparagraph (i) of paragraph two of subdivision b of this section, to the extent that such provisions grant special interest for any period prior to December sixteenth, nineteen hundred eighty-two, and the provisions of subparagraph (i) of paragraph two of subdivision c of this section, to the extent that such provisions of such subdivision c grant additional interest for any period prior to such date, shall not apply to any person who was not an improved benefits plan member on such date and shall not apply to any person to whom, on such date, a deferred

retirement allowance or any part of such a retirement allowance was payable pursuant to the provisions of section 13-361 of this chapter.

(2) The provisions of subparagraph (iv) of paragraph two of subdivision b of this section, to the extent that such provisions grant special interest for any period prior to the date of enactment of the provisions of this paragraph two (as such date is certified pursuant to section forty-one of the legislative law), and the provisions of subparagraph (iv) of paragraph two of subdivision c of this section, to the extent that such provisions grant additional interest for any period prior to such date, shall not apply to any person who was not an improved benefits plan member on such date and shall not apply to any person to whom on such date, a deferred retirement allowance or any part of such a retirement allowance was payable pursuant to the provisions of section 13-361 of this chapter.

(3) Nothing contained in subdivision b or subdivision c of this section shall be construed as entitling any person to the crediting of special or additional interest with respect to any period wherein he was not (a) an improved benefits plan member entitled to crediting of regular interest with respect to the same period or (b) an improved benefits plan discontinued member (as defined in subdivision sixteen-d of section 13-313 of this subchapter) entitled to crediting of regular interest as an improved benefits plan discontinued member with respect to the same period.

e. (1) Subject to the provisions of paragraph (3) of this subdivision e, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty to June thirtieth, nineteen hundred eighty-two on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter, there shall be annually allowed with respect to such period supplementary interest at the rate of three and one-half per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(2) (i) Subject to the provisions of paragraph three of this subdivision e, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty-two to July thirty-first, nineteen hundred eighty-three on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter, there shall be annually allowed with respect to such period supplementary interest at the rate of four per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(ii) Subject to the provisions of paragraph (3) of this subdivision e, in addition to regular interest annually allowed for the period from August first, nineteen hundred eighty-three to June thirtieth, nineteen hundred eighty-five on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter, there shall be annually allowed with respect to such period supplementary interest at the rate of one per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(iii) Subject to the provisions of paragraph (3) of this subdivision e, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty-five to June thirtieth, nineteen hundred eighty-eight on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter, there shall be annually allowed with respect to such period supplementary interest at the rate of one per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(iv) Subject to the provisions of paragraph (3) of this subdivision e, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty-eight to June thirtieth, nineteen hundred ninety on the

mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this subchapter, there shall be annually allowed with respect to such period supplementary interest at the rate of one and one-quarter per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(3) The provisions of paragraphs one and two of this subdivision e shall not apply to or affect (a) the allowance of interest on or the crediting of interest to accounts of improved benefits plan members or improved benefits plan discontinued members in the annuity savings fund, or (b) the allowance of interest on or crediting of interest to reserves-for-increased-take-home-pay of improved benefits plan members or improved benefits plan discontinued members, or (c) the determination of the amount of any benefit payable to any member or beneficiary.

f. On or after May first, nineteen hundred eighty-nine and not later than October thirty-first of such year, the board shall submit to the public officers and permanent commission referred to in paragraph (h) of subdivision eight of section 13-313 of this subchapter the recommendations of such board:

(1) as to whether legislation should be enacted providing for the crediting of special interest to improved benefits plan members after June thirtieth, nineteen hundred ninety and if so, the recommended rate thereof and duration of such crediting; and

(2) as to whether legislation should be enacted providing that in the determination of reserves-for-increased-take-home-pay of improved benefits plan members entitled to such a reserve, additional interest shall be included for any period after June thirtieth, nineteen hundred ninety, and if so, the recommended rate thereof and the period as to which such interest should be included; and

(3) as to whether legislation should be enacted providing for the crediting of supplementary interest after June thirtieth, nineteen hundred ninety to such funds to which subdivision e of this section is applicable and if so, the recommended rate thereof and duration of such crediting.

g. The allowance of special interest, additional interest and supplementary interest, if any, with respect to any fiscal year of the city beginning on or after July first, nineteen hundred ninety shall be governed by the applicable provisions of section 13-638.2 of this title.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b par 2 subpar (iii) amended chap 581/1989 § 60 subpar (iv) added chap 581/1989 § 61

Subd. c par 2 subpar (iii) amended chap 581/1989 § 62 subpar (iv) added chap 581/1989 § 63

Subd. d amended chap 581/1989 § 64

Subd. e par 2 subpar (iii) amended chap 581/1989 § 65 subpar (iv) added chap 581/1989 § 66

Subd. g added chap 878/1990 § 18 eff. July 25, 1990 applying on and after July 1, 1989

**DERIVATION**

Formerly § B19-7.7 added LL 53/1941 § 16

Amended chap 385/1981 § 18

Subs b, c, d, e amended chap 914/1982 § 21

Sub b par 2 amended chap 910/1985 § 21

Sub c par 2 amended chap 910/1985 § 22

Sub e par 2 amended chap 910/1985 § 23

Sub b par 2 subpar iii added chap 911/1985 § 23

Sub b par 2 amended chap 911/1985 § 24

Sub c par 2 subpar iii added chap 911/1985 § 25

Sub c par 2 amended chap 911/1985 § 26

Sub e par 2 subpar iii added chap 911/1985 § 27

Sub e par 2 amended chap 911/1985 § 28

Sub f amended chap 911/1985 § 29



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

*NYC Administrative Code 13-338*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-338 Custodian of funds.

The comptroller shall be custodian of the several funds provided for by this subchapter. Such funds, and all moneys which shall form a part thereof, or which shall hereafter accrue to them, shall be in his custody for the purposes of this subchapter subject to the direction, control and approval of such board as to disposition, investment, management and report.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.71 added LL 53/1941 § 16



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

*NYC Administrative Code 13-339*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-339 Payments from funds.

All payments from such funds shall be made by such comptroller upon a voucher signed by the secretary of the board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.72 added LL 53/1941 § 16



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*NYC Administrative Code 13-340*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-340 Fund for current needs.

For the purpose of meeting, in relation to original plan members, disbursements for retirement allowances and other payments, and for the purpose of meeting, in relation to improved benefits plan members, disbursements for pensions, pensions-providing-for-increased-take-home-pay, annuities and other payments, there may be kept an available fund, not exceeding ten per cent of the total amount in the several funds provided for by this subchapter, on deposit in any bank in this state organized under the laws thereof or under the laws of the United States, or in any trust company incorporated by any law of this state, provided such bank or trust company shall furnish adequate security for such fund, and further provided that the sum deposited in any one bank or trust company shall not exceed twenty-five per cent of the paid-up capital and surplus of such bank or trust company.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.73 added LL 53/1941 § 16

Amended chap 385/1981 § 19



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*NYC Administrative Code 13-341*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-341 Prohibition upon trustees and employees.

Except as provided in this subchapter, the trustees and employees assigned to the board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment of the pension fund or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board; nor shall any such trustee or any such employee become an indorser or surety or become in any manner an obligor for moneys loaned by or borrowed of such pension fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.74 added LL 53/1941 § 16

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-342 Rules regulating loans to members.

Any member who shall have been a member continuously at least three years, may borrow from the pension fund, subject to such rules and regulations as may be approved by such board, an amount not exceeding seventy-five per cent of the amount of his or her accumulated contributions (as defined in subdivision seven of section 13-313 of this subchapter), in the case of an original plan member, or an amount not exceeding seventy-five per cent of the amount of his or her accumulated deductions (as defined in subdivision seven-a of such section 13-313), in the case of an improved benefits plan member, provided that the amount so borrowed by any such original plan member or improved benefits plan member, together with interest thereon, can be repaid before attainment of age sixty-five years by additional deductions of ten per cent from his or her compensation made at the same time compensation is paid to the member. Upon retirement, an original plan member may borrow up to ninety percent of his or her accumulated contributions. An improved benefits plan member may borrow up to ninety percent of his or her accumulated deductions. The amount so borrowed together with regular interest applicable to the member (if he or she is an original plan member) or creditable to his or her account (if he or she is an improved benefits plan member) on any unpaid balance thereof shall be repaid to the pension fund in equal installments by deduction from the compensation of the member at the time the compensation is paid, but such installments shall be at least five per cent of the member's earnable compensation and at least sufficient to repay before attainment of age sixty-five years, the amount borrowed with interest thereon. Notwithstanding anything to the contrary in this subchapter, the additional deductions required to repay the loan shall be made, and the interest paid on the loan shall be credited to the proper funds of the pension fund.

In lieu of loan, any improved benefits plan member whose rate or contribution is cancelled, may withdraw from his or her account and may restore thereto in any year as he or she may elect any sum in excess of the maximum in his or her annuity savings account and due thereto at the end of the calendar year in which he or she became entitled to cancel his or her rate. The actuarial equivalent of any unpaid balance of a loan at the time any benefit may become payable shall be deducted from the benefit otherwise payable, except that each loan made pursuant to this section shall be insured by the pension fund, without cost to the member, against the death of such member in an amount up to but not exceeding twenty-five thousand dollars, as follows:

1. Until thirty days have elapsed after the making thereof, no part of the loan shall be insured.

2. From the thirtieth through the fifty-ninth day after the making thereof, twenty-five per centum of the present value of the outstanding loan shall be insured.

3. From the sixtieth through the eighty-ninth day after the making thereof, fifty per centum of the present value of the outstanding loan shall be insured.

4. On and after the ninetieth day after the making thereof, all of the present value of the outstanding loan shall be insured.

Upon the death of a member, the amount of insurance so payable shall be credited to his or her accumulated contributions in the case of an original plan member, or to his or her accumulated deductions, in the case of an improved benefits plan member.

**HISTORICAL NOTE**

Section amended chap 918/1990 § 2 eff. August 29, 1990

Section added chap 907/1985 § 1

Opening par amended chap 158/2004 § 1, eff. July 20, 2004.

Open par amended chap 502/1991 § 2 eff. July 19, 1991

**DERIVATION**

Formerly § B19-7.75 added LL 53/1941 § 16

Amended chap 668/1954 § 1

Amended chap 931/1958 § 1

Amended LL 17/1960 § 2

Amended chap 790/1963 § 1

Amended chap 799/1965 § 1

Amended chap 642/1980 § 2

Amended chap 385/1981 § 20

Amended chap 597/1982 § 1

Amended chap 415/1985 § 1



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

*NYC Administrative Code 13-343*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-343 Termination of membership; discontinuance of service.

a. Should an original plan member discontinue city-service except by death or retirement, he or she shall be paid such part of the amount of the accumulated contributions (as defined in subdivision seven of section 13-313 of this subchapter), that is, his or her contributions without interest, standing to the credit of his or her individual account in the contingent reserve fund as he or she shall demand. Such board, however, in its discretion, may withhold for not more than one year after such member last rendered city-service all or part of his or her accumulated contributions, if after a previous discontinuance of service he or she withdrew from the retirement allowance accumulation fund or the contingent reserve fund, as the case may be, all or part of the amount of his or her accumulated contributions and failed to redeposit such withdrawn amount in such fund.

b. Should an improved benefits plan member discontinue city-service except by death or retirement, he or she shall be paid such part of the amount of the accumulated deductions (as defined in subdivision seven-a of such section 13-313 of this subchapter) standing to the credit of his or her individual account in the annuity savings fund as he or she shall demand. Such board, however, in its discretion, may withhold for not more than one year after such a member last rendered city-service all or part of his or her accumulated deductions, if after a previous discontinuance of service he or she withdrew from the annuity savings fund all or part of the amount of his or her accumulated deductions and failed to redeposit such withdrawn amount in such fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.76 added LL 53/1941 § 16

Amended chap 385/1981 § 21



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

*NYC Administrative Code 13-344*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-344 Termination of membership; election to city, county or state office.

Should a member previously in city-service as a city official or employee be elected a city, county or state official, he or she may on application therefor and approval by the mayor, withdraw from the pension fund, and upon such withdrawal: (a) if he or she is an original plan member, he or she shall be paid such part of the amount of the accumulated contributions (as defined in subdivision seven of section 13-313 of this subchapter), that is, his or her contributions without interest, standing to the credit of his or her individual account in the contingent reserve fund as he or she shall be entitled to receive; or

(b) if he or she is an improved benefits plan member, he or she shall be paid such part of the accumulated deductions (as defined in subdivision seven-a of such section 13-313 of this subchapter) standing to the credit of his or her individual account in the annuity savings fund as he or she shall be entitled to receive.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.77 added LL 53/1941 § 16

Amended chap 385/1981 § 21



Administrative Code of the City of New York



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

*NYC Administrative Code 13-345*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-345 Termination of membership; miscellaneous.

Membership in the pension fund shall cease upon the occurrence of any one of the following conditions:

1. When the time out of city-service, other than time on a preferred civil service list, of any member who has resigned or has been separated from the service through no fault of his or her own, and who has total service of less than twenty-five years, shall aggregate more than five years in any period not exceeding ten consecutive years since he or she last became a member.

2. When any member who is an original plan member shall have withdrawn more than one-half of his or her accumulated contributions (as defined in subdivision seven of section 13-313 of this subchapter), or when any member who is an improved benefits plan member shall have withdrawn more than one-quarter of his or her accumulated deductions.

3. When any member shall die.

4. When any member who is an original plan member shall be retired on a retirement allowance or when any member who is an improved benefits plan member shall be retired on a pension.

5. When any member becomes eligible to participate in another pension or retirement system supported in whole

or in part by the city or state of New York.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.78 added LL 53/1941 § 16

Amended chap 796/1963 § 1

Amended chap 385/1981 § 22



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

*NYC Administrative Code 13-346*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-346 Death benefits; ordinary death benefits.

a. Upon the death of an original plan member not subject to article eleven (as defined in subdivision four-c of section 13-313 of this subchapter) who has not completed the period of service, as elected by him or her for retirement, or upon the death of a former original plan member not subject to article eleven, there shall be paid to his or her estate, or to such person as he or she has nominated or shall nominate by written designation duly executed and filed with such board during the lifetime of the member:

1. His or her accumulated contributions, that is, his or her contributions without interest; and, in addition thereto,

2. If such member is in city-service or is on a civil service preferred eligible list by reason of city-service, unless a retirement allowance be payable by the city under the provisions of section 13-347 of this subchapter, an amount equal to the compensation earnable by him or her while a member, during the six months immediately preceding his or her death, and, if the total number of years in which allowable service was rendered exceeds ten, then an amount equal to the compensation earnable by him or her in city-service while a member during the twelve months immediately preceding his or her death, and in addition, in either such case, the accumulation-for-increased-take-home-pay, if any.

a-1. Upon the death of an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of such section 13-313) or of a former improved benefits plan member not subject to article eleven, there shall be paid to his or her estate, or to such person as he or she has nominated or shall nominate by written designation duly

executed and filed with such board during the lifetime of the member:

1. His or her accumulated deductions; and, in addition thereto,

2. If such member is in city-service or is on a civil service preferred eligible list by reason of city-service, unless a pension be payable by the city under the provisions of section 13-347 of this subchapter, an amount equal to the compensation earnable by him or her while a member, during the six months immediately preceding his or her death, and, if the total number of years in which allowable service was rendered exceeds ten, then an amount equal to the compensation earnable by him or her in city-service while a member during the twelve months immediately preceding his or her death, and in addition, in either such case, the reserve-for-increased-take-home-pay.

b. Until the first payment has been made on account of a retirement benefit without optional selection of an original plan member not subject to article eleven or an improved benefits plan member not subject to article eleven, such member may be construed by such board to have been in city-service and the applicable benefits provided in this section may be paid in lieu of the retirement allowance.

c. The original plan member not subject to article eleven or the improved benefits plan member not subject to article eleven, or on the death of any such member, the person nominated by him or her to receive, in the case of an original plan member not subject to article eleven, his or her accumulated contributions or his or her death benefit, together with the accumulation-for-increased-take-home-pay, or both, or, in the case of an improved benefits plan member not subject to article eleven, the person nominated by him or her to receive either his or her accumulated deductions, his or her death benefit, together with the reserve-for-increased-take-home-pay, or both, may provide by written designation duly executed and filed with such board that the actuarial equivalent of the benefit otherwise payable in a lump sum shall be paid to the person designated in the form of an annuity payable in installments not more often than once a month, the amount of such annuity to be determined at the time of such member's death on the basis of the age of the beneficiary at that time.

d. Upon the death of an original plan member not subject to article eleven who has completed the period of service, as elected by him or her for retirement, but who shall not have filed application for retirement or who, having filed application for retirement shall die prior to the first payment on account of the benefits thereunder, there shall be paid to his or her estate, or to such person as he or she has nominated or shall nominate by written designation duly executed and filed with such board:

1. His or her accumulated contributions, that is his or her contributions without interest; and in addition thereto,

2. The present value of the pension he or she would have received if he or she had retired and had become entitled to a pension for service on the day immediately preceding the day of his or her death.

e. Notwithstanding the foregoing provisions of this section, and in lieu of any lesser amount thereby prescribed, upon the death of an improved benefits plan member not subject to article eleven, prior to the first payment of a retirement benefit, who has completed the minimum period of service, as elected by him or her for retirement, and whether or not such member shall have filed application for retirement, there shall be paid to his or her estate, or to such person as he or she has nominated or shall nominate by written designation duly executed and filed in accordance with the requirements of this subchapter:

1. His or her accumulated deductions; and in addition thereto,

2. The amount of reserve equal to the present value of the pension he or she would have received if he or she had retired and became entitled to a pension on the day immediately preceding his or her death.

The beneficiary of such deceased member shall have the right to accept such benefits in lump sum or in such periodic payments, on an annuity basis, as such beneficiary shall elect.

f. 1. The provisions of the preceding subdivisions of this section applicable to original plan members not subject to article eleven shall apply to an original plan member subject to article eleven (as defined in subdivision four-d of such section 13-313), except to the extent and in the manner that any such provision is modified by article eleven.

2. The provisions of the preceding subdivisions of this section applicable to improved benefits plan members not subject to article eleven shall apply to an improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313), except to the extent and in the manner that any such provision is modified by article eleven.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.79 added LL 53/1941 § 16

Amended chap 224/1963 § 4

Sub a amended chap 1062/1965 § 1

Sub d added chap 1062/1965 § 2

Amended chap 385/1981 § 23



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

*NYC Administrative Code 13-347*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-347 Death benefits; accidental death benefits.

a. Upon the accidental death of an original plan member not subject to article eleven (as defined in subdivision four-c of section 13-313 of this subchapter) before retirement, or upon the accidental death of an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of such section 13-313) before retirement, provided that evidence shall be submitted to such board proving that the death of such original plan member not subject to article eleven or of such improved benefits plan member not subject to article eleven, as the case may be, was the natural and proximate result of an accident sustained while a member and while in the performance of duty at some definite time and place and that such death was not the result of wilful negligence on his or her part:

(1) his or her accumulated contributions (as defined in subdivision seven of such section 13-313) that is, his or her contributions without interest, if he or she was an original plan member not subject to article eleven at the time of his or her death, shall be paid to his or her estate, or to such persons as he or she has nominated or shall nominate by written designation, duly acknowledged and filed with such board; and (2) his or her accumulated deductions (as defined in subdivision seven-a of such section 13-313), if he or she was an improved benefits plan member not subject to article eleven at the time of his or her death, shall be paid to his or her estate or to such persons as he or she has nominated or shall nominate by written designation, duly acknowledged and filed with such board.

b. Upon application by or on behalf of the dependents of such deceased member:

(1) such board, if such deceased member was an original plan member not subject to article eleven at the time of his or her death, shall grant, to the payee or payees and to the extent and in the manner provided for in subdivision c of this section, a lump sum payment of the accumulation for increased take-home-pay and, in addition, an allowance of one-half of the final compensation of such employee, which allowance shall in no case be less than one-half of the full salary payable to a first grade firefighter on the date of death of such employee and in the case of a member acting in a higher rank an amount not to exceed one-half the salary at the compensation of such rank; and

(2) such board, if such deceased member was an improved benefits plan member not subject to article eleven at the time of his or her death, shall grant, to the payee or payees and to the extent and in the manner provided for in subdivision c of this section, a lump sum payment of the reserve-for-increased-take-home-pay and, in addition thereto, a pension of one-half of the five-year-average compensation (as defined in subdivision six-a of such section 13-313) of such employee, which pension shall in no case be less than one-half of the full salary payable to a first grade firefighter on the date of death of such employee.

c. The applicable lump sum payment and allowance or pension, as the case may be, referred to in subdivision b of this section shall be granted:

(1) To such deceased member's surviving spouse, to continue until the death of the surviving spouse; or

(2) If there be no surviving spouse, or if the surviving spouse dies before any child of such deceased member shall have attained the age of eighteen years or if a student under the age of twenty-three years, then to his or her child or children under such age, divided in such manner as such board in its discretion shall determine, to continue, if such deceased member was an original plan member not subject to article eleven at the time of his or her death, as a joint and survivor pension of one-half of his or her final compensation until every such child dies or attains such age, and to continue, if such deceased member was an improved benefits plan member not subject to article eleven at the time of his or her death, as a joint and survivor pension of one-half of his or her five-year-average compensation until every such child dies or attains such age; or

(3) If there be no surviving spouse or child under the age of eighteen years or if a student under the age of twenty-three years surviving such deceased member, then to his or her dependent father or mother, as such deceased member shall have nominated by written designation duly acknowledged and filed with such board; or, if there be no such nomination, then to his or her dependent father or to his or her dependent mother, as such board in its discretion shall direct, to continue for life.

d. (1) The provisions of the preceding subdivisions of this section applicable to original plan members not subject to article eleven shall apply to an original plan member subject to article eleven (as defined in subdivision four-d of such section 13-313), except to the extent and in the manner that any such provision is modified by article eleven.

(2) The provisions of the preceding subdivisions of this section applicable to improved benefits plan members not subject to article eleven shall apply to an improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313), except to the extent and in the manner that any such provision is modified by article eleven.

e. An accident resulting in the death of an original plan member (as defined in subdivision four-b of section 13-313 of this subchapter) or improved benefits plan member (as defined in subdivision four-f of such section 13-313), while off-duty and within the geographic limits of the city of New York, shall be deemed to have occurred while in the performance of duty for the purpose of granting accidental death benefits pursuant to the provisions of subdivision a of this section in cases in which:

(1) a substantial and imminent danger to life or property occasioned the off-duty intervention of the member;

(2) the conduct of the member was reasonable in the circumstances; and

(3) the member, in the course of his or her off-duty intervention, utilized skills within the scope of his or her employment by the New York city fire department.

f. Notwithstanding any other provision of law to the contrary, and solely for the purposes of this section, a member shall be deemed to have died as the natural and proximate result of an accident sustained in the performance of duty upon which his or her membership is based, and not as a result of willful negligence on his or her part, provided that such member was in active service upon which his or her membership is based at the time that such member was ordered to active duty, other than for training purposes, pursuant to Title 10 of the United States Code, with the armed forces of the United States, and such member died while on such active duty on or after the effective date of the chapter of the laws of two thousand five which added this subdivision while serving on such active military duty.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. c amended chap 348/1989 § 5. [See note after § 13-244]

Subd. c pars (2), (3) amended chap 733/1990 § 5 eff. January 1, 1991.

[See note 1 after § 13-244]

Subd. e added chap 683/1989 § 2

Subd. f added chap 105/2005 § 24, eff. June 14, 2005.

**DERIVATION**

Formerly § B19-7.8 added LL 53/1941 § 16

Open par amended LL 146/1952 § 1

Amended chap 224/1963 § 5

Amended chap 803/1969 § 3

Amended chap 385/1981 § 24

**CASE NOTES FROM FORMER SECTION**

¶ 1. Petitioner's husband, a fireman who attended a fire while he was off duty and to which he was ordered not to attend, died in bed after he returned to the quarters of his company from occlusive coronary arteriosclerosis. Petitioner's application for a one-half pay line-of-duty death pension pursuant to this section was lawfully denied when the Board of Trustees reached a tied vote. Wagner v. Lowery, 158 (13) N.Y.L.J. (7-20-67) 9, Col. 5 T.



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

*NYC Administrative Code 13-348*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-348 Accidental death benefits in the case of deaths occurring prior to July first, nineteen hundred sixty-five.

a. Notwithstanding the provisions of section 13-347 of this subchapter, in any case where a pension was or is awarded under the provisions of such section, by reason of the death of a member occurring before July first, nineteen hundred sixty-five, such pension, subject to the provisions of subdivisions b and c of this section, shall be:

(1) For each full calendar year, on and after January first, nineteen hundred sixty-five an amount equal to one-half of the annual salary or compensation payable, on July first, nineteen hundred sixty-five, to a member of the uniformed force of rank, seniority and other salary-determining status, equal to that of the deceased member on the date of his or her death, but in no case less than one-half of the salary payable, to a first grade firefighter on July first, nineteen hundred sixty-five, and

(2) For any portion of a calendar year, on and after January first, nineteen hundred sixty-five, the appropriate pro rata portion of the amount which would be payable, under the provisions of paragraph one of this subdivision a, for the full calendar year which includes such portion of a year, if a pension were payable under this section for such full calendar year.

b. Such pension shall be payable to the same persons and shall be subject to the same terms and conditions, including provisions as to termination, as the pension which would otherwise be payable, on and after January first, nineteen hundred sixty-five, pursuant to section 13-347 of this subchapter by reason of the death of such member.

c. The pension payable pursuant to the provisions of subdivisions a and b of this section shall be in lieu of any pension which would otherwise be payable on and after January first, nineteen hundred sixty-five, pursuant to the provisions of section 13-347 of this subchapter and, except as otherwise provided in paragraph one of subdivision e of section 13-686 of this title, shall be in lieu of any supplemental retirement allowance which would otherwise be payable, on and after such date, under the provisions of subchapter six of chapter five of this title or any other law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.80 added LL 70/1965 § 1

Sub c amended chap 994/1973 § 5



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-349 Retirement; minimum period for service retirement.

Any member in city-service who shall have attained the minimum age or period of service retirement elected by him or her upon his or her own written application to and filed with the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, shall be retired as of the date specified in said application, provided that at the time so specified for his or her retirement, his or her term or tenure of office or employment shall not have terminated or have been forfeited, provided further that upon his or her request in writing the member shall be granted a leave of absence from the date of filing said application until the date the retirement becomes effective.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.81 added LL 53/1941 § 16

Amended LL 73/1951 § 1

(Amended without section number and heading)

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

*NYC Administrative Code 13-350*

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-350 Retirement; selection of either twenty or twenty-five years of city-service.

a. Any person becoming a member who was not previously a member or who during his or her last previous membership in the pension fund contributed on the basis of a minimum period of retirement of twenty years of city-service, may elect, prior to the certification of his or her rate of contribution, to contribute on the basis of a minimum retirement period of twenty years of city-service, by a written election duly executed and acknowledged and filed with the board. The minimum period of retirement for such member so electing shall be twenty years of city-service.

b. Any person becoming a member who was not previously a member or who during his or her last previous membership in the pension fund contributed on the basis of a minimum period of retirement of twenty-five years of city-service, may elect, prior to certification of his or her rate of contribution, to contribute on the basis of a minimum retirement period of twenty-five years of city-service by a written election duly executed and acknowledged and filed with the board. The minimum period of retirement for such members so electing shall be twenty-five years of city-service.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.82 added LL 53/1941 § 16

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-351 Method of computing retirement allowance of chief of department.

a. Any member who shall have been appointed as a chief of department of the fire department shall be entitled, upon retirement for service from such position, to elect to receive, in lieu of any other service retirement benefit to which he or she may be entitled, the applicable retirement allowance provided for in the succeeding subdivisions of this section.

b. If such member was an original plan member not subject to article eleven (as defined in subdivision four-c of section 13-313 of this subchapter) at the time of such retirement, such retirement allowance shall be equal to two-thirds of his or her salary as chief of department.

c. If such member was an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of such section 13-313) at the time of such retirement, such retirement allowance shall consist of an annuity which is the actuarial equivalent of his or her accumulated deductions at the time of such retirement and a pension, which, when added to such annuity, will make such retirement allowance equal to two-thirds of his or her salary as chief of department. For the purpose of computing the annuity portion of such retirement allowance, his or her accumulated deductions shall be the required amount of such deductions at the time of his or her retirement from such position, including any amount then remaining unpaid with respect to his or her contribution rate deficiency (as defined in subdivision twenty-one of such section) 13-313, if any, without any increase resulting from excess contributions and without any decrease resulting from withdrawals, loans, optional modification, payment of his or her contributions for

old age and survivor's insurance coverage, or from any other transaction authorized by law. For the purposes of this subdivision c, any such unpaid amount of contribution rate deficiency, in the case of any such member who becomes an improved benefits plan member before completion of his or her minimum period for service retirement, shall be deemed to consist of such amount plus regular interest thereon from his or her date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of such section) 13-313 to the date of completion of his or her minimum period for service retirement.

d. If such member was an original plan member subject to article eleven (as defined in subdivision four-d of such section 13-313) at the time of such retirement, such retirement allowance shall be determined pursuant to the provisions of subdivision b of this section, except to the extent and in the manner that any such provision is modified by article eleven. e. If such member was an improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section) 13-313 at the time of such retirement, such retirement allowance shall be determined pursuant to the provisions of subdivision c of this section, except to the extent and in the manner that any such provision is modified by article eleven.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 712/2006 § 4, eff. Sept. 13, 2006. [See

§ 15-103.1 Note 1]

**DERIVATION**

Formerly § B19-7.822 added chap 854/1969 § 1

Amended chap 385/1981 § 25



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-352 Retirement; for ordinary disability.

Medical examination of a member in city-service for ordinary disability shall be made upon the application of the commissioner, or upon the application of such member or of a person acting in his or her behalf, stating that such member is physically or mentally incapacitated for the performance of duty and ought to be retired. If such medical examination shows that such member is physically or mentally incapacitated for the performance of duty and ought to be retired, the medical board shall so report and the board shall retire such member for ordinary disability not less than thirty nor more than ninety days after the execution and filing of application therefor with the pension fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.83 added LL 53/1941 § 16

**CASE NOTES FROM FORMER SECTION**

¶ 1. Fireman was compulsorily retired for "acute asthmatic breathing" pursuant to § B19-7.83 without a hearing and based upon medical reports. Petitioner's claim that he should have had a trial pursuant to § 487a-12.0 denied as that

section refers only to disciplinary proceedings.-Greenidge v. Cavanagh, 145 (53) N.Y.L.J. (3-20-61) 13, Col. 1 F.

¶ 2. The time limitations in this section are directory and do not constitute a statute of limitations rendering action by the Pension Board outside these limitations nugatory.-Gratz v. Cavanagh, 18 App. Div. 2d 887, 237 N.Y.S. 2d 654 [1963].

**CASE NOTES**

¶ 1. The court upheld the denial of an application for accidental disability retirement. The Medical Board rejected petitioner's contention that he was disabled from performing his duties by an injury to his left ankle. The court found that the determination was supported by credible evidence consisting of the report of its independent orthopedic consultant who examined the petitioner, reviewed medical records and reports of other physicians, and concluded that petitioner was not permanently disabled for the performance of full fire duty. Although petitioner's independent consultant came to a different conclusion, it was up to the Medical Board to resolve conflicts in the evidence. Campbell v. Bd. of Trustees of NYC Fire Dept., 47 AD3d 926, 850 NYS2d 593 (App. Div. 2nd Dept. 2008).



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-353 Retirement; for accident disability.

Medical examination of a member in city-service for accident disability and investigation of all statements and certifications by him or her or on his or her behalf in connection therewith shall be made upon the application of the commissioner, or upon the application of a member or of a person acting in his or her behalf, stating that such member is physically or mentally incapacitated for the performance of city-service, as a natural and proximate result of such city-service, and certifying the time, place and conditions of such city-service performed by such member resulting in such alleged disability and that such alleged disability was not the result of wilful negligence on the part of such member and that such member should, therefore, be retired. If such medical examination and investigation shows that such member is physically or mentally incapacitated for the performance of city-service as a natural and proximate result of an accidental injury received in such city-service while a member, and that such disability was not the result of wilful negligence on the part of such member and that such member should be retired, the medical board shall so certify to the board, stating the time, place and conditions of such city-service performed by such member resulting in such disability, and such board shall retire such member for accident disability forthwith.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.84 added LL 53/1941 § 16

**CASE NOTES FROM FORMER SECTION**

¶ 1. Although board of trustees does not act merely ministerially in granting or denying pensions and has general discretionary powers over the fire department pension fund its power must be exercised reasonably and the board may not arbitrarily reject the conclusion of the Medical Board. Thus a rejection of a report by a 1B Medical Board should state its predicate and conclusion as to the nature and cause of an applicant's disability and as to whether causality was tied to the performance of his duties.-Matter of Maschino v. Lowery, 34 App. Div. 2d 255, 310 N.Y.S. 2d 900 [1970].

**CASE NOTES**

¶ 1. Where the Board of Trustees denies an application for accidental disability benefits as a consequence of a tie vote, the Board's determination can be set aside on judicial review only if it can be concluded as a matter of law that the petitioner's disability was the natural and proximate result of a service-related accident. Petitioner has the burden of establishing that, as a matter of law, a causal relationship exists between a service-related accident and the subject disability. If there is conflicting medical evidence in the record and the circumstances admit of more than one inference as to the cause of the petitioner's disability, the court cannot decide, as a matter of law, which inference should be drawn. Matter of Regan v. Board of Trustees of the New York Fire Department Article 1-B Pension Fund, 641 N.Y.S.2d 863 (2d Dept. 1996). Accord, Romanelli v. Board of Trustees of the New York City Fire Dept., 210 A.D.2d 232 (2d Dept. 1994).

¶ 2. The court set aside a denial of accidental disability retirement by the Board of Trustees. The evidence showed that petitioner had sustained a line of duty injury, and there was not evidence that petitioner had a knee problem prior to becoming a fireman or that since becoming a fireman he had sustained knee injuries which were not incurred in the line of duty. Mescall v. Board of Trustees of the New York City Fire Department, Article 1-B Pension Fund, 204 A.D.2d 643, 612 N.Y.S.2d 624 (2nd Dept. 1994).

¶ 3. Where the Board of Trustees denies an application for accident disability pension by a tie vote based on the procedural practice set forth in Matter of City of New York v. Schoeck, 294 N.Y. 559, a reviewing court may set aside that determination only if it can conclude as a matter of law that the disability was the natural and proximate result of a service related accident. Although the Board of Trustees is not bound by the determination of the medical board on the issue of causation, it may, at its discretion, rely on the medical board's opinion. So long as there is no indication that the medical board disregarded the proper rule of causation, the Board of Trustees is not required to conduct an independent investigation as to whether a service related accident precipitated the development of a latent condition or aggravated a pre-existing condition. Shedd v. Board of Trustees of the New York City Fire Dept., 177 A.D.2d 632, 575 N.Y.S.2d 336 (2nd Dept. 1991).

¶ 4. The Board of Trustees, in deciding to award ordinary disability rather than accidental disability, can rely upon the Medical Board's recommendation that there is no causal relation between the claimed disability and a service related injury, even though the Medical Board did not examine the pension member itself. Although factors such as the member's failure to return to full duty following a service related injury and the absence of a prio medical history of the disabling condition may be relevant on the issue of causation, none of these factors is dispositive, and a denial of accidental disability benefits may be upheld despite their existence. Thus, so long as the determination is based on credible evidence, i.e. where there is a rational explanation for the findings of the Board of Trustees based on review of records, x-rays, etc. by the Medical Board, the determination will be upheld. Meyer v. Board of Trustees of the New York City Fire Department, 90 N.Y.2d 139, 659 N.Y.S.2d 215 (1997).

¶ 5. In Tesoriero v. Bd. of Trustees of New York Fire Dept., Article 1-B, 17 Misc.3d 497, 844 N.Y.S.2d 611 (Sup.Ct. New York Co. 2007), the court overturned a finding of the Board that the firefighter's mild intermittent asthma did not render him unable to perform his duties without posing unacceptable risks to him or his colleagues. The court

found that the determination of the Medical Board (on which the trustees based their findings) was not credible since its scant six-sentence determination did not have any articulated basis for concluding that "mild intermittent asthma" was not a disabling condition for a firefighter. The report does not indicate the characteristics of "mild intermittent asthma," the performance requirements for a firefighter, or an assessment of any risk that "mild intermittent asthma" may pose to the safety of petitioner and his colleagues while performing duties as a firefighter. A similar result was reached in Marley v. Scopetta, 15  Misc.3d 1068, 834 NYS2d 833 (Sup.Ct. Kings Co. 2007).



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-353.1 Accidental disability retirement; World Trade Center presumption.

1. (a) Notwithstanding any provisions of this code or of any general, special or local law, charter or rule or regulation to the contrary, if any condition or impairment of health is caused by a qualifying World Trade Center condition as defined in section two of the retirement and social security law, it shall be presumptive evidence that it was incurred in the performance and discharge of duty and the natural and proximate result of an accident not caused by such member's own willful negligence, unless the contrary be proved by competent evidence.

(b) The New York City Fire Department Pension Fund (NYCFDPF) board of trustees is hereby authorized to promulgate rules and regulations to implement the provisions of this paragraph.

2. (a) Notwithstanding the provisions of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a member who participated in World Trade Center rescue, recovery or cleanup operations as defined in section two of the retirement and social security law, and subsequently retired on a service retirement, an ordinary disability retirement, an accidental disability retirement, or a performance of duty disability retirement and subsequent to such retirement is determined by the head of the retirement system to have a qualifying World Trade Center condition, as defined in section two of the retirement and social security law, upon such determination by the NYCFDPF board of trustees, it shall be presumed that such disability was incurred in the performance and discharge of duty as the natural and proximate result of an accident not caused by such member's own willful negligence, and that the member would have been physically or mentally incapacitated for the performance and

discharge of duty of the position from which he or she retired had the condition been known and fully developed at the time of the member's retirement, unless the contrary is proven by competent evidence.

(b) The NYCFDPF shall consider a reclassification of the member's retirement as an accidental disability retirement effective as of the date of such reclassification.

(c) Such member's retirement option shall not be changed as a result of such reclassification.

(d) The member's former employer at the time of the member's retirement shall have an opportunity to be heard on the member's application for reclassification by the NYCFDPF board of trustees according to procedures developed by the NYCFDPF.

(e) The NYCFDPF board of trustees is hereby authorized to promulgate rules and regulations to implement the provisions of this paragraph.

3. Notwithstanding any other provision of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a retiree who: (1) has met the criteria of subdivision one of this section and retired on a service or disability retirement, or would have met the criteria if not already retired on an accidental disability; and (2) has not been retired for more than twenty-five years; and (3) dies from a qualifying World Trade Center condition, as defined in section two of the retirement and social security law, as determined by the applicable head of the retirement system or applicable medical board, then unless the contrary be proven by competent evidence, such retiree shall be deemed to have died as a natural and proximate result of an accident sustained in the performance of duty and not as a result of willful negligence on his or her part. Such retiree's eligible beneficiary, as set forth in section 13-347 of this subchapter, shall be entitled to an accidental death benefit as provided by sections 13-347 and 13-348 of this subchapter, however, for the purposes of determining the salary base upon which the accidental death benefit is calculated, the retiree shall be deemed to have died on the date of his or her retirement. Upon the retiree's death, the eligible beneficiary shall make a written application to the head of the retirement system within the time for filing an application for an accidental death benefit as set forth in sections 13-347 and 13-348 of this subchapter requesting conversion of such retiree's service or disability retirement benefit to an accidental death benefit. At the time of such conversion, the eligible beneficiary shall relinquish all rights to the prospective benefits payable under the service or disability retirement benefit, including any post-retirement death benefits, since the retiree's death. If the eligible beneficiary is not the only beneficiary receiving or entitled to receive a benefit under the service or disability retirement benefit (including, but not limited to, post-retirement death benefits or benefits paid or payable pursuant to the retiree's option selection), the accidental death benefit payments to the eligible beneficiary will be reduced by any amounts paid or payable to any other beneficiary.

4. Notwithstanding any other provision of this code or of any general, special or local law, charter, or rule or regulation to the contrary, if a member who: (1) has met the criteria of subdivision one of this section; and (2) dies in active service from a qualifying World Trade Center condition, as defined in section two of the retirement and social security law, as determined by the applicable head of the retirement system or applicable medical board, then unless the contrary be proven by competent evidence, such member shall be deemed to have died as a natural and proximate result of an accident sustained in the performance of duty and not as a result of willful negligence on his or her part. Such member's eligible beneficiary, as set forth in section 13-347 of this subchapter, shall be entitled to an accidental death benefit provided he or she makes written application to the head of the retirement system within the time for filing an application for an accidental death benefit as set forth in section 13-347 of this subchapter.

**HISTORICAL NOTE**

Section amended chap 489/2008 § 16, eff. Aug. 5, 2008 and deemed to

have been in full force and effect Sept. 11, 2001.

**DERIVATION**

Formerly § Section amended chap 93/2005 § 12, eff. June 14, 2005 and deemed to have been in full force and effect on and after Sept. 11, 2001 per chap 93/2005 § 14 and chap 104/2005 § A14 of § 1.

Section added chap 104/2005 § 12, eff. June 14, 2005 and deemed to have been in full force and effect on and after Sept. 11, 2001.

Subd. 1 par (e) amended chap 495/2007 § 25, eff. Aug. 1, 2007 and deemed to have been in full force and effect on and after June 14, 2007.

Subd. 2 par (b) subpar (i) amended chap 495/2007 § 26, eff. Aug. 1, 2007 and deemed to have been in full force and effect on and after June 14, 2007.

Subd. 2 par (b) subpar (i) amended chap 444/2006 § 12, eff. Aug. 14, 2006.

Subd. 3 amended chap 5/2007 § 20, eff. Mar. 13, 2007 and deemed to have been in full force and effect on and after Sept. 11, 2007.

Subd. 3 added chap 445/2006 § 13, eff. Aug. 14, 2006 and deemed to have been in full force and effect on and after Sept. 11, 2001.

Subd. 4 added chap 5/2007 § 20, eff. Mar. 13, 2007 and deemed to have been in full force and effect on and after Sept. 11, 2007.

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-354 Certain disabilities of firefighters.

Notwithstanding any other provisions of this code to the contrary, any condition of impairment of health caused by diseases of the lung, resulting in total or partial disability or death to a member of the uniformed force, who successfully passed a physical examination on entry into the service of such department, which examination failed to reveal any evidence of such condition, shall be presumptive evidence that it was incurred in the performance and discharge of duty, unless the contrary be proved by competent evidence.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.84.1 added chap 1106/1969 § 1

**CASE NOTES**

¶ 1. Petitioner became a member of the New York City Fire Department fifteen months after he had sustained a gunshot wound to the chest. He was diagnosed as having adhesions to his right diaphragm but was nevertheless found to be qualified for the job with "normal pulm[onary] function". However four years later he complained of chest pains and

exhausion while working and was diagnosed as having a lung condition and advised to retire. Request for accidental retirement benefits was denied because of a tie vote by the Board resulting in granting ordinary disability benefits. However, the court overruled the board and found petitioner was entitled to accidental disability benefits, pursuant to § 13-354, because petitioner had the benefit of a presumption that disability occurred in line of duty. Battista v Bd. of Trustees, 188 AD 2d 598, 591 N.Y.S.2d 492, leave to appeal denied 82 N.Y.2d 659, 605 N.Y.S.2d 5 [1993].



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-355 Dependent benefits for surviving spouses and orphans.

a. (1) Where any member who became a member prior to the starting date of the improved benefits plan (as such date is defined in subdivision twenty-seven of section 13-313 of this chapter), elected to purchase dependent benefits pursuant to section B19-7.42 of former article one-A of former chapter nineteen, and such member, prior to such starting date, makes additional contributions required by sections B19-7.21 and B19-7.42 of such former article one-A to the contingent dependent benefit reserve fund provided for by subdivision c of such section B19-7.21, and such member on and after such starting date makes additional contributions, at the same rate to the dependent benefit contingent reserve fund provided for by subdivision b of section 13-329 of this subchapter, dependent benefits shall be payable on and after such starting date with respect to such member as provided for in subdivision b of this section from the dependent benefit reserve fund provided for by subdivision a of such section 13-329.

(2) In any case where prior to such starting date, dependent benefits were granted with respect to any deceased member or deceased retired member pursuant to the provisions of this section and such sections B197.21 and B19-7.42 as then in effect, dependent benefits with respect to such member shall be payable on and after such starting date to the person or persons eligible to receive same pursuant to the provisions of subdivision b of this section.

b. (1) Except as otherwise provided in paragraph two of this subdivision and subject to the provisions of subdivisions a and d of this section, the board shall pay a dependent benefit to the surviving spouse, child or children or dependent parents of any deceased member if the death of such member occur during his or her service or after he or

she was retired from service. The amount of any such dependent benefit to be paid by the board to each of the several representatives of such member, in case there shall be more than one, from time to time, may be determined by such board according to the circumstances of each case. The annual dependent benefit to the representative or representatives of such member, however, shall be six hundred dollars, and no part of such sum shall be paid to any such surviving spouse who shall remarry, after such remarriage, or to any child after it shall have reached the age of eighteen years.

(2) In any case where an original plan member subject to article eleven (as defined in subdivision four-d of section 13-313 of this subchapter) or an improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313) who has elected to contribute the additional deductions provided for by subdivision c of section of this subchapter dies during his or her service, no dependent benefits shall be paid under this section to any person by reason of such death; provided, however that the contributions of such member to the dependent benefit contingent reserve fund, without interest thereon, if such member was an original plan member subject to article eleven at the time of his or her death, and with regular interest thereon, if such member was an improved benefits plan member subject to article eleven at the time of his or her death, shall be paid, subject to the determination of the board as provided for by paragraph one of this subdivision b, to the person or persons who would have been entitled under the provisions of such paragraph one to receive a dependent benefit by reason of such death if such member had not been subject to the provisions of article eleven of the retirement and social security law at the time of his or her death.

c. Dependent benefits shall be granted pursuant to this section to the surviving spouse, child or children or dependent parent or parents of a member:

(1) only upon satisfaction of the applicable requirements set forth in subdivision a of this section, if such member last became a member prior to such starting date; and

(2) only if the member, where he or she becomes a member on or after such starting date, shall elect to contribute the additional deductions provided for by subdivision c of section 13-329 of this subchapter.

d. The benefits granted pursuant to this section shall be in addition to any other benefit provided for by this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.85 added LL 53/1941 § 16

Amended chap 385/1981 § 26

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-356 Safeguards on disability retirement; disability retirees other than disability retirees under improved benefits plan.

a. Once each year the board may, and upon his or her application shall, require any member, after retirement for disability and while under the minimum period for service retirement elected by him or her, to undergo medical examination. Such examination shall be made at the place of residence of such beneficiary or other place mutually agreed upon. Upon the completion of such examination the medical board shall report and certify to the board whether such beneficiary is or is not totally or partially incapacitated physically or mentally and whether he or she is or is not engaged in or able to engage in a gainful occupation. If the board concur in a report by the medical board that such beneficiary is able to engage in a gainful occupation, it shall certify the name of such beneficiary to the appropriate civil service commission, state or municipal, and such commission shall place his or her name as a preferred eligible on such appropriate lists of candidates as are prepared for appointment to positions for which he or she is stated to be qualified. Should such beneficiary be engaged in a gainful occupation, or should he or she be offered city-service as a result of the placing of his or her name on a civil service list, such board shall reduce the amount of his or her disability retirement allowance to an amount which, when added to that then earned by him or her, or earnable by him or her in city-service so offered him or her, shall not exceed the current maximum salary for the title next higher than that held by him or her when he or she was retired. Should the earning capacity of such beneficiary be further altered, such board may further alter his or her retirement allowance to an amount which shall not exceed the rate of retirement allowance upon which he or she was originally retired but which, subject to such limitation, shall equal, when added to that

earnable by him or her, the current maximum salary for the title next higher than that held by him or her when he or she was retired. The provisions of this section shall be executed, any provision of the charter or the code to the contrary notwithstanding.

b. Should any member, after retirement for disability and while under the minimum period for service retirement elected by him or her, refuse to submit to one medical examination in any year by a physician or physicians designated by the medical board, his or her retirement allowance may be discontinued until his or her withdrawal of such refusal. Should such refusal continue for one year, all his or her rights in and to such retirement allowance may be revoked by such board.

c. (1) The provisions of this section shall apply to:

(i) any beneficiary who retired for disability prior to the starting date of the improved benefits plan (as such date is defined in subdivision twenty-seven of section 13-313 of this subchapter); and

(ii) any beneficiary who becomes a beneficiary by retiring for disability on or after such starting date and who at the time of such retirement, is an original plan member.

(2) The provisions of this section shall not apply to any beneficiary who becomes a beneficiary by retiring for disability and who at the time of such retirement is an improved benefits plan member.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 438/1986 § 3

**DERIVATION**

Formerly § B19-7.86 added LL 53/1941 § 16

Sub a amended chap 274/1977 § 3

Section heading amended chap 385/1981 § 27

Sub c added chap 385/1981 § 28



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-357 Safeguards on disability retirement; disability retirees under improved benefits plan.

a. Once each year the board may, and upon his or her own application shall, require any disability pensioner, under the minimum period for service retirement elected by him or her, and who at the time of his or her retirement for disability was an improved benefits plan member, to undergo medical examination. Such examination shall be made at the place or residence of such beneficiary or other place mutually agreed upon. Upon the completion of such examination the medical board shall report and certify to the board whether such beneficiary is or is not totally or partially incapacitated physically or mentally and whether he or she is or is not engaged in or able to engage in a gainful occupation. If the board concur in a report by the medical board that such beneficiary is able to engage in a gainful occupation, it shall certify the name of such beneficiary to the appropriate civil service commission, state or municipal, and such commission shall place his or her name as a preferred eligible on such appropriate lists of candidates as are prepared for appointment to positions for which he or she is stated to be qualified. Should such beneficiary be engaged in a gainful occupation, or should he or she be offered city-service as a result of the placing of his or her name on a civil service list, such board shall reduce the amount of his or her disability pension and his or her pension-providing-for-increased-take-home-pay, if any, to an amount which, when added to that then earned by him or her, or earnable by him or her in city-service so offered him or her, shall not exceed the current maximum salary for the title next higher than that held by him or her when he or she was retired. Should the earning capacity of such beneficiary be further altered, such board may further alter his or her pension and his or her pension-providing-for-increased-take-home-pay, if any, to an amount which shall not exceed the rate of pension and his

or her pension-providing-for-increased-take-home-pay, if any, upon which he or she was originally retired but which, subject to such limitation, shall equal, when added to that earnable by him or her, the current maximum salary for the title next higher than that held by him or her when he or she was retired. The provisions of this section shall be executed, any provision of the charter or the code to the contrary notwithstanding.

b. Should any disability pensioner, under the minimum period for service retirement elected by him or her, and who was an improved benefits plan member at the time of his or her retirement for disability, refuse to submit to one medical examination in any year by a physician or physicians designated by the medical board, his or her pension and his or her pension-providing-for-increased-take-home-pay, if any, may be discontinued until his or her withdrawal of such refusal. Should such refusal continue for one year, all his or her rights in and to such pension and his or her pension-providing-for-increased-take-home-pay, if any, may be revoked by such board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 438/1986 § 4

**DERIVATION**

Formerly § B19-7.861 added chap 385/1981 § 29

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-358 Retirement allowances of original plan members; for service.

a. Subject to the provisions of subdivision b of this section, upon retirement for service an original plan member not subject to article eleven (as defined in subdivision four-c of section 13-313 of this subchapter) shall receive a retirement allowance which shall be equal to one-half his or her final compensation plus, for each year he or she shall have served in the uniformed force of the fire department after having attained the minimum period of service retirement elected by him or her, the additional amount provided for by section two hundred seven-b of the general municipal law with respect to such year.

b. In addition to the benefits provided for in subdivision a of this section, an original plan member not subject to article eleven, upon retirement for service, shall receive, for each year, or fraction thereof, of service credit transferred from the New York city employees' retirement system, a retirement allowance of fifty-five percent of one-sixtieth of his or her five-year-average-salary (as defined in subdivision twenty-eight of section 13-313 of this subchapter) if such service credit was for service rendered prior to October first, nineteen hundred fifty-one or seventy-five percent of one-sixtieth of his or her five-year-average-salary if such service was rendered on or after October first, nineteen hundred fifty-one. Nothing contained in this subdivision b shall be construed as denying or impairing any right granted to any member by any other provision of law with respect to any such transferred service credit which consists of credit for service as a member of a uniformed force, the members of which, during their service in such force, are eligible for membership in the New York city employees' retirement system.

c. Upon retirement for service, an original plan member subject to article eleven (as defined in subdivision four-d of section 13-313 of this subchapter) shall receive a retirement allowance determined pursuant to the provisions of subdivisions a and b of this section, except to the extent and in the manner that any such provision is modified by article eleven.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.87 added LL 53/1941 § 16

Amended chap 385/1981 § 30

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-359 Retirement allowances of improved benefits plan members; for service.

a. Subject to the provisions of subdivision b of this section, upon retirement for service, an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of section 13313 of this subchapter) shall receive a retirement allowance which shall consist of:

1. (a) An annuity based on his or her required annuity savings at the termination of his or her required minimum period of service, and in addition, a pension which when added to the annuity shall be equal to one-half of his or her annual earnable compensation on the date of retirement, for his or her minimum period of service. For the purpose only of determining the pension portion of the retirement allowance for minimum service, such member's annuity under this paragraph one shall be computed as it would be, (i) if it were not reduced by the actuarial equivalent of any outstanding loan, (ii) if it were not increased by the actuarial equivalent of any additional contributions, (iii) if it were not reduced by reason of such member's election to decrease his or her annuity contributions in order to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage, (iv) as it would be without any optional modification, and (v) as it would be, in the case of any improved benefits plan member not subject to article eleven who is subject to a contribution rate deficiency (as defined in subdivision twenty-one of such section 13-313) under the provisions of this subchapter, if an amount equal to the whole or any part of such deficiency remaining unpaid as of the effective date of such member's retirement for service had been paid to the pension fund on the earlier of (A) his or her date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of such section 13-313) or (B) the date next following the date of termination of such member's

required minimum period of service.

(b) If such member became an improved benefits plan member after the date of termination of such member's required minimum-period of service, his or her required annuity savings at the termination of his or her required minimum period of service shall be deemed to be such member's accumulated contributions (as defined in subdivision seven of section 13-313 of this subchapter) credited to him or her as an original plan member as of such date of termination, provided, however, that for the purpose only of determining the pension portion of the retirement allowance for minimum service, such member's annuity under this paragraph one shall be computed as it would be under the conditions prescribed in items (i), (iv), and (v) of subparagraph (a) of this paragraph.

2. For each additional year of service in the uniformed force of the fire department, or fraction thereof, beyond his or her required minimum service, such a member shall be entitled to, in addition to the benefits provided in paragraph one of this subdivision a;

(a) a pension of one-sixtieth of his or her average annual earnings from his or her date of eligibility for retirement to the actual date of retirement; and

(b) a pension-providing-for-increased-take-home-pay which shall be the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may be entitled, if any, for all periods of such service in the uniformed force of the department rendered both (1) after the completion of such required minimum service in such uniformed force and (2) after December thirty-first, nineteen hundred sixty-six.

3. For each year, or fraction thereof, of service credit transferred from the New York city employees' retirement system, or service credit acquired pursuant to subdivision d of section 13-318 of this subchapter or pursuant to the applicable provisions of subdivisions e and f of such section, a pension of fifty-five percent of one-sixtieth of his or her five-year-average compensation (as defined in subdivision six-a of such section 13-313) if such service credit was for service rendered prior to October first, nineteen hundred fifty-one or seventy-five percent of one-sixtieth of his or her five-year-average compensation if such service was rendered subsequent to October first, nineteen hundred fifty-one.

4. (a) For service in the uniformed force of the fire department in addition to and in excess of his or her required minimum period of service, such member shall be entitled to receive, in addition to the benefits provided for by the preceding paragraphs of this subdivision a, an annuity which shall be determined in the manner provided for in subparagraphs (b), (c), (d) and (e) of this paragraph four.

(b) There shall be added together (i) the total amount of the accumulated deductions of such member, if any, whenever made, as the same are on the date next preceding the date on which such member's retirement becomes effective, including all voluntary additional contributions, whenever made, and (ii) the unpaid amount of any loan of such member outstanding as of such date.

(c) Subject to the provisions of subparagraph (d) of this paragraph four, there shall be determined the amount of the accumulated deductions, if any, credited to such member with respect to the years of his or her service credited as his or her minimum period of service, as such deductions were on the date of completion of such minimum period of service (but also as such deductions would then be in the absence of a loan), excluding, however, from such accumulated deductions:

(i) the value, as of such completion date, of all of such member's voluntary, additional contributions made with respect to such years of service credited as his or her minimum period of service;

(ii) the value, as of such completion date, of any accumulated deductions credited with respect to any period of service preceding and not included in such period of service credited as such member's minimum period of service.

(d) If such member became an improved benefits plan member after the date of completion of such member's

minimum period of service, his or her accumulated deductions with respect to his or her minimum period of service shall be deemed to be, only for the purposes of this paragraph four, such member's accumulated contributions (as defined in subdivision seven of section 13-313 of this subchapter) credited to him or her as an original plan member as of such completion date with respect to the period of service credited to such member as his or her minimum period of service, as such accumulated contributions would be in the absence of a loan, and excluding from such accumulated contributions the value, as of such date, of any accumulated contributions credited with respect to any period of service preceding and not included in such period of service credited as such member's minimum period of service.

(e) From the amount computed pursuant to subparagraph (b) of this paragraph four, there shall be subtracted the amount computed pursuant to subparagraph (c) of this paragraph or subparagraph (d) hereof, as the case may be.

(f) The annuity to which such member shall be entitled under this paragraph four, if any, shall be the actuarial equivalent, as of the date next preceding the date on which such member's retirement becomes effective, of the remainder computed pursuant to subparagraph (e) of this paragraph four.

b. Upon retirement for service, an improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313) shall receive a retirement allowance consisting of an annuity and a pension determined pursuant to the provisions of subdivision a of this section, except to the extent and in the manner that any such provision is modified by article eleven.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.87-a added chap 385/1981 § 31

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-360*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-360 Vested retirement rights; original plan members.

a. For the purposes of this section, the term "service" shall mean service in the uniformed force of the fire department, as a member of such force, including service for which credit is granted pursuant to section 15-111 of the code, but excluding any service credit acquired by transfer or otherwise under any other provision of law.

b. (1) Any member who:

(i) discontinued "service" on or after July first, nineteen hundred sixty-nine, and prior to the starting date of the improved benefits plan (as such starting date is defined in subdivision twenty-seven of section 13-313 of this subchapter) other than by death, retirement or dismissal; and

(ii) prior to such discontinuance, completed fifteen or more years of "service", at least five of which immediately preceded such discontinuance; and

(iii) does not withdraw his or her accumulated contributions in whole or in part; and

(iv) at least thirty days prior to the date of such discontinuance, filed a duly executed application for a deferred retirement allowance hereunder; shall have a vested right to receive a deferred retirement allowance as provided in this section. For the purposes of this subchapter, any such member who acquired such a vested right pursuant to the

provisions of this paragraph one shall be deemed to have become an original plan discontinued member.

(2) Any original plan member who:

(i) discontinues "service" on or after such starting date, other than by death, retirement or dismissal; and

(ii) prior to such discontinuance, completed five or more years of "service"; and

(iii) does not withdraw his or her accumulated contributions in whole or in part; and

(iv) at least thirty days prior to the date of such discontinuance, filed a duly executed application for a deferred retirement allowance hereunder; shall have a vested right to receive a deferred retirement allowance as provided in this section and shall be an original plan discontinued member.

c. (1) Upon such discontinuance under the conditions and in compliance with the provisions of subdivision b of this section, such deferred retirement allowance shall vest automatically.

(2) Such retirement allowance shall become payable on the earliest date on which such original plan discontinued member could have retired for service if discontinuance had not occurred.

d. Such retirement allowance, in the case of an original plan discontinued member not subject to article eleven (as defined in subdivision sixteen-a of section 13-313 of this subchapter), shall be:

(1) An amount equal to:

(i) in the case of any such original plan discontinued member not subject to article eleven whose minimum period for service retirement is twenty years, two and one-half percent of his or her final compensation on the date of his or her discontinuance of "service", multiplied by the number of years of "service" credited to him or her on the date of such discontinuance; or

(ii) In the case of any such original plan discontinued member not subject to article eleven whose minimum period for service retirement is twenty-five years, two percent of his or her final compensation on the date of his or her discontinuance of "service", multiplied by the number of years of "service" credited to him or her on the date of such discontinuance; and

(2) an amount equal to fifty dollars for each year of city-service credited to him or her, other than "service".

d-1. Such retirement allowance, in the case of an original plan discontinued member subject to article eleven (as defined in subdivision sixteen-b of such section 13-313) shall consist of an amount determined pursuant to the provisions of subdivision d of this section, except to the extent and in the manner that any such provision is modified by article eleven.

e. If an original plan discontinued member dies before attaining the earliest age at which he or she could have retired for service if discontinuance had not occurred, his or her accumulated contributions shall be paid (1) to the beneficiary designated by him or her pursuant to section 13-346 of this subchapter to receive his or her accumulated contributions in the event that such contributions were to become payable under such section, or (2) if such member had made no such designation, to his or her estate.

f. An original plan discontinued member may elect any option under section 13-369 of this subchapter at any time prior to the first payment on account of his or her retirement allowance under this section.

g. Withdrawal of accumulated contributions, in whole or in part, after discontinuance of "service", shall terminate the right to a deferred retirement allowance under this section.

h. If an original plan discontinued member who has not withdrawn his or her accumulated contributions in whole or in part shall subsequently reenter "service" before the earliest date on which such original plan discontinued member could have retired for service if discontinuance had not occurred, he or she shall be entitled to the service credit and status to which he or she was entitled immediately prior to his or her discontinuance of "service".

i. (1) If an original plan discontinued member who has not withdrawn his or her accumulated contributions in whole or in part shall subsequently and on or after the earliest date on which such original plan discontinued member could have retired for service if discontinuance had not occurred, re-enter "service", his or her retirement allowance shall be suspended and forfeited during the period of such "service".

(2) (i) Such original plan discontinued member may again become a member of the pension fund if, within ninety days after his or her return to such "service", he or she files a duly executed and acknowledged application for such membership.

(ii) Subject to the provisions of subparagraphs (iii) and (iv) of this paragraph two, if any such original plan discontinued member shall again become a member of the pension fund, he or she shall become such member as a new entrant.

(iii) If such original plan discontinued member, at the time of his or her discontinuance of "service", was an original plan discontinued member not subject to article eleven, he or she shall, as such new entrant, continue to be an original plan discontinued member not subject to article eleven. If such original plan discontinued member, at the time of his or her discontinuance of "service", was an original plan discontinued member subject to article eleven, he or she shall, as such new entrant, continue to be an original plan discontinued member subject to article eleven.

(iv) Any original plan discontinued member who again becomes a member of the pension fund pursuant to the preceding subparagraphs of this paragraph two shall contribute to such fund at the rate (before modification, if any, to which such original plan discontinued member may be entitled pursuant to section 13-326 of this subchapter) at which he or she would have been required to contribute if he or she had not discontinued "service". The provisions of paragraph two of subdivision c of section 13-325 of this subchapter shall not apply to an original plan discontinued member who again becomes a member pursuant to this paragraph two.

(3) (i) Upon the subsequent retirement of any such original plan discontinued member who, pursuant to the provisions of subparagraph (iii) of paragraph two of this subdivision i, is an original plan discontinued member not subject to article eleven, he or she shall be credited with all of his or her "service" as a member subsequent to his or her last restoration to membership and he or she shall receive therefor a retirement allowance equal to one-sixtieth of his or her average annual salary or wages from the date of his or her re-entry into membership to the date of his or her subsequent retirement, multiplied by the number of years of "service" rendered by him or her from such date of re-entry.

(ii) Upon the subsequent retirement of any such original plan discontinued member who, pursuant to the provisions of subparagraph (iii) of paragraph two of this subdivision i, is an original plan discontinued member subject to article eleven, he or she shall be credited with all of his or her "service" as a member subsequent to this last restoration to membership and he or she shall receive therefor a retirement allowance determined pursuant to the provisions of subparagraph (i) of this paragraph three, except to the extent and in the manner that any such provision is modified by article eleven. If, after the restoration of any such original plan discontinued member subject to article eleven, he or she separates from "service" at a time when he or she is ineligible to retire under the provisions of such article eleven, that part of his or her accumulated contributions which is attributable to the period of his or her service subsequent to his or her last restoration to membership and which remains to his or her credit shall be refunded to him or her, without interest, pursuant to rules and regulations promulgated by the board with respect to refunds under such circumstances.

(4) In addition to the applicable retirement allowance provided for by paragraph three of this subdivision i, any

such new entrant original plan discontinued member, upon his or her subsequent retirement, shall receive the retirement allowance which he or she was receiving or entitled to receive immediately prior to his or her last restoration. If, after the restoration of any such original plan discontinued member subject to article eleven, he or she separates from service at a time when he or she is ineligible to retire under the provisions of such article eleven, he or she shall receive, in addition to the refund of a portion of his or her accumulated contributions as provided for in subparagraph (ii) of such paragraph three, the retirement allowance which he or she was receiving or entitled to receive immediately prior to his or her last restoration.

(5) During restoration to "service", in lieu of suspension of any benefits payable in the event of his or her death by reason of any option selection in respect to his or her retirement allowance, a beneficiary may pay to the fund from which his or her ordinary retirement allowance was payable, the amount by which his or her ordinary retirement allowance exceeded the optional retirement allowance theretofore granted to him or her, in which event such optional benefit shall continue and be payable in the event of his or her death as though no payment were suspended.

(6) Any original plan discontinued member who has again become a member of the pension fund pursuant to the provisions of paragraphs one and two of this subdivision i may, during such restored membership, by a written application duly executed and filed with the board pursuant to the provisions of subdivision c or subdivision e of section 13-315 of this subchapter, as the case may be, elect to become an improved benefits plan discontinued member restored to membership. As of the applicable time specified in subdivision d or subdivision f of such section with respect to commencement of status as an improved benefits plan member, any such original plan discontinued member who filed such an application shall cease to be an original plan discontinued member restored to membership and shall become an improved benefits plan discontinued member restored to membership. If such member was a restored original plan discontinued member not subject to article eleven immediately prior to the commencement of his or her status as a restored improved benefits plan discontinued member, he or she shall thereafter be an improved benefits plan discontinued member not subject to article eleven, restored to membership. If such member was a restored original plan discontinued member subject to article eleven immediately prior to the commencement of his or her status as a restored improved benefits plan discontinued member, he or she shall thereafter be an improved benefits plan discontinued member subject to article eleven, restored to membership. On and after the date on which the status of any such member as an improved benefits plan discontinued member restored to membership begins, his or her rights, privileges, benefits and obligations as such member shall be as prescribed by the provisions of section 13-359 of this subchapter; provided, however, that he or she shall contribute to the annuity savings fund on and after such date at the rate of contribution (before modification, if any, to which he or she may be entitled on account of increased-take-home-pay) which would have been applicable to him or her if the improved benefits plan had been in existence and he or she had become a non-elective improved benefits plan member as of the date of commencement of the period of member service in the uniformed force of the fire department which was credited to him or her at the time when he or she last discontinued service so as to become entitled to benefits under this section.

j. Notwithstanding any other provision of law, a discontinued member with ten or more years of credited service in the pension fund who dies before a retirement benefit becomes payable and who is otherwise not entitled to a death benefit from the pension fund shall be deemed to have died on the last day that he or she was in service upon which his or her membership was based for purposes of eligibility for the payment of a death benefit pursuant to the provisions of section 13-346 of this title. The death benefit payable in such case shall be one-half of that which would have been payable had such member died on the last day that service was rendered.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended chap 659/1999 § 8, eff. Feb. 4, 2000 and applicable

only to members who discontinue service on or after Feb. 4, 2000.

Subd. j added chap 659/1999 § 10, eff. Feb. 4, 2000 and applicable to the death of any member occurring on or after Jan. 1, 1997.

**DERIVATION**

Formerly § B19-7.871 added chap 867/1969 § 2

Amended chap 385/1981 § 32

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Administrative Code of the City of New York



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Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-361 Vested retirement rights; improved benefits plan members.

a. Any improved benefits plan member who:

(1) discontinues fire uniformed force service (as defined in subdivision sixteen-c of section 13-313 of this subchapter) on or after the starting date of the improved benefits plan (as such date is defined in subdivision twenty-seven of such section 13-313), other than by death, retirement or dismissal; and

(2) prior to such discontinuance, completed five or more years of allowable fire uniformed force service; and

(3) does not withdraw his or her accumulated deductions in whole or in part; and

(4) at least thirty days prior to the date of such discontinuance, filed a duly executed application for a deferred retirement allowance hereunder; shall have a vested right to receive a deferred retirement allowance as provided in this section.

b. (1) Upon such discontinuance under the conditions and in compliance with the provisions of subdivision a of this section, such deferred retirement allowance shall vest automatically.

(2) Such retirement allowance shall become payable on the earliest date on which such improved benefits plan discontinued member could have retired for service if discontinuance had not occurred.

c. Such deferred retirement allowance, in the case of an improved benefits plan discontinued member not subject to article eleven (as defined in subdivision sixteen-e of such section 13-313), shall consist of:

(1) an annuity which is the actuarial equivalent of an amount equal to such member's accumulated deductions for the period of his or her fire uniformed force service, plus any accumulated contributions transferred to his or her credit pursuant to section forty-three of the retirement and social security law, as the total of such accumulated deductions and contributions is on the earliest date on which such member could have retired for service; and

(2) a pension, which together with his or her annuity shall be equal to:

(i) in the case of any such improved benefits plan discontinued member not subject to article eleven whose minimum period for service retirement is twenty years, two and one-half percent of his or her annual earnable compensation on the date of his or her discontinuance of fire uniformed force service, multiplied by a number equal to the number of years of allowable fire uniformed force service credited to him or her on the date of such discontinuance, plus the number of his or her years of service for which credit was transferred pursuant to section forty-three of the retirement and social security law; or

(ii) in the case of any such improved benefits plan discontinued member not subject to article eleven whose minimum period for service retirement is twenty-five years, two percent of his or her annual earnable compensation on the date of his or her discontinuance of fire uniformed force service, multiplied by a number equal to the number of years of allowable fire uniformed force service credited to him or her on the date of his or her discontinuance of such service, plus the number of years of his or her service for which credit was transferred pursuant to section forty-three of the retirement and social security law; and

(3) for each year, or fraction thereof, of his or her service credit transferred from the New York city employees' retirement system, a pension of fifty-five percent of one-sixtieth of his or her five-year-average compensation (as defined in subdivision six-a of such section 13-313) if such service credit was for service rendered prior to October first, nineteen hundred fifty-one or seventy-five percent of one-sixtieth of his or her five-year-average compensation if such service was rendered on or after October first, nineteen hundred fifty-one.

d. For the purpose only of determining the pension portion of such retirement allowance pursuant to paragraphs one and two of subdivision c of this section, the annuity referred to in such paragraph one shall be computed as it would be (1) if it were not reduced by the actuarial equivalent of any outstanding loan, (2) if it were not increased by the actuarial equivalent of any additional contributions, (3) if it were not reduced by reason of such member's election to decrease his or her annuity contributions in order to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage, (4) as it would be without any optional modification, and (5) as it would be, in the case of any improved benefits plan discontinued member not subject to article eleven who is subject to a contribution rate deficiency (as defined in subdivision twenty-one of section 13-313 of this subchapter), if the whole or any part of such deficiency remaining unpaid at the time when such retirement allowance becomes payable had been paid to the pension fund on his or her date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of such section 13-313).

d-1. Such deferred retirement allowance, in the case of an improved benefits plan discontinued member subject to article eleven (as defined in subdivision sixteen-f of such section 13-313), shall consist of an annuity and pension determined pursuant to the provisions of subdivisions c and d of this section, except to the extent and in the manner that any such provision is modified by article eleven.

e. Regular interest on the accumulated deductions of an improved benefits plan discontinued member and on his or her reserve-for-increased-take-home-pay shall be credited after discontinuance of fire uniformed force service at the rate which would be applicable if he or she had not discontinued such service.

f. If an improved benefits plan discontinued member dies before attaining the earliest age at which he or she

could have retired for service if discontinuance had not occurred, his or her accumulated deductions shall be paid (1) to the beneficiary designated by him or her pursuant to section 13-346 of this subchapter to receive his or her accumulated deductions in the event that such deductions were to become payable under such section, or (2) if such member had made no such designation, to his or her estate.

g. An improved benefits plan discontinued member may elect any option under section 13-369 of this subchapter at any time prior to the first payment on account of his or her retirement allowance under this section.

h. Withdrawal of accumulated deductions, in whole or in part, after discontinuance of fire uniformed force service, shall terminate the right to a deferred retirement allowance under this section.

i. If an improved benefits plan discontinued member who has not withdrawn his or her accumulated deductions in whole or in part shall subsequently re-enter fire uniformed force service before the earliest date on which such improved benefits plan discontinued member could have retired for service if discontinuance had not occurred, he or she shall be entitled to the service credit and status to which he or she was entitled immediately prior to his or her discontinuance of fire uniformed force service and shall be credited with regular interest on his or her accumulated deductions and his or her reserve-for-increased-take-home-pay from the time of such discontinuance to the time of his or her re-entry into fire uniformed force service, at the rate which would have been applicable if he or she had not discontinued such service.

j. (1) If an improved benefits plan discontinued member who has not withdrawn his or her accumulated deductions in whole or in part shall subsequently and on or after the earliest date on which such improved benefits plan discontinued member could have retired for service if discontinuance had not occurred, re-enters fire uniformed force service, the payment of his or her pension only shall be suspended and forfeited during the period of such fire uniformed force service, except as herein otherwise provided.

(2) Such improved benefits plan discontinued member may again become a member of the pension fund, if within ninety days after his or her return to fire uniformed force service, he or she files a duly executed and acknowledged application for such membership.

(3) (i) Subject to the provisions of subparagraphs (ii) and (iii) of this paragraph three, if such beneficiary shall again become a member of the pension fund, the payment of his or her annuity shall also be suspended and forfeited and his or her annuity reserve shall be transferred to his or her credit in the annuity savings fund and he or she shall become such member as a new entrant.

(ii) If such improved benefits plan discontinued member, at the time of his or her discontinuance of fire uniformed force service, was an improved benefits plan discontinued member not subject to article eleven, he or she shall, as such new entrant, continue to be an improved benefits plan discontinued member not subject to article eleven. If such improved benefits plan discontinued member, at the time of his or her discontinuance of fire uniformed force service, was an improved benefits plan discontinued member subject to article eleven, he or she shall, as such new entrant, continue to be an improved benefits plan discontinued member subject to article eleven.

(iii) Any improved benefits plan discontinued member who again becomes a member of the pension fund pursuant to the provisions of paragraph two of this subdivision j and the preceding subparagraphs of this paragraph three, shall contribute to such fund at the rate (before modification, if any, to which such improved benefits plan discontinued member may be entitled pursuant to section 13-326 of this subchapter) at which he or she would have been contributing if he or she had not discontinued fire uniformed force service.

(iv) Upon the subsequent retirement of any such improved benefits plan discontinued member who, pursuant to the provisions of subparagraph (ii) of this paragraph three, is an improved benefits plan discontinued member not subject to article eleven, he or she shall be credited with all of his or her service as a member subsequent to his or her last restoration to membership and he or she shall receive therefor a retirement allowance, payable in such form as he or

she shall select under section 13-369 of this subchapter, consisting of:

(A) an annuity which is the actuarial equivalent of his or her accumulated deductions at the time of such retirement; and

(B) a pension equal to one-sixtieth of his or her average annual earnings from the date of his or her re-entry into membership to the date of his or her subsequent retirement, multiplied by the number of years of his or her allowable service in the uniformed force of the fire department rendered by him or her from such date of re-entry; and

(C) a pension-providing-for-increased-take-home-pay which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may be entitled, if any, for the period of his or her allowable service in the uniformed force of the fire department rendered by him or her from such date of re-entry.

(v) Upon the subsequent retirement of any such improved benefits plan discontinued member who, pursuant to the provisions of subparagraph (ii) of this paragraph three, is an improved benefits plan discontinued member subject to article eleven, he or she shall be credited with all of his or her service as a member subsequent to his or her last restoration to membership and he or she shall receive therefor a retirement allowance determined pursuant to the provisions of subparagraph (iv) of this paragraph three, except to the extent and in the manner that any such provision is modified by article eleven.

(vi) In addition to the applicable retirement allowance provided for by subparagraph (iv) or subparagraph (v) of this subdivision j, as the case may be, any such improved benefits plan discontinued member, upon his or her subsequent retirement, shall receive the pension which he or she was receiving or entitled to receive immediately prior to his or her last restoration.

(vii) If, after the restoration of any such improved benefits plan discontinued member subject to article eleven, he or she separates from service at a time when he or she is ineligible to retire under the provisions of such article eleven, he or she shall receive a retirement allowance which shall consist of an annuity which is the actuarial equivalent of his or her accumulated deductions and the pension, including the pension-providing-for-increased-take-home-pay, if any, which he or she was receiving or entitled to receive immediately prior to his or her last restoration.

(viii) In lieu of suspension during restoration to fire uniformed force service of any benefits payable in the event of his or her death by reason of any optional selection in respect to his or her pension, any such beneficiary may pay to the fund or funds from which his or her ordinary pension was payable, the amount by which his or her ordinary pension exceeded the optional pension heretofore granted to him or her, in which event such optional benefit shall continue and be payable in the event of his or her death as though no payment was suspended.

k. Notwithstanding any other provision of law, a discontinued member with ten or more years of credited service in the pension fund who dies before a retirement benefit becomes payable and who is otherwise not entitled to a death benefit from the pension fund shall be deemed to have died on the last day that he or she was in service upon which his or her membership was based for purposes of eligibility for the payment of a death benefit pursuant to the provisions of section 13-346 of this title. The death benefit payable in such case shall be one-half of that which would have been payable had such member died on the last day that service was rendered.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 659/1999 § 9, eff. Feb. 4, 2000 and applicable

only to members who discontinue service on or after Feb. 4, 2000.

Subd. k added chap 659/1999 § 11, eff. Feb. 4, 2000 and applicable to the death of any member occurring on or after Jan. 1, 1997.

**DERIVATION**

Formerly § B19-7.872 added chap 385/1981 § 33

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Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-362 Retirement allowances of original plan members; for ordinary disability.

a. Upon retirement for ordinary disability, an original plan member not subject to article eleven (as defined in subdivision four-c of section 13-313 of this subchapter) shall receive a retirement allowance which shall be equal to:

1. If the number of years of city-service credited to him or her is equal to or exceeds the minimum period for service retirement elected by him or her, (a) one-fortieth of his or her final compensation multiplied by the number of years of city-service credited to him or her, in the case of any such member whose minimum period is twenty years of city-service, and (b) one-fiftieth of his or her final compensation multiplied by the number of years of city-service credited to him or her, in the case of any such member whose minimum period is twenty-five years of city-service; or

2. One-half of his or her final compensation as such member, if the number of years of city-service credited to him or her is equal to or exceeds ten, but is less than his or her minimum period for service retirement; or

3. One-third of his or her final compensation as such member, if the number of years of city-service credited to him or her is less than ten.

b. Upon retirement for ordinary disability, an original plan member subject to article eleven (as defined in subdivision four-d of such section 13-313) shall receive a retirement allowance determined pursuant to the provisions of subdivision a of this section, except to the extent and in the manner that any such provision is modified by article

eleven.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.88 added LL 53/1941 § 16

Amended chap 868/1969 § 1

Amended chap 385/1981 § 34



Administrative Code of the City of New York



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Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-363 Retirement allowances of improved benefit plan members; for ordinary disability.

a. Subject to the provisions of subdivision b of this section, upon retirement for ordinary disability, an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of section 13-313 of this subchapter) shall receive a retirement allowance which shall consist of:

1. An annuity which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

2. A pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

3. A pension, which, together with his or her annuity and the pension-providing-for-increased-take-home-pay, if any, shall be equal to:

(i) In the case of any such member who contributes on the basis of retirement after twenty years of city-service, a retirement allowance equal to one-fortieth of his or her annual earnable compensation on the date of retirement multiplied by the number of years of city-service credited to him or her, but not less than (A) one-half of his or her annual earnable compensation on the date of retirement, if the years of city-service credited to him or her are ten or more, or (B) one-third of his or her annual earnable compensation on the date of retirement, if the years of city-service

credited to him or her are less than ten; or

(ii) In the case of any such member who contributes on the basis of retirement after twenty-five years of city-service, a retirement allowance equal to one-fiftieth of his or her annual earnable compensation on the date of retirement, multiplied by the number of years of city-service credited to him or her, but not less than (A) one-half of his or her annual earnable compensation on the date of retirement, if the years of city-service credited to him or her are ten or more, or (B) one-third of his or her annual earnable compensation on the date of retirement, if the years of city-service credited to him or her are less than ten.

b. For the purpose only of determining the pension portion of the retirement allowance payable for ordinary disability under the provisions of this section, the member's annuity shall be computed as it would be (1) if it were not reduced by the actuarial equivalent of any outstanding loan, (2) if it were not increased by the actuarial equivalent of any additional contributions, (3) if it were not reduced by reason of the member's election to decrease his or her annuity contributions in order to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage, (4) as it would be without optional modification, and (5) as it would be, in the case of any improved benefits plan member not subject to article eleven who is subject to a contribution rate deficiency (as defined in subdivision twenty-one of such section 13-313) under the provisions of this subchapter, if the whole or any part of such deficiency remaining unpaid as of the effective date of such member's retirement for ordinary disability had been

paid to the pension fund on the earlier of (i) his or her date of commencement of contributions as an improved benefits plan member (as defined in subdivision nineteen of such section 13-313) or (ii) the date next following the date of completion of such member's minimum period for service retirement.

c. Upon retirement for ordinary disability, an improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313) shall receive a retirement allowance determined pursuant to the provisions of subdivisions a and b of this section, except to the extent and in the manner that any such provision is modified by article eleven.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.881 added chap 385/1981 § 35



Administrative Code of the City of New York



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

*NYC Administrative Code 13-364*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-364 Retirement allowances of original plan members; for accident disability.

a. Upon retirement for accident disability, an original plan member not subject to article eleven (as defined in subdivision four-c of section 13-313 of this subchapter) shall receive:

1. a retirement allowance which shall be equal to three-quarters of his or her final compensation on the date of his or her retirement and in the case of a member acting in a higher rank, an amount not to exceed three-quarters of the compensation of such rank on the day such injury was suffered; and

2. his or her accumulated contributions, without interest, either in a lump sum or in the form of an annuity which is the actuarial equivalent of such accumulated contributions, as such member shall elect; and

3. for each year he or she shall have served in the uniformed force of the fire department after having completed the minimum period of service retirement elected by him or her, the additional amount provided for by section two hundred seven-b of the general municipal law with respect to such year.

b. Upon retirement for accident disability, an original plan member subject to article eleven (as defined in subdivision four-d of such section 13-313) shall receive a retirement allowance determined pursuant to the provisions of subdivision a of this section, except to the extent and in the manner that any such provision is modified by article eleven.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.89 added LL 53/1941 § 16

Amended chap 803/1969 § 4

Amended chap 868/1969 § 2

Amended chap 385/1981 § 36



Administrative Code of the City of New York



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

*NYC Administrative Code 13-365*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-365 Accidental disability benefits in the case of retirements prior to July 1, 1965.

a. Notwithstanding the provisions of section 13-364 of this subchapter, in any case where a retirement allowance was awarded under the provisions of such section, by reason of the retirement for accidental disability of a member occurring before July first, nineteen hundred sixty-five, such retirement allowance shall be not less than three-fourths the annual salary or compensation earnable by a first grade firefighter on July first, nineteen hundred and sixty-five. In the case of a member receiving a lesser retirement allowance, such retirement allowance shall be increased to an amount which will equal three-fourths of the earn able salary or compensation of a first grade firefighter on July first, nineteen hundred and sixty-five. Such retirement allowance shall be computed as it would have been without deduction for outstanding loans and optional modifications.

b. Such retirement allowance shall be payable to the same persons and shall be subject to the same terms and conditions, including provisions as to terminations, as the retirement allowance which would otherwise be payable to the members under section 13-364 of this subchapter or any other law.

c. The retirement allowance payable pursuant to the provisions of such subdivisions a and b of this section shall be in lieu of any retirement allowance which would otherwise be payable on and after the effective date of this section pursuant to the provisions of section 13-364 of this subchapter.

d. Nothing in this section shall be construed as creating any rights on behalf of any person who dies prior to

October twenty-seventh, nineteen hundred sixty-six and benefits due thereunder shall be calculated and paid only from such date this law becomes effective.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.891 added LL 34/1966 § 1

Amended LL 93/1973 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-366*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-366 Retirement allowances of improved benefits plan members; for accident disability.

a. Upon retirement for accident disability, an improved benefits plan member not subject to article eleven shall receive a retirement allowance which shall consist of:

(1) An annuity, which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement; and

(2) A pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may then be entitled, if any; and

(3) A pension, of three-quarters of his or her annual earnable compensation on the date of retirement and in the case of a member acting in a higher rank, an amount not to exceed three-quarters of the annual earnable compensation of such rank on the day such injury was suffered, in addition to the annuity and pension provided for by paragraphs one and two of this subdivision a; and

(4) For each year he or she shall have served in the uniformed force of the fire department after having completed the minimum period of service retirement elected by him or her, the additional amount provided for by section two hundred seven-b of the general municipal law with respect to such year.

b. Upon retirement for accident disability, an improved benefits plan member subject to article eleven shall receive a retirement allowance determined pursuant to the provisions of subdivision a of this section, except to the extent and in the manner that any such provision is modified by article eleven.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par (3) amended chap 570/1992 § 1, eff. July 24, 1992

**DERIVATION**

Formerly § B19-7.892 added chap 385/1981 § 37



Administrative Code of the City of New York



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

*NYC Administrative Code 13-367*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-367 Retirement allowances of improved benefits plan members credited with certain service as battalion chief.

a. In the case of the retirement of an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of section 13-313 of this subchapter), who, pursuant to certification from an eligible list and permanent appointment to the position of battalion chief, shall have served in such rank for a period of not less than five years, such member shall be entitled to receive a retirement allowance which shall be the larger of:

(1) the retirement allowance which would be computed for such member if this section had not been enacted; or

(2) a retirement allowance computed pursuant to the provisions of subdivision b of this section.

b. (1) A retirement allowance shall be computed for such member in all respects pursuant to the applicable provisions of this subchapter as if this section had not been enacted, except as provided in paragraphs two and three of this subdivision b.

(2) Solely for the purpose of calculating the annual earnable compensation on the date of retirement in computing a retirement allowance under the applicable provisions referred to in paragraph one of this subdivision b, the component thereof consisting of the base salary on the date of retirement shall not be such member's base salary in the position held by him or her on such date, but shall instead be deemed to be an amount equal to the base salary which would have been payable on the date of such member's retirement, if he or she had been promoted to the position of

deputy chief of the department on that date. The said deputy chief's base salary shall not be used for the purpose of calculating any other component of such member's retirement allowance under this subdivision.

(3) For the purpose of computing a retirement allowance pursuant to this subdivision b, any additional compensation of such member for acting in a higher rank shall be excluded.

c. Where an improved benefits plan member subject to article eleven (as defined in subdivision four-j of section 13-313 of this subchapter) shall have served in the rank of battalion chief for a period of not less than five years as described in subdivision a of this section, he or she shall, upon retirement, be entitled to a retirement allowance determined pursuant to the applicable provisions of subdivisions a and b of this section, except to the extent and in the manner that any such provision is modified by article eleven.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.893 added chap 385/1981 § 37

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-368*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-368 Retirement allowances; restrictions on.

a. If a lump sum which has been paid or which is payable under the provisions of the workers' compensation law equals or exceeds the present value of all amounts otherwise payable out of moneys provided or to be provided by the pension fund under the provisions of this subchapter on account of the same disability of the same person, no payment shall be made to such person under the provisions of this subchapter. If such lump sum be a percentage less than one hundred per cent of the present value of all such amounts, there shall be paid as it becomes due under the provisions of this subchapter, in lieu of each amount otherwise payable, an amount equal to the percentage thereof which is the difference between such lesser per cent and one hundred per cent.

b. If an amount which is payable throughout a period under the provisions of the workers' compensation law equals or exceeds the amounts otherwise payable during the same period out of the moneys provided or to be provided by the pension fund under the provisions of this subchapter on account of the same disability of the same person, no payment shall be made to such person under the provisions of this subchapter during such period nor thereafter, until the total amount of such omitted payments, together with the regular interest which they would have accumulated, equals the amount paid under the workers' compensation law, together with the regular interest which it would have accumulated. If an amount which is payable throughout a period under the provisions of the workers' compensation law be a percentage less than one hundred per cent of the amounts otherwise payable during the same period out of moneys provided or to be provided by the pension fund under the provisions of this subchapter on account of the same disability of the same person, there shall be paid during such period as it becomes due under the provisions of this

subchapter, in lieu of each amount otherwise payable, the percentage thereof which is the difference between such lesser per cent and one hundred per cent.

c. No decision of the state industrial board shall be binding on the medical board or on the board in the determination of eligibility of a claimant for an accident disability or an accidental death benefit.

d. Notwithstanding any of the foregoing provisions of this section or any other law to the contrary, pending the final determination of a claim for workers' compensation benefits, the board may authorize payment of all or any part of the benefits which are payable under this subchapter and to which any of the foregoing provisions of this section apply, and in that event the pension fund shall be entitled to reimbursement out of the unpaid installment or installments of compensation due under the workers' compensation law provided that claim therefor is filed with the workers' compensation board, together with proof of the fact and amount of payment.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.9 added LL 53/1941 § 16

Sub d added chap 1007/1971 § 3



Administrative Code of the City of New York



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

*NYC Administrative Code 13-369*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-369 Retirement of original plan members; options in which retirement allowances may be taken.

a. Subject to the provisions of subdivision b of this section, until the first payment on account of any benefit is made, except pursuant to the provisions of subdivision c of this section, any beneficiary who was an original plan member at the time of his or her retirement, or, if such beneficiary is an incompetent, then the spouse of such beneficiary, or, if there be no spouse, a committee of the estate, may elect to receive such benefit in a retirement allowance payable throughout life, or any such beneficiary or the spouse or committee so electing may then elect to receive the actuarial equivalent at the time of his or her retirement allowance in a lesser retirement allowance, payable throughout life with the provision that:

Option 1. If he or she die before he or she has received in payments the present value of his or her retirement allowance, as it was at the time of his or her retirement, the balance shall be paid to his or her legal representatives or to such person as such beneficiary, or the spouse or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board.

Option 2. Upon his or her death, his or her retirement allowance shall be continued throughout the life of and paid to such person as such beneficiary, or the spouse or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board at the time of his or her retirement.

Option 3. Upon his or her death, one-half of his or her retirement allowance shall be continued throughout the

life of and paid to such person as such beneficiary, or the spouse or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board at the time of his or her retirement.

Option 4. Upon his or her death, some other benefit or benefits shall be paid to such other person or persons as such beneficiary, or the spouse or committee so electing, has nominated or shall nominate, provided such other benefit or benefits, together with such lesser retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to his or her retirement allowance, and shall be approved by such board.

b. In the case of an original plan member subject to article eleven (as defined in subdivision four-d of section 13-313 of this subchapter) or any beneficiary who was an original plan member subject to article eleven at the time of such member's retirement, the provisions of subdivision a of this section shall apply except to the extent and in the manner that any such provision is modified by article eleven.

c. If a member who is otherwise eligible for retirement pursuant to section 13-352 or 13-353 of this subchapter dies within thirty days after the filing with the pension board of the application for retirement pursuant to section 13-352 or 13-353 of this subchapter and it is established that the physical or mental impairment or incapacitation of the applicant specified in such application was directly related to the cause of the applicant's death, such applicant shall be approved by the pension board effective one day before the date of the applicant's death, provided however that:

(1) if a member is entitled to an ordinary disability retirement allowance under the provisions of this subchapter, the benefits provided pursuant to section 13-352 of this subchapter shall be payable unless the member would otherwise be entitled to a greater benefit pursuant to section 13-346 of this subchapter, in which event the greater benefit shall be payable; or

(2) if a member is entitled to an accidental disability retirement allowance under the provisions of this subchapter, the benefits provided pursuant to section 13-353 of this subchapter shall be payable unless the member would otherwise be entitled to a greater benefit pursuant to section 13-348 of this subchapter, in which event the greater benefit shall be payable.

d. Notwithstanding any law to the contrary, for the purpose of electing an option pursuant to this section, the pension board shall notify the surviving spouse of any applicant described in subdivision c of this section, or, if no such spouse exists, the personal representative of the estate of such applicant of the right of election pursuant to this section and such surviving spouse or personal representative of such estate may elect any such option within thirty days after receipt of such notice.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a open par amended chap 775/1987 § 5

Subd. c added chap 775/1987 § 6 open par amended chap 198/1988 § 1

Subd. d added chap 775/1987 § 6

**DERIVATION**

Formerly § B19-7.91 added LL 53/1941 § 16

Amended chap 385/1981 § 38

Sub a open par amended chap 974/1983 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-369.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-369.1 Retired employees; change of options.

Notwithstanding any other provision of law to the contrary, no beneficiary shall be permitted to change any optional selection after it has become effective, provided, however, that if:

(a) a retired member nominates the spouse of such member as the survivor beneficiary under option two or three of section 13-369 of the code, or if a retired member nominates the spouse of such member under option four of such section to receive payment of an annual benefit as a survivor; and

(b) such person so nominated ceases by causes other than death to be his or her spouse or is divorced from or separated pursuant to a judicial decree from such spouse, then the board of trustees shall have the authority to permit the change of the optional benefit to the maximum benefit that is the actuarial equivalent by and with the consent of all parties.

**HISTORICAL NOTE**

Section added chap 582/1997 § 5, eff. Sept. 17, 1997.

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-370*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-370 Retirement of improved benefits plan members; options in which retirement allowances may be taken.

a. Subject to the provisions of subdivision c of this section, until the first payment on account of any benefit is made, except pursuant to the provisions of subdivision d of this section any beneficiary who was an improved benefits plan member at the time of his or her retirement, or, if such beneficiary is an incompetent, then the spouse or such beneficiary, or, if there be no spouse, a committee of the estate, may elect to receive such benefit in a retirement allowance payable throughout life, or any such beneficiary or the spouse or committee so electing may then elect to receive the actuarial equivalent at the time of his or her annuity, his or her pension, or his or her retirement allowance in a lesser annuity or a lesser pension or a lesser retirement allowance, payable throughout life with the provision that:

Option 1. If he or she die before he or she has received in payments the present value of his or her annuity, his or her pension, or his or her retirement allowance, as it was at the time of his or her retirement, the balance shall be paid to his or her legal representatives or to such person as such beneficiary, or the spouse or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board.

Option 2. Upon his or her death, his or her annuity, his or her pension, or his or her retirement allowance, shall be continued throughout the life of and paid to such person as such beneficiary, or the spouse or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board at the time of his or her retirement.

Option 3. Upon his or her death, one-half of his or her annuity, his or her pension, or his or her retirement allowance, shall be continued throughout the life of and paid to such person as such beneficiary, or the spouse or committee so electing, has nominated or shall nominate by written designation duly acknowledged and filed with the board at the time of his or her retirement.

Option 4. Upon his or her death, some other benefit or benefits shall be paid to such other person or persons as such beneficiary, or the spouse or committee so electing, has nominated or shall nominate, provided such other benefit or benefits, together with such lesser annuity, or lesser pension or lesser retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to his or her annuity, his or her pension or his or her retirement allowance, and shall be approved by such board.

b. For purposes of this section, the terms "pension" and "retirement allowance" shall be deemed to include the pension-providing-for-increased-take-home-pay, if any.

c. In the case of an improved benefits plan member subject to article eleven (as defined in subdivision four-j of section 13-313 of this subchapter) or any beneficiary who was an improved benefits plan member subject to article eleven at the time of such member's retirement, the provisions of subdivisions a and b of this section shall apply except to the extent and in the manner that any such provision is modified by article eleven.

d. If a member who is otherwise eligible for retirement pursuant to this section dies within thirty days after the filing with the pension board of the application for retirement pursuant to this section and it is established that the physical or mental impairment or incapacitation of the applicant specified in such application was directly related to the cause of the applicant's death, such application shall be approved by the pension board effective one day before the date of the applicant's death, provided however that:

(1) if a member is entitled to an ordinary disability retirement allowance under the provisions of this subchapter, the benefits provided pursuant to section 13-352 of this subchapter shall be payable unless the member would otherwise be entitled to a greater benefit pursuant to section 13-346 of this subchapter, in which event the greater benefit shall be payable; or

(2) if a member is entitled to an accidental disability retirement allowance under the provisions of this subchapter, the benefits provided pursuant to section 13-353 of this subchapter shall be payable unless the member would otherwise be entitled to a greater benefit pursuant to section 13-348 of this subchapter, in which event the greater benefit shall be payable.

e. Notwithstanding any law to the contrary, for the purpose of electing an option pursuant to this section, the pension board shall notify the surviving spouse of any applicant described in subdivision d of this section, or, if no such spouse exists, the personal representative of the estate of such applicant of the right of election pursuant to this section and such surviving spouse or personal representative of such estate may elect any such option within thirty days after receipt of such notice.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 288/1990 § 1 eff. June 25, 1990 retroactive to November 5, 1987

Subds. d, e added chap 228/1990 § 2 eff. June 25, 1990 retroactive to November 5, 1987

**DERIVATION**

Formerly § B19-7.911 added chap 385/1981 § 39



Administrative Code of the City of New York



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

*NYC Administrative Code 13-370.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-370.1 Retired employees; change of options.

Notwithstanding any other provision of law to the contrary, no beneficiary shall be permitted to change any optional selection after it has become effective, provided, however, that if:

(a) a retired member nominates the spouse of such member as the survivor beneficiary under option two or three of section 13-370 of the code, or if a retired member nominates the spouse of such member under option four of such section to receive payment of an annual benefit as a survivor; and

(b) such person so nominated ceases by causes other than death to be his or her spouse or is divorced from or separated pursuant to a judicial decree from such spouse, then the board of trustees shall have the authority to permit the change of the optional benefit to the maximum benefit that is the actuarial equivalent by and with the consent of all parties.

**HISTORICAL NOTE**

Section added chap 582/1997 § 6, eff. Sept. 17, 1997.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-371*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-371 Benefits upon re-entry into membership; after retirement of original plan members.

a. (1) Should a beneficiary receiving or entitled to receive a retirement allowance under the provisions of section 13-349, or 3-350 of this subchapter, who was an original plan member at the time of his or her last retirement, re-enter city-service, his or her retirement allowance shall cease. In the case of any such beneficiary who re-enters city-service (other than as fire commissioner or deputy fire commissioner), he or she shall again become a member of the fund as an original plan member, and in the case of any such beneficiary who re-enters city-service by reason of being appointed fire commissioner or deputy fire commissioner, he or she shall again become a member of the fund as an original plan member and, subject to the provisions of paragraph two of this subdivision shall remain such a member while serving as fire commissioner or deputy fire commissioner, and an amount equal to the retirement allowance reserve of any such member shall be transferred to the contingent reserve fund.

(2) Where any beneficiary who again becomes a member as provided for in paragraph one of this subdivision a elects to become an improved benefits plan member pursuant to the applicable provisions of section 13-315 of this subchapter:

(i) he or she shall, if he or she became an original plan member not subject to article eleven (as defined in subdivision four-c of section 13-313 of this subchapter) upon such restoration of membership, be from the effective date of such election an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of such section 13-313); and

(ii) he or she shall, if he or she became an original plan member subject to article eleven (as defined in subdivision four-d of such section 13-313) upon such restoration of membership, be from the effective date of such election an improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313).

(3) On and after the effective date of such election, his or her rights, privileges, benefits and obligations, as such restored improved benefits plan member, shall be governed by the provisions of section 13-372 of this subchapter.

b. (1) Subject to the applicable provisions of paragraphs five and six of this subdivision b, in any case where any such beneficiary who is appointed fire commissioner or deputy fire commissioner, subsequently retires while fire commissioner or deputy fire commissioner and without having elected to become an improved benefits plan member pursuant to the applicable provisions of section 13-315 of this subchapter, he or she shall receive the retirement allowance, if any, which he or she was receiving or entitled to receive immediately prior to his or her appointment as fire commissioner or deputy fire commissioner and in addition, a further retirement allowance as provided for by the applicable provisions of paragraph two or paragraph three of this subdivision b.

(2) If such appointee is an original plan member not subject to article eleven at the time of such retirement as fire commissioner or deputy fire commissioner, he or she shall receive a further retirement allowance of one-sixtieth of his or her average annual salary earned during his or her credited service as fire commissioner or deputy fire commissioner, multiplied by the number of years of his or her credited service as fire commissioner or deputy fire commissioner.

(3) If such appointee is an original plan member subject to article eleven at the time of such retirement as fire commissioner or deputy fire commissioner, he or she shall receive a further retirement allowance determined pursuant to the provisions of paragraph two of this subdivision b, except to the extent and in the manner that any such provision is modified by article eleven.

(4) The further retirement allowance payable to such appointee as prescribed by the applicable provisions of paragraph two or paragraph three of this subdivision shall be payable in such form as he or she shall select under section 13-369 of this subchapter.

(5) Subject to the provisions of paragraph six of this subdivision, where any beneficiary who is appointed fire commissioner or deputy fire commissioner shall have earned at least three years of member credit for service as fire commissioner or deputy fire commissioner, the total service credit to which he or she was entitled at the time of his or her earlier retirement may, at his or her election, again be credited to him or her and upon his or her subsequent retirement as fire commissioner or deputy fire commissioner, he or she shall be credited in addition with all service as fire commissioner or deputy fire commissioner.

(6) Such total service credit to which such fire commissioner or deputy fire commissioner was entitled at the time of his or her earlier retirement shall be credited as provided in paragraph five of this subdivision b only in the event that he or she returns to the pension fund with regular interest the actuarial equivalent of the amount of the retirement allowance he or she received; provided, however, that in the event that such amount is not so repaid, the actuarial equivalent thereof shall be deducted from his or her subsequent retirement allowance.

c. During restoration to service for the city, other than city-service as defined in this subchapter, in lieu of suspension of any benefits payable in the event of his or her death by reason of any optional selection in respect to his or her retirement allowance, a beneficiary who was an original plan member at the time of his or her last retirement prior to his or her last restoration to city-service may pay to the fund from which his or her ordinary retirement allowance was payable, the amount by which his or her ordinary retirement allowance exceeded the optional retirement allowance theretofore granted to him or her, in which event such optional benefit shall continue and be payable in the event of his or her death as though no payment were suspended.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.92 added LL 53/1941 § 16

Amended chap 1010/1972 § 3

(Special provision chap 1010/1972 §§ 4, 6, 7)

Amended chap 385/1981 § 40

Sub a par 1 amended chap 330/1982 § 1

Sub b pars 1, 2 amended chap 330/1982 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-372*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-372 Benefits upon re-entry into membership; after retirement of improved benefits plan members.

a. (1) Should a beneficiary receiving or entitled to receive a retirement allowance under the provisions of section 13-349 or 13-350 of this subchapter, and who was an improved benefits plan member at the time of his or her last retirement, re-enter city-service, his or her retirement allowance and his or her pension-providing-for-increased-take-home-pay, if any, shall cease.

(2) If he or she had not served the period of service elected by him or her, he or she shall again become a member of the pension fund as an improved benefits plan member. Except as otherwise provided in paragraph three of this subdivision a, if he or she has served the minimum period of service elected by him or her, he or she may file a duly executed and acknowledged application therefor within ninety days after his or her return to service and thereupon again become a member of such fund as an improved benefits plan member.

(3) In the case of any such beneficiary who is appointed fire commissioner or a deputy fire commissioner, he or she shall again become a member of the pension fund as an improved benefits plan member and shall remain such a member while serving as fire commissioner or deputy fire commissioner.

(4) The annuity reserve of any such member whose membership is restored as above provided in this section shall be transferred to his or her credit in the annuity savings fund, and he or she shall contribute to such fund as if he or she were a new entrant.

(5) Upon the subsequent retirement of any such member whose membership is restored as above provided in this section and who, as such restored member, is an improved benefits plan member not subject to article eleven (as defined in subdivision four-i of section 13-313 of this subchapter), he or she shall be credited with all of his or her service as a member subsequent to his or her last restoration to membership and shall receive a retirement allowance therefor as if he or she were a new entrant, which retirement allowance shall be determined pursuant to the applicable provisions of this subchapter governing the granting of such a retirement allowance to an improved benefits plan member not subject to article eleven.

(6) Where any such member whose membership is restored as above provided in this section is, as such restored member, an improved benefits plan member subject to article eleven (as defined in subdivision four-j of such section 13-313), he or she shall, upon his or her subsequent retirement, be credited with all of his or her service as a member subsequent to his or her last restoration to membership and shall receive a retirement allowance therefor as if he or she were a new entrant, which retirement allowance shall be determined pursuant to the applicable provisions of this subchapter governing the granting of such a retirement allowance to an improved benefits plan member subject to article eleven.

(7) A retirement allowance determined pursuant to the applicable provisions of subdivision five or subdivision six of this section shall be payable in such form as such member entitled thereto shall select under section 13-370 of this subchapter.

(8) In lieu of suspension during restoration to city-service of any benefits payable in the event of his or her death by reason of any optional selection in respect to his or her pension and the pension-providing-for-increased-take-home-pay, if any, a beneficiary who was an improved benefits plan member at the time of his or her last retirement prior to his or her last restoration to city-service may pay to the fund or funds from which his or her ordinary pension and his or her pension-providing-for-increased-take-home-pay, if any, were payable, the amount by which his or her ordinary pension and the pension-providing-for-increased-take-home-pay, if any, exceeded the optional pension and the pension-providing-for-increased-take-home-pay, if any, heretofore granted to him or her, in which event such optional benefit shall continue and be payable in the event of his or her death as though no payment were suspended.

(9) In addition, upon his or her subsequent retirement, any such member who again becomes a member as an improved benefits plan member under the applicable provisions of paragraphs one, two, three and four of this subdivision shall receive the pension and the pension-providing-for-increased-take-home-pay, if any, which he or she was receiving or entitled to receive immediately prior to his or her last restoration.

(10) Where any member who again becomes a member as an original plan member under section 13-371 of this subchapter elects pursuant to the provisions of section 13-315 of this subchapter while he or she is such a restored member to become an improved benefits plan member, the following shall apply:

(i) Subject to the provisions of subparagraph (iv) of this paragraph ten, the termination of his or her earlier retirement allowance, as provided for by such section,*5 13-371 shall not be affected by such election and shall continue in effect while such member remains in city-service.

(ii) The accumulated contributions of such member as an original plan member shall remain in the retirement allowance reserve fund and shall not be transferred to his or her credit in the annuity savings fund. On and after the effective date of his or her election to become an improved benefits plan member, he or she shall contribute to the pension fund as if he or she were a new entrant as an improved benefits plan member.

(iii) Upon the subsequent retirement of any such member who, as a restored member, is an improved benefits plan member by reason of such election, he or she shall be credited with all of his or her service as a member subsequent to his or her last restoration to membership and he or she shall receive a retirement allowance therefor

determined pursuant to the applicable provisions of paragraph five or paragraph six of this subdivision, which retirement allowance shall be payable in such form as he or she shall select under section 13-370 of this subchapter.

(iv) Upon becoming entitled to a retirement allowance as provided for by subparagraph (iii) of this paragraph, he or she shall receive, in addition to such retirement allowance, the retirement allowance, if any, which he or she was receiving or entitled to receive as an original plan retiree immediately prior to his or her last restoration.

b. (1) Subject to the provisions of paragraphs two and three of this subdivision b:

(i) where any beneficiary mentioned in subdivision a of this section, other than a beneficiary serving as fire commissioner or deputy fire commissioner, shall have earned at least five years of member credit for service in the uniformed force of the fire department after restoration to active service; and

(ii) where any beneficiary serving as fire commissioner or deputy fire commissioner shall have earned at least three years of member credit for service during restoration to membership pursuant to this section;

the total service credit to which any such restored member above referred to in this paragraph one was entitled at the time of his or her earlier retirement may, at his or her election, again be credited to him or her and upon his or her subsequent retirement he or she shall be credited in addition with all member service earned by him or her subsequent to his or her last restoration to membership.

(2) Such total service credit to which any such restored member referred to in paragraph one of this subdivision b was entitled at the time of his or her earlier retirement shall be credited as provided in such paragraph one only in the event that he or she returns to the pension fund with regular interest the actuarial equivalent of the amount of the retirement allowance he or she received; provided, however, that in the event that such amount is not so repaid, the actuarial equivalent thereof shall be deducted from his or her subsequent retirement allowance.

(3) In any case where any restored member who is eligible for and elects the crediting of his or her total service credit (to which he or she was entitled at the time of his or her earlier retirement) pursuant to the provisions of paragraphs one and two of this subdivision b became an improved benefits plan member by election made pursuant to the provisions of section 13-315 of this subchapter after his or her restoration to membership, he or she shall, upon his or her subsequent retirement, receive for such total service credit a retirement allowance determined pursuant to the provisions of section 13-359 of this subchapter, and he or she shall not receive any other retirement allowance or benefit for such total service credit.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.921 added chap 385/1981 § 41

**FOOTNOTES**

5

[Footnote 5]: * So in original. (Comma should be omitted.)

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

*NYC Administrative Code 13-372.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-372.1 Modified Option 1 pension computation formula.

a. The board may by resolution direct that under such circumstances as are designated in such resolution:

(1) benefits under Option 1 payable to or on account of original plan members who (i) were Tier I members in city-service on July thirty-first, nineteen hundred eighty-three and (ii) retired or retire on or after August first, nineteen hundred eighty-three for service or superannuation or for ordinary or accident disability or on or after such August first, discontinued or discontinue service so as to become original plan discontinued members; and

(2) benefits under Option 1 which consist of or are derived from the pension component of a retirement allowance and which are payable to or on account of improved benefits plan members who (i) became such members prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this section and (ii) retired or retire on or after August first, nineteen hundred eighty-three for service or superannuation or ordinary or accident disability or on or after such August first, discontinued or discontinue service so as to become improved benefits plan discontinued members;

shall be determined under the modified Option 1 pension computation formula (as defined in subdivision thirty-two of section 13-313 of the code).

b. If the board makes a direction, pursuant to the provisions of subdivision a of this section, for use of such

formula, it may also direct by resolution:

(1) that any member who is subject to the modified Option 1 pension computation formula may elect, at such time and in accordance with such procedures as are prescribed in such resolution, that such formula shall not apply to such member and that the initial reserve determined for the purpose of providing the benefits payable by reason of his or her selection of Option 1 and the Option 1 retirement allowance of any such original plan member or pension component of the Option 1 retirement allowance of any such improved benefits plan member shall be determined on the basis of gender-neutral mortality tables and regular interest of seven per centum per annum, compounded annually; and

(2) that the benefit payable, upon the death of the member making such election, to his or her beneficiary or estate shall be the difference between such Option 1 initial reserve and the total of the payments of such retirement allowance or pension component received by or payable to such member for the period prior to his or her death; and

(3) that where any member subject to the modified Option 1 pension computation formula retired before the effective date of a board resolution adopted pursuant to subdivision a of this section, and where the first payment on account of the retirement allowance of any original plan discontinued member or improved benefits plan discontinued member subject to such formula was made before the effective date of such resolution, such retiree or discontinued member, within such period of time after such effective date and in accordance with such procedures as are prescribed in such resolution, may elect the method of Option 1 benefit determination set forth in the preceding paragraphs of this subdivision b.

c. In any case, where, pursuant to board resolution, a benefit is required to be determined under the modified Option 1 pension computation formula and the determination of such benefit is also required by a board resolution adopted pursuant to sub-item (3) of item (A) of subparagraph (ii) of paragraph (j) of subdivision eight of section 13-313 of the code to reflect different computations of separate portions of such benefit, the methods of computation under the modified Option 1 pension computation formula shall be appropriately adjusted so as to give effect to the provisions of such resolution adopted pursuant to such sub-item (3).

**HISTORICAL NOTE**

Section added chap 910/1985 § 24, section number supplied by the

Legislative Bill Drafting Commission

**DERIVATION**

Formerly § B19-7.922 added chap 910/1985 § 24



Administrative Code of the City of New York



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

*NYC Administrative Code 13-373*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-373 Monthly payments to beneficiaries under original plan.

A retirement allowance granted under the provisions of this subchapter by reason of the retirement of an original plan member shall be paid in equal monthly installments or in ratably smaller amounts when the benefit begins after the first day of the month or ends before the last day of the month.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.93 added LL 53/1941 § 16

Amended chap 385/1981 § 42



Administrative Code of the City of New York



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

*NYC Administrative Code 13-374*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-374 Monthly payments to beneficiaries under improved benefits plan.

A pension-providing-for-increased-take-home-pay, an annuity, a dependent benefit, or a retirement allowance granted under the provisions of this subchapter by reason of the retirement of an improved benefits plan member shall be paid in equal monthly instalments or in ratably smaller amounts when the benefit begins after the first day of the month or ends before the last day of the month.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.931 added chap 385/1981 § 43

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

*NYC Administrative Code 13-375*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-375 Exemption under original plan from tax and legal process.

The right of a person under the provisions of law governing the original plan to a retirement allowance or a dependent benefit, to the return of contributions, the retirement allowance or dependent benefit itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this subchapter relating to such plan, and the right to any benefit under subchapter five or subchapter six of this chapter and any such benefit itself, and the moneys in the various funds provided for by this subchapter and in the funds provided for by such subchapter five and subchapter six, are hereby exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in any such subchapter specifically provided.

Notwithstanding the foregoing provisions of this section, a retired member shall have the right, at any time after the retired member's retirement, to execute and file a dues deduction authorization card or an authorization in writing with the New York fire department pension fund authorizing the deduction from the retired member's retirement allowance of membership dues or premiums for employee organization sponsored group insurance plans and the payment thereof to a retiree organization of which the retired member certifies he or she is then a member and which the retired member certifies is then affiliated with either an employee organization certified or recognized as the collective bargaining representative of all employees in the negotiating unit of which the retired member was a part prior to his or her retirement or an employee organization with which such employee organization is then affiliated. The comptroller shall thereafter deduct from the retirement allowance of such retired member the amount of membership dues required

to be paid by such retired member or premiums for employee organization sponsored group insurance plans and shall transmit the sum so deducted to said retiree organization. Such authorization shall continue in effect until revoked in writing by such retired member. The board shall determine the cost of administering deductions for premiums for employee organization sponsored group insurance plans and the cost incurred by the pension fund and the comptroller in administering the same shall be paid by the employee organization.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Opening par amended chap 480/1993 § 22 retro. to Jan. 1, 1993

Closing par amended chap 146/1992 § 3, eff. Jan. 1, 1992 added chap 359/1990 § 2 eff. July 2, 1990

**DERIVATION**

Formerly § B19-7.94 added LL 53/1941 § 16

Re-enacted chap 626/1942 § 1

Amended chap 385/1981 § 44



Administrative Code of the City of New York



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

*NYC Administrative Code 13-375.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-375.1 Eligible rollover distributions.

a. Notwithstanding anything to the contrary contained in section 13-375 of this subchapter, in the event that, under the terms of this subchapter, a person becomes entitled to a distribution from the pension fund which constitutes an "eligible rollover distribution" within the meaning of paragraph thirty-one of subsection a of section four hundred one of the internal revenue code, such distributee may elect, subject to any rules and regulations adopted pursuant to subdivision b of this section, to have such distribution, or a portion thereof, paid directly to an "eligible retirement plan" within the meaning of paragraph thirty-one of subsection a of section four hundred one of the internal revenue code.

b. The board of trustees is authorized to adopt such rules and regulations as it finds to be necessary in administering the provisions of this section, provided that they are not inconsistent with the applicable provisions of the internal revenue code and the rules and regulations thereunder.

**HISTORICAL NOTE**

Section added chap 510/1993 § 3 retro to Jan. 1, 1993



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

*NYC Administrative Code 13-376*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-376 Exemption under improved benefits plan from tax and legal process.

The right of a person under the provisions of law governing the improved benefits plan to a pension, a pension-providing-for-increased-take-home-pay, an annuity, a dependent benefit, or a retirmeent allowance, to the return of contributions, the pension, the pension-providing-for-increased-take-home-pay, annuity, dependent benefit, or a retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this subchapter relating to such plan, and the right to any benefit under subchapter five or subchapter six of this chapter and any such benefit itself, and the moneys in the various funds provided for by this subchapter and in the funds provided for by such subchapter five and subchapter six are hereby exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in any such subchapter specifically provided.

Notwithstanding the foregoing provisions of this section, a retired member shall have the right, at any time after the retired member's retirement, to execute and file a dues deduction authorization card or an authorization in writing with the New York fire department pension fund authorizing the deduction from the retired member's retirement allowance of membership dues or premiums for employee organization sponsored group insurancce plans and the payment thereof to a retiree organization of which the retired member certifies he or she is then a member and which the retired member certifies is then affiliated with either an employee organization certified or recognized as the collective bargaining representative of all employees in the negotiating unit of which the retired member was a part prior to his or her retirement or an employee organization with which such employee organization is then affiliated. The comptroller

shall thereafter deduct from the retirement allowance of such retired member the amount of membership dues required to be paid by such retired member or premiums for employee organization sponsored group insurance plans and shall transmit the sum so deducted to said retiree organization. Such authorization shall continue in effect until revoked in writing by such retired member. The board shall determine the cost of administering deductions for premiums for employee organization sponsored group insurance plans and the cost incurred by the pension fund and the comptroller in administering the same shall be paid by the employee organization.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Opening par amended chap 480/1993 § 23 retro. to Jan. 1, 1993

Closing par amended chap 146/1992 § 4, eff. Jan. 1, 1992 added chap 359/1990 § 3 eff. July 2, 1990

**DERIVATION**

Formerly § B19-7.941 added chap 385/1981 § 45

**CASE NOTES**

¶ 1. The statutory provision that protects pension benefits from execution, garnishment or attachment will protect the retired worker from creditors. However, in the event of a divorce, the court can, as part of an equitable distribution award, restrict the worker's exercise of pension options, so that he or she cannot choose an option that would deprive the worker's spouse of benefits in the event of the worker's death. McDermott v. McDermott, 119 A.D.2d 370, 507 N.Y.S.2d 390 (2nd Dept. 1986).



Administrative Code of the City of New York



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

*NYC Administrative Code 13-376.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-376.1 Eligible rollover distributions.

a. Notwithstanding anything to the contrary contained in section 13-376 of this subchapter, in the event that, under the terms of this subchapter, a person becomes entitled to a distribution from the pension fund which constitutes an "eligible rollover distribution" within the meaning of paragraph thirty-one of subsection a of section four hundred one of the internal revenue code, such distributee may elect, subject to any rules and regulations adopted pursuant to subdivision b of this section, to have such distribution, or a portion thereof, paid directly to an "eligible retirement plan" within the meaning of paragraph thirty-one of subsection a of section four hundred one of the internal revenue code.

b. The board of trustees is authorized to adopt such rules and regulations as it finds to be necessary in administering the provisions of this section, provided that they are not inconsistent with the applicable provisions of the internal revenue code and the rules and regulations thereunder.

**HISTORICAL NOTE**

Section added chap 510/1993 § 4 retro to Jan. 1, 1993



Administrative Code of the City of New York



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

*NYC Administrative Code 13-377*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-377 Protection against fraud or mistake.

Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of this pension fund, shall be guilty of a misdemeanor. Should any change or error in records result in any member or beneficiary receiving from the pension fund more or less than he or she would have been entitled to receive otherwise, on the discovery of any such error such board shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which he or she was entitled shall be paid.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.95 added LL 53/1941 § 16



Administrative Code of the City of New York



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

*NYC Administrative Code 13-378*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-378 State supervision.

The pension fund shall be subject to the supervision of the department of insurance in accordance with the provisions of sections three hundred seven through three hundred twelve of the insurance law, so far as the same are applicable thereto, and are not inconsistent with the provisions of this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.96 added LL 53/1941 § 16

Re-enacted chap 626/1942 § 1

Amended chap 805/1984 § 105



Administrative Code of the City of New York



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

*NYC Administrative Code 13-379*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-379 Limitation on other statutes; application of subchapter.

Except as otherwise provided in this subchapter, no other provision of law which provides wholly or partly at the expense of the city for retirement benefits for employees in the city-service, shall apply to such employees who are entitled to be members or beneficiaries of the pension fund provided for by this subchapter, their surviving spouse or their other dependents.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-7.97 added LL 53/1941 § 16

Re-enacted chap 626/1942 § 1

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*NYC Administrative Code 13-379.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 2 [FIRE DEPARTMENT, SUBCHAPTER TWO PENSION FUND]

§ 13-379.1 Excess benefit plan.

a. As used in this section, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

(1) "Retirement benefits" shall mean benefits payable to a beneficiary by the pension fund or a variable supplements fund established pursuant to subchapter five or six of this chapter which are subject to the limitations imposed by section 415(b) of the Internal Revenue Code.

(2) "Beneficiary" shall mean a person who is receiving retirement benefits from the pension fund.

(3) "Excess benefit plan" shall mean the excess benefit plan established by this section for the sole purpose of paying benefits as permitted under section 415(m) of the Internal Revenue Code.

(4) "Eligible participant" shall mean a beneficiary who is entitled to replacement benefits from the excess benefit plan for a plan year in accordance with subdivisions d and e of this section.

(5) "Replacement benefits" shall mean the benefits payable by the excess benefit plan to an eligible participant as determined pursuant to subdivision e of this section.

(6) "Internal Revenue Code" shall mean the Federal Internal Revenue Code of 1986, as amended.

(7) "Plan year" shall mean the limitation year of the pension fund as provided in section six hundred twenty of the retirement and social security law.

b. There is hereby established an excess benefit plan, the sole purpose of which shall be to provide replacement benefits, as permitted by section 415(m) of the Internal Revenue Code, to beneficiaries whose annual retirement benefits have been reduced because such benefits exceed the limitations imposed by section 415(b) of the Internal Revenue Code. The excess benefit plan shall be administered by the board of trustees of the pension fund.

c. There is hereby established a fund to be known as the excess benefit fund which shall be maintained for the sole purpose of providing replacement benefits to eligible participants in the excess benefit plan established by this section, as permitted under section 415(m) of the Internal Revenue Code. Such fund shall consist of such employer contributions as shall be made thereto pursuant to subdivision f of this section. Such contributions to the excess benefit fund shall be held separate and apart from the assets held by the other funds of the pension fund, provided, however, that the assets of the excess benefit fund may be invested with the other pension fund assets, but such excess benefit fund assets shall be accounted for separately from the other pension fund assets.

d. All beneficiaries of the pension fund whose retirement benefits for a plan year are being reduced because of section 415(b) of the Internal Revenue Code shall be eligible participants in the excess benefit plan for that plan year. Participation in the excess benefit plan shall be determined for each plan year. No beneficiary of the pension fund shall be an eligible participant in the excess benefit plan for any plan year for which his or her retirement benefits are not reduced because of section 415(b) of the Internal Revenue Code.

e. (1) For each plan year in which a beneficiary is an eligible participant in the excess benefit plan, such eligible participant shall receive replacement benefits from the excess benefit plan equal to the difference between the full amount of the retirement benefits otherwise payable to the eligible participant for that plan year prior to any reduction because of section 415(b) of the Internal Revenue Code, and the retirement benefits payable to the eligible participant for that plan year as reduced because of section 415(b) of the Internal Revenue Code. No replacement benefits for any plan year shall be paid pursuant to this subdivision to any beneficiary who is not receiving retirement benefits from the pension fund for that plan year.

(2) Replacement benefits pursuant to this section shall be paid at the same time and in the same manner as the retirement benefits which are being replaced. At no time shall an eligible participant be permitted directly or indirectly to defer compensation under the excess benefit plan.

f. (1) The required employer contributions to the excess benefit fund for each plan year shall be an amount, as determined by the actuary, which is necessary to pay the total amount of replacement benefits that are payable pursuant to this section to eligible participants for that plan year.

(2) Such required employer contributions shall be paid into the excess benefit fund from an allocation of the employer contribution amounts paid pursuant to section 13-331 of this subchapter and other applicable provisions of law. Such allocation of employer contribution amounts shall be paid into the excess benefit fund at such times and in such amounts as determined by the actuary.

(3) The benefit liabilities of the excess benefit plan shall be funded on a plan year to plan year basis, provided, however, that any employer contributions to the excess benefit fund, including any investment earnings on such contributions, which are not used to pay replacement benefits for the current plan year shall be used to pay replacement benefits for future plan years.

g. The right of an eligible participant to receive replacement benefits pursuant to this section, and the replacement benefits received pursuant to this section, shall be exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment or any other process whatsoever, and shall be unassignable, except as otherwise specifically provided for benefits payable by the pension fund.

h. Nothing contained in this section shall be construed to mean or imply that variable supplements payments from the variable supplements fund established pursuant to subchapter five or six of this chapter constitute pension or retirement allowance payments, or that any such variable supplements fund constitutes a pension or retirement system or fund.

i. Nothing contained in this section shall be construed as affecting in any way the eligibility of any person for variable supplements pursuant to applicable provisions of subchapter five or six of this chapter.

**HISTORICAL NOTE**

Section added chap 623/2004 § 3, eff. Oct. 19, 2004 and shall be deemed

to have been in full force and effect on and after July 1, 2000. [See

§ 13-196 Note 1]

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*NYC Administrative Code 13-380*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 3 NEW YORK FIRE DEPARTMENT LIFE INSURANCE FUND

§ 13-380 Life insurance fund.

a. The life insurance fund shall consist of all moneys in such fund on the first day of January, nineteen hundred forty.

b. The board of trustees of the New York fire department pension funds shall be the head of the New York fire department life insurance fund and shall have power and authority, from time to time, to establish and amend rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof in accordance with the provisions of this code and all laws applicable thereto. The chairperson and first vice-chairperson of such board, respectively, shall be the treasurer and assistant treasurer of the fund. They shall make a semi-annual report verified by the members of such board of the condition of such fund, containing a statement of the accumulated cash and securities in such fund and of all receipts and disbursements for or on account of such fund, together with the names of all beneficiaries and the amount paid to each, and file such report in the office of the comptroller.

c. (1) There shall be deducted from the monthly pay of each firefighter, officer and probationary firefighter of such department, and from the monthly pension of retired members of such department, a monthly sum not exceeding nine dollars, but not less than one dollar, which shall be received and deposited by such board to the credit of the New York fire department life insurance fund, in banks or trust companies to be selected by the board. Such board shall, subject to the provisions of paragraph two of this subdivision, have full power to invest such fund, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments

by savings banks; and subject to like terms, conditions, limitations and restrictions, such board shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of such funds shall have been invested. The comptroller shall be the custodian of all investments purchased pursuant to the authority vested herein.

(2) The members of the board shall have the same investment powers and power to delegate such powers as are vested by this code and the retirement and social security law in the members of the board of trustees of the fire department pension fund, subchapter two.

d. (1) In case of the death of any active member or of any pensioned or retired member of such department, and so contributing, there shall be paid to the beneficiary or beneficiaries named in a written designation filed with the board of trustees, or if there be no such written designation, then to the surviving spouse, or if there be no surviving spouse, then to the legal representatives of such deceased active member or pensioned and retired member out of the monies so assessed, a sum as hereinafter in this paragraph one provided:

(i) subject to the provisions of subdivision g of this section, the sum of five thousand dollars, if such member was an active member at the time of his or her death; or

(ii) subject to the provisions of subdivision g of this section, the sum of two thousand dollars, if such member was a pensioned or retired member of such department at the time of his or her death.

(2) The assessment, in the discretion of the board, may be increased to not exceeding the sum of nine dollars in each month's pay, or each month's pension or pensioned and retired members of such department.

(3) None but active and retired members of the uniformed force and probationary firefighters shall be eligible to membership in this fund.

e. Such treasurer and assistant treasurer shall give bond for the faithful and honest performance of their respective duties under this subchapter in such sum as may be fixed and with sureties to be approved by the comptroller. Any such bond shall run to the New York fire department life insurance fund.

f. Any member of such fund who is on leave of absence from the fire department for military duty as defined in sections two hundred forty-two and two hundred forty-three of the military law of the state of New York shall continue to be a member of such fund during such military duty. Upon his or her restoration to his or her position in the fire department, there shall be deducted monthly from his or her salary and paid to the New York fire department life insurance fund, such sum, as will over a period of five years, equal the amount which he or she would have been required to contribute if he or she had been continuously employed in the fire department during such period of service, or any part of such amount remaining unpaid at the date of such restoration. In lieu of such deduction, however, such amount or any part thereof may be paid by such member at any time or from time to time while in such service, or, in a lump sum or by larger monthly deductions, after his or her restoration to his or her position in the fire department, or by any other method of deduction which will complete the payment of such amount in a period less than five years from the date of such restoration. In the event such member has failed or shall fail to complete full payment of such amount of contributions remaining due and unpaid within the time herein specified, there shall be deducted monthly from the salary of such member or by any other method of deduction and paid to the New York fire department life insurance fund within a period of eighteen months, such sum as will equal the amount which he or she would have been required to contribute if he or she had been continuously employed in the fire department during such period of service, or any part of such amount remaining unpaid, plus interest at the rate of two and one-half per centum per annum computed from either five years after the date of such restoration or January first, nineteen hundred fifty-three, whichever date is later. In case of death of any member during his or her absence in such service or at any time prior to the full payment by him or her of the contributions due and payable to such fund during his or her absence, his or her beneficiary or beneficiaries or his or her surviving spouse or legal representatives, as the case may be, shall receive the sum required to

be paid pursuant to subdivision d or g of this section in the case of the death of an active member, less the amount of such contributions remaining due and unpaid.

g. From time to time, but not longer than every three years, the board of trustees may request the actuary of the fire department pension fund to make a valuation of the assets and liabilities of the fund in order to determine whether (i) an increase in the sums payable under this section would be consistent with operations of the life insurance fund on a basis whereby the cost of sums payable is met from deductions made pursuant to the provisions of this section from the pay or pensions of members or retired members or assessments made pursuant to the provisions of this section against members or retired members, or (ii) a decrease in sums payable is required in order to maintain the life insurance fund on such basis. If the actuary certifies to the board of trustees that an increase in such sums payable is warranted or that a decrease in such sums payable is required, the board shall, by resolution, increase or decrease such sums payable in accordance with the certification of the actuary. Such resolution and the actuarial data upon which an increase or decrease of sums is justified shall be public information.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. c amended chap 477/2001 § 1, eff. Nov. 21, 2001.

Subd. c amended chap 654/1999 § 1, eff. Dec. 29, 1999.

Subd. c amended chap 514/1994 § 1, eff. July 26, 1994

Subd. d par (2) amended chap 654/1999 § 2, eff. Dec. 29, 1999.

Subd. d par (2) amended chap 514/1994 § 2, eff. July 26, 1994

Subd. g amended chap 654/1999 § 3, eff. Dec. 29, 1999.

**DERIVATION**

Formerly § B19-8.0 added chap 929/1937 § 1

Amended LL 4/1940 § 1

Subs b, e amended LL 13/1941 § 1

Amended LL 23/1944 § 1

Sub f amended LL 64/1956 § 1

Sub c amended chap 929/1958 § 4

Sub d amended LL 16/1973 § 1

Sub f amended LL 16/1973 § 2

Sub g added LL 16/1973 § 3

(Special provision LL 16/1973 § 5)

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where, following the amendment in 1940 of Admin. Code § B19-8.0(d) to provide for payment of the pension of a member upon his death to the beneficiary named in a written designation filed with the trustees, the husband of the intervener had filed an instrument designating petitioner as the beneficiary of the sum payable on his death as a member of the Fire Department Life Insurance Fund, although when he retired the benefits from the Fund were then payable upon his death to his widow, an order granting petitioner's application for payment of the proceeds to her was affirmed, without opinion, notwithstanding the widow's contention that as beneficiary she had a vested right which could not be constitutionally divested by legislation.-Davis v. Walsh, 290 N.Y. 654, 49 N.E. 2d 618 [1943].

¶ 2. Where deceased had entered the Armed Forces in June 1943, and on June 19, 1944, the Commissioner of the Fire Department had appointed him as a fireman as of February 1, 1943, with assignment to the Military Service Division, subject to a medical examination by the Fire Department Medical Board and without compensation until such time as he was discharged from military service and began performance of his duties in the Fire Department, and deceased subsequently died while in the military service, his widow was entitled to a death benefit as provided for in Admin. Code § B19-8.0, since by the June 19, 1944 order the Commissioner had formally and legally appointed deceased and he thus became a member of the Fire Department and of the Fund. The Fire Department's rule requiring a medical examination was lawfully modified when the Commissioner appointed deceased subject to later physical examination, and the oath of office required by Civil Service Law § 30 and Admin. Code § 487a-5.0 could be taken on return from military service and before entering actively on the duties of the position.-Molinari v. Quayle, 300 N.Y. 55, 88 N.E. 2d 820 [1949].

¶ 3. A member of the Fire Department life insurance fund designated his father and mother "respectively" as the beneficiary or beneficiaries of his life insurance benefit. Held, upon the death of a father during the lifetime of a member, the designation lapsed, and the father's share, upon the death of the member, went to the member's widow as provided in subdivision D as if there was no written designation.-Cuchal v. Walsh, 185 Misc. 1008, 59 N.Y.S. 2d 435 [1945], aff'd 270 App. Div. 1001, 63 N.Y.S. 2d 828 [1946].



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 4 PAYMENTS TO EXEMPT OR VOLUNTEER ASSOCIATIONS AND FIREFIGHTERS HOME

§ 13-381 Payments to exempt or volunteer firefighters' associations; Queens and Richmond.

a. Each of the following exempt or veteran volunteer firefighters' associations of the boroughs of Queens and Richmond, to wit:

1. The exempt firemen's association of the town of Newtown,
2. The exempt firemen's association, fifth ward, borough of Queens,
3. The veteran volunteer firemen's association of the village of Jamaica,
4. The Woodhaven exempt volunteer firemen's association,
5. The exempt firemen's association of Flushing,
6. The veteran firemen's association of Long Island city,
7. The exempt firemen's association of Long Island city,
8. The exempt firemen's benevolent association of College Point,

9. The veteran firemen's association of the north shore fire department of Staten Island,

10. The veteran and exempt volunteer firemen's association of the Edgewater fire department of Staten Island,

11. The veteran volunteer firemen's association of Tottenville fire department,

12. The south shore veteran and exempt firemen's association, which on and after the first day of January, nineteen hundred fifty-two shall own, operate and maintain a clubhouse for the benefit of the members of such respective associations, shall be entitled to receive from and shall be paid by the comptroller of the city, in advance of and for each year beginning on the first day of January, the sum of forty dollars for each bona fide member of such association, plus five hundred dollars, or the sum of forty-five hundred dollars, whichever is less, upon presenting to the comptroller on or after the preceding first day of November in each year, a verified statement signed by the duly authorized officers of such association which shall set forth the number of living bona fide members thereof on such preceding first day of November and which shall state further whether or not the association owns, operates and maintains a clubhouse for the benefit of its members.

b. In determining the membership of such associations, only exempt or honorably discharged volunteer firefighters shall be considered as members.

c. The fire commissioner shall set aside annually, from the fines and proceeds of suits for penalties brought by him or her under the code which may be collected or paid in from the boroughs of Queens and Staten Island, and from the license fees payable to him or her under the code which may be collected or paid in from such boroughs, a sum of money sufficient to cover the payments required to be made to the exempt or veteran volunteer firefighters' associations as provided in subdivision a of this section.

d. Upon receipt from the comptroller of a notification as to the amounts required to be paid in any year in order to carry out the provisions of subdivision a of this section, the fire commissioner shall pay such amounts to the comptroller from the revenues set aside by such commissioner pursuant to the provisions of subdivision c of this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-9.0 added chap 929/1937 § 1

Repealed LL 130/1952 § 1

Added LL 130/1952 § 2



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 5 [FIREFIGHTERS' VARIABLE SUPPLEMENTS FUND]

§ 13-382 Definitions.

As used in this subchapter, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

1. "Variable supplements fund". The firefighters' variable supplements fund established by this subchapter.

1-a. "Minimum period". The minimum period of credited service which a member of pension fund subchapter one or pension fund subchapter two is required by law to perform in order to be eligible to retire for service with immediate payability of retirement allowance.

1-b. "Firefighter". A member of either pension fund referred to in subdivision one-a of this section who, at the time of retirement for service by reason of fulfillment of the minimum period, was a firefighter and was not a fire officer as defined in subdivision five of section 13-392 of subchapter six of this chapter.

2. "Association". The uniformed firefighters' association of greater New York.

3. "Fiscal year". Any year commencing with the first day of July and ending with the thirtieth day of June next following.

4. "Board". The board of trustees provided for in section 13-384 of this subchapter.

5. "Pension fund beneficiary". (a) Subject to the provisions of paragraph (b) of this subdivision and except as provided in subdivision e of section 13-385 of this subchapter, any person who receives a retirement allowance by reason of having retired, on or after October first, nineteen hundred sixty-eight, for service (with credit for twenty or more years of service creditable toward the minimum period) as a member of pension fund subchapter one or subchapter two and as a firefighter or fire marshal (uniformed).

(b) With respect to benefits payable under this subchapter for calendar years succeeding December thirty-first, nineteen hundred ninety-two, the term "pension fund beneficiary" 6 *subject to the provisions of paragraph thirteen of subdivision a of section 13-385 of this subchapter) shall include each person who receives a retirement allowance by reason of having retired, on or after October first, nineteen hundred sixty-eight, for service (with credit for twenty or more years of service creditable toward the minimum period) as a member of pension fund subchapter one or pensions fund subchapter two and as a wiper (uniformed).

6. "Variable supplement". Any sum authorized to be paid to a pension fund beneficiary pursuant to the provisions of this subchapter.

7. "Pension fund subchapter two". The New York fire department pension fund subchapter two maintained pursuant to subchapter two of chapter three of this title.

8. "Pension fund subchapter one". The New York fire department pension fund maintained pursuant to subchapter one of chapter three of this title.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subds. 1-a, 1-b added chap 583/1989 § 1

Subd. 5 amended chap 480/1993 § 24 retro. to Jan. 1, 1993 amended chap 690/1990 § 1 eff. July 22, 1990 retro. to July 1, 1988

Subd. 5 amended chap 583/1989 § 2.

Subd. 6 amended chap 583/1989 § 2

**DERIVATION**

Formerly § B19-40.0 added chap 877/1970 § 1

Section designation, open par amended chap 1011/1972 § 1

Sub 5 amended chap 1011/1972 § 2

**FOOTNOTES**

6

[Footnote 6]: * So in original. ("opening parenthesis" inadvertently omitted).



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 5 [FIREFIGHTERS' VARIABLE SUPPLEMENTS FUND]

§ 13-383 Firefighters' variable supplements fund.

a. There is hereby established a fund, to be known as the firefighters' variable supplements fund. Such fund shall consist of such monies as may be paid thereto from pension fund subchapter two, pursuant to the provisions of sections 13-335 and 13-335.1 of this chapter and all other monies received by such fund from any other source pursuant to law.

b. It is hereby declared by the legislature that the firefighters' variable supplements fund shall not be, and shall not be construed to constitute, a pension or retirement system or fund, and that it shall function as a means whereby payments, not constituting a pension or retirement allowance, shall be made in accordance with the provisions of this subchapter, to eligible pension fund beneficiaries as a supplement to benefits received by them under subchapter one or subchapter two of this chapter. The legislature hereby reserves to the state of New York and itself the right and power to amend, modify or repeal any or all of the provisions of this subchapter.

**HISTORICAL NOTE**

Section amended chap 583/1989 § 3

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-41.0 added chap 877/1970 § 1



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 5 [FIREFIGHTERS' VARIABLE SUPPLEMENTS FUND]

§ 13-384 Board of trustees.

a. The variable supplements fund shall be administered by a board of trustees which shall, subject to applicable provisions of law and to the prior approval of the board of estimate, from time to time establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof.

b. Such board shall consist of:

1. The representative of the mayor who is a member of the board of trustees of pension fund subchapter two, who shall be entitled to cast one vote. The mayor may, by instrument in writing filed in his or her office and with the board, designate one or more members of his or her office to act in the place of such representative at meetings of the board, in the event of such representative's absence therefrom.

2. The comptroller of the city, who shall be entitled to cast one vote. Any deputy comptroller authorized, pursuant to subdivision b of section ninety-four of the New York city charter, to act in the place of the comptroller as a member of the board of trustees of pension fund, subchapter two, may be authorized by the comptroller, in accordance with the provisions of such subdivision b, to act in the place of the comptroller as a member of the board.

2-a. The commissioner of finance, who shall be entitled to cast one vote. Such commissioner may, by instrument in writing filed in his or her office and with the board, designate one or more members of his or her office to act in his

or her place at meetings of the board, in the event of such commissioner's absence therefrom.

3. Two members of the association designated by it, who shall each be entitled to cast one vote. The members so designated shall be officers of the association who are members of the board of trustees of pension fund subchapter two. Each such designee may at any time, by written authorization filed with the board, authorize any other officer of the association to act in his or her place as a member of the board in the event of such designee's absence from any meeting thereof; provided that the by-laws or constitution of the association provide for the designation of a representative for such purpose.

c. Every act of the board shall be by resolution which shall be adopted only by a vote of at least three-fifths of the whole number of votes authorized to be cast by all of the members of such board.

d. The actuary appointed pursuant to section 13-121 of the code shall be the technical advisor of the board.

e. (1) As of June thirtieth of the nineteen hundred eighty-eight-nineteen hundred eighty-nine base fiscal year and as of June thirtieth of each succeeding base fiscal year, the actuary referred to in subdivision d of this section shall make a valuation of the assets and liabilities of the variable supplements fund in accordance with the requirements of the succeeding paragraphs of this subdivision e.

(2) The actuary shall base such annual valuation of liabilities only (A) upon the persons who, as of each such June thirtieth, are pension fund beneficiaries or persons eligible to receive supplemental benefits pursuant to subdivision e of section 13-385 of this subchapter and (B) upon the persons who, being firefighters or fire marshals (uniformed) in service as of such June thirtieth, may be actuarially expected to retire thereafter as firefighters or fire marshals (uniformed) for service with twenty or more years of service creditable toward the minimum period and (C) with respect to any such valuation for any base fiscal year beginning on or after July first, nineteen hundred ninety-two, also upon the persons who, being wipers (uniformed) in service as of June thirtieth of such base fiscal year beginning on or after such July first, may be actuarially expected to retire thereafter as wipers (uniformed) or firefighters or fire marshals (uniformed) for service with twenty or more years of service creditable toward the minumum period.

(3) The liabilities determined in such valuation shall be equal to the actuarial present value of accumulated plan benefits. The actuarial assumptions used by the actuary in making such annual valuation of liabilities, including assumptions as to interest rate, mortality of pension fund beneficiaries and number of firefighters and fire marshals (uniformed) in service as of June thirtieth who will retire for service as firefighters or fire marshals (uniformed) with twenty or more years of service creditable toward the minimum period, and, with respect to the base fiscal years referred to in subparagraph (C) of paragraph two of this subdivision, the number of wipers (uniformed) in service as of the applicable June thirtieth who will retire for service as wipers (uniformed) or firefighters or fire marshals (uniformed) with twenty or more years of service creditable toward the minimum period, shall be adopted by the board on the recommendation of the actuary.

(4) For the purposes of such annual valuation of the assets of the variable supplements fund, such assets shall be valued at their fair market value as of each such June thirtieth.

f. The fire commissioner shall assign to the board such number of clerical and other assistants as may be necessary for the performance of its functions.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b par 2-a added chap 583/1989 § 4

Subd. c amended chap 583/1989 § 5

Subd. d. so designated and amended chap 583/1989 § 7 (former subd e)

Subd. d repealed chap 583/1989 § 6

Subd. e added chap 583/1989 § 8

Subd. e par (2) amended chap 480/1993 § 25 retro. to Jan. 1, 1993 amended chap 690/1990 § 2 eff. July 22, 1990 retro. to July 1, 1988

Subd. e par (3) amended chap 480/1993 § 25 retro. to Jan. 1, 1993

**DERIVATION**

Formerly § B19-42.0 added chap 877/1970 § 1



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 5 [FIREFIGHTERS' VARIABLE SUPPLEMENTS FUND]

§ 13-385 Payment of supplemental benefits.

a. (1) The variable supplements fund shall pay variable supplements to pension fund beneficiaries in accordance with the provisions of the succeeding paragraphs of this subdivision a.

(2) Subject to the provisions of paragraphs three, four, six and seven of this subdivision a, and the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, for the period from January first, nineteen hundred eighty-eight to December thirty-first, nineteen hundred eighty-nine, variable supplements shall be payable monthly for each month of eligibility therefor under the provisions of this subchapter and the benefit plan and payment resolution as in effect immediately prior to July first, nineteen hundred eighty-eight:

(i) to persons who, having retired on or before June thirtieth, nineteen hundred eighty-eight, were or are pension fund beneficiaries eligible for monthly payments with respect to such period from January first, nineteen hundred eighty-eight to December thirty-first, nineteen hundred eighty-nine, or a part thereof, under such applicable prior law, benefit plan and resolution; and

(ii) to persons who, as of June thirtieth, nineteen hundred eighty-eight, were in service as members of the fire department pension fund subchapter two and who retired during the period from July first, nineteen hundred eighty-eight to November thirtieth, nineteen hundred eighty-nine so as to become pension fund beneficiaries who would be entitled, if such prior law, plan and resolution were in effect for such period, to receive monthly payments thereunder

for such period from such July first or a part thereof.

(3) The number of full calendar months in the calendar year nineteen hundred eighty-eight for which each such pension fund beneficiary referred to in paragraph two of this subdivision a is entitled to receive monthly payments under such applicable prior law, plan and resolution in accordance with the provisions of such paragraph two shall be multiplied by one-twelfth of the sum of twenty-five hundred dollars.

(4) The total of the monthly amounts payable to each such pension fund beneficiary for full calendar months in such calendar year under the provisions of such paragraph two shall be subtracted from the applicable product computed pursuant to paragraph three of this subdivision a.

(5) Subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, as soon as practicable after the enactment of the chapter which added this paragraph five of this subdivision a, the variable supplements fund shall pay to each such eligible beneficiary referred to in paragraph two of this subdivision a, an amount equal to the remainder resulting from the subtraction prescribed by paragraph four of this subdivision, as applicable to such pension fund beneficiary.

(6) The number of full canendar months in the calendar year nineteen hundred eighty-nine for which each such pension fund beneficiary referred to in paragraph two of this subdivision a is entitled to receive monthly payments under such applicable prior law, plan and resolution in accordance with the provisions of such paragraph two shall be multiplied by one-twelfth of the sum of three thousand dollars.

(7) The total of the monthly amounts payable to each such pension fund beneficiary for full calendar months in such calendar year under the provisions of such paragraph two shall be subtracted from the applicable product computed pursuant to paragraph six of this subdivision a.

(8) Subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, on or about December fifteenth, nineteen hundred eighty-nine, the variable supplements fund shall pay to each such eligible beneficiary referred to in paragraph two of this subdivision a, an amount equal to the remainder resulting from the subtraction prescribed by paragraph seven of this subdivision, as applicable to such pension fund beneficiary.

(9) Nothing contained in the preceding paragraphs of this subdivision a shall be construed as entitling any pension fund beneficiary therein described to any payment for any month in which the retirement or death of such pension fund beneficiary occurred or occurs.

(10) For calendar years succeeding December thirty-first, nineteen hundred eighty-nine, the variable supplements fund, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, and subject to the provisions of paragraph thirteen of this subdivision a, shall pay to each pension fund beneficiary who retired prior to July first, nineteen hundred eighty-eight, variable supplements payments as follows:

(i) for each calendar year following calendar year nineteen hundred eighty-nine, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about December fifteenth of such year, as follows:

| Calendar Year | Supplement |
|---|---|
| 1990 | $ 3,500 |
| 1991 | $ 4,000 |
| 1992 | $ 4,500 |
| 1993 | $ 5,000 |
| 1994 | $ 5,500 |
| 1995 | $ 6,000 |

| | |
|---|---|
| 1996 | $ 6,500 |
| 1997 | $ 7,000 |
| 1998 | $ 7,500 |
| 1999 | $ 8,000 |
| 2000 | $ 8,500 |
| 2001 | $ 9,000 |
| 2002 | $ 9,500 |
| 2003 | $10,000 |
| 2004 | $10,500 |
| 2005 | $11,000 |
| 2006 | $11,500 |
| 2007 and each calendar year thereafter | $12,000 |

(ii) for the calendar year of the beneficiary's death (for those pension fund beneficiaries who die on or after February first, nineteen hundred ninety), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided in the chart set forth in subparagraph (i) of this paragraph ten, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death.

(11) For calendar years succeeding December thirty-first, nineteen hundred eighty-nine, the variable supplements fund, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, and subject to the provisions of paragraph thirteen of this subdivision a, shall pay to each person who, as of June thirtieth, nineteen hundred eighty-eight, was in service as a member of pension fund subchapter two and who retired for service thereafter so as to become a pension fund beneficiary, variable supplements payments as follows:

(i) for the calendar year of retirement (for those beneficiaries who retire on or after January first, nineteen hundred ninety), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of retirement, as provided for in the chart set forth in subparagraph (i) of paragraph ten of this subdivision a, by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(ii) for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment equal to the supplement provided for with respect to each such calendar year as set forth in the chart in subparagraph (i) of such paragraph ten, which payment shall be made on or about December fifteenth of such year; and

(iii) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, nineteen hundred ninety), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided for in the chart set forth in subparagraph (i) of such paragraph ten, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death.

(iv) If the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs (i) and (iii) of this paragraph shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(12) The variable supplements fund, subject to the provisions of subparagraphs (i) and (iii) of paragraph one of subdivision b of this section, and subject to the provisions of paragraph thirteen of this subdivision a, shall pay to each person who becomes a member of pension fund, subchapter two on or after July first, nineteen hundred eighty-eight, and who retires for service so as to become a pension fund beneficiary, variable supplements payments as follows:

(i) (A) subject to the provisions of subparagraph (iv) of this paragraph, for the calendar year of retirement, where such retirement occurs before January first, two thousand eight, an amount calculated by multiplying one-twelfth

times the sum of twenty-five hundred dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(B) subject to the provisions of subparagraph (iv) of this paragraph, for the calendar year of retirement, where such retirement occurs on or after January first, two thousand eight, an amount calculated by multiplying one-twelfth times the sum of twelve thousand dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about December fifteenth of such year;

(ii) subject to the provisions of subparagraph (ii-a) of this paragraph, for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about December fifteenth of such year, as follows:

| CALENDAR YEAR OF ANNIVERSARY OF RETIREMENT (references hereinafter to "anniversary year" shall mean calendar year of anniversary) | SUPPLEMENT |
|---|---|
| First anniversary year | The sum of (1) a lower-based component equal to one-twelfth of the base sum of $2500 multiplied by the number of whole calendar months from and including the first month of such calendar year to and including the month in which the anniversary of the date of retirement occurs, and (2) a higher-based component equal to one-twelfth of the base sum of $3000 multiplied by the number of months remaining in such calendar year |
| Second anniversary year and each succeeding anniversary year to and including the nineteenth anniversary year | The sum of a lower-based component and a higher-based component computed pursuant to the formula, above, for the first anniversary year, except that for each such anniversary year succeeding the first, (i) the lower-based component shall be computed on a base sum $500 higher than the base sum required to be used in computing the lower-based component for the next preceding anniversary year and the higher-based component shall be computed on a base sum $500 higher than the base sum required to be used in computing the higher-based component for such next preceding anniversary year |
| Twentieth anniversary year and each succeeding anniversary year | $12,000 |

(ii-a) for each calendar year which occurs both after the year of retirement and after December thirty-first, two thousand seven (but not including the calendar year of the beneficiary's death), notwithstanding any provision of subparagraph (ii) of this paragraph which otherwise would be applicable, a single annual payment of twelve thousand dollars, which payment (A) shall be in lieu of any other amount which otherwise would be payable under subparagraph (ii) of this paragraph for such calendar year and (B) shall be made on or about December fifteenth of such year; (iii) (A) for the calendar year of the beneficiary's death, where such death occurs both after the year of retirement and prior to January first, two thousand eight, an amount calculated in accordance with the formula which would apply to the year of death under subparagraph (ii) of this paragraph twelve if such death had not occurred, but prorated on the basis of the number of full calendar months the beneficiary lived during the year of death prior to the month of his or her death;

(B) for the calendar year of the beneficiary's death, where such death occurs both after the year of retirement and in the calendar year two thousand eight or thereafter, an amount calculated by multiplying one-twelfth of twelve thousand dollars by the number of months the beneficiary lived during the year of death prior to the month of his or her death;

(iv) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs (i) and (iii) of this paragraph shall be made only in respect to calendar months following the month of

retirement and preceding the month of death.

(13) (i) subject to the provisions of subparagraphs (ii), (iii), (iv) and (v) of this paragraph thirteen, and the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, for the period from January first, nineteen hundred ninety-three to December thirty-first, nineteen hundred ninety-three, variable supplements shall be payable monthly (from the wiper variable supplements assets account) for each month of eligibility therefor under the provisions of section 13-391.1 of this subchapter and the wipers (uniformed) benefit plan and payment resolution as in effect immediately prior to January first, nineteen hundred ninety-three:

(A) to persons who, having retired on or before January first, nineteen hundred ninety-three, were or are pension fund beneficiaries who both (1) qualify as such beneficiaries pursuant to paragraph (b) of subdivision five of section 13-382 of this subchapter and (2) are eligible for monthly payments with respect to such period from January first, nineteen hunded ninety-three to December thirty-first, nineteen hundred ninety-three, or a part thereof, under such applicable prior law, benefit plan and resolution; and

(B) to persons who, as of December thirty-first, nineteen hundred ninety-two, were in service as members of the fire department pension fund subchapter two and who retired during the period from January first, nineteen hundred ninety-three to November thirtieth, nineteen hundred ninety-three, so as to become pension fund beneficiaries who both (1) qualify as such beneficiaries pursuant to paragraph (b) of such subdivision five and (2) would be entitled, if such prior law, plan and resolution were in effect for such period, to receive monthly payments thereunder for such period from such January first or a part thereof.

(ii) The number of full calendar months in the calendar year nineteen hundred ninety-three for which each such pension fund beneficiary referred to in subparagraph (i) of this paragraph thirteen is entitled to receive monthly payments under such applicable prior law, plan and resolution in accordance with the provisions of such subparagraph (i) shall be multiplied by one-twelfth of the sum of five thousand dollars.

(iii) The total of the monthly amounts payable to each such pension fund beneficiary for full calendar months in such calendar year under the provisions of such subparagraph (i) shall be subtracted from the applicable product computed pursuant to subparagraph (ii) of this paragraph thirteen.

(iv) Subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, on or about December fifteenth, nineteen hundred ninety-three, the variable supplements fund shall pay to each such eligible beneficiary referred to in subparagraph (i) of this paragraph thirteen, an amount equal to the remainder resulting from the subtraction prescribed by subparagraph (iii) of this paragraph, as applicable to such pension fund beneficiary.

(v) Nothing contained in the preceding subparagraphs of this paragraph thirteen shall be construed as entitling any pension fund beneficiary eligible to receive any payment thereunder to any payment for any month in which the retirement or death of such pension fund beneficiary occured or occurs.

(vi) For calendar years succeeding December thirty-first, nineteen hundred ninety-three, the variable supplements fund, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, shall pay to each pension fund beneficiary who both (A) retired prior to January first, nineteen hundred ninety-four and (B) qualifies as such a beneficiary pursuant to paragraph (b) of subdivision five of section 13-382 of this subchapter, variable supplements payments in accordance with the terms and conditions set forth in subparagraphs (i) and (ii) of paragraph ten of this subdivision a, as applicable to such calendar years.

(vii) For calendar years succeeding December thirty-first, nineteen hundred ninety-three, the variable supplements fund, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, shall pay to each person who, as of June thirtieth, nineteen hundred eighty-eight, was in service as a member of pension fund subchapter two and who retired for service, on or after January first, nineteen hundred ninety-four so as to become a pension fund beneficiary who qualified as such a beneficiary pursuant to paragraph (b) of subdivision five of

section 13-382 of this subchapter, variable supplements payments in accordance with the terms and conditions set forth in subparagrpahs (i), (ii), (iii) and (iv) of paragraph eleven of this subdivision a, as applicable to such calendar years.

(viii) The variable supplements fund, subject to the provisions of subparagraphs (i) and (iii) of paragraph one of subdivision b of this section, shall pay to each person who becomes a member of pension fund, subchapter two on or after July first, nineteen hundred eighty-eight, and who retires for service so as to become a pension fund beneficiary who qualified as such a beneficiary pursuant to paragraph (b) of subdivision five of section 13-382 of this subchapter, variable supplements payments in accordance with the terms and conditions set forth in subparagraphs (i), (ii), (iii) and (iv) of paragraph twelve of this subdivision.

(ix) Nothing contained in the preceding subparagraphs of this paragraph shall be construed as providing for payment of variable supplements for any period prior to January first, nineteen hundred ninety-three. Nothing contained in the preceding paragraphs of this subdivision a or in subdivision five of section 13-382 of this subchapter shall be construed as entitling any person who retired or retires as a wiper (uniformed) to payment of variable supplements under this subdivision a for any period prior to January first, nineteen hundred ninety-three.

b. (1) (i) Subject to the provisions of subparagraphs (ii), (iii) and (iv) of this paragraph one, on or after July first, nineteen hundred eighty-eight, where a pension fund beneficiary is entitled to receive variable supplements payments pursuant to subdivision a of this section, and that beneficiary is also entitled to receive a supplemental retirement allowance or cost-of-living adjustment pursuant to any other provision of law enacted on or after July first, nineteen hundred eighty-eight (hereinafter referred to as "other supplemental retirement allowance"), the amount of such variable supplement payable for a calendar year or a part of such calendar year to such beneficiary shall be reduced by the amount of such other supplemental retirement allowance that is payable to such beneficiary to the extent that such other supplemental retirement allowance is attributable to the same calendar year or part of such calendar year.

(ii) For any pension fund beneficiary referred to in paragraph two or paragraph ten or paragraph eleven of subdivision a of this section, or in any of subparagraphs (i), (vi) and (vii) of paragraph thirteen of such subdivision a, whose variable supplements payments are being reduced pursuant to subparagraph (i) of this paragraph one because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such subparagraph (i) shall cease as to such beneficiary on the later of (A) the first day of the month next following the month in which such beneficiary attains age sixty-two; or (B) January first, two thousand seven.

(iii) For any pension fund beneficiary referred to in paragraph twelve of subdivision a of this section, or in subparagraph (viii) of paragraph thirteen of such subdivision, whose variable supplements payments are being reduced pursuant to subparagraph (i) of this paragraph one because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such subparagraph (i) shall cease as to such beneficiary on the later of (A) the first day of the month following the month in which such beneficiary attains age sixty-two; or (B) the earlier of (1) the first day of the month next following the month in which the nineteenth anniversary of the retirement of such beneficiary occurs or (2) January first, two thousand eight.

(iv) In any case where the reduction of variable supplements payments to a pension fund beneficiary has ceased pursuant to subparagraph (ii) or subparagraph (iii) of this paragraph one, that beneficiary, for the purpose of determining his or her eligibility for and the amount of any other supplemental retirement allowance, shall be deemed to have retired on the date of the cessation of such reduction specified in the applicable provisions of such subparagraph (ii) or subparagraph (iii).

(v) The payment of all variable supplements payable pursuant to subdivision a of this section are hereby made obligations of the city, and the city hereby guarantees that such supplements shall be paid to all eligible pension fund beneficiaries.

(2) The legislature hereby declares that the variable supplements authorized by this subchapter and the granting

and receipt thereof: (i) shall not create or constitute membership in a pension or retirement system and shall not create or constitute a contract with any pension fund beneficiary or with any member of pension fund subchapter one or pension fund subchapter two; and

(ii) shall not constitute a pension or retirement allowance or benefit under pension fund subchapter one or pension fund subchapter two or otherwise.

(3) Except as otherwise provided in sections 13-335 and 13-335.1 of this chapter and section 13-391.1 of this subchapter, nothing contained in this subchapter shall create or impose any obligation on the part of pension fund subchapter one or pension fund subchapter two or the funds or monies thereof, or authorize such funds or monies to be appropriated or used for any payment under this article or for any purpose thereof.

c. Pension fund beneficiaries shall be eligible to receive variable supplements pursuant to this subchapter, notwithstanding any other provision of law to the contrary.

d. The monies or assets of the variable supplements fund shall not be used for any purpose, other than payment of variable supplements pursuant to the provisions of this subchapter, except that they may be invested as authorized by section 13-387 of this chapter.

e. Notwithstanding any inconsistent provision of this subchapter or any benefit plan or payment resolution that was in effect prior to July first, nineteen hundred eighty-eight, any original plan discontinued member (as defined in subdivision sixteen of section 13-313 of this chapter) or improved benefits plan discontinued member (as defined in subdivision sixteen-d of such section) who discontinued service as a firefighter on or after July first, nineteen hundred sixty-nine, but prior to July nineteenth, nineteen hundred eighty-nine shall be deemed to be a pension fund beneficiary for purposes of eligibility to receive supplemental benefits under this section for any period of time for which such discontinued member receives payments of a deferred retirement allowance pursuant to section 13-360 or 13-361 of this chapter, and the date of retirement of such discontinued member, for purposes of applying the requirements of this section which determine the eligibility of a pension fund beneficiary to receive supplemental benefits under this section, shall be deemed to be the first day of the period for which such discontinued member first began receiving payments of a deferred retirement allowance pursuant to section 13-360 or 13-361 of this chapter.

f. For the purposes of paragraphs eleven and twelve of subdivision a of this section, the date of entry into the police pension fund, subchapter two shall be substituted for the date of entry into the fire department pension fund, subchapter two in the event that a pension fund beneficiary has transferred service credit from such police pension fund pursuant to the provisions of section 15-111 of this code.

g. In addition to the payments set forth in paragraphs eleven and twelve of subdivision a of this section, there shall be paid to each pension fund beneficiary, on or about the December fifteenth next succeeding his or her date of retirement, an amount equal to the variable supplements payments, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, that he or she would have received, had he or she retired on the date of his or her earliest eligibility for service retirement, in the period measured from (1) the later of (i) such earliest eligibility date and (ii) January 1, 2002, and (2) his or her date of retirement.

h. Notwithstanding any other provision of law to the contrary, where a pension fund beneficiary has transferred credit from the New York city employees' retirement system to the fire department pension fund, subchapter two for service rendered in the uniformed force of the New York city department of correction which immediately preceded service in the uniformed force of the fire department, such pension fund beneficiary shall, for the purposes of paragraphs eleven and twelve of subdivision a of this section, have the earliest date of such transferred uniformed correction service substituted for his or her date of entry into the fire department pension fund, subchapter two.

**HISTORICAL NOTE**

Section amended chap 583/1989 § 9

Section added chap 907/1985 § 1

Subd. a par 10 open. par amended chap 480/1993 § 26
retro. to Jan. 1, 1993

Subd. a par 11 open. par amended chap 480/1993 § 27
retro. to Jan. 1, 1993

Subd. a par (12) amended chap 500/1995 § 14, eff. Aug. 2, 1995.

Subd. a par 12 open. par amended chap 480/1993 § 28
retro. to Jan. 1, 1993

Subd. a par 13 added chap 480/1993 § 29 retro. to
Jan. 1, 1993

Subd. b par (1) subpar (i) amended chap 125/2000 § 8, eff. July 11, 2000.

Subd. b par 1 subpar (ii) amended chap 480/1993 § 30
retro. to Jan. 1, 1993

Subd. b par (1) subpar (iii) amended chap 500/1995 § 15, eff. Aug. 2,
1995.

Subd. b par 1 subpar (iii) amended chap 480/1993 § 30
retro. to Jan. 1, 1993

Subd. e added chap 690/1990 § 3 eff. July 22, 1990 retro.
to July 1, 1988

Subd. f added chap 806/1992 § 1 eff. Aug. 7, 1992 retro.
to July 1, 1988

Subd. g added chap 216/2002 § 3, eff. July 30, 2002.

Subd. h added chap 661/2004 §1, eff. Oct. 26, 2004 and shall be deemed
to have been in full force and effect on and after January 1, 2003, and
shall apply to payments made by the firefighters' variable supplements
fund to eligible pension fund beneficiaries on or after such effective
date.

**DERIVATION**

Formerly § B19-43.0 added chap 877/1970 § 1

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 5 [FIREFIGHTERS' VARIABLE SUPPLEMENTS FUND]

§ 13-386 Variable supplements fund; a corporation.

The variable supplements fund shall have the powers and privileges of a corporation and by its name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property held.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-44.0 added chap 877/1970 § 1



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*NYC Administrative Code 13-387*

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 5 [FIREFIGHTERS' VARIABLE SUPPLEMENTS FUND]

§ 13-387 Trustees of funds; investments.

a. The members of the board shall be the trustees of the monies received by or belonging to the variable supplements fund pursuant to this subchapter and, subject to the provisions of subdivision b of this section, shall have full power to invest same, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of such monies shall have been invested as well as of the proceeds of such investments and of any monies belonging to such fund.

b. The members of the board shall have the same investment powers and power to delegate such powers as are vested by the code and the retirement and social security law in the members of the board of trustees of the pension fund subchapter two.

**HISTORICAL NOTE**

Section amended chap 583/1989 § 10 (section 10 refers to this section as § 13-397)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-45.0 added chap 877/1970 § 1



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

*NYC Administrative Code 13-388*

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 5 [FIREFIGHTERS' VARIABLE SUPPLEMENTS FUND]

§ 13-388 Annual reports.

The board shall publish annually in the City Record a report for the preceding year showing the assets of the variable supplements fund and a statement as to the accumulated cash and securities of such fund as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as the board may deem pertinent.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-46.0 added chap 877/1970 § 1



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

*NYC Administrative Code 13-389*

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 5 [FIREFIGHTERS' VARIABLE SUPPLEMENTS FUND]

§ 13-389 Custodian of funds.

The comptroller shall be custodian of the monies and assets of the variable supplements fund. All such monies and assets included in such fund or which shall hereafter accrue to such fund shall be in his or her custody for the purposes of this subchapter subject to the direction, control and approval of such board as to disposition, investment, management and report. All payments from such fund shall be made by the comptroller upon a voucher signed by the secretary of the board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-47.0 added chap 877/1970 § 1



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

*NYC Administrative Code 13-390*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 5 [FIREFIGHTERS' VARIABLE SUPPLEMENTS FUND]

§ 13-390 Prohibitions with respect to trustees and employees.

Except as provided in this subchapter, the trustees and employees assigned to the board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment of the variable supplements fund or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-48.0 added chap 877/1970 § 1



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 5 [FIREFIGHTERS' VARIABLE SUPPLEMENTS FUND]

§ 13-391 State supervision.

The superintendent of insurance may examine the affairs of the variable supplements fund with the same powers and jurisdiction as are applicable in the case of an examination of a life insurance company by the superintendent under article three of the insurance law. The variable supplements fund shall be subject to assessment for expenses pursuant to the provisions of section three hundred thirteen of the insurance law, but shall not be subject to assessment under any of the provisions of section three hundred thirty-two of such law.

**HISTORICAL NOTE**

Section amended chap 583/1989 § 11

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-49.0 added chap 877/1970 § 1

Sub b amended chap 854/1980 § 3

Sub b amended chap 805/1984 § 106



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 5 [FIREFIGHTERS' VARIABLE SUPPLEMENTS FUND]

§ 13-391.1 Variable supplements for wipers for periods included in the period beginning on July first, nineteen hundred eighty-eight and ending on December thirty-first, nineteen hundred ninety-two.

a. As used in this section, the following terms shall mean and include:

1. "Wiper (uniformed)". A member of pension fund subchapter one or pension fund subchapter two holding the position of wiper (uniformed).

2. "Minimum period". The minimum period of credited service which a member of the fire department pension fund subchapter one or the fire department pension fund subchapter two is required by law to perform in order to be eligible to retire for service with immediate payability of retirement allowance.

3. "Wiper pension fund beneficiary". Any person who receives a retirement allowance by reason of having retired, on or after October first, nineteen hundred sixty-eight, for service (with credit for twenty or more years of service creditable toward the minimum period) as a member of pension fund subchapter one or pension fund subchapter two and as a wiper (uniformed).

4. "Board of Trustees". The board of trustees of the firefighters' variable supplements fund established by section 13-384 of the code, as such section would be in the absence of the enactment of the act which added this section 13-391.1. Subdivisions c and d of such section, as it would be in the absence of such enactment, shall govern the

functioning of such board for the purposes of this section.

5. "Wiper variable supplements assets account". (a) Subject to the provisions of subdivision f of this section, a separate account of assets which (i) shall be available as a source of payment of variable supplements to wiper pension fund beneficiaries pursuant to the provisions of this section and subparagraph (i) of paragraph thirteen of subdivision a of section 13-385 of this subchapter, and (ii) shall consist of the assets hereinafter designated in this paragraph as included in such account and (iii) shall be separately maintained by the firefighters' variable supplements fund (within the assets of such fund), in the custody of the comptroller, for the benefit of wiper pension fund beneficiaries.

(b) As of July first, nineteen hundred eighty-eight, there shall be determined by the board of trustees, on the recommendation of the actuary, the portion of the assets of the firefighters variable supplements fund which is attributable to persons who are wipers (uniformed) as of such July first and persons who are wiper pension fund beneficiaries as of such July first.

(c) If the board of trustees is unable to make such determination by the required majority vote, such dispute shall be resolved, on the basis of the recommendation of the actuary, pursuant to the procedure set forth in subdivision d of section 13-384 of this subchapter, as such subdivision would be in the absence of the enactment of the act which added this section 13-391.1.

(d) Upon the making of the determination provided for in subparagraphs (b) and (c) of this paragraph five, the assets attributable to such wipers and wiper pension fund beneficiaries, as so determined, shall be credited by the firefighters' variable supplements fund to the wiper variable supplements assets account.

(e) (i) For each base fiscal year included in the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-two as to which the cumulative earnings factor, as calculated pursuant to section 13-335.2 of this chapter is a positive quantity, the amount of such factor shall be multiplied by a fraction, the numerator of which shall be the total contributions made to pension fund subchapter two with respect to such base fiscal year on behalf of all members of the uniformed force of the fire department who are wipers (uniformed), as of the last day of such base fiscal year, and the denominator of which shall be the total contributions made to such pension fund with respect to such base fiscal year on behalf of all persons who are members of the uniformed force of the fire department as of the last day of such base fiscal year.

(ii) On or before August thirty-first of the current fiscal year with respect to such base fiscal year, pension fund subchapter two shall pay an amount equal to the product of such multiplication into the wipers variable supplements assets account.

b. Subject to the provisions of subdivision f of this section, with respect to any period included in the period beginning on July first, nineteen hundred eighty-eight and ending on December thirty-first, nineteen hundred ninety-two, the entitlement of all wiper pension fund beneficiaries to variable supplements shall be determined pursuant to the provisions of this subchapter five (other than this section), as such provisions would be in the absence of the enactment of chapter five hundred eighty-three of the laws*7 nineteen hundred eighty-nine and as such provisions are modified by this section.

c. For the purpose of determining such entitlement, the provisions of such subchapter (other than this section) shall be interpreted and applied in the manner provided for in the succeeding subdivisions of this section. For such purpose, a wiper pension fund beneficiary shall be entitled to receive variable supplements only to the extent provided for in this section.

d. For each month during the period from July first, nineteen hundred eighty-eight to December thirty-first, nineteen hundred eighty-nine, the firefighters' variable supplements fund shall pay to each wiper pension fund beneficiary the monthly variable supplement for which such beneficiary would be eligible under the provisions of this subchapter and the benefit plan and payment resolution as in effect immediately prior to July first, nineteen hundred

eighty-eight.

e. Subject to the provisions of subdivision f of this section, for any period included in the period beginning on January first, nineteen hundred ninety and ending on December thirty-first, nineteen hundred ninety-two, the granting of variable supplements to wiper pension fund beneficiaries shall be governed by the provisions of sections 13-385 and 13-391 of this subchapter, as such provisions would be in the absence of the enactment of chapter five hundred eighty-three of the laws of nineteen hundred eighty-nine. For such purpose, the assets providing a basis for a grant of variable supplements to wiper pension fund beneficiaries shall be only the assets in the wipers variable supplements assets account. For any period included in the period beginning on January first, nineteen hundred ninety and ending on December thirty-first, nineteen hundred ninety-two, variable supplements may not be paid to a wiper pension fund beneficiary from any assets other than assets of the wiper variable supplements asset account.

f. On January first, nineteen hundred ninety-four, the wiper variable supplements asset account shall terminate and cease to exist and all assets in such account on such date, and all rights to any moneys due and owing to such account on such date, shall be transferred to and become the property of the variable supplements fund.

g. Nothing contained in the preceding subdivisions of this section shall be construed as preventing the application of the provisions of this section for the purposes of, and in the manner and to the extent prescribed by subparagraphs (i), (ii), (iii), (iv) and (v) of paragraph thirteen of subdivision a of section 13-385 of this subchapter.

**HISTORICAL NOTE**

Section added chap 583/1989 § 25

Section heading amended chap 480/1993 § 31 retro. to Jan. 1, 1993

Subd. a par 5 subpars (a), (e) amended chap 480/1993 § 32 retro. to Jan. 1, 1993

Subds. b, e amended chap 480/1993 § 33 retro. to Jan. 1, 1993

Subds. f, g added chap 480/1993 § 34 retro. to Jan. 1, 1993

**FOOTNOTES**

7

[Footnote 7]: * So in original. ("of" inadvertently omitted).

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 6 [FIRE OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-392 Definitions.

As used in this subchapter, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

1. "Variable supplements fund". The fire officers' variable supplements fund established by this subchapter.

1-a. "Minimum period". The minimum period of credited service which a member of pension fund, subchapter one or pension fund, subchapter two is required by law to perform in order to be eligible to retire for service with immediate payability of retirement allowance.

1-b. "Firefighter". A member of either pension fund referred to in subdivision one-a of this section who, at the time of retirement for service by reason of fulfillment of the minimum period, was a firefighter and was not a fire officer.

2. "Association". The uniformed fire officers' association of the fire department, city of New York.

3. "Fiscal year". Any year commencing with the first day of July and ending with the thirtieth day of June next following.

4. "Board". The board of trustees provided for in section 13-394 of this chapter.

5. "Fire officer". (a) Any member of the uniformed force of the fire department holding the position of lieutenant or any position of higher rank in such force and (b) any pilot, marine engineer (uniformed) or assistant marine engineer (uniformed) who is a member of pension fund subchapter two or pension fund subchapter one and (c) any member of either such pension fund holding a position in the fire marshal occupational group above the rank of fire marshal (uniformed).

6. "Pension fund beneficiary". Any person who receives a retirement allowance by reason of having retired, on or after October first, nineteen hundred sixty-eight, for service (with credit for twenty or more years of service creditable toward the minimum period) as a member of pension fund subchapter one or pension fund subchapter two and as a fire officer.

7. "Variable supplement". Any sum authorized to be paid to a pension fund beneficiary pursuant to the provisions of this subchapter.

8. "Pension fund subchapter two". The New York fire department pension fund subchapter two maintained pursuant to subchapter two of chapter three of this title.

9. "Pension fund subchapter one". The New York fire department pension fund maintained pursuant to subchapter one of chapter three of this title.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subds. 1-a, 1-b added chap 480/1993 § 1 retro. to Jan. 1, 1993

Subds. 5-7 amended chap 480/1993 § 2 retro. to Jan. 1, 1993

**DERIVATION**

Formerly § B19-60.0 added chap 877/1970 § 1

Sub 6 amended chap 1012/1972 § 1



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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 6 [FIRE OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-393 Fire officers' variable supplements fund.

a. There is hereby established a fund, to be known as the fire officers' variable supplements fund. Such fund shall consist of such monies as may be paid thereto from pension fund subchapter two, pursuant to the provisions of sections 13-335, 13-335.2 and 13-335.3 of this chapter and all other monies received by such fund from any other source pursuant to law.

b. It is hereby declared by the legislature that the fire officers' variable supplements fund shall not be, and shall not be construed to constitute, a pension or retirement system or fund, and that it shall function as a means whereby payments, not constituting a pension or retirement allowance, shall be made in accordance with the provisions of this subchapter, to eligible pension fund beneficiaries as a supplement to benefits received by them under subchapter one or two of this chapter. The legislature hereby reserves to the state of New York and itself the right and power to amend, modify or repeal any or all of the provisions of this subchapter.

**HISTORICAL NOTE**

Section amended chap 480/1993 § 3 retro. to Jan. 1, 1993

Section added chap 907/1985 § 1

Subd. a amended chap 583/1989 § 21

**DERIVATION**

Formerly § B19-61.0 added chap 877/1970 § 1



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*NYC Administrative Code 13-394*

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 6 [FIRE OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-394 Board of trustees.

a. The variable supplements fund shall be administered by a board of trustees which shall, subject to applicable provisions of law and to the prior approval of the board of estimate, from time to time establish rules and regulations for the administration and transaction of the business of such fund and for the control and disposition thereof.

b. Such board shall consist of:

1. The representative of the mayor who is a member of the board of trustees of pension fund subchapter two, who shall be entitled to cast one vote. The mayor may, by instrument in writing filed in his or her office and with the board, designate one or more members of his or her office to act in the place of such representative at meetings of the board, in the event of such representative's absence therefrom.

2. The comptroller of the city, who shall be entitled to cast one vote. Any deputy comptroller authorized, pursuant to subdivision b of section ninety-four of the New York city charter, to act in the place of the comptroller as a member of the board of trustees of pension fund, subchapter two, may be authorized by the comptroller, in accordance with the provisions of such subdivision b, to act in the place of the comptroller as a member of the board.

2-a. The commissioner of finance, who shall be entitled to cast one vote. Such commissioner may, by instrument in writing filed in his or her office and with the board, designate one or more members of his or her office to act in his

or her place at meetings of the board, in the event of such commissioner's absence therefrom.

3. Two members of the association designated by it, who shall each be entitled to cast one vote. The members so designated shall be officers of the association who are members of the board of trustees of pension fund subchapter two. Each such designee may at any time, by written authorization filed with the board, authorize any other officer of the association to act in his or her place as a member of the board in the event of such designee's absence from any meeting thereof; provided that the by-laws or constitution of the association provide for the designation of a representative for such purpose.

c. Every act of the board shall be by resolution adopted only by a vote of at least three-fifths of the whole numbers of votes authorized to be cast by all of the members of such board.

d. The actuary appointed pursuant to section 13-121 of the code shall be the technical adviser of the board.

e. (1) As of June thirtieth of the nineteen hundred ninety-two-nineteen hundred ninety-three fiscal year and as of June thirtieth of each succeeding fiscal year, the actuary referred to in subdivision d of this section shall make a valuation of the assets and liabilities of the variable supplements fund in accordance with the requirements of the succeeding paragraphs of this subdivision e.

(2) The actuary shall base such annual valuation of liabilities only (i) upon the persons who, as of each such June thirtieth, are pension fund beneficiaries and (ii) upon the persons who, being in service as of such June thirtieth as members of pension fund subchapter two, may be actuarially expected to retire thereafter as fire officers for service with twenty or more years of service creditable toward the minimum period.

(3) The liabilities determined in such valuation shall be equal to the actuarial present value of accumulated plan benefits. The actuarial assumptions used by the actuary in making such annual valuation of liabilities, including assumptions as to interest rate, mortality of pension fund beneficiaries and number of members of such pension fund in service as of June thirtieth who will retire as fire officers for service with twenty or more years of service creditable toward the minimum period, shall be adopted by the board on the recommendation of the actuary.

(4) For the purposes of such annual valuation of the assets of the variable supplements fund, such assets shall be valued at their fair market value as of each such June thirtieth.

f. The fire commissioner shall assign to the board such number of clerical and other assistants as may be necessary for the performance of its functions.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b par 2-a added chap 480/1993 § 4 retro. to Jan. 1, 1993

Subd. c amended chap 480/1993 § 5 retro. to Jan. 1, 1993

Subd. d relettered and amended chap 480/1993 § 7 retro. to Jan. 1, 1993 (formerly subd. e) repealed chap 480/1993 § 6 retro. to Jan. 1, 1993

Subd. e added chap 480/1993 § 8 retro. to Jan. 1, 1993

**DERIVATION**

Formerly § B19-62.0 added chap 877/1970 § 1



Administrative Code of the City of New York



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

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Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 6 [FIRE OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-395 Payment of supplemental benefits.

a. (1) The variable supplements fund shall pay variable supplements to pension fund beneficiaries in accordance with the provisions of the succeeding paragraphs of this subdivision a.

(2) For calendar years succeeding December thirty-first, nineteen hundred ninety-two, the variable supplements fund, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, and subject to the provisions of paragraph five of this subdivision a, shall pay to each pension fund beneficiary who retired prior to July first, nineteen hundred eighty-eight, and to each person who, having been in service as a member of pension fund subchapter two on June thirtieth, nineteen hundred eighty-eight, retired for service prior to January first, nineteen hundred ninety-three so as to become a pension fund beneficiary, variable supplements payments as follows:

(i) for each calendar year following December thirty-first, nineteen hundred ninety-two, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about January thirty-first next succeeding such calendar year, as follows:

| Calendar Year | Supplement |
|---|---|
| 1993 | $ 5,000 |
| 1994 | $ 5,500 |

| | |
|---|---|
| 1995 | $ 6,000 |
| 1996 | $ 6,500 |
| 1997 | $ 7,000 |
| 1998 | $ 7,500 |
| 1999 | $ 8,000 |
| 2000 | $ 8,500 |
| 2001 | $ 9,000 |
| 2002 | $ 9,500 |
| 2003 | $10,000 |
| 2004 | $10,500 |
| 2005 | $11,000 |
| 2006 | $11,500 |
| 2007 and each calendar year thereafter | $12,000 |

(ii) for the calendar year of the beneficiary's death (for those pension fund beneficiaries who die on or after February first, nineteen hundred ninety-three), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided in the chart set forth in subparagraph (i) of this paragraph two, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death.

(3) For calendar years succeeding December thirty-first, nineteen hundred ninety-two, the variable supplements fund, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, and subject to the provisions of paragraph five of this subdivision a, shall pay to each person who, as of June thirtieth, nineteen hundred eighty-eight, was in service as a member of pension fund subchapter two and who retired for sevice on or after January first, nineteen hundred ninety-three so as to become a pension fund beneficiary, variable supplements payments as follows:

(i) for the calendar year of retirement, an amount calculated by multiplying one-twelfth times the supplement applicable to the year of retirement, as provided for in the chart set forth in subparagraph (i) of paragraph two of this subdivision a, by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about January thirty-first next succeeding such year;

(ii) for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment equal to the supplement provided for with respect to each such calendar year as set forth in the chart in subparagraph (i) of such paragraph two, which payment shall be made on or about January thirty-first next succeeding such calendar year;

(iii) for the calendar year of the beneficiary's death (for those beneficiaries who die on or after February first, nineteen hundred ninety-three), an amount calculated by multiplying one-twelfth times the supplement applicable to the year of death, as provided for in the chart set forth in subparagraph (i) of such paragraph two, by the number of full calendar months the beneficiary lived during that calendar year prior to the month of his or her death; and

(iv) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs (i) and (iii) of this paragraph three shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(4) The variable supplements fund, subject to the provisions of subparagraphs (i) and (iii) of paragraph one of subdivision b of this section, shall pay to each person who becomes a member of pension fund subchapter two on or after July first, nineteen hundred eighty-eight, and who retires for service so as to become a pension fund beneficiary, variable supplements payments as follows:

(i) (A) subject to the provisions of subparagraph (iv) of this paragraph, for the calendar year of retirement, where such retirement occurs before January first, two thousand eight, an amount calculated by multiplying one-twelfth times the sum of twenty-five hundred dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about January thirty-first next succeeding such year;

(B) subject to the provisions of subparagraph (iv) of this paragraph, for the calendar year of retirement, where such retirement occurs on or after January first, two thousand eight, an amount calculated by multiplying one-twelfth times the sum of twelve thousand dollars by the number of calendar months elapsing from and including the month next following the month of retirement to the end of such calendar year of retirement, such payment to be made on or about January thirty-first next succeeding such year;

(ii) subject to the provisions of subparagraph (ii-a) of this paragraph, for each calendar year following the year of retirement, but not including the calendar year of the beneficiary's death, a single annual payment to be paid on or about January thirty-first next succeeding such calendar year for which payment is due under this subparagraph, as follows:

| CALENDAR YEAR OF ANNIVERSARY OF RETIREMENT (references hereinafter to "anniversary year" mean calendar year of anniversary) | SUPPLEMENT |
|---|---|
| First anniversary year | The sum of (1) a lower-based component equal to one-twelfth of the base sum of $2,500 multiplied by the number of whole calendar months from and including the first month of such calendar year to and including the month in which the anniversary of the date of retirement occurs, and (2) a higher-based component equal to one-twelfth of the base sum of $3,000 multiplied by the number of months remaining in such calendar year |
| Second anniversary year and each succeeding anniversary year to and including the nineteenth anniversary year | The sum of a lower-based component and a higher-based component computed pursuant to the formula, above, for the first anniversary year, except that for each such anniversry year succeeding the first, the lower-based component shall be computed on a base sum $500 higher than the base sum required to be used in computing the lower-based component for the next preceding anniversary year and the higher based component shall be computed on a base sum $500 higher than the base sum required to be used in computing the higher-based component for such next preceding anniversary year |
| Twentieth anniversary year and each succeeding anniversary year | $12,000 |

(ii-a) for each calendar year which occurs both after the year of retirement and after December thirty-first, two thousand seven (but not including the calendar year of the beneficiary's death), notwithstanding any provision of subparagraph (ii) of this paragraph which otherwise would be applicable, a single annual payment of twelve thousand dollars, which payment (A) shall be in lieu of any other amount which otherwise would be payable under subparagraph (ii) of this paragraph for such calendar year and (B) shall be made on or about January thirty-first next succeeding such calendar year;

(iii) (A) for the calendar year of the beneficiary's death, where such death occurs both after the year of retirement and prior to January first, two thousand eight, an amount calculated in accordance with the formula which would apply to the year of death under subparagraph (ii) of this paragraph four if such death had not occurred, but prorated on the basis of the number of full calendar months the beneficiary lived during the year of death prior to the month of his or her death;

(B) for the calendar year of the beneficiary's death, where such death occurs both after the year of retirement and in the calendar year two thousand eight or thereafter, an amount calculated by multiplying one-twelfth of twelve

thousand dollars by the number of months the beneficiary lived during the year of death prior to the month of his or her death; (iv) if the retirement and death of a beneficiary occur in the same calendar year, aggregate payments under subparagraphs (i) and (iii) of this paragraph four shall be made only in respect to calendar months following the month of retirement and preceding the month of death.

(5) (i) In any case where a pension fund beneficiary who is entitled to receive a payment for the nineteen hundred ninety-three calendar year pursuant to paragraph two or paragraph three of this subdivision a has received, prior to the date of enactment of the act which added this paragraph five, a payment for the nineteen hundred ninety-three calendar year pursuant to the provisions of this section and the benefit plan and payment resolution as in effect prior to such date of enactment, such beneficiary shall be entitled to receive such payment provided for by such paragraph two or paragraph three for the calendar year nineteen hundred ninety-three, in addition to such payment received by such beneficiary for such calendar year prior to such date of enactment pursuant to such provisions of such section, benefit plan and resolution.

(ii) In any case where a pension fund beneficiary who is entitled to receive a payment for the nineteen hundred ninety-three calendar year pursuant to paragraph two or paragraph three of this subdivision a became entitled, prior to such date of enactment, to receive a payment for the nineteen hundred ninety-three calendar year pusuant to the provisions of this section and such benefit plan and resolution as in effect prior to such date of enactment, but the variable supplements fund did not, prior to such date of enactment, cause a check for such payment to be issued to such beneficiary, the variable supplements fund (A) shall pay to such beneficiary the amount to which he or she became entitled, prior to such date of enactment, to receive for the nineteen hundred ninety-three calendar year pursuant to the provisions of such section, benefit plan and resolution (which payment shall be made at the time prescribed by such benefit plan and resolution), and (B) in addition, shall pay to such beneficiary, on or about January thirty-first, nineteen hundred ninety-four, the sum to which he or she is entitled under the provisions of such paragraph two or paragraph three of this subdivision for the nineteen hundred ninety-three calendar year.

(iii) In any case where, if the act which added this paragraph five had not been enacted, a pension fund beneficiary who is entitled to receive a payment for the nineteen hundred ninety-three calendar year pursuant to paragraph three of this subdivision a would have become entitled, by reason of retirement on or after such date of enactment, to receive a payment for the nineteen hundred ninety-three calendar year pursuant to the provisions of this section and the benefit plan and payment resolution as in effect prior to such date of enactment, the variable supplements fund (A) shall pay to such beneficiary the amount which he or she would have become entitled to receive for the nineteen hundred ninety-three calendar year pursuant to the provisions of such section, benefit plan and resolution if such act had not been enacted (which payment shall be made at the time prescribed by such benefit plan and resolution) and (B) in addition, shall pay to such beneficiary, on or about January thirty-first, nineteen hundred ninety-four, the sum to which he or she is entitled under the provisions of such paragraph three of this subdivision for the nineteen hundred ninety-three calendar year.

b. (1) (i) Subject to the provisions of subparagraphs (ii), (iii) and (iv) of this paragraph one, on or after January first, nineteen hundred ninety-three, where a pension fund beneficiary is entitled to receive variable supplements payments pursuant to subdivision a of this section, and that beneficiary is also entitled to receive a supplemental retirement allowance or a cost-of-living adjustment pursuant to any other provision of law enacted on or after January first, nineteen hundred ninety-three (hereinafter referred to as "other supplemental retirement allowance"), the amount of such variable supplement payable for a calendar year or a part of such calendar year to such beneficiary shall be reduced by the amount of such other supplemental retirement allowance that is payable to such beneficiary to the extent that such other supplemental retirement allowance is attributable to the same calendar year or part of such calendar year.

(ii) For any pension fund beneficiary referred to in paragraph two or paragraph three of subdivision a of this section, whose variable supplements payments are being reduced pursuant to subparagraph (i) of this paragraph one because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in

such subparagraph (i) shall cease as to such beneficiary on the later of (A) the first day of the month next following the month in which such beneficiary attains age sixty-two; or (B) January first, two thousand seven.

(iii) For any pension fund beneficiary referred to in paragraph four of subdivision a of this section, whose variable supplements payments are being reduced pursuant to subparagraph (i) of this paragraph one because such other supplemental retirement allowance is also payable to that beneficiary, the reduction provided for in such subparagraph (i) shall cease as to such beneficiary on the later of (A) the first day of the month next following the month in which such beneficiary attains age sixty-two; or (B) the earlier of (1) the first day of the month next following the month in which the nineteenth anniversary of the retirement of such beneficiary occurs or (2) January first, two thousand eight.

(iv) In any case where the reduction of variable supplements payments to a pension fund beneficiary has ceased pursuant to subparagraph (ii) or subparagraph (iii) of this paragraph one, that beneficiary, for the purpose of determining his or her eligibility for and the amount of any other supplemental retirement allowance, shall be deemed to have retired on the date of the cessation of such reduction specified in the applicable provisions of such subparagraph (ii) or subparagraph (iii).

(v) The payments of all variable supplements payable pursuant to subdivision a of this section are hereby made obligations of the city, and the city hereby guarantees that such supplements shall be paid to all eligible pension fund beneficiaries; provided that nothing contained in the preceding provisions of this subparagraph (v) shall be construed as making such guarantee applicable to any payment which paragraph five of such subdivision directs to be made in an amount determined pursuant to the provisions of this section and the benefit plan and payment resolution as in effect prior to the date of enactment of the act which added this subparagraph (v).

(2) The legislature hereby declares that the variable supplements authorized by this subchapter and the granting and receipt thereof: (i) shall not create or constitute membership in a pension or retirement system and shall not create or constitute a contract with any pension fund beneficiary or with any member of pension fund subchapter one or pension fund subchapter two; and

(ii) shall not constitute a pension or retirement allowance or benefit under pension fund subchapter one or pension fund subchapter two or otherwise.

(3) Except as otherwise provided in sections 13-335, 13-335.2 and 13-335.3 of this chapter, nothing contained in this subchapter shall create or impose any obligation on the part of pension fund subchapter one or pension fund subchapter two or the funds or monies thereof, or authorize such funds or moneys to be appropriated or used for any payment under this subchapter or for any purpose thereof.

c. Pension fund beneficiaries shall be eligible to receive variable supplements pursuant to this subchapter, notwithstanding any other provision of law to the contrary.

d. The monies or assets of the variable supplements fund shall not be used for any purpose, other than payment of variable supplements pursuant to the provisions of this subchapter, except that they may be invested as authorized by section 13-397 of this chapter.

e. In addition to the payments set forth in paragraphs three and four of subdivision a of this section, there shall be paid to each pension fund beneficiary, on or about the January thirty-first of the calendar year next succeeding his or her date of retirement, an amount equal to the variable supplements payments, subject to the provisions of subparagraphs (i) and (ii) of paragraph one of subdivision b of this section, that he or she would have received, had he or she retired on the date of his or her earliest eligibility for service retirement, in the period measured from (1) the later of (i) such earliest eligibility date and (ii) January 1, 2002, and (2) his or her date of retirement.

**HISTORICAL NOTE**

Section amended chap 480/1993 § 9 retro. to Jan. 1, 1993

Section added chap 907/1985 § 1

Subd. a par (4) amended chap 500/1998 § 1, eff. July 29, 1998.

Subd. b par (1) subpar (i) amended chap 125/2000 § 5, eff. July 11, 2000.

Subd. b par (1) subpar (iii) amended chap 500/1998 § 2, eff. July 29, 1998.

Subd. b par (3) amended chap 583/1989 § 22

Subd. e added chap 216/2002 § 4, eff. July 30, 2002.

**DERIVATION**

Formerly § B19-63.0 added chap 877/1970 § 1



Administrative Code of the City of New York



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

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Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 6 [FIRE OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-396 Variable supplements fund; a corporation.

The variable supplements fund shall have the powers and privileges of a corporation and by its name all of its business shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property held.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-64.0 added chap 877/1970 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-397*

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Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 6 [FIRE OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-397 Trustees of funds; investments.

a. The members of the board shall be the trustees of the monies received by or belonging to the variable supplements fund pursuant to this subchapter and, subject to the provisions of subdivision b of this section, shall have full power to invest same, subject to the terms, conditions, limitations and restrictions imposed by law, upon savings banks in the making and disposing of investments by savings banks; and subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of such monies shall have been invested as well as of the proceeds of such investments and of any monies belonging to such fund.

b. The members of the board shall have the same investment powers and power to delegate such powers as are vested by the code and the retirement and social security law in the members of the board of trustees of the pension fund, subchapter two.

**HISTORICAL NOTE**

Section amended chap 740/1990 § 1 eff. July 22, 1990

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-65.0 added chap 877/1970 § 1



Administrative Code of the City of New York



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

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Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 6 [FIRE OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-398 Annual reports.

The board shall publish annually in the City Record a report for the preceding year showing the assets of the variable supplements fund and a statement as to the accumulated cash and securities of such fund as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as the board may deem pertinent.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-66.0 added chap 877/1970 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-399*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 6 [FIRE OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-399 Custodian of funds.

The comptroller shall be custodian of the monies and assets of the variable supplements fund. All such monies and assets included in such fund or which shall hereafter accrue to such fund shall be in his or her custody for the purposes of this subchapter subject to the direction, control and approval of such board as to disposition, investment, management and report. All payments from such fund shall be made by the comptroller upon a voucher signed by the secretary of the board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-67.0 added chap 877/1970 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-400*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 6 [FIRE OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-400 Prohibitions with respect to trustees and employees.

Except as provided in this subchapter, the trustees and employees assigned to the board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment of the variable supplements fund or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-68.0 added chap 877/1970 § 1

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

*NYC Administrative Code 13-401*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 3 FIRE DEPARTMENT PENSION FUND AND RELATED FUNDS

SUBCHAPTER 6 [FIRE OFFICERS' VARIABLE SUPPLEMENTS FUND]

§ 13-401 State supervision.

The superintendent of insurance may examine the affairs of the variable supplements fund with the same powers and jurisdiction as are applicable in the case of an examination of a life insurance company by the superintendent under article three of the insurance law. The variable supplements fund shall be subject to assessment for expenses pursuant to the provisions of section three hundred thirteen of the insurance law, but shall not be subject to assessment under any of the provisions of section three hundred thirty-two of such law.

**HISTORICAL NOTE**

Section amended chap 480/1993 § 10 retro. to Jan. 1, 1993

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B19-69.0 added chap 877/1970 § 1

Sub b amended chap 854/1980 § 4

Sub b amended chap 805/1984 § 107



*NYC Administrative Code 13-501*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-501 Definitions.

The following words and phrases as used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

1. "Retirement system" shall mean the arrangement for the payment of retirement allowances, under the provisions of this chapter.

2. "Retirement association" shall mean the teachers' retirement association provided for in section 13-503 of this chapter.

3. "Retirement board" shall mean the teachers' retirement board provided for in section 13-507 of this chapter.

4. "Medical board" shall mean the board of physicians provided for in section 13-519 of this chapter.

5. "Board of education" shall mean the board of education of the city.

6. "Public school" shall mean any class, school, high school, normal school, training school, vocational school, truant school, parental school, and all schools or classes conducted under the order and superintendence of the board of education, and the schools or classes maintained by the department of social services or by the department of correctional services in pursuance of the rules established by the board of education, or by the commissioner of social services or by the commissioner of correction for schools or classes maintained by such commissioners, respectively.

7. (a) "Teacher" shall mean the superintendent of schools, the associate superintendents, the assistant

superintendents, the director and the assistant director of the divisions of reference and research, the director and the assistant directors of the bureau of compulsory education, school census and child welfare, attendance teachers and specially certificated attendance officers who are first employed by the New York city board of education on or after September first, nineteen hundred sixty-eight, attendance teachers and specially certificated attendance officers who were members of the New York city board of education retirement system and who, on or before December thirty-first, nineteen hundred sixty-nine, gave notice to said board of education retirement system of their intention to transfer to the New York city teachers' retirement system, the director of attendance, assistant director of attendance, chief attendance officer, division supervising attendance officers and district supervising attendance officers of the bureau of compulsory education, school census and child welfare, supervisors of school social workers who are first employed by the New York city board of education on or after September first, nineteen hundred sixty-nine or who were members of the New York city board of education retirement system and who on or before December thirty-first, nineteen hundred seventy, gave notice to the said board of education retirement system of their intention to transfer to the New York city teachers' retirement system, the members of the board of examiners, the directors and the assistant directors of special branches, the supervisor and assistant supervisors of lectures, all principals, vice-principals, assistants-to-principals, heads of departments, and all regular and special teachers of the public day schools of the city, and all employees of the board of education appointed to regular positions in the service of the public schools at annual salaries and whose appointments were made or shall be made from eligible lists prepared as the result of examinations held by the board of examiners or from hiring lists established by the chancellor of the board of education, as the case may be, and all employees employed by the board of education in the titles of teacher aide, educational assistant, educational associate, auxiliary trainer, bilingual professional assistant, family worker, family assistant, family associate, parent program assistant, who file an application for membership in the retirement association on a form supplied by the retirement board.

(b) (1) A member employed in a title added by the provisions of the amendment made by chapter nine hundred ninety-seven of the laws of nineteen hundred eighty-three may elect a service retirement benefit pursuant to the provisions of subparagraphs two and three of this paragraph.

(2) A member employed in a title specified in subparagraph one may elect a service retirement without having to satisfy the requirement set forth in paragraph one of subdivision b of section six hundred nine of the retirement and social security law that a minimum of five years of credited service be performed subsequent to joining a retirement system. Provided however, that nothing herein shall be deemed to affect any applicable condition of eligibility for a service retirement, including but not limited to, that such member has: (i) attained age sixty-two as required by section six hundred three of the retirement and social security law; (ii) rendered a minimum of ten years of credited service as required by subdivision a of section six hundred two of such law; and (iii) purchased credit for any creditable service rendered in such title or titles prior to joining the New York city teachers' retirement system by making payment to such system prior to the effective date of retirement an amount equal to three percent of the employee's salary earned during the period such prior service was rendered, with interest at the rate of five percent per annum compounded annually. Further provided, that nothing herein shall be construed to mean that any service shall be credited in a manner inconsistent with the provisions of subdivision a of section six hundred nine of the retirement and social security law, or, if applicable, the provisions of subdivision e of such section.

(3) In order to be effective, elections made pursuant to the provisions of this paragraph shall be in writing on a form supplied by the New York city teachers' retirement system and duly acknowledged and filed with such system on or before December thirty-first, nineteen hundred eighty-five.

8. "Present-teacher" shall mean any teacher employed in the public schools as a teacher on the first day of August, nineteen hundred seventeen, or on leave of absence on such date; and any teacher serving on a temporary license on the first day of August, nineteen hundred seventeen who, without separation from service, became a contributor to the teachers' retirement system; and any teacher-clerk or clerical assistant employed in the public day schools as a teacher-clerk or clerical assistant on the second day of June, nineteen hundred nineteen, and whose service as such teacher-clerk or clerical assistant was continuous from any time prior to the thirtieth day of June, nineteen

hundred seventeen to the second day of June, nineteen hundred nineteen; and any teacher-clerk or clerical assistant employed as such in the public day schools from any time prior to the thirtieth day of June, nineteen hundred seventeen and who, without separation from service, was appointed as a regular teacher on a per annum salary prior to the second day of June, nineteen hundred nineteen and who, prior to the fourth day of May, nineteen hundred thirty-five, was classified upon the records of the retirement board as "present-teacher"; and any teacher-clerk or clerical assistant who was employed as such in the public day schools on the second day of June, nineteen hundred nineteen and who, prior to the fourth day of May, nineteen hundred thirty-five, was classified upon the records of the retirement board as "present-teacher"; and any teacher who was employed in the public schools as a teacher on the first day of August, nineteen hundred seventeen who subsequently resigned and who was reinstated or reappointed within two years from the date of such resignation.

9. "New-entrant" shall mean any teacher appointed to serve in the public schools after the first day of August, nineteen hundred seventeen.

10. "Contributor" shall mean any member of the retirement association.

11. "Transferred-contributor" shall mean a contributor as defined in section 13-523 of this chapter.

12. "Beneficiary" shall mean any person in receipt of a pension, a pension-providing-for-increased-take-home-pay, an annuity, a retirement allowance, or other benefit as provided in this chapter.

13. "city-service" shall mean any service as an employee of the city or of any department, bureau, board or corporation thereof, or of the counties within the city.

14. "Prior-service" shall mean all city-service and all teaching or supervisory service in schools or colleges not maintained by the city computed to and including the sixteenth day of September, nineteen hundred seventeen, in the case of a present-teacher, and, in the case of a new-entrant, to the date of his or her appointment as a teacher, subject to the limitations and restrictions imposed by section 13-505 of this chapter.

15. "Total-service" shall mean all prior-service together with all subsequent service as a teacher or contributor as provided in this chapter.

15-a. "Member-service" shall mean credited city-service rendered while a contributor.

16. "Service retirement" shall mean retirement as defined in section 13-545, 13-547 or 13-549 of this chapter.

17. "Disability retirement" shall mean any of the following:

(a) retirement prior to July first, nineteen hundred seventy for disability, as defined in subdivision seventeen-a of this section;

(b) retirement for ordinary disability, as defined in subdivision seventeen-b of this section;

(c) retirement for accident disability, as defined in subdivision seventeen-c of this section.

17-a. "Retirement prior to July first, nineteen hundred seventy for disability" shall mean retirement of a contributor for disability pursuant to section 13-550 of this chapter in any case where the effective date of such retirement precedes July first, nineteen hundred seventy.

17-b. "Retirement for ordinary disability" shall mean retirement of a contributor for disability pursuant to section 13-550 of this chapter, in any case where such retirement becomes effective on or after July first, nineteen hundred seventy.

17-c. "Retirement for accident disability" shall mean retirement pursuant to section 13-551 of this chapter.

17-d. "Disability pensioner". Any retired person whose retirement constitutes disability retirement.

18. "Average salary" shall mean the average annual salary earnable by a contributor for the five years immediately preceding the date of death or retirement or, at the option of such contributor, it shall mean the average annual salary earnable during any ten consecutive years of his or her total service, said ten years to be selected by the contributor prior to the date of death or retirement; upon the death of a contributor before retirement and prior to the selection of the period of time upon which his or her average annual salary shall be based, for the purpose of determining the amount to be paid as special death and retirement benefits pursuant to section 13-543 of this chapter, "average salary" shall mean the average annual salary earnable by such contributor during the five years immediately preceding his or her death or the average annual salary earnable by him or her during any ten consecutive years of total service, whichever of the two averages is greater in amount.

18-a. (a) For the purposes of paragraphs (b), (c) and (d) of this subdivision, the term "improved salary base contributor" shall mean any contributor:

(i) who dies or retires on or after the date on which this subdivision takes effect; and

(ii) whose last three years of credited service after his or her contribution rate fixation date (as defined in subdivision forty-seven of this section) were rendered in the position held by him or her on the date of death or retirement.

(b) (1) Notwithstanding the provisions of subdivision eighteen of this section or any other provision of law to the contrary, "average salary" shall mean, in the case of any improved salary base contributor, the annual salary earnable by such contributor during the year immediately preceding the date of death or retirement or, at the option of such contributor, it shall mean the average annual salary earnable during any five consecutive years of his or her total service, such five years to be selected by such contributor prior to the date of death or retirement.

(2) In any case where an improved salary base contributor dies prior to the selection of the period of time upon which his or her average salary shall be based, and such death occurs prior to his or her retirement or under such circumstances that a benefit is payable pursuant to paragraph a or b of subdivision two of section 13-545 of this chapter, then for the purpose of determining the amount to be paid as special death and retirement benefits pursuant to section 13-543 of this chapter or for the purpose of determining the amount of the benefit to be paid pursuant to paragraph a or b of subdivision two of section 13-545 of this chapter, as the case may be, "average salary" shall mean the annual salary earnable by such contributor during the year immediately preceding his or her death or the average annual salary earnable by him or her during any five consecutive years of total service, whichever of such earnable amounts is greater.

(c) Notwithstanding any provision of paragraphs (a) and (b) of this subdivision to the contrary, in any case where a contributor would qualify as an improved salary base contributor, except for lack of the three years of service required by subparagraph (ii) of paragraph (a) of this subdivision, and such contributor, after his or her contribution rate fixation date (as defined in subdivision forty-seven of this section), rendered credited service for a period of three or more years during which period of three or more years he or she held no more than one position, such contributor shall be deemed, for the purposes of paragraphs (a), (b) and (d) of this subdivision, to be an improved salary base contributor; provided, however, that wherever the expression "annual salary earnable by such contributor during the year immediately preceding the date of death or retirement," or "annual salary earnable by such contributor during the year immediately preceding his or her death", appear in paragraph (b) of this subdivision, such expressions shall be instead deemed to mean, with respect to a contributor who qualifies as an improved salary base contributor under this paragraph (c), the annual salary earnable by such contributor during the last year of the most recent period of three or more years of credited service of such contributor (after his or her contribution rate fixation date, as defined in subdivision forty-seven of this section), during which period of three or more years he or she held no more than one position.

(d) (1) Subject to the provisions of subparagraph two of this paragraph, the provisions of paragraphs (a), (b) and (c) of this subdivision shall not apply to any contributor:

(i) who heretofore retired or shall hereafter retire or who heretofore became or shall hereafter become a withdrawn contributor or a discontinued member; and

(ii) who, after such retirement or withdrawal or after his or her discontinuance of service as a discontinued member, as the case may be, and after June thirtieth, nineteen hundred sixty-nine, re-entered or shall re-enter service (whether or not with service credit and status prior to withdrawal or discontinuance of service, as the case may be); and

(iii) who would otherwise qualify as an improved salary base contributor at the time of death or retirement occurring after such reentry; unless and until such contributor, after such re-entry, completes a period of not less than four years of member-service (as defined in subdivision fifteen-a of this section).

(2) In any case where any contributor retires as an improved salary base contributor or discontinues service as an improved salary base discontinued member (as defined in subdivision eighteen-b of this section) and thereafter retires without having the status of an improved salary base contributor, the average salary used in computing the retirement allowance of such contributor with respect to such subsequent retirement shall in no event be less than the average salary:

(i) which was used in computing the retirement allowance awarded to him or her with respect to his or her prior retirement as an improved salary base contributor, in the case of such a contributor who retired after a prior retirement; or

(ii) which would have been required to be used in computing the retirement allowance to which he or she would have been entitled as a discontinued member if he or she had not re-entered service, in the case of such a contributor who retires after previously discontinuing service as a discontinued member.

18-b (a) For the purposes of paragraph (b) and (c) of this subdivision, the term "improved salary base discontinued member" shall mean, except as otherwise provided in paragraph (c) of this subdivision, any discontinued member:

(i) who:

(a) became such a member by discontinuing service on or after the date on which this subdivision takes effect and after five years of credited service immediately preceding such termination, as required by section 13-556 of this chapter (relating to vested retirement rights); or

(b) became such a member after a prior discontinuance of service and re-entry into service, by discontinuing service on or after the date on which this subdivision takes effect and after completion of five years of credited service after such re-entry into service and immediately preceding such subsequent termination as required by such section 13-556; and

(ii) whose last three years of credited service prior to his or her most recent discontinuance were rendered in the position held by him or her on the date of such most recent discontinuance.

(b) (1) Notwithstanding the provisions of subdivision eighteen of this section or any other provision of law to the contrary, "average salary" shall mean, in the case of any improved salary base discontinued member, the annual salary earnable by such member during the year immediately preceding the date of his or her discontinuance of service, or, at the option of such member, it shall mean the average annual salary earnable during any five consecutive years of his or her total-service, said five years to be selected by such member prior to the date on which his or her retirement allowance becomes payable under the provisions of section 13-556 of this chapter (relating to vested retirement rights).

(c) Notwithstanding any provision of paragraphs (a) and (b) of this subdivision to the contrary, in any case where a discontinued member would qualify as an improved salary base discontinued member, except for lack of the three years of service required by subparagraph (ii) of paragraph (a) of this subdivision, and such member, after his or her contribution rate fixation date (as defined in subdivision forty-seven of this section) rendered credited service for a period of three or more years during which period of three or more years he or she held no more than one position, such member shall be deemed, for the purposes of paragraphs (a) and (b) of this subdivision to be an improved salary base discontinued member; provided, however, that the expression "annual salary earnable by such member during the year immediately preceding the date of his or her discontinuance of service" set forth in paragraph (b) of this subdivision shall be deemed to mean, with respect to a discontinued member who qualifies as an improved salary base discontinued member under this paragraph (c), the annual salary earnable by such member during the last year of the most recent period of three or more years of credited service of such member during which period of three or more years he or she held no more than one position.

19. (a) "Minimum contribution", except as otherwise provided in paragraphs (b) and (c) of this subdivision, shall mean (1) the amount realized by deducting from the salary of a contributor three per cent of his or her earnable salary; or (2) such per cent thereof, if less than three per cent, as shall be computed to be sufficient, with regular interest, when paid until age sixty-five, to provide for him or her on retirement at that age an annuity which, when added to his or her pension provided for in this title, will provide a retirement allowance of fifty percent of his or her average salary.

(b) The "minimum contribution" of a twenty-year pension plan contributor shall be that realized by deducting from his or her salary the proportion of his or her earnable salary represented by his or her effective contribution rate as a twenty-year pension plan contributor (as such rate is defined in subdivision forty-five of this section).

(c) The "minimum contribution" of an age-fifty-five-increased-benefits pension plan contributor shall be that realized by deducting from his or her salary the proportion of his or her earnable salary represented by his or her effective contribution rate as an age-fifty-five-increased-benefits pension plan contributor (as such rate is defined in subdivision forty-six of this section).

(d) The method of computation and the deductions herein prescribed shall be appropriately modified in the case of a contributor for whom a rate is otherwise fixed pursuant to section 13-546 of this chapter (relating to pensions-providing-for-increased-take-home-pay).

20. "Minimum accumulation" shall mean:

(a) Except as otherwise provided in paragraphs (b) and (c) of this subdivision, the amount created by the accumulation of the minimum contributions, together with the regular interest thereon; and

(b) Subject to the provisions of paragraphs (c) and (d) of this subdivision , such term, in the case of any twenty-year pension plan contributor, shall mean the remainder obtained:

(1) by computing the amount which the accumulated deductions of such contributor would equal, as of the date of his or her completion of twenty years of twenty-year pension plan qualifying service, if during the period from his or her contribution rate fixation date up to and including the date of completion of such twenty years of service, he or she contributed to the retirement system at his or her normal rate of contribution as such contributor; and

(2) by subtracting from such amount computed pursuant to subparagraph one of this paragraph (b), the amount of the reserve-for-increased-take-home-pay to which such contributor is entitled for such period of twenty years of service, as such reserve was as of the date of completion of such period of service.

(c) For the purposes of subparagraph one of paragraph (b) of this subdivision, the accumulated deductions referred to in such subparagraph shall be computed as they would be:

(i) in the absence of any outstanding loan; and

(ii) if they were not increased by any additional contributions, and

(iii) if they were not reduced by reason of any election of the contributor to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage; and

(iv) if, in the case of contributor who is a participant in the variable annuity program, he or she had never been a participant in such program during the period from his or her contribution rate fixation date up to and including the date of completion of twenty years of twentyyear pension plan qualifying service.

(d) (1) In the case of a twenty-year pension plan contributor who, prior to his or her contribution rate fixation date, had completed twenty or more years of twenty-year pension plan qualifying service, the minimum accumulation shall be an amount which, as of the initial date of retirement allowance payability with respect to such contributor, is the actuarial equivalent of an annuity equal to twelve and one-half per centum of his or her annual salary earnable on his or her contribution rate fixation date.

(2) In the case of a twenty-year pension plan contributor who, after having retired as a twenty-year pension plan contributor, re-enters city-service, the minimum accumulation of such contributor while a twenty-year pension plan contributor shall be his or her minimum accumulation at the time of his or her prior retirement as a twenty-year pension plan contributor.

(3) For the purpose of the computation prescribed by subparagraph one of paragraph b of this subdivision, in the case of a twenty-year pension plan contributor whose first twenty years of twenty-year pension plan qualifying service includes transferred service as described in subdivision forty-four of this section (relating to definitions), the accumulated deductions of such contributor attributable to all such transferred service rendered prior to July first, nineteen hundred seventy shall be the amount obtained by adding together:

(i) the amount which the accumulated deductions of such contributor resulting from his or her contributions as a member of the other retirement system would have equalled at the end of such period of transferred service rendered prior to July first, nineteen hundred seventy, (a) in the absence of a loan, (b) if not increased by additional contributions and (c) if not reduced by reason of such contributor's election as a member of such other retirement system to decrease his or her contributions in order to apply the amount of such reduction in payment of his or her contributions for old age and survivors insurance coverage; and

(ii) the reserve-for-increased-take-home-pay, if any, which accrued for such period of transferred service rendered prior to July first, nineteen hundred seventy in favor of such contributor as a member of such other retirement system.

(4) For the purpose of facilitating the computation of minimum accumulations, the retirement board may promulgate rules and regulations providing, with respect to any twenty-year pension plan contributor whose first twenty years of twenty-year pension plan qualifying service include any such service rendered after his or her contribution rate fixation date and prior to July first, nineteen hundred seventy, that for the purpose of computing that part of his or her minimum accumulation attributable to the period of his or her twenty-year pension plan qualifying service commencing on his or her contribution rate fixation date (or on the date of his or her last entry into city-service constituting member-service, if he or she is subject to the provisions of subparagraph three of this paragraph (c)) and ending on June thirtieth, nineteen hundred seventy or on the date on which he or she completes twenty years of twenty-year pension plan qualifying service, whichever is earlier;

(i) his or her earnable salary during such period shall be deemed to increase annually by a constant amount; and

(ii) if such entire period includes one or more constituent periods (hereinafter referred to as sub-periods) for

which he or she did not receive service credit, such part of his or her minimum accumulations shall be the amount obtained:

(a) by computing, in accordance with the method of computation mentioned in item one of this paragraph four, the amount which his or her accumulated deductions for such entire period would equal, as of the last day of such period, if throughout such period, including in such period all such sub-periods, he or she contributed continuously to the retirement system at his or her normal rate of contribution; and

(b) by multiplying such amount computed pursuant to subitem (a) of this item (ii) by a fraction, the numerator of which is the number of years of service for which he or she is credited with respect to such entire period, and the denominator of which is the number of years of service for which he or she would be credited with respect to such entire period if no such sub-periods were included therein.

20-a. "Minimum accumulation factor" shall mean an amount equal to an annuity which would be, as of the date on which the retirement allowance of a twenty-year pension plan contributor begins, the actuarial equivalent of his or her minimum accumulation.

21. "Accumulated deductions" shall mean the total of the amounts deducted from the salary of a contributor and standing to the credit of his or her individual account in the annuity savings fund, together with the regular interest and special interest, if any, thereon.

22. (a) Except as otherwise provided in paragraphs (b), (c), (d), (e) and (g) of this subdivision, "regular interest," in the cases of persons who are members on the thirtieth day of June, nineteen hundred forty-seven, shall mean interest at four per centum per annum, compounded annually, and in the case of persons becoming members thereafter, shall mean interest of three per centum per annum, compounded annually to and including the thirty-first day of December, nineteen hundred sixty-six, and interest at four per centum per annum, compounded annually from and after the first day of January, nineteen hundred sixty-seven, except that in the cases of persons becoming members after the thirtieth day of June, nineteen hundred forty-seven whose service as a teacher, contributor, or transferred-contributor is terminated by death, retirement, resignation, dismissal or otherwise prior to the thirtieth day of June, nineteen hundred sixty-seven, the term "regular interest" shall mean interest at three per centum per annum compounded annually, to and including the date of such termination.

(b) The provisions of paragraph (a) of this subdivision shall not apply to any actuarial valuation, determination or appraisal which is made pursuant to this chapter and which is used to determine the amount of any contribution required to be paid by the city or other public employer into the contingent reserve fund or pension reserve fund number two of the retirement system in nineteen hundred seventy-seven-nineteen hundred seventy-eight fiscal year of the city or any subsequent fiscal year thereof.

(c) (i) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this title and which is used to determine the amount of any contribution required to be paid by the city (or other obligors required to pay public employer contributions on account of contributors) into the contingent reserve fund or pension reserve fund number two of the retirement system in the nineteen hundred seventy-seven-nineteen hundred seventy-eight fiscal year of the city and in each succeeding fiscal year thereof to and including the nineteen hundred seventy-nine-nineteen hundred eighty fiscal year thereof, "regular interest" shall mean interest at five and one-half per centum per annum, compounded annually.

(ii) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, and except as otherwise provided in subdivision a of section 13-527 of this chapter and subdivision d of such section with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this title and which is used to determine the amount of any contribution required to be paid by the city (or other obligors

required to pay public employer contributions on account of contributors) into the contingent reserve fund or pension reserve fund number two of the retirement system in the nineteen hundred eighty-nineteen hundred eighty-one fiscal year of the city and in each succeeding fiscal year thereof to and including the nineteen hundred eighty-one-nineteen hundred eighty-two fiscal year thereof, "regular interest" shall mean interest at the rate of seven and one-half per centum per annum, compounded annually.

(iii) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, and except as otherwise provided in subdivision a of section 13-527 of this chapter and subdivision d of such section with respect to the determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this title and which is used to determine the amount of any contribution required to be paid by the city (or other obligors required to pay public employer contributions on account of contributors) into the contingent reserve fund or pension reserve fund number two of the retirement system in the nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year of the city and in each succeeding fiscal year thereof to and including the nineteen hundred eighty-seven-nineteen hundred eighty-eight fiscal year thereof, "regular interest" shall mean interest at the rate of eight per centum per annum, compounded annually.

(iv) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, and except as otherwise provided in subdivision a of section 13-527 of this chapter and subdivision d of such section with respect to the determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this chapter and which is used to determine the amount of any contribution required to be paid by the city (or other obligors required to pay public employer contributions on account of contributors) into the contingent reserve fund or pension reserve fund number two of the retirement system in the nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year of the city and the nineteen hundred eighty-nine-nineteen hundred ninety fiscal year thereof, "regular interest" shall mean interest at the rate of eight and one-quarter per centum per annum, compounded annually.

(d) Subject to the provisions of subparagraph (ii) of paragraph (f) of this subdivision, and except as otherwise provided in subdivision a of section 13-527 of this chapter and subdivision f of such section with respect to determination of the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty and balance sheet liability contributions, for the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this chapter and which is used to determine the amount of any contribution required to be paid by the city (or other obligors required to pay public employer contributions on account of contributors) into the contingent reserve fund or pension reserve fund number two of the retirement system in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year of the city and in any subsequent fiscal year thereof, "regular interest" shall mean interest at such rate per annum, compounded annually, as shall be prescribed by the legislature in section 13-638.2 of this title.

(e) On or after May first, nineteen hundred eighty-nine and no later than October thirty-first of such year, the retirement board shall submit to the governor, the temporary president and minority leader of the senate, the speaker of the assembly, the majority and minority leaders of the assembly, the state superintendent of insurance, the chairman of the permanent commission on public employee pension and retirement systems, the mayor of the city, and the members of the board of estimate and city council thereof, the written recommendations of the retirement board as to the rate of interest and effective period thereof which should be established by law as "regular interest" for the purpose specified in the paragraph (d) of this subdivision.

(f) (i) Subject to the provisions of paragraph four of subdivision (b) of section 13-527 of this chapter, nothing contained in paragraphs (b), (c), (d) and (e) of this subdivision shall be construed as prescribing, for the purpose of crediting interest to individual accounts in the annuity savings fund or to reserves-for-increased-take-home-pay or for any other purpose besides that specified in such paragraphs, a rate of regular interest other than as prescribed by the applicable provisions of paragraph (a) or paragraph (g) of this subdivision.

(ii) Subject to the provisions of section 13-638.2 of this title, nothing contained in paragraphs (c) and (d) of this subdivision shall be construed as requiring the original unfunded accrued liability contribution, as defined in subdivision c of section 13-527 of this chapter, and the revised unfunded accrued liability contribution, as defined in subdivision d of such section, and the nineteen hundred eighty unfunded accrued liability adjustment, as defined in subdivision e of such section and the nineteen hundred eighty-two unfunded accrued liability adjustment, as defined in such subdivision, to be determined in any manner other than as prescribed by the applicable provisions of such subdivisions. Subject to the provisions of section 13-638.2 of this title, nothing contained in paragraphs (c) and (d) of this subdivision shall be construed as requiring any balance sheet liability or balance sheet liability contribution computed pursuant to the provisions of subdivision f of section 13-527 of this chapter to be determined in any manner other than as prescribed in such subdivision.

(g) (i) Commencing on August first, nineteen hundred eighty-three, and continuing thereafter, "regular interest", in the cases of persons who were in member service on July thirty-first, nineteen hundred eighty-three or who thereafter entered or resumed or enter or resume member service, shall mean, subject to the provisions of subparagraphs (ii) to (ix), inclusive, of this paragraph (g) and subdivision b of section 13-578 of the code, interest at seven per centum per annum, compounded annually.

(ii) (A) (1) Subject to the provisions of sub-items (2) and (3) of this item (A), regular interest at the rate of seven per centum per annum, compounded annually, shall be used as the actuarial interest assumption for determining any actuarial equivalent benefit (other than a variable annuity program benefit) payable to or on account of any seven percent member for actuarial equivalent benefit purposes.

(2) Where an actuarial equivalent benefit is required by retirement board resolution to be determined for any seven percent member for actuarial equivalent benefit purposes through the use of the modified Option 1 pension computation formula (as defined in subdivision fifty-nine of section 13-501 of the code), the actuarial interest assumptions used in making such determination shall be as prescribed in such formula.

(3) Where it is provided by retirement board resolution that a portion of an actuarial equivalent benefit shall be determined for any seven percent member for actuarial equivalent benefit purposes on the basis of gender-neutral mortality tables, and that the remainder of such benefit shall be determined on the basis of mortality tables which are not gender-neutral, regular interest at the rate of seven per centum per annum, compounded annually, shall be used as the actuarial interest assumption for determining the portion of such benefit required by such resolution to be determined on the basis of gender-neutral mortality tables and such rate of regular interest shall not apply to the determination of the remainder of such benefit.

(B) Notwithstanding that the process of determining whether a member is a seven percent member for actuarial benefit purposes may include, for the purpose of ascertaining the highest applicable benefit, alternative hypothetical benefit calculations utilizing a rate of regular interest other than such rate of seven per centum, nothing contained in subparagraph (i) of this paragraph (g) or in item (A) of this subparagraph (ii) shall be construed as requiring that in the determination of any actuarial equivalent benefit (other than a variable annuity program benefit) payable to or on account of any member who is not a seven percent member for actuarial equivalent benefit purposes, any rate of interest be used as the actuarial interest assumption other than regular interest, compounded annually, as prescribed by the applicable provisions of paragraph (a) of this subdivision twenty-two.

(iii) The provisions of item (A) of subparagraph (ii) of this paragraph shall not apply to any person who prior to August first, nineteen hundred eighty-three, retired as a member of the retirement system for service or superannuation or for ordinary or accident disability and was such a retiree immediately prior to such August first, provided, however, that if any such retiree, on or after July thirty-first, nineteen hundred eighty-three, returned or returns to member service, the provisions of such item (A), from and after such date of restoration to member service, shall apply to such restored member, provided that nothing contained in the preceding provisions of this subparagraph shall be construed as applicable to any such restored member who was not or is not a seven percent member for actuarial equivalent benefit

purposes at the time of subsequent retirement or subsequent discontinuance of service so as to qualify for benefits.

(iv) (A) Subject to the provisions of item (B) of this subparagraph (iv), the provisions of item (A) of subparagraph (ii) of this paragraph shall not apply to any Tier I or Tier II member who (1) prior to August first, nineteen hundred eighty-three, discontinued service under such circumstances that such member became a discontinued member and acquired a vested right to receive a retirement allowance pursuant to section 13-556 of the code (and in the case of a Tier II member, article eleven of the retirement and social security law), and (2) was a discontinued member immediately prior to such August first.

(B) If such a discontinued member, on or after July thirty-first, nineteen hundred eighty-three, returned or returns to member service, the provisions of item (A) of subparagraph (ii) of this paragraph shall apply to him or her on and after the date of such resumption of member service, provided that nothing contained in this item (B) shall be construed as making the provisions of item (A) of such subparagraph (ii) applicable to any such member who was not or is not a seven percent member for actuarial equivalent benefit purposes at the time of subsequent retirement or subsequent discontinuance of service so as to qualify for benefits.

(v) (A) Subject to the provisions of item (B) of this subparagraph (v), the provisions of item (A) of subparagraph (ii) of this paragraph shall not apply to any Tier III member or Tier IV member who (1) prior to August first, nineteen hundred eighty-three, terminated employment under such circumstances that such member became a Tier III member entitled to a vested benefit or a Tier IV member entitled to a vested benefit, and (2) had such status immediately prior to such August first.

(B) If a member who became entitled to a vested benefit, as described in item (A) of this subparagraph (v), returned or returns to member service on or after July thirty-first, nineteen hundred eighty-three, the provisions of item (A) of such subparagraph (ii) shall apply to him or her on and after the date of such resumption of member service, provided that nothing contained in the preceding provisions of this item (B) shall be construed as applicable to any such member who was not or is not a seven percent member for actuarial equivalent benefit purposes at the time of subsequent retirement or subsequent discontinuance of service so as to qualify for benefits.

(vi) (A) Subject to the provisions of items (B) and (C) of this subparagraph (vi) and to the provisions of subparagraph (vii) of this paragraph (g), the selection of mode of benefit (as defined in subdivision sixty of this section) which, prior to the termination date of eligibility for option re-selection (as defined in subdivision sixty-four of this section), a person entitled to a recomputation of benefits (as defined in subdivision sixty-two of this section) made or makes in relation to the retirement allowance (or any component thereof) which became or becomes payable to him or her prior to such termination date of eligibility for option re-selection, shall be the selection of mode of benefit applicable to the recomputed retirement allowance (or any corresponding component thereof) to which he or she is entitled under the best-of-three-computations method or the gender-neutral computations method, and, any such person entitled to a recomputation of benefits pursuant to the best-of-three-computations method or the gender-neutral computations method shall not be entitled to make any change in such selection of mode of benefit.

(B) (1) Notwithstanding the provisions of item (A) of this subparagraph (vi), a person entitled to a recomputation of benefits pursuant to the best-of-three-computations method shall be entitled, to the extent and in the manner prescribed in the succeeding sub-items of this item (B), to change the original selection of mode of benefit applicable to the retirement allowance (or component thereof) which became or becomes payable to him or her prior to the termination date of eligibility for option re-selection.

(2) In any case where the original selection of mode of benefit of a person entitled to a recomputation of benefits was a selection of a joint and survivor option (as defined in subdivision sixty-three of this section), no change from such original selection of a joint and survivor option may be made under this item (B) to any other selection of mode of benefit if the designated beneficiary selected with respect to such joint and survivor option by such person entitled to a recomputation is not alive at the time of filing of the form whereby such person entitled to a recomputation seeks to

change, pursuant to this item (B), his or her original selection of such joint and survivor option.

(3) Except for a change of selection of mode of benefit prohibited by sub-item two of this item (B), any original selection of mode of benefit may be changed pursuant to this item (B) to another selection of mode of benefit, provided all of the conditions set forth in sub-items four, six and eight of this item (B) are met.

(4) Subject to the provisions of sub-items seven and eight of this item (B), a person entitled to a recomputation of benefits may, pursuant to this item (B), effect any such permissible change of his or her original selection of mode of benefit by executing, acknowledging and filing with the retirement system, within the applicable period of time prescribed by sub-item six of this item, a new selection of mode of benefit. If the original selection of mode of benefit of the person filing such new selection was a selection of a joint and survivor option, such new selection shall be void and of no effect unless (a) the designated beneficiary named in such orignal*8 selection of a joint and survivor option signs and acknowledges, in the form for such new selection of mode of benefit, a consent to such changed selection of mode of benefit, and (b) such original designated beneficiary is alive on the date of filing of such new selection.

(5) The retirement system shall mail to each person entitled to a recomputation of benefits a letter showing amounts of benefits, as recomputed for such person under the best-of-three-computations method or the gender-neutral computations method, for modes of benefit other than joint and survivor options, together with a statement advising such person that upon request, the amounts of recomputed benefits under joint and survivor options will be provided.

(6) The period of time within which any such person entitled to a recomputation may file a new selection of mode of benefit as provided for in sub-items three and four of this item (B) shall be sixty days after the date of issuance set forth in such letter mailed to such person pursuant to sub-item five of this item; provided, however, that if, pursuant to the request of such person, a later letter setting forth benefits information in relation to new selection of mode of benefit is mailed to such person by the retirement system, such period of time for filing a new selection of mode of benefit shall be thirty days after the date of issuance set forth in such later letter.

(7) Upon the filing of a new selection of mode of benefit pursuant to this item (B) by any such person entitled to a recomputation, such new selection shall be irrevocable and such person shall not be entitled to file any other selection of mode of benefit with respect to such retirement allowance (or any component thereof) which became payable to him or her prior to the termination date of eligibility for option re-selection.

(8) No new selection of mode of benefit filed pursuant to the preceding sub-items of this item (B) shall be valid or effective as a change of mode of benefit or for any other purpose unless the person entitled to a recomputation of benefits who files such new selection is alive on the date (hereinafter referred to as the "validating date") three hundred sixty-five days after the date of filing of such new selection of mode of benefit. If such person filing such new selection of mode of benefit is alive on the validating date with respect to such new selection, such new selection shall become valid and effective on such validating date; provided, however, that from and after the effective date of retirement of such person making such valid and effective new selection of mode of benefit (if he or she retired for service or superannuation or for ordinary or accident disability) or from and after the date on which payability of the original benefits of such person began (if he or she was a discontinued member or Tier III member entitled to a vested benefit or Tier IV member entitled to a vested benefit), such new selection of mode of benefit shall supersede such original selection of mode of benefit and shall apply to and govern the amount of benefits payable to such person or to his or her designated beneficiary or estate.

(C) Nothing contained in item (A) or item (B) of this subparagraph (vi) shall be construed as preventing any change in selection of mode of benefit where such change is authorized by section 13-565 of the code.

(vii) In any case where a retiree or discontinued member or Tier III member entitled to a vested benefit or Tier IV member entitled to a vested benefit referred to in subparagraph (vi) of this paragraph returns to member service on or after July thirty-first, nineteen hundred eighty-three, nothing contained in such subparagraph shall be construed as

preventing such person so restored to member service, upon his or her subsequent retirement, from exercising any right, which any other applicable law grants to him or her under such circumstances, to make a selection of mode of benefit (as defined in subdivision sixty of this section).

(viii) Notwithstanding the provisions of subparagraph (i) of this paragraph (g) prescribing a rate of regular interest of seven per centum per annum, compounded annually, for specified members described in such subparagraph (i), the rate of regular interest which shall be applied to fix the rate of interest on any loan to any such member eligible to borrow shall be four per centum per annum, compounded annually.

(ix) The rate of regular interest applicable to determination of the rate of member contribution of any member whose last membership began prior to the date of enactment (as certified pursuant to section fortyone of the legislative law) of this paragraph shall be the rate of regular interest which was applicable, under the provisions of law in effect prior to such date of enactment, to the determination of the rate of member contribution of such member, and nothing contained in the preceding subparagraphs of this paragraph shall be construed as applicable to the determination of the rate of member contribution of any such member whose last membership so began or as changing or affecting the rate of member contribution of any such member.

23. "Pension" shall mean payments for life derived from appropriations made by the city and from any other sources of revenue of the pension reserve funds as provided in this chapter.

23-a. "Pension-providing-for-increased-take-home-pay" shall mean the annual allowance for life payable in monthly installments derived from contributions made to the contingent reserve fund pursuant to section 13-546 of this chapter.

24. "Annuity" shall mean payments for life derived from contributions made by a contributor as provided in this chapter.

25. "Retirement allowance" shall mean the pension, plus the annuity and the pension-providing-for-increased-take-home-pay, if any.

26. "Pension reserve" shall mean the present value computed on the basis of such mortality tables as shall be adopted by the retirement board, with regular interest, of the future payments to be made on account of any pension granted under the provisions of this chapter.

26-a. "Reserve-for-increased-take-home-pay" shall mean an amount which, at the time of death or retirement, shall be equal to the sum obtained by adding together the amounts specified in the succeeding paragraphs of this subdivision, as follows:

(i) A sum representing two and one-half per centum of the contributor's salary paid to him or her during the period with respect to which the city contributes, pursuant to subdivisions b and f of section 13-546 of this chapter, towards pensions-providing-for-increased-take-home-pay, plus regular interest and additional interest, if any, on such sum;

(ii) A sum representing the product obtained by multiplying the percentage selected by the board of estimate pursuant to the provisions of paragraph four of subdivision c of section 13-546 of this chapter, by the salary of the contributor during the period with respect to which the city contributes, pursuant to subdivisions d and f of such section 13-546, towards pensions-providing-for-increased-take-home-pay, plus regular interest and additional interest, if any, on such sum;

(iii) A sum representing five per centum of the contributor's salary paid to him or her during the period with respect to which the city contributes, pursuant to paragraph four of subdivision g or paragraph four of subdivision i of such section 13-546 and subdivision f of such section, towards pensions-providing-for-increased-take-home-pay, plus

regular interest and additional interest, if any, on such sum;

(iv) In the case of contributors employed by the board of education, a sum representing three per centum of the salary of each such contributor paid to him or her during the period with respect to which the city contributes, pursuant to subparagraph a of paragraph one of subdivision j of such section 13-546 and subdivision f of such section, towards pensions-providing-for-increased-take-home-pay, plus regular interest on such sum;

(v) In the case of contributors employed by the board of education, a sum representing eight per centum of each contributor's salary paid to him or her during the period with respect to which the city contributes, pursuant to subparagraph (c) of paragraph one of subdivision j of such section 13-546 and subdivision f of such section, towards pensions-providing-for-increased-take-home-pay, plus regular interest on such sum;

(vi) In the case of contributors employed by the board of education, a sum representing eight per centum of the salary of each such contributor paid to him or her during the period with respect to which the city contributes, pursuant to subdivisions k and f of such section 13-546 of this chapter, towards pensions-providing-for-increased-take-home-pay, plus regular interest on such sum; provided, however, that if the reduction in contributions of such contributors with respect to the months of July and August, nineteen hundred seventy is governed by paragraph one of subdivision m of section 13-546 of this chapter, the reserve provided for in this paragraph (vi) shall not inlcude any portion of the salary of each such contributor paid to him or her with respect to such months;

(vii) In the case of contributors employed by the city university of New York, a sum representing three per centum of the salary of each such contributor paid to him or her during the period with respect to which, if an election by the mayor requires such contributions, the city contributes, pursuant to subparagraph a of paragraph one of subdivision l of such section 13-546 of this chapter and subdivision f of such section, towards pensions-providing-for-increased-take-home-pay, plus regular interest on such sum;

(viii) In the case of contributors employed by the city university of New York, a sum representing eight per centum of each contributor's salary paid to him or her during the period with respect to which the city contributes, pursuant to subparagraph (c) of paragraph one of subdivision l of such section 13-546 of this chapter and subdivision f of such section, towards pensions providing-for-increased-take-home-pay, plus regular interest on such sum, if the mayor elects a reduction in the contributions of such contributors pursuant to such paragraph (c); provided, however, that if the reduction in contributions of such contributors with respect to the months of July and August, nineteen hundred seventy is governed by paragraph one of subdivision n of section 13-546 of this chapter, the reserve provided for in this paragraph (viii) shall not include any portion of the salary of each such contributor paid to him or her with respect to such months;

(ix) (a) In the case of contributors employed by the board of education, a sum representing five per centum of the salary of each such contributor paid to him or her during the period with respect to which the city contributes, pursuant to paragraph one of subdivision m of section 13-546 of this chapter and subdivision f of such section, towards pensions-providing-for-increased-take-home-pay, plus regular interest on such sum, if a bill entitled "An act to amend the administrative code of the city of New York, in relation to providing additional rights, privileges and benefits for contributors to the New York city teachers' retirement system, including optional retirement plans" is enacted into law, or

(b) In the case of contributors employed by the board of education, a sum representing eight per centum of the salary of each such contributor paid to him or her during the period with respect to which the city contributes, pursuant to paragraph two of subdivision m of section 13-546 of this chapter and subdivision f of such section, towards pensions-providing-for-increased-take-home-pay, plus regular interest on such sum, in the event a bill entitled "An act to amend the administrative code of the city of New York, in relation to providing additional rights, privileges and benefits for contributors to the New York city teachers' retirement system, including optional retirement plans" is not enacted into law;

(x) (a) In the case of contributors employed by the board of higher education, a sum representing five per centum of each contributor's salary paid to him or her during the period with respect to which the city contributes, pursuant to paragraph one of subdivision n of section 13-546 of this chapter and subdivision f of such section, towards pensions-providing-for-increased-take-home-pay, plus regular interest on such sum, if a bill entitled "An act to amend the administrative code of the city of New York, in relation to providing additional rights, privileges and benefits for contributors to the New York city teachers' retirement system, including optional retirement plans" is enacted into law, or

(b) In the case of contributors employed by the board of higher education, a sum representing eight per centum of each contributor's salary paid to him or her during the period with respect to which the city contributes, pursuant to paragraph two of subdivision n of section 13-546 of this chapter and subdivision f of such section, towards pensions-providing-for-increased-take-home-pay, plus regular interest on such sum, in the event a bill entitled "An act to amend the administrative code of the city of New York, in relation to providing additional rights, privileges and benefits for contributors to the New York city teachers' retirement system, including optional retirement plans" is not enacted into law;

(xi) In the case of contributors employed by the board of education or board of higher education, a sum representing five per centum of the salary of each such contributor paid to him or her during the period with respect to which the city contributes, pursuant to paragraph one of subdivision o of section 13-546 of this chapter and subdivision f of such section, towards pensions-providing-for-increased-take-home-pay, plus regular interest on such sum.

(xii) In the event that the mayor makes the election authorized by paragraph one of subdivision p of section 13-546 of this chapter, then in the case of contributors employed by the board of education or board of higher education, a sum representing five per centum of the salary of each such contributor paid to him or her during the period with respect to which the city contributes, pursuant to paragraph one of such subdivision p and subdivision f of such section, towards pensions-providing-for-increased-take-home-pay, plus regular interest on such sum.

(xiii) In any case where it is prescribed in section 13-535 of this chapter that in the determination of the reserve-for-increased-take-home-pay of any contributor with respect to a specified period heretofore or hereafter occurring, additional interest shall be included with respect to such period, the definition of reserve-for-increased-take-home-pay set forth in this subdivision, to the extent that it does not specifically provide for inclusion of such additional interest, shall be deemed to provide for the inclusion of such additional interest, in the amount prescribed for such period, in such contributor's reserve-for-increased-take-home-pay.

27. "Annuity reserve" shall mean the present value computed on the basis of such mortality tables as shall be adopted by the retirement board, with regular interest, of the future payments to be made on account of any annuity or benefit granted and based on the accumulated deductions of the contributor.

28. "Expense fund" shall mean the fund provided for in section 13-526 of this chapter.

29. "Contingent reserve fund" shall mean the fund provided for in section 13-527 of this chapter.

30. "Pension reserve fund number one" shall mean the fund provided for in section 13-530 of this chapter.

31. "Pension reserve fund number two" shall mean the fund provided for in section 13-530 of this chapter.

32. "Annuity savings fund" shall mean the fund provided for in section 13-521 of this chapter.

33. "Annuity reserve fund" shall mean the fund provided for in section 13-522 of this chapter.

34. "Fiscal year" shall mean the year commencing with the first day of July and ending with the thirtieth day of June next following.

35. "Special interest". A distribution to the annuity savings fund, in addition to regular interest, which distribution (a) for each of the periods as to which the provisions of section 13-535 of this chapter or section 13-638.2 of this title grant special interest, consists of the amount prescribed by such provisions for such period and (b) for each such period is credited in such applicable amount to the accounts in the annuity savings fund of members who are eligible under such provisions for crediting of such amount for such period.

36. "Additional interest". A distribution to the reserve-for-increased-take-home-pay, in addition to regular interest, which distribution (a) for each of the periods as to which the provisions of section 13-535 of this chapter or section 13-638.2 of this title grant additional interest, consists of the amount prescribed by such provisions for such period and (b) for each such period is to be included in such applicable amount in the reserve-for-increased-take-home-pay of each contributor who is eligible under such provisions for inclusion of such amount for such period.

37. "Twenty-year pension plan" shall mean the rights, benefits and privileges granted by the provisions of section 13-547 of this chapter (relating to the twenty-year pension plan).

38. "Twenty-year-pension plan contributor" shall mean a contributor who has elected the benefits of section 13-547 of this chapter (relating to the twenty-year pension plan) pursuant to its terms and to whom the provisions of such section are applicable.

39. "Applicant for retirement with a deferred payability date" shall mean a twenty year pension plan contributor who, pursuant to section 13-547 of this chapter (relating to the twenty-year pension plan), has filed an application for retirement designating an effective date of retirement occurring before his or her initial date of retirement allowance payability (as defined in subdivision forty-three of this section).

40. "Twenty-year pension plan retiree having a deferred payability date" shall mean any twenty-year pension plan contributor who has retired pursuant to section 13-547 of this chapter (relating to the twenty-year pension plan) and whose effective date of retirement precedes the date on which his or her retirement allowance begins.

41. "Age-fifty-five-increased-benefits pension plan" shall mean the rights, benefits and privileges granted by the provisions of section 13-548 of this chapter (relating to the age-fifty-five-increased-benefits pension plan), by paragraph f of subdivision one of section 13-545 (relating to eligibility of age-fifty-five-increased-benefits pension plan contributors for service retirement), and by paragraph e of subdivision one of section 13-554 of this chapter (relating to service retirement pensions payable to age-fifty-five-increased-benefits pension plan contributors).

42. "Age-fifty-five-increased-benefits-pension plan contributor" shall mean a contributor (a) who is entitled to retire for service upon attaining age fifty-five, as provided for in paragraph f of subdivision one of section 13-545 of this chapter and (b) who, upon retirement for service, is entitled to a pension as provided for in paragraph e of subdivision one of section 13-554 of this chapter (relating to service retirement pensions payable to age-fifty-five-increased-benefits pension plan contributors).

43. "Initial date of retirement allowance payability" shall mean the earliest date as of which the retirement allowance of a twenty-year pension plan contributor may be caused by him or her to commence under the provisions of section 13-547 of this chapter (relating to the twenty-year pension plan).

44. "Twenty-year-pension plan qualifying service" shall mean (a) credited city-service and (b) any service credited to a twenty-year pension plan contributor by reason of transfer to the New York city teachers' retirement system pursuant to section five hundred twenty-two of the education law or section forty-three of the retirement and social security law or other applicable law authorizing a transfer of service credit to such retirement system from another publicly supported retirement system.

45. "Effective contribution rate as a twenty-year pension plan contributor" shall mean the normal rate of

contribution fixed for a twenty-year pension plan contributor pursuant to the applicable provisions of section 13-547 of this chapter (relating to the twenty-year pension plan) or section 13-549 of this chapter (relating to deferred eligibility of certain retirees, withdrawn contributors and discontinued members for benefits under certain pension plans); provided, however, that in any case where such a contributor contributes at a rate of fifteen per centum or more but less than such normal rate pursuant to paragraph (b) of subdivision seven of section 13-521 of this chapter (relating to contributions of twenty-year pension plan contributors and age-fifty-five-increased-benefits pension plan contributors), the term herein defined shall mean his or her rate of contribution pursuant to such paragraph (b).

46. "Effective contribution rate as an age-fifty-five-increased-benefits pension plan contributor" shall mean the normal rate of contribution fixed for an age fifty-five-increased-benefits pension plan contributor pursuant to the applicable provisions of section 13-548 of this chapter (relating to the age-fifty-five-increased-benefits pension plan) or section 13-549 of this chapter (relating to deferred eligibility of certain retirees, withdrawn contributors and discontinued members for benefits under certain pension plans); provided, however, that in any case where such a contributor contributes at a rate of fifteen per centum or more but less than such normal rate pursuant to paragraph (b) of subdivision seven of section 13-521 of this chapter (relating to contributions of twenty-year pension plan contributors and age fifty-five-increased-benefits pension plan contributors), the term herein defined shall mean his or her rate of contribution pursuant to such paragraph (b).

47. "Contribution rate fixation date" shall have the following meanings:

(a) Except as otherwise provided in paragraphs (b) and (c) of this subdivision, such term shall mean the date on which a contributor first became a contributor, whether or not he or she subsequently became a withdrawn contributor, or discontinued member and thereafter re-entered city-service.

(b) In any case where a withdrawn contributor heretofore re-entered or hereafter re-enter service as a contributor without being entitled to service credit and status prior to withdrawal as provided for in section 13-506 of this chapter (relating to withdrawn contributors who re-enter service), such term shall mean the date upon which such contributor last re-entered member-service without such entitlement, after being a withdrawn contributor.

(c) In any case where a contributor became a discontinued member pursuant to section 13-556 of this chapter (relating to vested retirement rights) and after becoming such a member, re-entered service as a contributor without being entitled to service credit and status prior to withdrawal as provided for in such section, such term shall mean the date upon which such contributor, after becoming a discontinued member, last re-entered member-service without such entitlement.

(d) In any case where a contributor has or acquires credit for service by reason of transfer of service credit pursuant to section five hundred twenty-two of the education law, section forty-three of the retirement and social security law or any other law authorizing a transfer of service credit to this retirement system from another publicly supported retirement system, such transferred service credit shall be deemed to be member-service for the purposes of this subdivision.

48. "Twenty-five-year-age-fifty-five-one-per-centum contributor" shall mean a contributor who, by reason of elections made pursuant to paragraph e of subdivision one of section 13-545 of this chapter (relating to the age fifty-five, twenty-five year pension plan) and paragraph d of subdivision one of section 13-554 of this chapter (relating to election of a pension of one per centum of average salary for each year of credited service) is entitled upon retirement to receive the benefits provided for by such paragraphs.

49. "Supplementary interests". An annual allowance, in addition to regular interest, of interest on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this chapter (excluding, however, the expense fund and pension reserve fund number two and the amount in the annuity savings fund and the amount in the contingent reserve fund to the extent that the amount in such latter fund consists of

reserves-for-increased-take-home-pay), which allowance, (a) for each of the periods as to which the provisions of section 13-535 of this chapter or section 13-638.2 of this title grant supplementary interest, consists of the amount prescribed by such provisions for such period and (b) for each such period, is credited in such applicable amount to such funds (with the exclusions above mentioned in this subdivision) at the time, in the manner and to the extent provided for in the provisions of such section 13-535 or section 13-638.2.

50. "Actuarial equivalent benefit." Any benefit which by law is required to be an actuarial equivalent or by law is required to be determined on the basis of an actuarial equivalent.

51. "Seven percent member for actuarial equivalent benefit purposes." (a) A member who meets all of the following conditions:

(i) subparagraph (i) of paragraph (g) of subdivision twenty-two of this section (relating to the definition of members as to whom regular interest at seven per centum per annum, compounded annually, applies) applies to such member; and

(ii) an actuarial equivalent benefit (other than a variable annuity program benefit) has become payable to or on account of such member; and

(iii) it is provided by a resolution adopted by the retirement board (A) that a mortality table which does not differentiate on the basis of sex shall be used to calculate such actuarial equivalent benefit or a portion of such benefit or (B) that the modified Option 1 pension computation formula (as defined in subdivision fifty-nine of this section) shall be used to calculate such actuarial equivalent benefit.

(b) Except in cases to which the modified Option 1 pension computation formula applies pursuant to a resolution adopted by the retirement board, nothing contained in subparagraph (iii) of paragraph (a) of this subdivision shall be construed as referring to or including any calculation of an actuarial equivalent benefit (or a portion of such benefit) payable to any person where such calculation is required by retirement board resolution to be made through the use of a sex-differentiated mortality table.

52. "Tier I member." A member whose benefits (other than a supplemental retirement allowance) are prescribed by this chapter and who is not subject to the provisions of article eleven, article fourteen or article fifteen of the retirement and social security law.

53. "Tier II member." A member who is subject to the provisions of article eleven of the retirement and social security law.

54. "Tier III member." A member who is subject to the provisions of article fourteen of the retirement and social security law.

55. "Tier IV member." A member who is subject to article fifteen of the retirement and social security law.

56. "Tier III member entitled to a vested benefit." A Tier III member who is entitled to a deferred vested benefit under the provisions of section five hundred sixteen of the retirement and social security law.

57. "Tier IV member entitled to a vested benefit." A Tier IV member who is entitled to a deferred vested benefit under the provisions of section six hundred twelve of the retirement and social security law.

58. "Variable annuity program benefit." Any benefit under the variable annuity program which is payable from the variable annuity reserve fund or the variable pension reserve fund.

59. "Modified Option 1 pension computation formula." (a) The method of computing the pension component of an Option 1 retirement allowance payable to a Tier I member and the amount of the Option 1 benefit payable to the

beneficiary or estate of the member who selected or selects (or is deemed to have selected) Option 1 as to such pension component, which method of computation is as prescribed by the succeeding paragraphs of this subdivision.

(b) The initial reserve for such pension component shall be computed through use of mortality tables which do not differentiate on the basis of sex (hereinafter referred to as "gender-neutral mortality tables") and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually.

(c) Solely for the purpose of use as the minuend from which the payments of such pension component to such member are subtracted in order to determine the amount of the Option 1 benefit payable, upon such member's death, to such member's beneficiary or estate by reason of such Option 1 selection in relation to such pension component, the present value of such member's maximum pension, as it was at the time of such member's retirement, shall be deemed to be the greatest of:

(i) such present value determined on the basis of gender-neutral mortality tables and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually; or

(ii) such present value determined on the basis of the female mortality tables and the regular interest applicable to such member in effect immediately prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this subdivision fifty-nine; or

(iii) such present value determined on the basis of the male mortality tables and the regular interest applicable to such member in effect immediately prior to the date of enactment of this subdivision.

(d) The pension component payable to such member shall be computed on the basis of gender-neutral mortality tables and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually, so that:

(i) the present value, as it was at the time of such member's retirement, of such component; plus

(ii) the present value, as it was at the time of such member's retirement, of the amount payable to such member's Option 1 beneficiary or estate upon the death of the member as provided for by the applicable provisions of paragraph (e) of this subdivision; shall be equal to the Option 1 initial reserve determined for such pension component with respect to such member pursuant to the provisions of paragraph (b) of this subdivision.

(e) (i) Where such member dies before he or she has received payments on account of such pension component equal to the present value of such member's maximum pension as computed pursuant to paragraph (c) of this subdivision, the Option 1 benefit payable to the beneficiary or estate of such deceased member, by reason of such Option 1 selection in relation to such pension component, shall be the remainder obtained by subtracting from such present value determined pursuant to such paragraph (c) in relation to such pension component, the total of such Option 1 payments on account of such pension component received by or payable to such member for the period prior to his or her death.

(ii) In any case where the Option 1 beneficiary's benefit referred to in subparagraph (i) of this paragraph (e) is payable to such beneficiary in the form of an annuity payable in installments, or in the form of a lesser annuity, with provision that any unexhausted balance of the initial reserve for such lesser annuity shall be paid to a designated beneficiary or to an estate, such annuity or lesser annuity shall be determined to be the greater of the following in relation to the beneficiary entitled to such annuity or lesser annuity:

(A) such annuity or lesser annuity calculated on the basis of gender-neutral mortality tables and an interest assumption consisting of regular interest of seven per centum per annum, compounded annually; or

(B) such annuity or lesser annuity calculated on the basis of the female mortality tables applicable to such an

annuity or lesser annuity or lesser annuity, as the case may be, and the regular interest applicable to such member, as such tables and interest were in effect immediately prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this subdivision; or

(C) such annuity or lesser annuity calculated on the basis of the male mortality tables applicable to such an annuity or lesser annuity, as the case may be, and the regular interest applicable to such member, as such tables and interest were in effect immediately prior to the date of enactment of this subdivision.

(iii) Any unexhausted balance of an initial reserve payable to a designated beneficiary or to an estate after payment of a lesser annuity as described in subparagraph (ii) of this paragraph shall be the balance of such reserve remaining after there is subtracted from such reserve, the total amount of such lesser annuity payments paid or payable for the period prior to the annuitant's death.

(f) In relation to the Option 1 benefits determined pursuant to the method of computation set forth in this subdivision by reason of discontinuance by a discontinued member, the phrase "time of such member's retirement," as set forth in paragraphs (c) and (d) of this subdivision, shall be deemed, for the purposes of this subdivision, to mean the date of commencement of the retirement allowance of such discontinued member.

60. "Selection of mode of benefit." The choice made by a member (as permitted by and pursuant to the requirements of law governing such choice by such member) as to whether the maximum amount of his or her retirement allowance or a component thereof shall be payable or such retirement allowance or a component thereof shall be payable under an option selected by the member. The term "selection of mode of benefit" shall include a case where the maximum retirement allowance or a maximum component thereof becomes payable because of a member's omission, within the time permitted by law, to select the maximum benefit or an option.

61. "Best-of-three-computations method." (a) A method (as prescribed by a resolution of the retirement board) under which a retirement allowance (or portion thereof) payable to a member is required to be determined for such member so that:

(i) if such retirement allowance (or portion thereof) does not include a variable annuity program benefit, such retirement allowance (or portion thereof) is the greatest of:

(A) such retirement allowance (or portion thereof) determined on the basis of gender-neutral mortality tables and regular interest at the rate of seven per centum per annum; or

(B) such retirement allowance (or portion thereof) determined on the basis of female mortality tables and the regular interest applicable to such member as of a time prescribed in such resolution; or

(C) such retirement allowance (or portion thereof) determined on the basis of male mortality tables and the regular interest applicable to such member as of a time prescribed in such resolution; and

(ii) if such retirement allowance (or portion thereof) includes a variable annuity program benefit, then the part of such retirement allowance (or portion thereof) other than any variable annuity program benefit is determined in the manner provided for by subparagraph (i) of this paragraph and such variable annuity program benefit (or portion thereof) is the greatest of:

(A) such variable annuity program benefit (or portion thereof) determined on the basis of gender-neutral mortality tables and a uniform rate of interest of four percent, as such rate of interest is provided for in section 13-578 of the code; or

(ii) such variable annuity program benefit (or portion thereof) determined on the basis of female mortality tables and such uniform rate of interest of four percent; or

(iii) such variable annuity program benefit (or portion thereof) determined on the basis of male mortality tables and such uniform rate of interest of four percent.

(b) Where, under the provisions of any such resolution of the retirement board, the modified Option 1 pension computation formula (as defined in subdivision fifty-nine of this section) applies to any member, the term, "best-of-three-computations method," where used in relation to such member, shall be deemed to include such modified Option 1 pension computation formula, to the extent that such formula governs the determination of the pension component (or portion thereof) of such member's retirement allowance.

61-a. "Gender-neutral computations method." A method (as prescribed by a resolution of the retirement board) under which a retirement allowance (or portion thereof) payable to a member is required to be determined in the following manner:

(a) if such retirement allowance (or portion thereof) does not include a variable annuity program benefit, such retirement allowance (or portion thereof) is determined on the basis of gender-neutral mortality tables and regular interest at the rate of seven per centum per annum, without reference to any other actuarial mortality or interest assumption; or

(b) if such retirement allowance (or portion thereof, includes a variable annuity program benefit, then the part of such retirement allowance (or portion thereof) other than any variable annuity program benefit is determined in the manner provided for by paragraph (a) of this subdivision, and such variable annuity program benefit (or portion thereof) is determined on the basis of gender-neutral mortality tables and a uniform rate of interest of four percent (as such rate of interest is provided for in section 13-578 of the code), without reference to any other actuarial mortality or interest assumption.

62. "Person entitled to a recomputation of benefits." Any person who meets all of the conditions stated below in this sub- division:

(a) such person, during the period beginning on August first, nineteen hundred eighty-three and ending on the date next preceding the termination date of eligibility for option re-selection (as defined in subdivision sixty-four of this section), (i) retired or retires for service or superannuation or for ordinary or accident disability, or (ii) discontinued or discontinues member service so as to become a discontinued member, or (iii) terminated or terminates employment so as to become a Tier III member entitled to a vested benefit or a Tier IV member entitled to a vested benefit; and

(b) such person's retirement allowance (or a portion thereof), by reason of such retirement or discontinuance of member service or termination of employment, is required by a resolution adopted by the board to be re-determined pursuant to the best-of-three-computations method (as defined in subdivision sixty-one of this section); and

(c) the date of commencement of such person's benefits occurred or occurs the termination date of eligibility for option re-selection (if such person, at the time of retirement, discontinuance of service or termination of employment, was a Tier I member, Tier II member or Tier III member); or (if such person, at the time of retirement, or termination of employment, was a Tier IV member), his or her effective date of retirement (or date of commencement of benefits, if he or she was a Tier IV member entitled to a vested benefit) occurred or occurs prior to the termination date of eligibility for option re-selection.

63. "Joint and survivor option". (a) Any option under which, at the time when such option is selected, a choice is made which includes both:

(i) a benefit payable for the lifetime of the retired or vested member by whom or in whose behalf such option is selected; and

(ii) a benefit (A) which consists of an amount equal to or constituting a percentage of such retired or vested

member's benefit and (B) which is payable for the lifetime of a designated beneficiary selected at the time when such option is selected.

(b) In any case where an option described in paragraph (a) of this subdivision includes a provision prescribing that if the designated beneficiary predeceases such retired or vested member, a maximum benefit shall become payable to such member, such option shall nevertheless be deemed to be a joint and survivor option.

64. "Termination date of eligibility for option re-selection" shall mean October first, nineteen hundred eighty-seven, provided that if the executive director of the retirement system certifies to the retirement board that as of such October first, or any later termination date which the retirement board may establish pursuant to the provisions of this subdivision sixty-four, it will not be administratively feasible to process benefits (including conversions from fixed to variable benefits and vice versa) under the best-of-three-computations method (as defined in subdivision sixty-one of this section) and/or the gender-neutral computations methods (as defined in subdivision sixty-one-a of this section) for any persons who are entitled, pursuant to law and/or retirement board resolution, to benefits so computed then the retirement board, by resolution, may extend the termination date of eligibility for options re-selection, as applicable to such persons, to a later date, provided further, however, that any such extension or extensions directed by the retirement board upon such certification or certifications shall not result in any such extended termination date later than eighteen months after October first, nineteen hundred eighty-seven. In the event that any such extension is directed by a resolution of the retirement board adopted prior to the date of enactment of this subdivision sixty-four, such extension, upon the enactment of this subdivision, shall be valid and effective as of the date of adoption of such resolution in the same manner and to the same extent as if such enactment had occurred before such date of adoption.

65. "Basic rate of contribution as a Tier I or Tier II member." (a) Subject to the provisions of paragraph (b) of this subdivision, the "basic rate of contribution of a Tier I or Tier II member" in the case of any contributor who is such a member shall mean the percent of the total amount of salary earnable by such contributor in a payroll period, which percent, pursuant to the provisions of section 13-521 of this chapter and other applicable provisions thereof, is required to be deducted as the member contributions of such contributor, exclusive of any increase in such contributions resulting from an election by such contributor pursuant to section 13-525 of this chapter or subdivision two of section 13-554 of this chapter to effect such an increase, or any decrease in such contributions on account of any program for increased take-home-pay or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law (relating to election to decrease member contributions by contributions due on account of social security coverage).

(b) In any case where it is provided in this chapter that the deduction from salary on account of member contributions required to be made by a contributor who is a Tier I member or Tier II member shall not be in excess of fifteen per centum unless the contributor so elects, and such contributor makes such election, any per centum of such deduction in excess of fifteen per centum with respect to such contributor shall not be included in such contributor's basic rate of contribution as a Tier I or Tier II member.

66. "Contributing Tier I or Tier II member." With respect to any payroll period as to which the status of a contributor who is a Tier I member or Tier II member as to required member contributions is to be determined, the term "contributing Tier I or Tier II member" shall mean any Tier I member or Tier II member other than any such member who, under the provisions of section 13-524 of this chapter, is not required to contribute during such payroll period. A contributor who, being a Tier I member or Tier II member, is not required to contribute under the provisions of such section 13-524, but who nevertheless continues to make member contributions, shall not be deemed to be a contributing Tier I or Tier II member.

67. "Employer responsible for pick up." The public employer by whom a Tier I member or Tier II member is employed.

68. "Tier I or Tier II member contributions eligible for pick up by the employer." (a) With respect to any payroll

period for a contributing Tier I or Tier II member (as defined in subdivision sixty-six of this section), the term "Tier I or Tier II member contributions eligible for pick up by the employer" shall mean the amount of member contributions which, in the absence of a pick up program applicable to such member pursuant to section 13-521.1 of this chapter (providing for pick up of required member contributions of certain contributing Tier I or Tier II members) would be required by law to be deducted, on account of such member's basic rate of contribution as a Tier I or Tier II member (as defined in subdivision sixty-five of this section), from the salary of such member for such payroll period, after (1) giving effect to any reduction in such contributions required under any program for increased-take-home-pay or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law and (2) excluding any deductions from such salary (or redeposits, restorations or payments) on account of (i) loans or withdrawal of excess contributions or (ii) any election by any such member, pursuant to any applicable provision of law, to increase his or her member contributions above the level prescribed by his or her basic rate of contribution as a Tier I or Tier II member or (iii) any other cause not attributable to the member's basic rate of contribution as a Tier I or Tier II member after reduction in such rate, if any, as described in subparagraph one of this paragraph. The term "Tier I or Tier II member contributions eligible for pick up by the employer" shall also mean the contributions made by a member pursuant to the terms of an irrevocable payroll deduction agreement for the purchase of credit for prior service or credit for military service, provided, however, that contributions picked up for the purchase of credit for military service shall be deposited in the employer contribution account in accordance with the provisions of subdivision four of section one thousand of the retirement and social security law pursuant to subdivision g of section 13-505 of this chapter or subdivision b-1 of section four hundred forty-six of the retirement and social security law.

(b) If no deductions on account of any contributor's basic rate of contribution as a Tier I or Tier II member are required by law to be made from the salary of such contributor for any payroll period, such contributor shall not have, for such payroll period, any such Tier I or Tier II member contributions eligible for pick up by the employer; provided, however, that member contributions required pursuant to an irrevocable payroll deduction agreement for the purchase of prior sevice credit for such payroll period shall be eligible for pick up by the employer. Except as otherwise provided pursuant to the terms of an irrevocable payroll deduction agreement for the purchase of prior service credit, the amount of Tier I or Tier II, member contributions eligible for pick up by the employer of any Tier I member or Tier II member for any payroll period shall be determined solely on the basis of salary which would have been paid to such member for such payroll period by his or her public employer in the absence of a pick up program applicable to such member pursuant to section 13-521.1 of this chapter. A Tier I member or Tier II member shall not have any Tier I or Tier II member contributions eligible for pick up by the employer with respect to any payroll period for which he or she is not paid salary by his or her public employer.

69. "Starting date for pick up." The first day of the first whole payroll period commencing after the date which is sixty days after the internal revenue service have issued a ruling that member contributions picked up pursuant to section 13-325.1 of this chapter are not includible as gross income for federal income tax purposes until distributed or made available.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. 7 par (a) amended chap 650/1990 § 12 eff. January 1, 1991

Subd. 22 par (c) subpar (iii) amended chap 581/1989 § 15 subpar (iv) added chap 581/1989 § 16

Subd. 22 par (d) amended chap 878/1990 § 19 eff. July 25, 1990 applying on and after July 1, 1990

Subd. 22 par (f) subpar (ii) amended chap 878/1990 § 20 eff. July 25, 1990 applying on and after July 1, 1990

Subd. 22 par (g) subpar (vi) amended chap 831/1987 § 4

Subds. 35, 36, 49 amended chap 878/1990 § 21 eff. July 25, 1990 applying on and after July 1, 1990

Subd. 61-a added chap 831/1987 § 1

Subd. 62 amended chap 831/1987 § 2

Subd. 64 added chap 831/1987 § 3

Subd. 65-67 added chap 681/1992 § 4 eff. July 31, 1992

Subd. 68 amended chap 691/2004 § 6, approved Nov. 3, 2004 effective as per § 13-505 Note 1.

Subd. 68 added chap 681/1992 § 4 eff. July 31, 1992

Subd. 68 par (a) amended chap 627/2007 § 14, approved Aug. 28, 2007 eff. upon compliance with chap 627/2007 § 22. [See § 13-101 Note 1]

Subd. 69 added chap 681/1992 § 4 eff. July 31, 1992

**DERIVATION**

Formerly § B20-1.0 added chap 929/1937 § 1

Sub 8 amended chap 474/1945 § 1

Sub 18 amended chap 860/1946 § 1

Sub 22 amended chap 626/1947 § 5

Subs 23-a, 26-a added chap 510/1960 § 2

Sub 12 amended chap 510/1960 § 3

Sub 19 amended chap 510/1960 § 4

Sub 25 amended chap 510/1960 § 5

Sub 26-a amended chap 788/1962 § 4

Sub 26-a amended chap 519/1963 § 4

Sub 21 amended chap 711/1964 § 1

Sub 26-a amended chap 711/1964 § 2

Subs 35, 36 added chap 711/1964 § 3

Sub 22 amended chap 575/1967 § 7

Sub 7 amended chap 326/1968 § 3

Sub 7 amended chap 507/1969 § 2

Sub 26-a amended chap 870/1969 § 7

Subs 15-a, 17-a, 17-b, 17-c, 17-d, 18-a, 18-b, 20-a, 37-48 added chap 274/1970 § 1

(Sub 20-a-see chap 976/1970 § 1)

Subs 16, 17, 19, 20 amended chap 274/1970 § 2

Sub 7 amended chap 769/1970 § 3

Sub 26-a amended chap 960/1970 § 8

Sub 26-a pars vi, viii amended chap 961/1970 § 3

Sub 40 amended chap 976/1970 § 2

Sub 26-a pars viii, x amended chap 615/1971 § 10

Sub 26-a par xi added chap 615/1971 § 11

Sub 26-a par xii added chap 921/1972 § 8

Sub 22 amended chap 976/1977 § 8

Sub 35 amended chap 977/1977 § 2

Sub 22 pars c, d, e, f amended chap 957/1981 § 44

Sub 26-a par xiii added chap 957/1981 § 52

Sub 36 amended chap 957/1981 § 53

Sub 49 added chap 957/1981 § 54

Sub 22 pars c, d, e, f amended chap 914/1982 § 8

Sub 7 amended chap 997/1983 § 1

Sub 7 par a designated chap 868/1985 § 1

(formerly open par)

Sub 7 par b added chap 868/1985 § 1

Sub 22 par a amended chap 910/1985 § 9

Sub 22 par f subpar i amended chap 910/1985 § 10

Subs 50-63 added chap 910/1985 § 11

Sub 22 par g added chap 910/1985 § 12

Sub 22 par c subpar iii amended chap 911/1985 § 11

Sub 22 par d, e amended chap 911/1985 § 12

**CASE NOTES FROM FORMER SECTION**

¶ 1. Whether teacher who had been on leave of absence at time of enactment of Teachers' Retirement Law in 1917 and who had thereafter resigned at expiration of leave of absence but had been reappointed as a teacher three years later was entitled to be classified under the Retirement Law as a "present teacher" or as a "new entrant", **held** to depend upon whether retirement was merely technical and temporary and not one evidencing intention to withdraw from the school system. Statutory definition of "present teacher" contains an implied phrase that such teacher must continue in her employment or else lose her status.-Matter of Thomas (Teachers Retirement Bd. of N.Y.C.), 164 Misc. 341, 299 N.Y.S. 358 [1937], aff'd to extent appealed from 258 App. Div. 942, 17 N.Y.S. 2d 993 [1940].

¶ 2. Amendment to Greater New York Charter § 1092, subd. 8, providing that no prior service certificate issued to any contributor by Teachers' Retirement Board should thereafter be reviewed or modified after certificate should have been in effect for one year, **held** not to prevent Board on date one month after effective date of amendment from classifying teacher as a "present-teacher" as result of appeal instituted within three months of his reclassification as a "new-entrant" and 14 months prior to effective date of amendment, since the statutory interdiction applied only to a review "thereafter" instituted, and right to "review" would be meaningless unless it included right to "modify". Furthermore, to disallow modification would be inequitable in view of fact that modification was delayed only because of Board's inactivity. Consequently its determination when made must be deemed retroactive to date of the application, as Board had a duty to act upon an application, reconsider the case and modify a certificate in appropriate case.-Wilmerding v. Bonaschi, 166 Misc. 140, 2 N.Y.S. 2d 124 [1938].

¶ 3. Teacher who, without intent to leave City school system permanently, had resigned to become director of the Educational Alliance, withdrawing his contributions from retirement fund pursuant to requirements of Greater New York Charter § 1092, subd. j, and who had been reinstated in school system two years later, **held** entitled to classification of "present-teacher", since under the circumstances his resignation and reinstatement were equivalent to a leave of absence.-Id.

¶ 4. In view of fact that petitioner had been negotiating with the Retirement Board since 1933 in an attempt to adjust amicably the question of her classification as a "Present Teacher", and that the law was still in an unsettled state, petitioner **held** not barred by laches in not having sooner resorted to the courts for settlement of the question.-Matter of King, 170 Misc. 314, 10 N.Y.S. 2d 97 [1938].

¶ 5. Provisions of Laws 1935, ch. 706, providing that no prior service certificate therefore issued should thereafter be reviewed or modified after it had been in effect for one year, had no application in immediate case where no certificate had ever been issued, notwithstanding petitioner must have had knowledge of her classification at some time prior to suit, since the statute was specific that the limitation period began to run from the time the certificate was issued.-Id.

¶ 6. Petitioner who had first been appointed a teacher in 1900, and in 1918 had ostensibly resigned her position by a resignation absolute in form, at the same time withdrawing her contributions in the Retirement Fund, and after an interval in private business had been reappointed in 1919 as a "new entrant", **held** entitled to an alternative order in a proceeding under Civil Practice Act Art. 78, so as to permit her to develop the factual picture more completely. However, decisions conferring status of "Present Teacher", notwithstanding a resignation absolute in form, on theory that the resignation under the particular circumstances was equivalent to a leave of absence in that the parties so intended, would seem of doubtful applicability inasmuch as petitioner's intent to return to the teaching system was never disclosed to the respondents at the time of her resignation.-Id.

¶ 7. Petitioner, who was assigned as "additional teacher" or "teacher clerk" on a per diem basis before February 3, 1919, was not appointed as a "teacher", as that term is defined in Admin. Code § B20-1.0, subd. 7. Accordingly,

petitioner was properly classified as a "new entrant" under subd. 9, when she was appointed as a regular teacher on February 3, 1919.-In re Murtaugh, 184 Misc. 72, 52 N.Y.S. 2d 661 [1945], aff'd without opinion, 269 App. Div. 683, 54 N.Y.S. 2d 377 [1945], aff'd 294 N.Y. 902, 63 N.E. 2d 110 [1945].

¶ 8. Clause of § B20-1.0, subd. 8, providing that a "present-teacher" is any teacher, clerk or clerical assistant who was employed as such on June 2, 1919, and who prior to May 4, 1935, was classified as a present teacher, referred only to those who immediately prior to May 4, 1935, were classified as present teachers, and not to petitioner, who was classified as a "present teacher" from May, 1920 to May, 1932.-Id.

¶ 9. That certain teachers may have been erroneously classified as "present teachers" prior to May 4, 1935 did not entitle petitioner also to be given an erroneous classification so that she too might obtain the benefits of Laws 1935, Chapter 706.-Id.

¶ 10. Plaintiff, as a junior clerical assistant with the Board of Education, was a teacher within the meaning of the Teachers' Retirement System Law (Admin. Code § B20-1.0[7]), and in that capacity she was a contributor to the System.-Thurm v. N.Y. Teachers' Retirement Board, 123 (103) N.Y.L.J. (5-29-50) 1902, Col. 4 T, aff'd 100 N.Y.S. 2d 528 [1950].

¶ 11. Provision of the Constitution (Art. 5, § 7), that membership in a pension or retirement system should be a contractual relationship, the benefits of which should not be impaired, froze into a contract the statutory benefits accorded to plaintiff-teacher in 1940 when the constitutional provision was adopted, and prohibited diminution of such benefits, one of which was a right to a 4 per cent interest rate. The amendment in 1947 of Admin. Code § B20-1.0, par. 22, to provide that interest should be at 4 per cent in case of persons who were members on June 30, 1947, but in the case of persons becoming members thereafter interest should be 3 per cent, was ineffectual to reduce interest rates applicable to plaintiff-teacher, who was a teacher and member of the retirement system in 1940. In any event, plaintiff was a member of the retirement system on June 30, 1947, notwithstanding he was in retirement at that time, and accordingly the interest reduction statute by its express terms exempted him from its application. Argument that plaintiff when he retired was a "beneficiary" and not a "member" of the system, was untenable.-Cashman v. Teachers' Retirement Board, 193 Misc. 57, 84 N.Y.S. 2d 142 [1948], aff'd 275 App. Div. 908, 90 N.Y.S. 2d 273 [1949], aff'd 301 N.Y. 501, 93 N.E. 2d 71 [1950].

¶ 12. Teacher who had accepted during the period from 1945 to 1947 cost of living bonuses pursuant to resolutions which expressly made them conditional on exclusion of such increases from salary for pension purposes, and who had also signed payrolls every month which on their face showed that there was no deduction for pension purposes with regard to the cost of living bonus, **held** not entitled to have such cost of living bonus included as salary in computing her pension rights. An employee may waive any right which he has, including statutory and even constitutional rights, unless such waiver would violate public policy.-Rosen v. N.Y.C. Teachers' Retirement Board, 282 App. Div. 216, 122 N.Y.S. 2d 485 [1953], reversing 202 Misc. 159, 115 N.Y.S. 2d 263 [1952], aff'd without opinion, 306 N.Y. 625, 116 N.E. 2d 239 [1953].

¶ 13. A teacher was a "contributor" rather than a "beneficiary" and could elect to receive an optional retirement allowance at any time before the Retirement Board had taken action on the retirement application. A request for retirement had been made on January 26, a medical examination was held on March 28, and on April 10, the secretary of the Board wrote petitioner that her retirement would be tested for action by the Board at its meeting on April 28 and was scheduled to take place as of April 1. After this letter was written but before the Board had taken action, petitioner filed an election to take an optional modification of her benefits.-Matter of Katz, 291 N.Y. 360, 52 N.E. 2d 902 [1943].

¶ 14. Members of Teachers' Retirement System were not entitled to prior service credit for services performed prior to January 1, 1938 for the Emergency Relief Bureau of the City of New York. Such service was not made prior city service by a legislative enactment recognizing such service for members upon the Employees' Retirement System.-Matter of Dimowitz, 33 Misc. 2d 1067, 228 N.Y.S. 2d 267 [1962].

¶ 15. Under this section providing twenty year pension plan qualifying service, petitioners were not entitled to credit for experience in WPA, CWA, or TERA nor for service in schools outside of New York City.-In re Banner (Teachers' Retirement Board), 172 (26) N.Y.L.J. (8-6-74) 2, Col. 4 T.

**CASE NOTES**

¶ 1. Education Law §3107 governs payment of accumulated sick leave upon separation for members of the Teachers' Retirement System and applies to members holding managerial and nonmanagerial titles equally. Ad Cd §13-503(1) provides for membership to consist of all teachers and defines teacher broadly to include nonpedagogical, managerial employees as well as regular and special teachers of the city's public schools, Ad Cd §13-501(7)(a). Auerbach v. Board of Ed. 86 NY2d 198 [1995].

¶ 2. For purposes of determining teachers' retirement benefits, the Teachers Retirement System ("TRS") must count not only regular annual salary but also "per-session" activities such as summer and evening school, athletic and non-athletic extracurricular activities, and adult education. Weingarten v. Board of Trustees of the New York City Teachers Retirement System, 287 A.D.2d 14, 733 N.Y.S.2d 136 (1st Dept. 2001), leave to appeal granted, 97 NY2d 611, 740 N.Y.S.2d 695 (2002).

**FOOTNOTES**

8

[Footnote 8]: * So in original.

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-502*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-502 Date of establishment.

The retirement system as established on the first day of August, nineteen hundred seventeen shall be continued.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-2.0 added chap 929/1937 § 1

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

*NYC Administrative Code 13-503*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-503 Teachers' retirement association; membership.

The teachers' retirement association is continued. Its membership shall consist of the following:

1. All teachers.

2. All transferred contributors.

3. Notwithstanding any inconsistent provision of sections 13-267 and 13-379 of this chapter, or any other provision of this chapter, or the code, or any other law, a teacher, as defined in this chapter, who files with the board a statement duly executed and acknowledged consenting for the period of his or her active membership in this retirement association to the suspension of all present benefits provided wholly or partly by the city through any other retirement system or pension fund and consenting and agreeing to membership and to the deductions for annuity purposes prescribed in this chapter. Upon the subsequent retirement of such person from this retirement system, he or she shall receive benefits based on city service not included in the service upon which his or her retirement allowance or pension from such other retirement system or pension fund is or would be based, and, upon such subsequent retirement, payment of the benefits provided through such other retirement system or pension fund, which had been suspended, shall be resumed.

**HISTORICAL NOTE**

Section amended chap 658/1992 § 1 retroactive to July 22, 1990 amended chap 666/1990 § 1 eff. July 22, 1990. [See note.]

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-3.0 added chap 929/1937 § 1

**NOTE**

Provisions of chap 666/1990 § 3, amended by chap 658/1992 § 3.

§ 3. a. Notwithstanding any other provision of law to the contrary, any service retiree from a public retirement system who

(1) retired under a plan which permitted retirement upon completion of a specified period of service of twenty-five years or less without regard to age;

(2) was at the time of such retirement or thereafter employed in one or more other positions of public service and has been so employed continuously to and including September 1, 1999; [Par (2) amended chap 575/1999 § 1, eff. Sept. 1, 1999].

(3) has been so employed either (i) without suspension or diminution of his retirement allowance pursuant to section 211 or 212 of the retirement and social security law or (ii) with his or her pension having been, in fact, suspended pursuant to section 150 of the civil service law; and

(4) by reason of such position or positions would have otherwise been entitled to become (in the case of subparagraph (i) of paragraph (3) of this subdivision) or has been (in the case of subparagraph (ii) of paragraph (3) of this subdivision) a member of one or more other public retirement systems, shall be entitled to elect to be deemed retroactively to have transferred his or her membership in the system from which he or she retired to such other retirement system in which he or she would otherwise have been entitled to membership on July 22, 1990, pursuant to section 43 of the retirement and social security law as of the date immediately prior to the date of his or her retirement, provided he or she consents to the suspension of his or her retirement allowance, if not already suspended; and provided further that upon making such election, he or she shall be credited with public service continuously performed in the position or positions described in paragraph (2) of this subdivision; retirement from such system to which a retiree has transferred his or her membership, his or her retirement allowance shall be reduced by (i) the actuarial equivalent of the retirement allowance received by such retiree while so employed in such other position or positions prior to his or her election pursuant to this section and (ii) the actuarial equivalent of any member contributions such retiree would have been required to pay while so employed in such other position or positions, had he or she become a member of such other system as of the first date of his or her eligibility for membership but for the operation of section 213 of the retirement and social security law unless such retiree shall pay in such contributions with regular interest pursuant to a schedule established by such system to which such retiree has transferred his or her membership pursuant to regulation.

b. In order to effect such retroactive transfer pursuant to this section, the retiree must give notice to the administrative head of the retirement system from which he is a retiree on or before July 22, 2000; upon receipt of such notice, the retirement allowance of the retiree shall be suspended and the reserve on such retiree's allowance shall thereafter be computed and transferred to such second retirement system; such second retirement system shall be entitled to recover from the employer or employers of such retiree any contributions with interest such employer or employers would have made had the retiree been a member of such second retirement system during such employment or employments but less such actuarial reduction, if any, as such other system may provide by regulation to be appropriate to reflect the actuarial reduction for payment of the retiree's allowance during such employment or employments. [Subd. b amended chap 575/1999 § 1, eff. Sept.; amended chap 646/1993 § 1, eff. Aug. 4, 1993].

c. Notwithstanding any other provision of law, in the event such person elects to exercise the rights granted

pursuant to this section but dies prior to retirement from such second system, the death benefit to be paid shall be the greater in value of (i) the death benefit payable under the rules of such second system or (ii) a survivor benefit, if any, which would have been paid according to the option selection made by such person at the time of such person's prior retirement and in the amount which would have been paid if such person had died immediately prior to the date on which he gave notice of his election under this section. Notwithstanding the foregoing, if such person designated a different beneficiary for death benefit (i) than for death benefit (ii), then only the death benefit provided in subparagraph (i) of this paragraph shall be paid.

d. Notwithstanding the provisions of subdivision b of this section or any other provision of law to the contrary, with respect to transfers pursuant to this section which occur on or after the effective date of this subdivision, no determination or transfer of the reserve on the benefits allowable to the transferring member as the result of employer contributions, including the reserve-for-increased-take-home-pay, shall be required. [Subd. d added chap 647/2004 § 8, eff. Oct. 26, 2004]

**CASE NOTES**

¶ 1. Education Law §3107 governs payment of accumulated sick leave upon separation for members of the Teachers' Retirement System and applies to members holding managerial and nonmanagerial titles equally. Ad Cd §13-503(1) provides for membership to consist of all teachers and defines teacher broadly to include nonpedagogical, managerial employees as well as regular and special teachers of the city's public schools, Ad Cd §13-501(7)(a). Auerbach v. Board of Ed. 86 NY2d 198 [1995].

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

*NYC Administrative Code 13-504*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-504 Teachers' retirement association; membership of lecturers.

The retirement board shall adopt rules and regulations determining how much service during each year shall be required of lecturers to become or to remain members of the retirement system, and how many days or hours of service shall be the equivalent of a year of service. For the purpose of determining average salary of lecturers, annual salary shall be based on the salary earned by a lecturer during the number of days or hours determined by the retirement board to be the equivalent of a year of service.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-3.1 added chap 815/1970 § 3

(Legislative findings chap 815/1970 § 1)

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

*NYC Administrative Code 13-505*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-505 Credit for service and service certificates.

a. In computing the length of service of a contributor for retirement purposes under the provisions of this chapter, full credit up to the nearest number of years and months shall be given each contributor by the retirement board:

1. For all city-service; and

2. In the case of present-teachers for all teaching or supervisory service in schools and colleges not maintained by the city; and

3. (a) In the case of new-entrants for all teaching or supervisory service in schools and colleges not maintained by the city, and for all service rendered in the employ of the Works Progress Administration or of any other agency of the government of the United States on educational projects in the schools of the city of New York or in conjunction with educational projects of the board of education of the city of New York during the period commencing January first, nineteen hundred thirty-three and ending December thirty-first, nineteen hundred forty-three, provided that in no case shall the total amount of service subject to purchase exceed fifteen years, and furthermore provided that for any such new-entrant who becomes a contributor for the first time after June thirtieth, nineteen hundred thirty-five, except as otherwise provided in this section, credit for service previous to becoming a contributor shall be given only to the extent that reserves sufficient to purchase credit for such previous service are transferred to the teachers' retirement system on behalf of the contributor from another pension system or are paid in a lump sum by the contributor, whether or not such contributor was a member of another pension system.

(b) In all cases except transfers under section five hundred twenty-two of the education law and forty-three of

the retirement and social security law, if the reserve transferred is insufficient to purchase such previous service, the contributor shall be permitted to pay a lump sum equal to the deficiency.

(c) Any special or general law, except section five hundred twenty-two of the education law and forty-three of the retirement and social security law, to the contrary notwithstanding, the amount of money necessary to purchase such prior service or part thereof shall be the amount of money determined by the actuary to be equal to the reserve the city would have been required to contribute to the contingent reserve fund in the same manner as provided in section forty-three of the retirement and social security law, if such service or part thereof were rendered to the city while a member based upon the salary received at the date of purchase.

(d) Credit for such prior service up to a maximum of fifteen years shall be given only if application and payment therefor is made by the contributor within the first four years subsequent to membership in the New York city teachers' retirement system or before December thirty-first, nineteen hundred sixty-nine, whichever is later.

(e) Members of the New York city teachers' retirement system who held membership in such system on January first, nineteen hundred fifty-nine, shall be permitted to purchase credit for prior service under this subdivision provided that they make application and payment therefor on or before December thirty-first, nineteen hundred sixty-nine.

(f) Subject to the provisions of subparagraph (j) of this paragraph three, such members who held membership on December first, nineteen hundred fifty-eight shall have the right to purchase such prior service credit at the rate applicable to them as of December first, nineteen hundred fifty-eight.

(g) Subject to the provisions of subparagraphs (j) and (k) of this paragraph three, such members who entered into membership subsequent to December first, nineteen hundred fifty-eight shall have the right to purchase such prior service credit at the rate applicable to them as of the time of their entry into membership.

(h) Any transfer of a reserve from another pension system or lump sum paid by a contributor under this subdivision shall at no time be refunded.

(i) The contributor shall have the option of transferring his or her contributions from another pension system to the teachers' retirement system which contributions shall be paid into the contributor's annuity account.

(j) (1) Any contributor who:

(a) last entered or shall last enter membership in the retirement system prior to July first, nineteen hundred seventy; and

(b) heretofore and on or after July first, nineteen hundred sixty-nine filed a timely application, in accordance with the applicable requirements of the preceding subparagraphs of this paragraph three, to purchase credit for prior outside service or any part thereof, or hereafter files a timely application in accordance with the applicable requirements of this paragraph three to purchase credit for such service or any part thereof; and

(c) is not a twenty-year pension plan contributor or age fifty-five-increased-benefits pension plan contributor at the time of filing such application, in any case where such application is filed on or after July first, nineteen hundred seventy; shall not be eligible, whether or not he or she has paid the purchase price for prior outside service credit pursuant to such application, to elect to become a twenty-year pension plan contributor or an age-fifty-five-increased-benefits pension plan contributor unless he or she files with his or her application to become such a contributor, a consent that the purchase price of credit for his or her prior outside service shall be recalculated in accordance with the provisions of item four of this subparagraph (j) and that his or her rights with respect to the purchase of credit for such service, or where he or she has previously paid the purchase price of credit for such service or any part thereof, his or her rights as to any such purchased credit, shall be as prescribed in items two to six inclusive of this subparagraph (j).

(2) In the case of any such contributor who has filed a consent pursuant to item one of this subparagraph (j) and who has not previously paid the purchase price of credit for prior outside service or any part thereof, the retirement system shall notify such contributor of the purchase price, as recalculated pursuant to item four of this subparagraph, of credit for the number of purchaseable years of such service designated by him or her in his or her application to purchase.

(3) In the case of any such contributor who has filed a consent pursuant to item one of this subparagraph (j) and who has previously paid the purchase price of credit for prior outside service or any part thereof, the retirement system shall notify such contributor of:

(i) the amount of the excess of:

(1) the recalculated purchase price, under item four of this subparagraph (j), of credit for such prior outside service or part thereof; over

(2) the purchase price previously paid by such contributor for such credit; and

(ii) the amount of prior outside service for which such contributor would be credited, if the credit based on the purchase price previously paid by him or her were reduced to the credit which such purchase price would purchase under the provisions of item four of this subparagraph (j).

(4) The recalculated purchase price of credit for the prior outside service of any such contributor, whether he or she seeks to elect to become a twenty-year pension plan contributor or an age-fifty-five-increased-benefits pension plan contributor, shall be computed:

(i) on the basis of the salary which was used or was required to be used, pursuant to the provisions of the preceding subparagraphs of this paragraph three, to calculate the prior purchase price which he or she paid or was required to pay to purchase credit for prior outside service; and

(ii) on the basis of the larger of the following two amounts:

(1) the amount which the required reserve under subparagraph (c) of this paragraph three would equal, if computed on the basis of his or her retirement for service as an age-fifty-five-increased-benefits pension plan contributor, so as to provide a pension equal to one and two-tenths per centum of his or her average salary for each year of the prior outside service with respect to which such recalculation is made; or

(2) the amount which the required reserve under subparagraph (c) of this paragraph three would equal, if computed on the basis of his or her retirement for service as a twenty-year pension plan contributor, so as to provide a pension equal to one and two-tenths per centum of his or her average salary for each year of the prior outside service with respect to which such recalculation is made.

(5) If any such contributor mentioned in item two of this subparagraph (j) shall, within thirty days after the notification required by such item two, pay to the retirement system the recalculated purchase price of credit, as set forth in such notification, he or she shall be entitled to credit for such period of prior outside service. If he or she shall fail to make any such payment within such period of thirty days, his or her application to purchase prior outside service pursuant to which such notification was made shall be null and void and he or she shall have no further rights under such application.

(6) (i) If any such contributor mentioned in item three of this subparagraph (j) shall, within thirty days after the notification required by such item three, pay to the retirement system the amount of the excess set forth in such notification pursuant to subitem (i) of such item three, he or she shall be credited with the period of prior outside service for which he or she previously paid the purchase price.

(ii) If any such contributor shall, within such period of thirty days, fail to make the payment mentioned in subitem (i) of item three of this subparagraph (j), he or she shall be credited with the reduced period of prior outside service as set forth in such notification pursuant to subitem (ii) of such item three, and shall not be entitled to credit for any other prior outside service.

(k) (1) Subject to the provisions of items two and three of this subparagraph (k), any twenty-year pension plan contributor or age-fifty-five-increased-benefits pension plan contributor shall have the right to purchase credit for prior outside service or any part thereof within the period of time prescribed by, and in accordance with the applicable provisions of subparagraphs (a) to (d), inclusive, and (h) and (i) of this paragraph three, except as otherwise provided by the applicable provisions of items four and five of this subparagraph (k).

(2) The provisions of item one of this subparagraph (k) and the applicable provisions of items four and five of this subparagraph shall not apply to any twenty-year pension plan contributor or age-fifty-five-increased-benefits pension plan contributor who, before becoming such a contributor:

(i) filed an application to purchase credit for prior outside service under the circumstances specified in item one of subparagraph (j) of this paragraph three; and

(ii) paid the purchase price, as then in effect, for such credit.

(3) In any case where any twenty-year pension plan contributor or age-fifty-five-increased-benefits pension plan contributor, before becoming such a contributor:

(i) filed an application to purchase credit for prior outside service under the circumstances specified in item one of subparagraph (j) of this paragraph three; and

(ii) did not, before becoming such a contributor, pay the purchase price, as then in effect, for such credit; and

(iii) does not pay the recalculated purchase price for such credit pursuant to item five of such subparagraph (j); and

(iv) would otherwise be eligible to purchase credit for prior outside service pursuant to the provisions of this subparagraph (k); the provisions of item one of this subparagraph (k) and the applicable provisions of items four and five of this subparagraph shall not apply to such contributor until such application to purchase credit becomes null and void pursuant to the provisions of item five of such subparagraph (j).

(4) If all of the prior outside service rendered at any time by any contributor to whom the provisions of item one of this subparagraph (k) are applicable was rendered prior to July first, nineteen hundred seventy, the purchase price to be paid by such contributor, whether he or she is a twenty-year pension plan contributor or an age-fifty-five-increased-benefits pension plan contributor, shall be the larger of the two amounts computed as prescribed by subitem (ii) of item four of subparagraph (j) of this paragraph three.

(5) If any part of the prior outside service of any contributor to whom the provisions of item one of this subparagraph (k) are applicable was rendered on or after July first, nineteen hundred seventy, the purchase price to be paid by such contributor, whether or not he or she rendered prior outside service prior to such date, and whether or not he or she is a twenty-year pension plan contributor or an age-fifty-five-increased-benefits pension plan contributor, shall be the larger of the following two amounts:

(i) the amount which the required reserve under subparagraph (c) of this paragraph three would equal, if computed on the basis of his or her retirement for service as an age-fifty-five-increased-benefits pension plan contributor so as to provide a pension equal to one and fifty-three one hundredths per centum of his or her average salary for each year of such prior outside service for which he or she seeks to purchase credit; or

(ii) the amount which the required reserve under subparagraph (c) of this paragraph three would equal, if computed on the basis of his or her retirement for service as a twenty-year pension plan contributor, so as to provide a pension equal to one and seven-tenths per centum of his or her average salary for each year of such prior outside service for which he or she seeks to purchase credit.

(1) In any case where any twenty-year pension plan contributor or age fifty-five-increased-benefits pension plan contributor:

(a) dies or retires; and

(b) in order to obtain credit for any prior outside service, had paid therefor:

(i) a recalculated purchase price or any part thereof computed pursuant to subitem (ii) of item four of subparagraph (j) of this paragraph three; or

(ii) a purchase price computed pursuant to item four or item five of subparagraph (k) of this paragraph three; on the basis of a reserve larger than that which would have been computed with respect to such contributor if such reserve had been computed on the basis of the pension plan in effect with respect to such contributor at the time of his or her death or retirement, any excess of the total purchase price paid by him or her for such prior outside service over the amount which such total purchase price would have equalled if such computation had been made on the basis of the pension plan in effect with respect to such contributor at the time of his or her death or retirement shall, together with regular interest on such excess from the date on which he or she paid such excess, be deemed, for the purpose of computing the benefit payable by reason of such death or retirement, to be additional contributions by such contributor.

4. In the case of new-entrants who are members of the retirement system on July first, nineteen hundred sixty-nine and who have been serving as school secretaries, for all secretarial and clerical service rendered in regular employment in the civil service of the state of New York and its political subdivisions, except for service in cities having a population of one million or more, provided that for any such new-entrant who becomes a contributor for the first time after June thirtieth, nineteen hundred thirty-five, except as otherwise provided in this section, credit for service previous to becoming a contributor shall be given only to the extent that reserves sufficient to purchase credit for such previous service are paid in a lump sum by the contributor; provided, however, that no credit shall be purchasable if the contributor has obtained or is eligible to obtain credit for such service by transfer under section five hundred twenty-two of the education law or section forty-three of the retirement and social security law. Any special or general law, except section five hundred twenty-two of the education law and section forty-three of the retirement and social security law, to the contrary notwithstanding, the amount of money necessary to purchase such prior service or part thereof shall be the amount of money determined by the actuary to be equal to the reserve the city would have been required to contribute to the contingent reserve fund in the same manner as provided in section forty-three of the retirement and social security law, if such service or part thereof were rendered to the city while a member based upon the salary received and, except as otherwise provided in paragraph seven of this subdivision a, the rate applicable at the date of purchase. Credit for such prior service up to a maximum of fifteen years, less the amount of credit, if any, acquired pursuant to paragraph three of this subdivision, shall be given only if application and payment therefor is made by the contributor prior to January first, nineteen hundred seventy. Any lump sum paid by a contributor under this subdivision shall at no time be refunded.

5. (a) In the case of new-entrants who are members of the retirement system on July first, nineteen hundred sixty-nine and who have been serving as teachers of library, for all service as librarian rendered in regular employment in libraries within the state of New York supported in whole or in part by public funds, except for libraries maintained in the schools of cities having a population of one million or more, provided that for any such new-entrant who becomes a contributor for the first time after June thirtieth, nineteen hundred thirty-five, except as otherwise provided in this section, credit for service previous to becoming a contributor shall be given only to the extent that reserves sufficient to purchase credit for such previous service are paid in a lump sum by the contributor. Any special or general law, except

section five hundred twenty-two of the education law and forty-three of the retirement and social security law, to the contrary notwithstanding, the amount of money necessary to purchase such prior service or part thereof shall be the amount of money determined by the actuary to be equal to the reserve the city would have been required to contribute to the contingent reserve fund in the same manner as provided in section forty-three of the retirement and social security law, if such service or part thereof were rendered to the city while a member based upon the salary received and, except as otherwise provided in subparagraph (c) of this paragraph five, the rate applicable at the date of purchase. Credit for such prior service up to a maximum of fifteen years, less the amount of credit, if any, acquired pursuant to paragraph three of this subdivision, shall be given only if application and payment therefor is made by the contributor prior to January first, nineteen hundred seventy. Any lump sum paid by a contributor under this subdivision shall at no time be refunded.

(b) For purposes of this paragraph five, "service as librarian" shall mean service by a person trained in library science working in such regular employment as is deemed by the retirement board to be related to the functions of teacher of library in the city of New York, provided that such service was credited for retirement purposes in the New York state teachers' retirement system or in the New York state employees' retirement system but that credit for such service was not obtained nor is the contributor, at the time of application for purchase, eligible to obtain credit for such service by transfer under section five hundred twenty-two of the education law or section forty-three of the retirement and social security law.

6. Service, credit for which shall not exceed three years, in any branch of the armed forces of the United States prior to October first, nineteen hundred twenty, provided, however, that such member shall, for the period of service with the armed forces, contribute to the retirement system an amount he or she would have been required to contribute if such service was rendered to the city while a member, and provided further, that such member, during the period between the termination of such military service and the retirement of such member, shall have been credited with not less than fifteen years of member or restored member service. Duly executed applications for such service credit shall be filed with the retirement system before the first day of September, nineteen hundred fifty-nine.

7. Any contributor who files an application to purchase credit for prior outside service pursuant to paragraph four or paragraph five of this subdivision a and who thereafter seeks to elect to become a twenty-year pension plan contributor or an age-fifty-five-increased-benefits pension plan contributor shall not, whether or not he or she has paid the purchase price for such credit pursuant to such paragraph four or paragraph five, be eligible to become such a contributor unless he or she complies with the requirements of subparagraph (j) of paragraph three of this subdivision a.

8. Notwithstanding any other law to the contrary, a person who has previously transferred or who shall transfer from another retirement system to this system in accordance with section five hundred twenty-two of the education law, section forty-three of the retirement and social security law, or any other applicable law shall receive, in addition to his or her transferred service credit, all service credit to which he or she would have been entitled under paragraph one of subdivision a of this section had he or she not transferred from another retirement system, provided, however, that credit for such service was not included in the service credit transferred by the other retirement system.

9. Notwithstanding any other law to the contrary, a member who has received service credit for seniority and length of service purposes pursuant to subdivision eight of section eighty of the civil service law, shall receive service credit for retirement purposes for the same period provided the member pays into the annuity savings fund of the retirement system the amount of the employee contributions required to have been paid into the retirement system for such service, within one year from the date this paragraph shall have taken effect, and further provided that the member has not previously received credit for retirement purposes for the same period.

b. Under such rules and regulations as such board shall adopt, each teacher shall file with such board a detailed statement of all such service rendered by him or her. As soon as practicable thereafter, such board shall verify such statement as to prior-service and shall issue to each teacher a certificate certifying to the aggregate length of his or her prior-service. Such certificate shall be final and conclusive as to his or her prior-service unless thereafter modified by:

1. Such board upon application by the teacher; or

2. By the board of education upon application by the teacher or by the retirement board, provided such application for modification be made to the board of education within one year after the issuance of a certificate or a modified certificate by the retirement board.

c. A certificate for prior-service issued to a present-teacher shall certify the total length of prior-service allowance for such present-teacher through the sixteenth day of September, nineteen hundred seventeen. The time during which a contributor was absent on leave of absence without pay shall not be counted in computing the prior-service or the total-service of a contributor, unless allowed both by the head of the department in which such contributor was employed at the time such leave of absence was granted and by the retirement board. The time during which a contributor was absent on leave of absence on full pay or part-pay from the city-service shall be counted in computing the prior-service and the total-service of such contributor. For the purpose of computing prior-service the retirement board shall fix and determine by appropriate rules and regulations how much service rendered on the basis of the hour, day or session, or any other than a per annum basis, shall be the equivalent of a year of service. No allowance shall be made for such service as a substitute teacher, night school teacher, vacation school teacher, or for any service rendered in a position to which the contributor was not regularly appointed and served on a per annum salary, unless such service was city-service or teaching or supervisory service under regular appointment rendered in the public day schools other than summer schools of New York state for ten or more consecutive weeks, except such service rendered in the employ of the Works Progress Administration or of any other agency of the government of the United States on educational projects in the schools of the city of New York or in conjunction with educational projects of the board of education of the city of New York during the period commencing January first, nineteen hundred thirty-three and ending December thirty-first, nineteen hundred forty-three, as provided in subdivision (a) of paragraph three of this section. Except as to credits or allowances erroneously granted for attendance as a pupil at a training school for teachers, or clerical or mathematical errors in the computation of prior-service, a prior-service certificate issued to any contributor by the retirement board prior to the fourth day of May, nineteen hundred thirty-five and not modified prior to the fourth day of May, nineteen hundred thirty-six shall not have the service certified therein reduced.

d. Notwithstanding any provision of law to the contrary, in the case of employees of the city university of New York, appointed subsequent to January first, nineteen hundred fifty-six, prior-service for hourly teaching employment by this board shall be granted as follows: a credit of one year of city service for retirement purposes shall be allowed for a minimum of thirty weeks per year with an average service of fifteen hours of teaching per week (four hundred fifty hours per year), provided that no such employee shall receive more than one year of credit for service rendered during one calendar year.

e. Notwithstanding any other provision of law, any contributor who is in the system as of April first, nineteen hundred sixty-three and whose prior-service certificate was issued prior to the fourth day of May, nineteen hundred thirty-five and not modified prior to the fourth day of May, nineteen hundred thirty-six may file an application with the retirement board on or before November first, nineteen hundred sixty-three for modification of said prior-service certificate for the purpose of claiming allowable retirement credit for prior city-service as teacher-in-training in the employ of the board of education of the city of New York. Such certificates shall be subject to review and modification by the retirement board and any such modified certificates are hereby validated and confirmed to the same extent and with the same effect as if issued after the fourth day of May, nineteen hundred thirty-six. The rate of contribution of any contributor whose prior-service certificate is modified pursuant to the provisions of this subdivision shall be increased so that the cost of the additional service credit is prorated over said contributor's anticipated years of service.

f. Notwithstanding any other provision of law to the contrary, in computing the length of service of a contributor for retirement purposes under the provisions of this chapter, full credit up to the nearest number of years and months shall be given each contributor by the retirement board for all service that would have been creditable in one of the public retirement systems of the state, as defined in subdivision twenty-three of section five hundred one of the retirement and social security law, at the time the service was rendered, had the contributor been a member of such

retirement system. Credit for such prior service up to a maximum of fifteen years shall be given only if application and payment therefor is made by the contributor within the first four years subsequent to membership in the New York city teachers' retirement system or before December thirty-first, two thousand two, whichever is later. Contributors shall have the right to purchase such prior service credit at the rate applicable to them as of the time of their entry into membership.

g. Notwithstanding any other provision of law, any member of the New York city teachers' retirement system eligible to purchase credit for prior service with a public employer pursuant to this section or credit for military service pursuant to article twenty of the retirement and social security law, may elect to purchase any or all of such service by executing a periodic payroll deduction agreement. Such agreement shall set forth the amount of prior service or military service being purchased, the estimated total cost of such service credit, and the number of payroll periods in which such periodic payments shall be made. Such agreement shall be irrevocable, shall not be subject to amendment or modification in any manner, and shall expire only upon completion of payroll deductions specified therein. Notwithstanding the foregoing, any member who has entered into such a payroll deduction agreement and who terminates employment prior to completion of the payments required therein shall be credited with any service as to which such member shall have paid the contributions required under the terms of such agreement.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par 9 added chap 470/2001 § 1, eff. Nov. 13, 2001.

Subd. f added chap 532/2001 § 1, eff. Nov. 28, 2001.

Subd. g amended chap 627/2007 § 15, approved Aug. 28, 2007 eff. upon

compliance with chap 627/2007 § 22. [See § 13-101 Note 1]

Subd. g added chap 691/2004 § 4, approved Nov. 3, 2004 and effective

as per Note 1.

**DERIVATION**

Formerly § B20-4.0 added chap 929/1937 § 1

Sub a par 4 added chap 115/1958 § 1

Sub a par 4 amended chap 535/1959 § 1

Sub a par 3 amended chap 961/1962 § 1

Sub d added chap 880/1963 § 1

Sub d added chap 881/1963 § 1

Sub a par 3 amended chap 884/1963 § 1

Sub a par 3 amended chap 786/1964 § 1

Sub a par 5 added chap 337/1965 § 1

Sub a par 3 amended chap 385/1965 § 1

Sub c amended chap 385/1965 § 2

Sub c amended chap 297/1966 § 1

Sub a par 3 amended chap 442/1967 § 1

Sub a par 3 amended chap 321/1968 § 1

Sub a par 3 amended chap 876/1968 § 6

Sub a pars 5, 6 renumbered chap 664/1969 § 1

(formerly pars 4, 5)

Sub a par 4 added chap 664/1969 § 1

Sub a pars 5, 6 renumbered chap 848/1969 § 1

(formerly pars 4, 5)

Sub a par 4 added chap 848/1969 § 2

Sub a par 3 amended chap 873/1969 § 1

Sub a par 3 amended chap 274/1970 § 6

Sub a par 4 amended chap 274/1970 § 7

Sub a pars 6, 8 renumbered chap 274/1970 § 8

(formerly pars 5, 6)

Sub a par 5 designated and amended chap 274/1970 § 8

(formerly par 4 added chap 848/1969 § 2)

Sub a par 7 added chap 274/1970 § 9

**NOTE**

1. Provisions of chap 691/2004:

§ 7. Nothing contained in this act shall be construed to create any contractual right with respect to members and employees to which it applies. The provisions of this act are intended to afford members and employees the advantages of certain benefits contained in the Internal Revenue Code, and the effectiveness and existence of this act and benefits it confers are completely contingent thereon.

§ 8. This act shall take effect at the beginning of the first payroll period following sixty days after an internal revenue service ruling stating that the employee contributions covered by this act are not includible in the gross income of the employee until distributed or made available to the employee, and shall remain in full force and effect only as long as such treatment of such employee contributions is authorized pursuant to the provisions of the Internal Revenue Code; provided, that the chief executive officer of the New York City teachers' retirement system shall notify the legislative bill drafting commission upon the occurrence of such ruling and upon any change in the provisions of the Internal Revenue Code affecting the provisions of this act in order that the commission may maintain an accurate and

timely effective data base of the official text of the laws of the state of New York in furtherance of effecting the provisions of section 44 of the legislative law and §70-b of the public officers law; the amendments to §13-521.1 of the administrative code of the city of New York made by sections five and six of this act shall not affect the expiration of such section as provided by chapter 681 of the laws of 1992, as amended; and the amendments to sections 609 and 613 of the retirement and social security law made by sections one and two of this act shall not affect the expiration of and shall expire on the same date as article 15 of such law, pursuant to section 615 of the retirement and social security law.

**CASE NOTES FROM FORMER SECTION**

¶ 1. Petitioner who had been assistant curator in the children's Museum of Brooklyn for eighteen years prior to her appointment as teacher in the public school system, was not entitled, upon joining the Teachers' Retirement System, to a credit for eighteen years prior "city service" rendered in the Museum, even though her salary had been paid wholly by the City, since the Museum was privately owned and, except for annual appropriations made by the City towards maintenance, was privately supported by endowments, bequests and contributions. Furthermore, in considering the claims for prior teaching service credits, Greater New York Charter § 1092h should be reasonably construed to refer to service rendered as a teacher in a public or private institution dedicated to teaching under the same or similar standards required of a public or private school in the City.-In re Weisse (Bd. of Education of N.Y.C.), 178 Misc. 118, 32 N.Y.S. 2d 258 [1941].

¶ 2. While a member of the Teachers' Retirement System is entitled to credit for City service as a contributor, no provision is made in the statute for service in a capacity other than the one which qualifies that person for membership except as credit for services prior to membership are specifically provided for. In instant case, plaintiff's services as a substitute teacher, being subsequent to her becoming a contributor, could not be credited as prior services, and since they were rendered in a capacity other than the one which qualified her as a member, they could not be credited as part of the City service as a contributor.-Thurm v. N.Y. Teachers' Retirement Board, 123 (103) N.Y.L.J. (5-29-50) 1903, Col. 4 T, aff'd 100 N.Y.S. 2d 528 [1950].

¶ 3. Petitioner was not entitled to immediate retirement on the basis of prior service credit where she had not joined Retirement System until 32 months after her appointment as a teacher.-In re Schein (Teachers' Retirement Bd.), 132 (119) N.Y.L.J. (12-22-54) 4, Col. 4 F.

¶ 4. Ruling of Teachers' Retirement Board disallowing teacher retirement service credit for period petitioner served as civilian education specialist for the U.S. Army in Europe, **held** not to have been arbitrary, as such service did not constitute military duty within intendment of Military Law § 246, and moreover the Retirement Board is vested with discretion on applications for credit during the time a contributor is on leave of absence without pay.-Meyer v. N.Y. City Teachers' Retirement Board, 122 (47) N.Y.L.J. (9-7-49) 399, Col. 5 M.

¶ 5. Plaintiff became a City school teacher in 1941, at which time the Teachers' Retirement Board allegedly, perfunctorily and without any investigation, denied her claim for prior service credit. In 1953 the Board did verify plaintiff's statement and gave her a letter certifying over 14 years of prior service. The Board, as a condition to issuance of a certificate of credit, insisted upon payment by her at the current cost thereof, while she offered to pay upon the basis of the 1941 schedule, plus interest. She brought this action for declaratory judgment in 1955, within four months after the final determination of the Board refusing her demand. This action is subject to a four-month statute of limitation (see C.P.A. § 1286) governing the alternative procedure under C.P.A. Art. 78. However, in the case of "certiorari" the statute runs from the time of the determination sought to be reviewed; whereas, in the case of "mandamus", it runs from the time of a refusal after demand to perform the duties sought to be compelled. Determination of various issues of fact, as well as questions involving the statute of limitations and laches, will have to await the trial. Consequently, the motion to dismiss the complaint is denied.-Calder v. Teachers' Retirement Board, 4 Misc. 2d 166, 156 N.Y.S. 2d 494 [1956].

¶ 6. Two teachers filed a petition for an order directing the Teachers' Retirement Board of New York City to

recompute a prior-service credit allowance on the basis of the 1950 amendment to Article 4 of the bylaws, instead of applying the tables of 1940 and 1943. The petition was sufficient. The question of laches was a matter of defense.-In re Garvin (Teachers' Retirement Board), 26 Misc. 2d 279, 204 N.Y.S. 2d 293 [1961].

¶ 7. The Teachers' Retirement Board of the City of New York could properly require new members who applied for previous service credit for service outside the State to purchase such credit at the current cost, as determined by attained salary when application was made.-Beck v. The Teachers' Retirement Board of the City of New York, 15 A.D. 2d 223, 222 N.Y.S. 2d 440 [1961].

¶ 8. On March 26, 1952 petitioner received a prior service certificate with respect to the Teachers' Retirement System. Petitioner could not again demand on April 26, 1961 full credit for prior substitute service in view of the four-month statute of limitations provided by C.P.A. § 1286.-In re Lindsell (Teachers' Retirement Bd.), 147 (8) N.Y.L.J. (1-11-62) 14, Col. 6 M.

¶ 9. Members of Teachers' Retirement System were not entitled to prior service credit for services performed prior to January 1, 1938 for the Emergency Relief Bureau of the City of New York. Such service was not made prior city service by a legislative enactment recognizing such service for membership of the Employees' Retirement System.-Matter of Dimowitz, 33 Misc. 2d 1067, 228 N.Y.S. 2d 267 [1962].

¶ 10. A member of the Retirement System was entitled to credit for former service with the Emergency Relief Bureau of the City.-Matter of Dimowitz, 18 App. Div. 2d 395, 239 N.Y.S. 2d 629 [1963].

¶ 11. School teachers who had been suspended without pay for over a three-year period, ending when the Board directed their "reinstatement", were not entitled to retirement service credit for the period of their suspension. Full exoneration was clearly not contemplated by the Board of Education.-Douglas v. Teachers' Retirement Board, 40 Misc. 2d 870, 244 N.Y.S. 2d 173 [1963], aff'd 247 N.Y.S. 2d 994 [1964].

¶ 12. Determination of Retirement Board that petitioner was not entitled to credit certificate for prior non-City service rendered prior to his appointment to City College staff in 1947 was not arbitrary where petitioner had listed prior service on Form 2a but had not made a definite request to purchase the outside service.-Beck v. Teachers' Retirement Board, 153 (38) N.Y.L.J. (2-26-65) 18, Col. 1 T.

¶ 13. Petitioner was not entitled to credit for service rendered as teacher-in-training for one year after February 1933. Requirements of this section were not met where prior service credit certificate was not issued prior to May 4, 1945.-Rosenbaum v. Teachers' Retirement System, 152 (43) N.Y.L.J. (8-28-64) 8, Col. 3 M.

¶ 14. Four month time limitation barred action to compel Retirement Board to grant service credit for work done in the 1930s where action was not commenced until more than four months after denial.-In re Machlis, 152 (64) N.Y.L.J. (9-29-64) 14, Col. 4 M.

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*NYC Administrative Code 13-506*

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Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-506 Re-entry into service.

Any withdrawn contributor, who does not withdraw his or her contributions from the annuity savings fund, on again entering the membership as the result of reappointment or restoration to service, may be entitled to the service credit and status, including the reserve-for-increased-take-home-pay, to which he or she was entitled immediately prior to his or her withdrawal, except as provided in section 13-556 of this chapter, provided that he or she returns to membership within a period of seven school years following such withdrawal, and further provided, that he or she has not been absent from service for more than seven school years during any ten consecutive school years since he or she became a contributor of the retirement system, and further provided that in computing his or her average salary for retirement purposes only the earnable salary for years of actual service shall be used.

At not time shall this section be so construed as to result in depriving a contributor of credit for substitute teaching service in the New York city public schools or for teaching service on other than an annual basis in the colleges under the city university of New York of the city of New York where such service was performed during the period between the contributor's withdrawal from membership in the teachers' retirement systems and his or her re-entry into membership.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Section amended chap 366/1998 § 1, eff. July 14, 1998

**DERIVATION**

Formerly § B20-5.0 added chap 929/1937 § 1

Amended chap 510/1960 § 6

Amended chap 994/1960 § 1

Amended chap 952/1962 § 1

Amended chap 914/1963 § 1

Amended chap 1019/1965 § 3

**CASE NOTES FROM FORMER SECTION**

¶ 1. Whether 1929 amendment to Greater New York Charter § 1092, subd. j-3, providing that any withdrawing contributor who did not withdraw his contribution might be entitled to have status restored provided he returned to membership within five years following withdrawal, was retroactive, was very doubtful. However, teacher who was on leave of absence at time of enactment of Teachers' Retirement Law and who resigned at expiration of her leave did not qualify under such statute, since such teacher had made no contribution to the Annuity Fund and hence could have left none in the fund upon resigning.-Matter of Thomas (Teachers' Retirement Bd. of N.Y.C.), 164 Misc. 341, 299 N.Y.S. 358 [1937], aff'd to extent appealed from, 258 App. Div. 942, 17 N.Y.S. 2d 993.

¶ 2. Where a teacher, in 1949, had resigned after 20 years of service, she ceased to be a member of the Teachers' Retirement System and her subsequent prospective re-employment and consequent re-entry into the Retirement System was deemed not intended to take effect until September 5, 1952, the first day of the new school term. Hence, the teacher had not reacquired the status of teacher when she died in an automobile accident in August of 1952 and her estate was not entitled to death benefits.-Winkel v. Teachers' Retirement System, 149 N.Y.S. 2d 443 [1956].

¶ 3. The petitioner became a member of the Teachers' Retirement Association in 1949 when he was appointed a regular school clerk. Thereafter, in 1950, he resigned that position and from then until 1954 rendered services as a substitute teacher. Finally, in 1954 he was appointed a regular teacher and resumed membership in the Retirement Association. The petitioner was not entitled to service credit for the services he had rendered as a substitute teacher prior to resuming membership in the association. No credit may be made for services in a capacity other than the one which qualifies the person for membership in the association except as a credit for services prior to membership is specifically provided for.-McNaney v. New York City Teachers' Retirement Board, 135 (72) N.Y.L.J. (4-13-56) 6, Col. 4 F.

¶ 4. Petitioner, who resigned as a teacher in order to enter government service, later returned but was absent at a time when the Board of Education adopted a resolution crediting war service leaves for retirement purposes. He was not entitled to a service credit.-In re Cohen (Teachers' Retirement Board), 5 N.Y. 2d 963, 184 N.Y.S. 2d 838, 157 N.E. 2d 715 [1959].

¶ 5. The Teachers' Retirement Board of the City of New York could properly require new members who applied for previous service credit for service outside the State to purchase such credit at the current cost as determined by attained salary when application was made.-Beck v. The Teachers' Retirement Board of the City of New York, 15 A.D. 2d 223, 222 N.Y.S. 2d 440 [1961].

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*NYC Administrative Code 13-507*

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Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-507 Teachers' retirement board; membership; elections.

The retirement board is continued and shall consist of the following:

1. The president of the board of education or an authorized representative designated by him or her, in writing, and filed with the teachers' retirement board.

2. The comptroller.

3. Two members appointed by the mayor, one of whom shall be a member of the board of education; they shall serve until their successors are appointed. Should the board of education member of the retirement board cease to be a member of the board of education, he or she shall thereupon cease to be a member of the retirement board. The mayor may, by a written instrument filed with the retirement board, designate one or more alternates to act in the place of either of such appointed members in the event of the absence of such member; provided that only a member of the board of education may be designated to act in the place of such board of education member of the retirement board.

4. Three members of the retirement association elected from the contributors. The term of each teacher-member shall be three years. The teacher-members now in office shall hold office until the expiration of the terms for which they were respectively elected. Their successors shall be elected by direct vote of the contributors, by secret ballot, as follows:

(a) Nomination. Candidates for office of teacher-member of the retirement board shall be nominated by petition. The nominating petition must be signed by at least one thousand contributors, each sheet of which petition shall contain:

(1) The name and official board-of-education or city university of New York position of the candidate.

(2) The name and official board-of-education or city university of New York position of the contributor who shall be the alternate candidate in the event of a vacancy caused by the death, disability, disqualification or withdrawal of the candidate occurring prior to the day of the election.

(3) The names of three contributors and the number or name of the school or college and borough in which each is employed to act as tellers for the candidate at the final canvass of returns at the hall of the board of education on the Tuesday following the second Thursday of May.

(4) A statement that the signature or signatures of a contributor which appear on more than one petition or more than once on a specific petition shall be void and shall not be counted on any petition.

(5) A certification at the bottom by a contributor together with the number or name and borough of his or her school or college that all the signatures to the number of..... appearing on that particular sheet of the petition are bona fide signatures of contributors known to him or her.

Each petition shall bear the signatures of not less than one thousand approving contributors endorsing the candidate, the number or name and borough of the school, the college or the department in which each contributor so endorsing is employed and the date on which each signed.

Contributors shall sign only one petition and the signature or signatures of a contributor which appear on more than one petition or more than once on a specific petition shall be void and shall not be registered or counted on any petition.

(b) Filing of petitions. All petitions shall be filed with the superintendent of schools or his or her authorized representative not later than five o'clock in the afternoon of the last day on which schools are in session preceding April twenty in each year. The date and time of such filing shall be noted on the face of the petition by the superintendent of schools or his or her authorized representative. Petitions shall be open to public inspection. Each petition shall be accompanied by a written acceptance of the nomination by the candidate named in the petition and by a written statement of the contributor named as alternate candidate, that in the event of the death, disability, disqualification or withdrawal of the candidate prior to the election, he or she will accept the nomination in such a contingency.

In the event of but one candidate being nominated for the office of teacher-member, it shall not be necessary to prepare ballots, official blanks or tally sheets, nor for the members of the retirement association to meet on the second Wednesday of May for the casting of written ballots. The election of the single candidate shall be consummated on the second Wednesday of May by the superintendent of schools casting one ballot in favor of the candidate.

(c) Objections to petitions. If the question of the qualification of any signer of a petition is raised by any contributor by writing to the superintendent of schools, or his or her authorized representative, the executive director of the retirement system or his or her authorized representative, shall certify as to whether or not the signer is a contributor to the teachers' retirement system and entitled to vote in the election of teacher-members of the retirement board.

A written objection to any petition may be filed with the superintendent of schools, or his or her authorized representative, by any contributor not later than the last day on which schools are in session preceding April twenty-seventh in each year. The superintendent of schools or his or her authorized representative shall summarily hear and determine such objections under such rules and regulations as he or she may establish and shall notify in writing both the candidate and the objector of his or her determination of the objection not later than the first Wednesday in May.

(d) Publication of nominations. Not later than the first Wednesday of May in each year, the superintendent of schools or his or her authorized representative shall notify each school, annex, and college in which members of the

retirement association are employed of the names of all nominees. On receipt of such notice, the principal of the school or annex or in his or her absence the acting principal, and the president or acting president of a college shall give to each contributor in the school, annex or college a copy of such notice.

(e) Form of ballots, etc. The superintendent of schools or his or her authorized representative shall cause to be prepared the necessary ballots for the election. These ballots shall contain only the names of the candidates and necessary directions for voting. The superintendent of schools shall determine by lot in the presence of each candidate or his or her duly authorized representative the order of the names of candidates on the ballot.

The superintendent of schools or his or her authorized representative shall cause to be distributed to each school or voting place not later than the Tuesday preceding the day of the election:

(1) A sufficient number of official ballots.

(2) The official blank form for contributors' signatures.

(3) Blank tally sheets in triplicate.

(f) Discussion meetings. Upon petition of ten per centum of the contributors in any public school building, annex or college for a meeting for the discussion of the merits of the various candidates for teacher-member of the retirement board, the principal or person in charge of such public school building, annex or college, shall call such a meeting not more than five school days nor less than two school days, prior to the date of election in each year. After the principal or person in charge of such school building, annex or college or his or her authorized representative has called such meeting to order, the contributors present shall proceed to elect by plurality vote a chairperson and a secretary. The chairperson of such meeting shall be responsible for the conduct of the meeting.

(g) Elections. Procedures for members of the retirement system who are in the employ of the New York city board of education. On the second Wednesday of May, or if the second Wednesday of May falls on a religious or other holiday or if for any reason the schools are closed on that day then on the first school day preceding the second Wednesday of May, in each year, the contributors in each school or annex shall meet in their respective school buildings at three o'clock in the afternoon, or if the administration conditions in any school or annex are such that the meeting ought to be held at some other hours, then at such hour in such school building as shall be designated by the superintendent of schools, after consultation with the principal or person in charge of such school. Such principal or person in charge or his or her authorized representative shall call the meeting to order, and the contributors present at the meeting shall proceed to elect from their number by written ballot, a chairperson and a secretary. The candidate receiving the greatest number of votes in each instance shall be declared elected. The chairperson elected shall then appoint from among the contributors at least one teller for each candidate nominated for the position of teacher-member of the retirement board. Such teller shall be an acknowledged supporter of the particular candidate. In no case shall there be less than three tellers. The contributors shall then proceed as follows, to vote by written and secret ballot for teacher-member of the retirement board. Each contributor shall receive a ballot and sign the contributors' list in the presence of the chairperson and the tellers. The contributor shall then proceed to mark his or her ballot in secret. As his or her name is called each contributor shall then deposit his or her ballot in the official ballot box provided by the principal or person in charge. Contributors designated as special teachers, supervisors and directors shall vote and sign the contributors' signature blank in the school or voting place nearest to the respective main offices. The superintendent of schools or his or her authorized representative shall provide voting places for all other contributors not assigned to schools and he or she shall designate the person or persons who shall be responsible for the proper conduct of the election in each place so provided. If a contributor spoils a ballot he or she shall return it to the chairperson of the meeting. Both the contributor and the chairperson of the meeting shall certify on the face of the ballot that the ballot is void. The voided ballot shall then be deposited in the ballot box and thereupon another ballot shall be issued to the contributor. During the period of this meeting there shall be no electioneering or discussions regarding candidates. The chairperson of the meeting shall be responsible for the proper conduct of the election. Only contributors to the

retirement system may be designated as representatives of the superintendent of schools or principals or heads of schools or department or persons in charge.

Procedure for members of the retirement system who are in the employ of the board of higher education of the city of New York. On the second Wednesday of May, or if the second Wednesday of May falls on a religious or other holiday or if for any reason the schools are closed on that day then on the first school day preceding second Wednesday of May, in each year, the contributors in each college building shall meet in their respective school buildings at nine o'clock in the morning, or if the administration conditions in any college are such that the meeting ought to be held at some other hour, then at such hour in such college building as shall be designated by the superintendent of schools, after consultation with the principal or person in charge of such college. Such principal or person in charge or his or her authorized representative shall call the meeting to order, and the contributors present at the meeting shall proceed to elect from their number by written ballot, a chairperson and a secretary of the balloting. The candidate receiving the greatest number of votes in each instance shall be declared elected. The chairperson elected shall then appoint from among the contributors at least one teller for each candidate nominated for the position of teacher-member of the retirement board. Such teller shall be an acknowledged supporter of the particular candidate. In no case shall there be less than three tellers. The chairperson shall then announce the opening of the balloting, which shall continue until five o'clock in the afternoon of that day and from nine o'clock in the morning until five o'clock in the afternoon of the next succeeding school day. The contributors shall proceed as follows, to vote by written and secret ballot for teacher-member of the retirement board. Each contributor, regardless of whether he or she was present at the election of the chairperson and the secretary, shall receive a ballot and sign the contributors' list in the presence of at least two tellers at any time during the balloting. The contributor shall then and there proceed to mark his or her ballot in secret and shall then deposit his or her ballot in the official ballot box provided by the principal or person in charge. The superintendent of schools or his or her authorized representative shall provide voting places for all other contributors not assigned to colleges and he or she shall designate the person or persons who shall be responsible for the proper conduct of the election in each place so provided.

If a contributor spoils a ballot he or she shall return it to the chairperson of the balloting. Both the contributor and the chairperson of the balloting shall certify on the face of the ballot that the ballot is void. The voided ballot shall be deposited in the ballot box and thereupon another ballot shall be issued to the contributor.

During the period of this balloting there shall be no electioneering or discussions regarding candidates in the voting place.

The chairperson of the balloting shall be responsible for the proper conduct of the election.

Only contributors to the retirement system may be designated as representatives of the superintendent of schools or heads of colleges or department or persons in charge.

(h) Returns. Procedure for members of the retirement system who are in the employ of the New York city board of education. After all the contributors present in the voting place have had an opportunity to vote, the tellers shall publicly open the ballot box, count the ballots, tally and announce the vote for teacher-member of the retirement board. After the votes have been tallied the chairperson and secretary and tellers shall prepare and sign the election returns for teacher-member in triplicate. One copy of the election return shall be posted on the official bulletin board of the building in which the voting took place. One copy of the election return shall be forwarded immediately by mail to the superintendent of schools and one copy to the executive director of the retirement system. Then the chairperson shall place in the ballot box all the ballots cast, the spoiled ballots, the unused ballots and the contributors' signature list, seal the ballot box and deliver it forthwith to the principal or person in charge of the school building or annex. A receipt shall be given to the person making this delivery. The principal or person in charge of such school building or annex shall retain such sealed box for six months following the date of voting, or until a special election is called to fill a vacancy among the teacher-members as hereinafter provided, whichever occurs first.

Procedure for members of the retirement system who are in the employ of the board of higher education of the city of New York. At five o'clock in the afternoon of each day of the balloting, or as soon thereafter as possible, allowing all contributors who are present at such time to cast their ballots, the tellers shall publicly open the ballot box, count the ballots, tally and announce the vote for teacher-member of the retirement board. After the votes have been tallied the chairperson and secretary and tellers shall prepare and sign the election returns for teacher-member for that day in triplicate. There shall be no posting of returns after the first day, but one copy of the election return shall be posted on the offical*11 bulletin board of the building in which the voting took place after the second day's balloting has been completed. One copy of the election return for each day shall be forwarded immediately by mail, at the end of each day of balloting, to the superintendent of schools and one copy shall be forwarded by mail, at the same time, to the executive director of the retirement system. At the end of the first day's balloting the chairperson shall place in an envelope all the ballots cast during that day, and the spoiled ballots, which envelope shall be sealed and identified as the first day's balloting. The sealed envelope shall be kept in the ballot box, together with the first day's tally sheet and the contributors' signature list. At the end of the second day's balloting, the ballots cast that day, the spoiled ballots, the unused ballots and the contributors' signature list shall be placed in the ballot box, the chairperson shall seal the ballot box and deliver it forthwith to the person in charge of the college. A receipt shall be given to the person making this delivery. The person in charge of such college shall retain such sealed ballot box for six months following the date of voting, or until a special election is called to fill a vacancy among the teacher-members as hereinafter provided, whichever occurs first.

(i) Counting the vote for teacher-member. At four o'clock in the afternoon of the Tuesday following the third Thursday of May in each year at the hall of the board of education the final canvass of the returns shall be made. Each candidate for election to the office of teacher-member or his or her duly authorized representative shall be entitled to be present at the final canvass to inspect the election returns and to witness the canvass and summary made of the number of votes cast. The superintendent of schools or his or her duly authorized representative shall preside at the canvass. The executive director of the retirement system or his or her duly authorized representative shall be present with all the election returns received at his or her office from the various schools, colleges and other voting places. No contributor duly authorized by this act shall suffer loss of pay by reason of attendance at this meeting. The tellers designated on the nominating petition, together with the superintendent of schools or his or her authorized representative shall record and tally the vote cast in the respective schools, school annexes and colleges for each candidate for the office of teacher-member of the teachers' retirement board. The chairperson of the meeting shall call for a report of the vote cast in each of the respective schools, school annexes and colleges. If the accuracy of any election return is questioned or if the election return of a voting place is missing, the vote recorded on the copy of the election return filed with the executive director of the retirement system shall be used. The total vote for each candidate as recorded on the election returns from all voting places shall be announced. The candidate receiving the greatest number of votes shall be declared elected and the pension election committee shall so certify and the superintendent of schools or his or her authorized representative shall transmit immediately such certification to the retirement board. The newly elected teacher-member shall take office forthwith.

Election returns, tally sheets, and all other records including ballots and contributors' signature lists shall be kept in the custody of the superintendent of schools for a period of not less than six months after the third Thursday in May or until a vacancy occurs in the office of teacher-member in the retirement board, whichever occurs first.

(j) Vacancies. Procedure for members of the retirement system who are in the employ of the New York city board of education. In the event of a vacancy in the office of teacher-member of the retirement board two months or more before the expiration of his or her term, a special election shall be held to elect a teacher-member to complete the unexpired term. Such special election shall be conducted in the same manner as hereinbefore provided for a regular election, except that petitions shall be filed not later than twenty regular school days after the date on which the vacancy occurred, and the election shall be held on the third Wednesday after the closing date for the filing of petitions. Should this day fall on a holiday, the election shall be held on the first Thursday subsequent thereto on which school is in regular session.

Procedure for members of the retirement system who are in the employ of the city university of New York. In the event of a vacancy in the office of teacher-member of the retirement board two months or more before the expiration of his or her term, a special election shall be held to elect a teacher-member to complete the unexpired term. Such special election shall be conducted in the same manner as hereinbefore provided for a regular election, except that petitions shall be filed not later than twenty regular school days after the date on which the vacancy occurred, and the election shall be held on the third Wednesday after the closing date for the filing of petitions and on the school day immediately succeeding it. Should the third Wednesday after said closing date fall on a holiday, the election shall be held on the first Wednesday subsequent thereto on which school is in regular session and on the next succeeding school day.

In the event that such vacancy among the teacher-members of the retirement board occur in June, July, August or during the time in September when schools are not in session, such vacancy shall be deemed to have occurred on the first day schools are in session and the same procedure and time allowance for the election shall be followed as herein provided for the election of a teacher-member when a vacancy occurs during the school year.

(k) Appeals. The superintendent of schools or his or her authorized representative shall have jurisdiction to hear and summarily determine any question arising in connection with the nomination or election of a teacher-member of the retirement board as set forth in this act except questions concerning the qualifications of any signer of a petition as to whether or not he or she is a contributor, in which instance the executive director of the retirement system or his or her authorized representative shall determine the facts.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. 3 amended chap 607/1991 § 32 retro. to July 1, 1990.

**DERIVATION**

Formerly § B20-6.0 added chap 929/1937 § 1

Amended chap 915/1939 § 1

Amended chap 711/1940 § 1

(Legislative intent chap 711/1940 § 2)

Sub 4 par f amended chap 706/1946 § 1

Sub 4 par g amended chap 706/1946 § 2

Sub 4 par j amended chap 629/1950 § 1

Sub 4 par b amended chap 413/1951 § 1

Sub 4 par h amended chap 96/1954 § 1

Sub 1 amended chap 415/1961 § 1

Sub 4 par b amended chap 538/1964 § 1

Sub 4 pars c, d amended chap 538/1964 § 2

Sub 4 par g amended chap 538/1964 § 3

Sub 4 par h amended chap 538/1964 § 4

Sub 4 par j amended chap 538/1964 § 5

Sub 4 par g amended chap 1017/1965 § 1

Sub 4 par h amended chap 1017/1965 § 2

Sub 4 par i amended chap 1017/1965 § 3

Sub 4 par j amended chap 1017/1965 § 4

Sub 4 par c amended chap 888/1973 § 9

Sub 4 par h amended chap 888/1973 § 10

Sub 4 par i amended chap 888/1973 § 11

Sub 4 par k amended chap 888/1973 § 12

**FOOTNOTES**

11

[Footnote 11]: * So in original. (Word misspelled.)

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CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-508 Retirement board; oath of office.

Each member of the retirement board shall take an oath of office that he or she will, so far as it devolves upon him or her, diligently and honestly administer the affairs of such board, and that he or she will not knowingly violate, or wilfully permit to be violated, any of the provisions of law applicable to this title. Such oath shall be subscribed by the member making it, and certified by the officer before whom it is taken, and shall be filed forthwith in the office of the clerk of the county of New York.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-7.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where the Admin. Code provided that the concurrence of the Comptroller or of one member appointed by the Mayor, of a member elected by the retirement association and of at least two other members was necessary for a decision of the Board, and by-laws of Board provided that chairman, elected by the Board from its membership, shall serve until his successor is elected, and the term of the City Comptroller-Chairman had expired. Comptroller's successor in office was not entitled to become chairman unless so elected.-Briscoe v. Teachers' Retirement Board of City of New

York, 283 App. Div. 1026, 131 N.Y.S. 2d 112 [1954], modifying 205 Misc. 909, 131 N.Y.S. 2d 587 [1954], aff'd 308 N.Y. 704, 124 N.E. 2d 329 [1954].

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CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-509 Retirement board; organization; employees.

The retirement board shall elect from its membership a chairman, and shall appoint an executive director of the retirement system and an actuary. Such board may also appoint such medical examiners, assistant medical examiners, medical, clerical and other employees as it may deem necessary.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-8.0 added chap 929/1937 § 1

Amended chap 888/1973 § 13

(Special provision, executive directors powers chap 888/1973 § 14)



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

*NYC Administrative Code 13-510*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-510 Retirement board; no compensation for members of board.

The members of such board shall serve without compensation but shall be reimbursed from the expense fund for any necessary expenditures and no contributor shall suffer loss of salary or wages through serving on such board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-9.0 added chap 929/1937 § 1



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

*NYC Administrative Code 13-511*

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Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-511 Retirement board; a corporation.

For the purposes of this chapter, the retirement board shall possess the powers and privileges of a corporation, and as such may sue and be sued.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-10.0 added chap 929/1937 § 1



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

*NYC Administrative Code 13-512*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-512 Retirement board; decisions.

The concurrence of the comptroller or of one member appointed by the mayor, of a member elected by the retirement association, and of at least two other members shall be necessary for a decision of such board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-11.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where the Admin. Code provided that the concurrence of the Comptroller or of one member appointed by the Mayor, of a member elected by the retirement association and of at least two other members was necessary for a decision of the Board, and the by-laws of Board provided that chairman, elected by the Board from its membership, shall serve until his successor is elected, and the term of the City Comptroller-Chairman had expired, Comptroller's successor in office was not entitled to become chairman unless so elected.-Briscoe v. Teachers' Retirement Board of City of New York, 283 App. Div. 1026, 131 N.Y.S. 2d 112 [1954], modifying 205 Misc. 909, 131 N.Y.S. 2d 587 [1954], aff'd 308 N.Y. 704, 124 N.E. 2d 329 [1954].



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CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-513 Retirement board; rules and regulations.

Subject to the limitations of this chapter and of law, such board, from time to time, shall establish rules and regulations for the administration of the funds provided for by this chapter, and for the transaction of its business.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-12.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-514*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-514 Retirement board; adoption of tables and certification of rates.

Every five years, the actuary of the retirement board shall make an actuarial investigation into the mortality and service experience of the contributors and beneficiaries as defined in this chapter, and he or she shall make a valuation, as of June thirtieth of each year, of the various funds provided for by this chapter. Upon the basis of such investigation such board shall:

1. Adopt for the retirement system such mortality, service and other tables as shall be deemed necessary;

2. Certify the rates of deduction from salary necessary to pay the annuities authorized under the provisions of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-13.0 added chap 929/1937 § 1

Amended chap 876/1968 § 7

Amended chap 957/1981 § 45

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-515*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-515 Retirement board; data.

The retirement board shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds provided for by this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-14.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-516*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-516 Retirement board; records.

The retirement board shall keep a record of all its proceedings open to public inspection.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-15.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-517*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-517 Retirement board; reports.

The retirement board shall publish annually a report certified to by each member showing the condition of the various funds provided for by this chapter, and setting forth such other facts, recommendations, and data, as may be of use in the advancement of knowledge concerning teachers' pensions and annuities. Such board shall submit such report to the mayor, and shall file at least fifty copies thereof with the board of education for the use of such board and its members, at least one copy in each school for the use of the teachers thereof, one copy in the office of the superintendent of schools, of each associate superintendent of schools and of each assistant superintendent of schools.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-16.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-518*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-518 Retirement board; other duties.

a. The retirement board shall perform such other functions as are required for the execution of the provisions of this chapter.

b. (1) In addition to the powers conferred upon it by any other provision of law, the board of trustees shall on or before April first of each year, establish a budget sufficient to fulfill the powers, duties and responsibilities set forth in this chapter and any other provision of law which sets forth the benefits of members of the retirement system. Said budget shall also include the respective amounts deposited in the expense fund in accordance with the provisions of subdivision k of section 13-570 of this chapter and subdivision b of section 13-582 of this chapter. The board of trustees shall, if necessary, draw upon the assets of the retirement system to fund the portion of such budget which is not derived from subdivision k of section 13-570 of this chapter and subdivision b of section 13-582 of this chapter provided, that such action shall be subject to the provisions of paragraphs two, three, four and five of this subdivision and subdivisions c and d of this section. The provisions of this section shall not be applicable to the payment of investment expenses pursuant to section 13-705 of the code and nothing contained herein shall be construed as abolishing, limiting, or modifying any power of the board of trustees to provide for the payment of investment expenses pursuant to section 13-705 of the code.

(2) If an expense budget has not been adopted by the commencement of the new fiscal year, the expense budget for the preceding fiscal year shall be deemed to have been extended for the new fiscal year until such time as a new expense budget is adopted.

(3) Any budget in effect pursuant to paragraphs one or two of this subdivision b shall be modifiable during such

succeeding fiscal year.

(4) Notwithstanding any other provision of law, the board of trustees shall have the power either directly or by delegation to the executive director, to obtain by employment or by contract the goods, property and services necessary to fulfill its powers within the appropriation authorized by the board of trustees pursuant to paragraph one of this subdivision.

(5) The provisions of chapter seventeen of the charter shall continue to apply to the retirement system and the retirement system shall constitute an agency for the purposes of such chapter seventeen. The board of trustees shall not obtain any legal services by the retention of employees or by contract unless the corporation counsel shall consent thereto.

(6) All contracts for goods or services entered into by the retirement system shall be procured as prescribed in chapter thirteen of the charter; provided, however, that where the provisions of such chapter thirteen require action by the mayor in regard to a particular procurement (except for mayoral action pursuant to subdivision c of section three hundred thirty-four of the charter) such action shall not be taken by the mayor or such appointee of the mayor but shall be taken by the board of trustees or the executive director pursuant to a resolution adopted by the board of trustees delegating such authority to the executive director.

(7) The provisions of paragraphs four and six of this subdivision shall not apply to any contract or contracts relating to the variable annuity funds and tax-deferred annuity program pursuant to section 13-570 and section 13-582 of this chapter.

c. Employment by the retirement system shall constitute city-service for the purposes of chapter one of this title; provided, however, that nothing contained herein shall be construed as granting membership rights in the New York city employees' retirement system to a contractor of the retirement system or such contractor's employees. Employees of the retirement system shall be deemed employees of the city of New York for the purposes of chapter thirty-five of the charter and title twelve of the code.

d. In the event that the assets of the retirement system are drawn upon pursuant to the provisions of paragraph one of subdivision b of this section all monies so withdrawn shall be made a charge to be paid by each participating employer otherwise required to make contributions to the retirement system no later than the end of the fiscal year next succeeding the time period during which such assets were drawn upon, provided, however, that where such charge is for assets so withdrawn in fiscal year two thousand four-two thousand five or in any fiscal year thereafter, such charge shall be paid by each such participating employer no later than the end of the second fiscal year succeeding the time period during which such assets were drawn upon. The actuary shall calculate and allocate to each such participating employer its share of such charge by multiplying such charge by a fraction, the numerator of which shall consist of the total salaries of the employees of each participating employer as of the June thirtieth succeeding the withdrawal of assets and the denominator of which shall consist of the total salaries of members of the retirement system as of such June thirtieth. All charges to be paid pursuant to this subdivision shall be paid at the regular rate of interest utilized by the actuary in determining employer contributions to the retirement system pursuant to the provisions of paragraph two of subdivision b of section 13-638.2 of the code.

**HISTORICAL NOTE**

Section amended chap 593/1996 § 3, eff. Aug. 8, 1996 and budgets

referred to shall be deemed to be established on Apr. 1, 1996

Section added chap 907/1985 § 1

Subd. d amended chap 152/2006 § 9, eff. July 7, 2006 and deemed to

have been in full force and effect on and after July 1, 2005. [See § 13-103 Note 1]

**DERIVATION**

Formerly § B20-17.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-519*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-519 Medical board.

a. There shall be a medical board of three physicians constituted as follows:

1. One physician who shall be appointed by the members of the retirement board who are contributors.

2. One physician who shall be appointed by the members of the retirement board who are not contributors.

3. One physician who shall be appointed by the retirement board. Such physician shall be an expert in women's diseases or in diseases of the nervous system.

b. They shall be appointed to serve for a term of three years but the term of each shall expire on August first in different years. Vacancies shall be filled for the unexpired term. All appointments for a full term or for an unexpired term shall be made by the same group of members of the retirement board which appointed the predecessor.

c. All medical examinations required or authorized by sections 13-550 (relating to retirement of certain contributors for disability) and 13-551 (relating to retirement for accident disability) of the code shall be made by the medical board or by a physician or physicians designated by the medical board under rules and regulations for such designation prescribed by the retirement board, at the place of residence of the contributor or at a place designated by mutual agreement.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-18.0 added chap 929/1937 § 1

Sub a par 3 amended chap 643/1942 § 1

Sub c added chap 274/1970 § 10

**CASE NOTES**

¶ 1. Doctor chosen to examine petitioner and report to the medical board was later appointed to the board itself. It was "improper for an impartial reviewer of an issue of fact to sit in review of his own prior determination of fact".-Lowcher v. NYC Teachers' Retirement System, 54 N.Y.2d 373, 445 N.Y.S.2d 696 (1981).

¶ 2. Doctor chosen to examine petitioner was a member of the Medical Board. § 13-519(c) provides the examination for accident disability retirement "shall be made by the medical board or a physician designated . . .". In this case the doctor was not asked to serve as an impartial observer but acted at all times as a member of the review board.-Fisher v. Condello, 137 A.D. 2d 446, 524 N.Y.S.2d 707 (1st Dept. 1988).



Administrative Code of the City of New York



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

*NYC Administrative Code 13-520*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-520 The funds; component funds.

The funds provided for herein are the expense fund, the contingent reserve fund, pension reserve fund number one, pension reserve fund number two, the annuity savings fund and the annuity reserve fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-19.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-521*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-521 Contributions of members and their use; annuity savings fund.

The annuity savings fund shall consist of the accumulated deductions from the salaries of contributors made, under such rules and regulations as the retirement board shall prescribe, and in addition, such amounts as shall be contributed thereto for the benefit of members by the city in accordance with subdivision eight of this section, as follows:

1. (a) Except as otherwise provided with respect to contributions of twenty-year pension plan contributors and age-fifty-five-increased-benefits pension plan contributors in subdivision seven of this section, from the salary of each present-teacher there shall be deducted such per cent of his or her earnable salary as he or she shall elect, provided, however, that such contributor shall be limited in his or her choice to one of the following rates:

(1) Three per cent of his or her earnable salary.

(2) Such per cent of his or her earnable salary as shall be computed to be sufficient, with regular interest, when paid until age sixty-five, to provide for him or her on retirement at that age an annuity which, when added to his or her pension, provided for in this chapter, will provide a retirement allowance of fifty per cent of his or her average salary.

(3) A per cent of his or her earnable salary greater than three per cent thereof.

(b) Should any present-teacher, on becoming a contributor, fail to make such an election, he or she shall be deemed to have elected a deduction from his or her salary at the rate of three per cent of his or her earnable salary.

2. (a) Except as otherwise provided with respect to contributions of twenty-year pension plan contributors and

age-fifty-five-increased-benefits pension plan contributors in subdivision seven of this section, from the salary of each new-entrant, there shall be deducted such per cent of his or her earnable salary as shall be computed to be sufficient, with regular interest, to procure for him or her on service retirement an annuity equal to twenty-five per cent of his or her average salary. The rate per cent of such deduction from salary shall be based on the mortality and other tables herein authorized, together with regular interest, and shall be computed to remain constant during his or her prospective teacher-service prior to eligibility for service retirement, except such deduction shall not be in excess of fifteen per centum unless the member so elects. Except as otherwise provided with respect to contributions of twenty-year pension plan contributors and age-fifty-five-increased-benefits pension plan contributors in subdivision seven of this section, no beneficiary restored to duty shall be required to contribute a per cent of his or her earnable salary greater than the per cent thereof which he or she was required to contribute prior to his or her retirement.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision two, the rate per cent of such deduction from the salary of any new-entrant who became a member after June thirtieth, nineteen hundred forty-seven and prior to June thirtieth, nineteen hundred sixty-seven shall be, on and after the first day of the first payroll period beginning after January first, nineteen hundred sixty-eight:

(1) his or her rate as of June twenty-ninth, nineteen hundred sixty-seven, determined pursuant to paragraph (a) of this subdivision, including any increase thereof pursuant to section 13-525 or subdivision two of section 13-554 of this chapter or reduction thereof pursuant to subdivision four of this section, section 13-545 of this chapter, or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, hereinafter referred to as his or her "prior computed rate", less the difference between the rate which was computed for such new-entrant pursuant to paragraph (a) of this subdivision two on the date he or she last became a member, exclusive of any increase thereof pursuant to section 13-525 or subdivision two of section 13-554 of this chapter or reduction thereof pursuant to the election provided for in paragraph (a) of this subdivision or pursuant to subdivision four of this section, section 13-546 of this chapter, or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and the rate which would have been computed for such new-entrant on the date he or she last became a member, pursuant to paragraph (a) of this subdivision, but not limited to the fifteen per centum provided in that paragraph, had he or she been entitled on that date to regular interest at four per centum; or

(2) if such new-entrant made an election pursuant to paragraph d of subdivision one of section 13-545 or paragraph d of subdivision one of section 13-554 of this chapter, but not before any deduction was made from his or her compensation for annuity purposes, his or her "prior computed rate" less the difference between the rate, which would have been computed for such new-entrant on the date he or she last became a member, pursuant to paragraph (a) of subdivision two of this section, but not limited to fifteen per centum, if the later election he or she made had been made on that date, and the rate, which would have been computed for such new-entrant on the date he or she last became a member, pursuant to paragraph (a) of subdivision two of this section, but not limited to fifteen per centum, if the later election he or she made had been made on that date, and if, on that date, he or she had been entitled to regular interest at four per centum; provided that the adjusted rate of contribution computed pursuant to this paragraph b shall be subject to changes pursuant to paragraph (a) of this subdivision, section 13-525 or subdivision two of section 13-554, subdivision four of this section, section 13-546 of this chapter or pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law.

(c) For any new-entrant to whom the last paragraph applies, and beginning with the first day of the first payroll period commencing after June thirtieth, nineteen hundred sixty-seven, and ending with the last day of the last payroll period before the first payroll period beginning after January first, nineteen hundred sixty-eight, the amount of contribution which represents the difference between the prior computed rate of such member as of June twenty-ninth, nineteen hundred sixty-seven, and his or her adjusted rate of contribution as computed pursuant to the last paragraph shall be deemed additional contributions made for the purpose of purchasing additional annuity, or upon the member's election, shall be refunded.

3. The head of each department shall deduct on each and every payroll of a contributor for each and every

payroll period, such per cent of the total amount of salary earnable by the contributor in such payroll period as shall be certified to such head of department by the retirement board as proper in accordance with the provisions of this chapter. In determining the amount earnable by a contributor in a payroll period such board shall consider the rate of salary payable to such contributor on the first day of each regular payroll period as continuing throughout such payroll period and it may omit salary deductions for any period less than a full payroll period in cases where the teacher was not a contributor on the first day of the regular payroll period. To facilitate the making of the deductions it may modify the deduction required of any contributor by such amount as shall not exceed one-tenth of one per cent of the salary upon the basis of which the deduction is to be made. Such head of each department shall certify to the comptroller on each and every payroll the amounts to be deducted. Each of such amounts so deducted shall be paid into such annuity savings fund, and shall be credited together with regular interest to an individual account of the contributor from whose salary the deduction was made.

4. (a) Notwithstanding any provisions in this chapter to the contrary, but subject to the provisions of paragraph (b) of this subdivision four, there shall not be deducted for annuity purposes from the compensation or salary of any contributor an amount greater than six per cent of such contributor's earnable compensation or salary if such contributor elects to pay a rate limited to six per cent. Any such contributor so electing shall be limited to a pension on retirement, exclusive of the pension-providing-for-increased-take-home-pay, if any, of not more than two per cent of his or her average salary multiplied by the number of his or her years of service rendered subsequent to the time he or she last became a member of the retirement system not in excess of ten for disability and not in excess of twelve and one-half for service retirement.

(b) The provisions of paragraph (a) of this subdivision shall not apply to a twenty-year pension plan contributor or an age-fifty-five-increased-benefits pension plan contributor.

5. The method of computation and the deductions prescribed in this section shall be appropriately modified in the case of a contributor to the extent that his or her rate is otherwise fixed pursuant to section 13-546 of this chapter.

6. Where a contributor's rate of contribution is reduced because the city contributes towards pensions-providing-for-increased-take-home-pay pursuant to section 13-546 of this chapter, such member may by written notice duly acknowledged and filed with the retirement board within one year after such reduction or within one year after he or she last became a member, whichever is later, elect to waive such reduction. One year or more after the filing thereof, a member may withdraw any such waiver by written notice duly acknowleged and filed with the retirement board. Where a member makes an election to waive such reduction, he or she shall contribute to the retirement system as otherwise provided in this chapter.

7. (a) Notwithstanding any other provision of this section or any other provision of this chapter or any other law to the contrary;

(1) the normal rate of contribution of a twenty-year pension plan contributor shall be as prescribed by the applicable provisions of section 13-547 of this chapter (relating to the twenty-year pension plan) and section 13-549 of this chapter (relating to deferred eligibility of certain retirees, withdrawn contributors and discontinued members for benefits under certain pension plans); and

(2) the normal rate of contribution of an age-fifty-five-increased-benefits pension plan contributor shall be as prescribed by the applicable provisions of section 13-548 of this chapter (relating to the age-fifty-five-increased-benefits pension plan) and such section 13-549.

(b) (1) A twenty-year pension plan contributor or an age-fifty-five-increased-benefits pension plan contributor whose normal rate of contribution is in excess of fifteen per centum shall not contribute at a rate in excess of fifteen per centum unless he or she so elects.

(2) In any case where any such contributor contributes pursuant to subparagraph one of this paragraph (b) at a

rate of fifteen per centum or more but less than his or her normal rate of contribution, neither the making of contributions at such lesser rate nor any election of such contributor to do so shall be construed as changing his or her normal rate of contribution.

(c) (1) Except as otherwise provided in subparagraph three of this paragraph (c) and in paragraph (d) of this subdivision seven, in any case where:

(i) a normal rate of contribution is established for a twenty-year pension plan contributor on a basis including twenty-year pension plan qualifying service preceding his or her contribution rate fixation date; and

(ii) by reason of any action taken after such rate is established, the amount of twenty-year pension plan qualifying service which precedes his or her contribution rate fixation date and with which he or she is credited pursuant to the applicable provisions of this chapter differs from the amount of such preceding service which was reflected in the establishment of such rate; no change shall be made in such rate, unless such contributor files with the retirement board a request for a recomputed normal rate of contribution.

(2) If such a request is filed, the normal rate of contribution of such contributor shall be recomputed to equal that which would have been originally established for him or her on the basis of the revised amount of such twenty-year pension plan qualifying service preceding his or her contribution rate fixation date and a new normal rate of contribution, as so recomputed, shall be established for such contributor as promptly as is practicable.

(3) If any such contributor does not file a request for recomputation of his or her normal rate of contribution pursuant to subparagraph one of this paragraph (c), his or her normal rate of contribution shall remain unchanged until the date of his or her retirement, at which time such rate shall be recomputed in the manner prescribed by the applicable provisions of subparagraph two of this paragraph (c).

(d) In any case where:

(i) a normal rate of contribution is established for a twenty-year pension plan contributor and such contributor, after such rate is established, acquires credit for service by transfer as described in subdivision forty-four of section 13-501 of this chapter (relating to definitions); his or her normal rate of contribution shall be recomputed to equal that which would have been established for him or her if when such rate was orginally established, the status and additional credited service resulting from such transfer and been reflected in such original fixation and a new normal rate contribution, as so recomputed, shall be established for such contributor as promptly as is practicable.

(e) In any case where a new normal rate of contribution is established for a contributor pursuant to subparagraph two of paragraph (c) of this subdivision seven or paragraph (d) of this subdivision, his or her contributions to the retirement system, on and after the date of establishment of such new rate, shall be in accordance with the applicable provisions of this chapter, on the basis of such new rate.

(f) In the event that a recomputed normal rate of contribution established for a contributor pursuant to paragraph (c) or paragraph (d) of this subdivision seven is lower than the rate originally established for such contributor, he or she shall not be entitled to a refund of any part of the contributions made by him or her on the basis of his or her prior normal rate of contribution, except to the extent that such contributor may be entitled to withdraw excess contributions pursuant to subdivision four of section 13-525 of this chapter.

(g) In any case where a recomputed normal rate of contribution is established for a contributor pursuant to subparagraph two or subparagraph three of paragraph (c) of this subdivision seven or paragraph (d) of this subdivision, the minimum accumulation of such contributor for the entire period of his or her first twenty years of twenty-year pension plan qualifying service shall be the amount computed as prescribed by the applicable provisions of paragraphs (b), (c) and (d) of subdivision twenty of section 13-501 of this chapter, on the basis of such recomputed rate.

8. a. As used in this subdivision eight, the following terms shall mean and include:

(i) "Employee at maximum salary level". An employee of the board of education who has attained the maximum salary step of the salary schedule currently applicable to him or her.

(ii) "Eligible teacher contributor". A contributor who is employed by the board of education as a teacher and who, as of any month with respect to which his or her entitlement to a city contribution under this section is to be determined, is an employee at maximum salary level.

(iii) "Eligible supervisor contributor". A contributor who holds a postion with the board of education of the city, the principle duty of which is supervision of subordinates and who, as of any month as to which his or her entitlement to a city contribution under this section is to be determined, is an employee at maximum salary level.

(iv) "Variable annuity program election". The currently effective election of an eligible teacher contributor or eligible supervisor contributor pursuant to subdivisions a and d of section 13-568 of this chapter.

b. Except as otherwise provided in paragraph f of this subdivision, beginning with the month of October, nineteen hundred seventy, and each month thereafter, the city shall contribute the applicable amount prescribed by subdivision c of this section to the account or accounts of each eligible teacher contributor and each eligible supervisor contributor in the annuity savings fund and/or the variable annuity savings fund, in the same proportion as the contributions of such contributor for such month are credited to such account or accounts pursuant to his or her variable annuity program election, if any.

c. In the case of an eligible teacher contributor, such monthly amount shall be one-twelfth of four hundred dollars. In the case of an eligible supervisor contributor, such monthly amount shall be one-twelfth of five hundred fifty dollars.

d. Such city contributions credited to the account or accounts of any such eligible teacher contributor or eligible supervisor contributor shall for all purposes of this chapter be treated as and deemed to be voluntary additional contributions by such contributor. Any such city contributions credited to the annuity savings account of any such contributor shall, notwithstanding any other provision of law to the contrary, be treated as and deemed to be a part of his or her accumulated deductions.

e. In any case where the status of an eligible teacher contributor or eligible supervisor contributor changes so that his or her salary is no longer prescribed by the maximum salary step of the salary schedule applicable to him or her, he or she shall nevertheless be entitled to be credited with the city contribution under this section for the month in which such change occurs.

f. Notwithstanding any other provision of this subdivision to the contrary, the contributions which the city would otherwise be required to make for each month of the nineteen hundred seventy-seven-nineteen hundred seventy-eight fiscal year of the city pursuant to the provisions of the preceding paragraphs of this subdivision shall not be made by the city. For each month of such fiscal year, there shall be paid from the contingent reserve fund into the account or accounts of each eligible teacher contributor and each eligible supervisor contributor in the annuity savings fund and/or variable annuity savings fund, an amount equal to the amount which would have been required by the preceding paragraphs of this subdivision to be paid by the city into such account or accounts for such month if this paragraph f had not been enacted. The amount or amounts so paid shall be credited in such account or accounts in the same manner and with the same force and effect as if such amount or amounts had been paid into such account or accounts pursuant to the provisions of the preceding paragraphs of this subdivision.

8-a. Annuity benefits for certain Tier III and Tier IV contributors. a. Notwithstanding any other provision of this title or any other law to the contrary, the following terms, as used in this subdivision eight-a, shall have the following meanings, unless a different meaning is plainly required by the context:

(i) "Annuitant". A qualified instructor contributor whose annuity has become payable under the provisions of paragraph j or paragraph k of this subdivision, or a qualified supervisor contributor whose annuity has become payable under the provisions of either such paragraph.

(ii) "Annuity accumulation". The total of the amounts of contributions made by the city on behalf of a qualified instructor contributor or qualified supervisor contributor pursuant to the applicable provisions of paragraphs c, d, e and f of this subdivision and standing to the credit of his or her account in the annuity savings accumulation fund established pursuant to paragraph b of this subdivision, together with interest on such contributions as prescribed by paragraph h of this subdivision.

(iii) "Board of education". The board of education of the city school district of the city.

(iv) "Contributor entitled to an annuity accumulation". A qualifed instructor contributor entitled to be credited with city contributions pursuant to the provisions of paragraph c and/or paragraph e of this subdivision or any qualified supervisor contributor entitled to be credited with city contributions pursuant to the provisions of paragraph d and/or paragraph f of this subdivision.

(v) "Instructional employee". An employee of the board of education who is a "present-teacher" as that term is defined in subdivision eight of section 13-501 of the code, other than any employee whose title was added by chapter nine hundred ninety-seven of the laws of nineteen hundred eighty-three to the provisions previously included in such subdivision eight.

(vi) "Instructional employee at maximum salary level". An instructional employee who has attained the maximum salary step of the salary schedule currently applicable to him or her.

(vii) "Qualified instructor contributor". A contributor who is an instructor and who also, as of any month with respect to which such contributor's entitlement to a city contribution under this subdivision is to be determined, is an instructional employee at maximum salary level.

(viii) "Qualified supervisor contributor". A contributor who is a supervisor and who, as of any month as to which such contributor's entitlement to a city contribution under this subdivision is to be determined, is an instructional employee at maximum salary level.

(ix) "Instructor". An instructional employee, other than any such employee who is a supervisor.

(x) "Supervisor". An instructional employee who holds a position, the principal duties of which consist of supervising employees of lower rank.

b. The retirement board shall promulgate such regulations as may be necessary and appropriate to establish a special fund, to be known as the "annuity savings accumulation fund", in which the retirement system shall maintain, in behalf of each contributor entitled to an annuity accumulation, a separate account to which shall be credited all amounts which the city is required by the applicable provisions of paragraphs c, d, e and f of this subdivision to contribute to such account for the benefit of such member.

c. With respect to each month occuring during the period beginning on July first, nineteen hundred seventy-six and ending on August thirty-first, nineteen hundred eighty-three, during which month a contributor was a qualified instructor contributor and also a Tier III member (as defined in subdivision fifty-four of section 13-501 of the code), the city shall pay into the account of such contributor in the annuity savings accumulation fund, a sum equal to one-twelfth of four hundred dollars.

d. With respect to each month occurring during such period mentioned in paragraph c of this subdivision, during which month a contributor was a qualified supervisor contributor and also a Tier III member, the city shall pay into the

account of such contributor in the annuity savings accumulation fund a sum equal to one-twelfth of five hundred fifty dollars.

e. With respect to each month occurring after August thirty-first, nineteen hundred eighty-three, during which month a contributor was or is a qualified instructor contributor and also a Tier IV member (as defined in subdivision fifty-five of section 13-501 of the code), the city shall pay into the account of such contributor in the annuity savings accumulation fund a sum equal to one-twelfth of four hundred dollars.

f. With respect to each month occurring after such August thirty-first, during which month a contributor was or is a qualified supervisor contributor and also a Tier IV member, the city shall pay into the account of such contributor in the annuity savings accumulation fund a sum equal to one-twelfth of five hundred fifty dollars.

g. In any case where the status of a qualified instructor contributor or qualified supervisor contributor changes so that the salary of such contributor is no longer prescribed by the maximum salary step of the salary schedule applicable to him or her, such contributor, if he or she was or is also a Tier III member or Tier IV member at the time when such change occurred or occurs, shall nevertheless be entitled to be credited with the city contribution under this subdivision for the month in which such change occurred or occurs.

h. Interest shall be credited on all sums paid into the account of each qualified instructor contributor and each qualified supervisor contributor pursuant to the provisions of paragraphs c, d, e and f of this subdivision at the rate of five per centum per annum, compounded annually.

i. In any case where the city, prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this subdivision, paid to the retirement system any sums equal in whole or in part to the amounts required by the provisions of paragraph c, d, e or f of this subdivision to be paid for any period by the city into the account of a contributor entitled to an annuity accumulation, such sum so previously paid by the city, together with interest thereon computed at the rate and in the manner prescribed by paragraph h of this subdivision, shall be credited for the same period to the account of such contributor in the annuity savings accumulation fund and such previous payments by the city, to the extent that they are sufficient therefor, shall be deemed to satisfy in full or pro tanto, as the case may be, the obligation of the city for such period to make the payments prescribed by such paragraph c, d, e or f.

j. Any qualified instructor contributor or qualified supervisor contributor:

(i) who is required by the provisions of this subdivision to be credited with an annuity accumulation; and

(ii) who, prior to the date of enactment of this subdivision, retired while he or she was a Tier III member or a Tier IV member, or prior to such date, became a Tier III member entitled to a vested benefit (as defined in subdivision fifty-six of section 13-501 of the code) or a Tier IV member entitled to a vested benefit (as defined in subdivision fifty-seven of section 13-501 of the code); shall be entitled to receive, in addition to any retirement allowance which such contributor is entitled to receive under the provisions of article fourteen or article fifteen of the retirement and social security law, an annuity which is the actuarial equivalent, as of the date on which such retirement allowance begins, of such contributor's annuity accumulation, as such annuity accumulation is required by this subdivision to be on such date. Such annuity shall begin on the date of commencement of such retirement allowance.

k. Any qualified instructor contributor or qualified supervisor contributor:

(i) who is required by the provisions of this subdivision to be credited with an annuity accumulation; and

(ii) who, on or after the date of enactment of this section, retires as a Tier IV member or on or after such date, becomes a Tier IV member entitled to a vested benefit; shall be entitled to receive, in addition to any retirement allowance which such contributor is entitled to receive under the provisions of article fifteen of the retirement and social security law, or if applicable, article fourteen of such law, an annuity which is the actuarial equivalent, as of the date on

which such retirement allowance begins, of such contributor's annuity accumulation, as such annuity accumulation is required by this subdivision to be on that date. Such annuity shall begin on the date of commencement of such retirement allowance.

1. In the case of any annuitant who retired during the period beginning on August first, nineteen hundred eighty-three and ending on the date next preceding the date of enactment of this subdivision, and in the case of any annuitant who, during such period, terminated service under such circumstances that he or she became a Tier III member entitled to a vested benefit or a Tier IV member entitled to a vested benefit, the actuarial interest assumption which shall be used in determining the annuity of such annuitant shall be interest at the rate of seven per centum per annum, compounded annually, and the actuarial mortality assumption used in determining such annuity shall be the gender-neutral mortality tables for benefit computation purposes, as adopted by the retirement board, which took effect on August nineteenth, nineteen hundred eighty-five, with applicability prior to such date as provided for by the resolutions of such board adopting such tables.

m. In the case of any annuitant who, on or after the date of enactment of this subdivision, retires or terminates service under such circumstances that he or she becomes a Tier IV member entitled to a vested benefit, the actuarial interest assumption and actuarial mortality assumption used in determining the annuity of such annuitant shall be the applicable benefit computation interest rate and mortality tables for benefit computation purposes in effect for the retirement system on the effective date of such annuitant's retirement or on the date of such annuitant's termination of service so as to become a Tier IV member entitled to a vested benefit, as the case may be.

n. For the purpose of determining optional benefits and the amount of any supplemental retirement allowance, any retirement allowance payable pursuant to article fourteen or article fifteen of the retirement and social security law to an annuitant shall be deemed to consist of the total amount obtained by adding the annuity to which such annuitant is entitled under this subdivision to such retirement allowance payable pursuant to such article fourteen or article fifteen.

o. (i) If, prior to the date of enactment of this subdivision, or on or after such date of enactment, an ordinary death benefit became or becomes payable pursuant to article fourteen or article fifteen of the retirement and social security law by reason of the death of a contributor entitled to an annuity accumulation, the retirement system, in addition to paying such ordinary death benefit, shall pay the annuity accumulation of such contributor to the beneficiary entitled to receive such ordinary death benefit; provided, however, that the annuity accumulation shall be paid to the annuitant's estate, if the estate is entitled to receive such ordinary death benefit under the applicable provisions of such article fourteen or article fifteen.

(ii) In any case where a death referred to in subparagraph (i) of this paragraph occurs on or after the date of enactment of this subdivision, the contributor entitled to such annuity accumulation or the beneficiary entitled to receive such ordinary death benefit may elect, by a duly executed and acknowledged designation filed with the retirement system, that such annuity accumulation shall be paid in the form of an annuity. Such designation shall be filed prior to or within sixty days after the death of the contributor entitled to such annuity accumulation. Such annuity shall be the actuarial equivalent, as of the date of such member's death, of such annuity accumulation. The actuarial assumptions used in determining such annuity shall be the same as would have been required to be used, pursuant to the applicable provisions of paragraph m of this subdivision, to determine an annuity for such contributor, if he or she had retired on the date of his or her death.

p. If, prior to the date of enactment of this subdivision or on or after such date of enactment, the employment of a contributor entitled to an annuity accumulation terminated or terminates without entitlement on the part of the such contributor to an immediate or deferred retirement allowance or if a contributor entitled to an annuity accumulation transferred or transfers to another retirement system, the amount of the annuity accumulation of such contributor shall be paid to him or her, upon application therefor.

q. Notwithstanding any other provision of law to the contrary, a contributor entitled to an annuity accumulation

shall not be permitted to borrow any portion of such annuity accumulation. The variable annuity program of the retirement system shall not apply to any annuity accumulation or the contributions upon which it is based.

r. The provisions of subdivision eight of this section shall be inapplicable to any contributor entitled to an annuity accumulation and to the beneficiary or estate of any such contributor; provided, however, that the provisions of this paragraph shall not be construed as denying benefits under such subdivision eight to any beneficiary of a contributor who qualified for benefits under such subdivision eight, where such beneficiary under such subdivision eight became or becomes a Tier III or Tier IV member and himself or herself qualified or qualifies for benefits under this subdivision.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. 8-a added chap 773/1988 § 1. [See note.]

**DERIVATION**

Formerly § B20-20.0 added chap 929/1937 § 1

Sub 4 amended chap 510/1960 § 7

Subs 5, 6 added chap 510/1960 § 8

Sub 2 amended chap 883/1963 § 1

Sub 2 amended chap 575/1967 § 8

Sub 1 amended chap 274/1970 § 11

Sub 2 par a amended chap 274/1970 § 12

Sub 4 amended chap 274/1970 § 13

Sub 7 added chap 274/1970 § 14

Open par amended chap 973/1970 § 1

Sub 7 added chap 973/1970 § 2

Sub 7 par b amended chap 975/1977 § 1

Sub 7 par f added chap 975/1977 § 2

**NOTE**

Provisions of chap 773/1988

§ 2. Section four hundred thirty of the retirement and social security law shall not apply to any benefit or benefit improvement provided for by this act.

§ 3. This act shall take effect immediately and shall be deemed to have been in effect since July first, nineteen hundred seventy-six.

FISCAL NOTE.-This bill would clarify the entitlement of New York City Board of Education teachers and supervisors who have qualified for compensation at the maximum salary step and who are also Tier IV members of the New York City Teachers' Retirement System and/or former Tier III members of that Retirement System, to a City-financed retirement benefit similar to the benefit to which Tier I and Tier II teachers and supervisors at the maximum salary step are entitled under subdivision 8 of section 13-521 of the administrative code of the city of New York. It is estimated that, because of factors such as employer social security contributions, the employer cost of such payments would be more than the employer pension cost which would be entailed in providing the additional retirement benefits under the bill for these members. Consequently, the enactment of this bill would not create any additional employer cost. This estimate is intended for use only during the 1987 Legislative Session. It is Fiscal Note No. 87-10, dated January 30, 1987, prepared by the Acting Chief Attorney for the New York City Teachers' Retirement System.

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

*NYC Administrative Code 13-521.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-521.1 Pick up of member contributions of Tier I and Tier II members by employer.

a. Notwithstanding any other provision of law to the contrary, on and after the starting date for pick up, the employer responsible for pick up shall pick up and pay into the annuity savings fund (subject to the provisions of paragraph four of subdivision d of this section) the Tier I or Tier II member contributions eligible for pick up by the employer which each Tier I member (as defined in subdivision fifty-two of section 13-501 of this chapter) or Tier II member (as defined in subdivision fifty-three of such section 13-501) would otherwise be required to make on and after such starting date, including (1) any contributions required to be made for the purchase of credit for previous service or military service by its employees pursuant to an irrevocable payroll deduction agreement under subdivision b-1 of section four hundred forty-six of the retirement and social security law on and after the effective date of such subdivision, and (2) any contributions required to be made for the purchase of credit for prior service or military service by its employees pursuant to an irrevocable payroll deduction agreement under subdivision g of section 13-505 of this chapter on and after the effective date of such subdivision.

a-1. Notwithstanding any other provision of law to the contrary, the employer responsible for pick up shall, in the case of a member who is a participant in the age fifty-five retirement program (as defined in paragraph ten of subdivision a of section four hundred forty-five-i of the retirement and social security law), pick up and pay to the retirement system all additional member contributions which otherwise would be required to be deducted from such member's compensation pursuant to paragraph three of subdivision d of section four hundred forty-five-i of the retirement and social security law, and shall effect such pick up on each and every payroll of such participant for each and every payroll period with respect to which such paragraph three of subdivision d of section four hundred forty-five-i of the retirement and social security law otherwise would require such deductions.

b. An amount equal to the amount of such picked up contributions shall be deducted by the employer responsible for pick up from the salary of such member (as such salary would be in the absence of a pickup program applicable to him or her hereunder) and shall not be paid to such member. Such deduction shall be effected by means of subtraction from such member's current salary (as so defined) or offset against future pay increases, or a combination of such methods.

c. (1) The member contributions and additional member contributions picked up pursuant to this section for any Tier I member or Tier II member shall be paid by the employer responsible for pick up in lieu of an equal amount of the member contributions and additional member contributions otherwise required to be paid by such member under the provisions of this chapter or the retirement and social security law, and shall be deemed to be and treated as employer contributions pursuant to subsection h of section four hundred fourteen of the United States internal revenue code, as amended, for the purposes, under federal law, for which such subsection h so classified such picked up contributions. Subject to the provisions of subdivision b of this section, for all other purposes, including but not limited to:

(i) the obligation of such member to pay New York state and New York city income and/or wages or earnings taxes and the withholding of such taxes; and

(ii) the determination of the amount of such member's Tier I or Tier II member contributions eligible for pick up by the employer or additional member contributions required to be picked up pursuant to subdivision a-one of this section; and

(iii) the determination of the amount of any retirement allowance or other retirement system benefit payable to or on account of such member or any other retirement system right, benefit or privilege of such member;

the amount of the member contributions and additional member contributions picked up pursuant to this section shall be deemed to be a part of the employee salary of such member and such member's gross salary (as it would be in the absence of a pick up program applicable to him or her hereunder) shall not be deemed to be changed by such member's participation in such program.

(2) Nothing contained in paragraph one of this subdivision c shall be construed as superseding the provisions of section four hundred thirty-one of the retirement and social security law or any similar provision of law which limits the salary base for computing retirement benefits payable by a public retirement system.

d. (1) For the purpose of determining the retirement system rights, benefits and privileges of any Tier I member or Tier II member whose Tier I or Tier II member contributions eligible for pick up by the employer are picked up pursuant to this section (including the procurement of loans by any such member), such picked up member contributions, subject to the provisions of subparagraph five of this paragraph, shall be deemed to be and treated (i) as member contributions made by such member pursuant to law and (ii) as a part of such member's accumulated deductions.

(2) For the purpose of determining the retirement system rights, benefits and privileges of any member who is a participant in the age fifty-five retirement program (as defined in paragraph ten of subdivision a of section four hundred forty-five-i of the retirement and social security law), the additional member contributions of such participant picked up pursuant to subdivision a-one of this section shall be deemed to be and treated as a part of such member's additional member contributions under subdivision d of section four hundred forty-five-i of the retirement and social security law.

(3) Interest on contributions picked up for any Tier I or Tier II member pursuant to this section (other than additional member contributions picked up pursuant to subdivision a-one of this section) shall accrue in favor of the member and be payable to the retirement system at the same rate, for the same time periods, in the same manner and under the same circumstances as interest would be required to accrue in favor of the member and be payable to the retirement system on such contributions if they were made by such member in the absence of a pick up program applicable to such member under the provisions of this section.

(4) Where member contributions of any Tier I member or Tier II member are picked up and paid into the annuity savings fund pursuant to this section, such picked up contributions shall be credited to a separate account within the individual account of such member in such fund, so that a separate record of the amount of such picked up contributions is maintained.

(5) For the purposes of determining the retirement system rights, benefits and privileges of any Tier I member or Tier II member who is a participant in a variable annuity program of the retirement system, his or her picked up member contributions shall, to the extent and in the proportions appropriate pursuant to his or her election to participate in such program, be deemed to be and treated as a part of his or her accumulated deductions and/or credits in his or her account in the variable annuity savings fund. A separate record shall be kept showing any such variable annuity savings fund account credits attributable to any such picked up contributions.

(6) Nothing contained in this subdivision shall be construed as granting member contributions or additional member contributions picked up under this section any status, under federal law, other than as employer contributions, pursuant to subsection h of section four hundred fourteen of the United States internal revenue code, for the federal purposes for which such subsection h so classifies such picked up contributions.

e. No contributor whose member contributions or additional member contributions are required to be picked up pursuant to this section shall have any right to elect that such pick up, with accompanying deduction from the compensation of such contributor as prescribed by subdivision b of this section, shall not be effectuated.

**HISTORICAL NOTE**

Section added chap 681/1992 § 5 eff. July 31, 1992.

Subd. a amended chap 627/2007 § 16, approved Aug. 28, 2007 eff. upon

compliance with chap 627/2007 § 22. [See § 13-101 Note 1]

Subd. a amended chap 691/2004 § 5, approved Nov. 3, 2004 and effective

as per § 13-505 Note 1.

Subd. a-1 added chap 19/2008 § 7, eff. Feb. 27, 2008. [See Note 1]

Subd. c par (1) amended chap 19/2008 § 8, eff. Feb. 27, 2008. [See

Note 1]

Subd. d amended chap 19/2008 § 9, eff. Feb. 27, 2008. [See Note 1]

Subd. e amended chap 19/2008 § 9, eff. Feb. 27, 2008. [See Note 1]

**NOTE**

1. Provisions of chap 19/2008:

. . . . . .

§ 14. Nothing contained in sections six, seven, eight, nine, ten, eleven, twelve and thirteen of this act shall be construed to create any contractual right with respect to members to whom such section applies. The provisions of such sections are intended to afford members the advantages of certain benefits contained in the internal revenue code, and the effectiveness and existence of such sections and benefits they confer are completely contingent thereon.

. . . . . .

(c) the provisions of sections six, seven, eight, nine, ten, eleven, twelve and thirteen of this act shall remain in force and effect only so long as, pursuant to federal law, contributions picked up under such sections are not includible as gross income of a member for federal income tax purposes until distributed or made available to the member; (d) the amendments to section 13-521.1 of the administrative code of the city of New York made by sections seven, eight and nine of this act and the amendments made to subdivision 19 of section 2575 of the education law made by sections ten, eleven, twelve and thirteen of this act shall not affect the expiration of such provisions as provided for in chapter 681 of the laws of 1992, as amended; and

. . . . . .

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

*NYC Administrative Code 13-522*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-522 Contributions of members and their use; annuity reserve fund.

Upon the retirement of a contributor, his or her accumulated deductions shall be transferred from the annuity savings fund to a fund to be known as the annuity reserve fund. His or her annuity shall be paid out of such annuity reserve fund. Should such a beneficiary be restored to active service his or her annuity reserve shall thereupon be transferred from the annuity reserve fund to the annuity savings fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-21.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-523*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-523 Transferred contributor.

Any contributor who resigns his or her position to accept and who, within sixty days thereafter, does accept another position in the city-service shall continue to be a contributor while in such city-service and shall be known as a transferred-contributor provided he or she executes and files with the retirement board a statement in writing that he or she elects to leave with the annuity savings fund his or her accumulated deductions and to continue to contribute to such fund at a rate of salary deduction not less than the rate of deduction theretofore required from his or her salary, and further provided that he or she shall waive and renounce any present or prospective benefit from any other retirement system or association supported wholly or in part by the city. Where an election is made pursuant to the provisions of this section, the salary deductions required by such provisions shall be appropriately modified, if a rate of deduction is otherwise fixed, pursuant to section 13-546 of this chapter, for the transferred-contributor making such election.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-22.0 added chap 929/1937 § 1

Amended chap 510/1960 § 9

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-524*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-524 Other provisions relative to contributions of members.

a. Subject to the provisions of subdivision b of this section, a contributor shall not be required to continue to contribute to the annuity savings fund after he or she shall have become eligible for service retirement. All contributions made thereafter to such fund shall be voluntary. However, this subdivision a shall not apply to a contributor who elects to contribute at a rate not in excess of fifteen per centum in accordance with the provisions of subdivision two of section 13-521 and paragraph d of subdivision one of section 13-554, as amended; nor shall this subdivision apply to a member who became a contributor to the teachers' retirement system subsequent to April thirtieth, nineteen hundred sixty-three.

b. The provisions of subdivision a of this section shall be inapplicable to a twenty-year pension plan contributor and to an age-fifty-five-increased-benefits pension plan contributor.

c. A twenty-year pension plan contributor shall not be required to contribute to the retirement system after the later of the following dates:

(1) the date on which he or she becomes eligible to retire for service; or

(2) the date on which his or her accumulated deductions equal his or her minimum accumulation.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-23.0 added chap 929/1937 § 1

Amended chap 883/1963 § 2

Amended chap 274/1970 § 15



Administrative Code of the City of New York



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

*NYC Administrative Code 13-525*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-525 Change of rate of contribution; withdrawal of excess.

Subject to such terms and conditions and to such rules and regulations as the retirement board may adopt, any contributor from time to time may:

1. Increase or decrease his or her rate of contribution to the annuity savings fund, but in no event shall the contribution of a present-teacher be less than the minimum contribution, nor shall the contribution of a new-entrant, other than a twenty-year pension plan contributor or an age-fifty-five-increased-benefits pension plan contributor, be at a rate less than the per cent rate provided for such new-entrant in section 13-521 (2) of this chapter, (relating to contributions of newentrants) nor, in the case of a twenty-year pension plan contributor, shall his or her effective contribution rate as a twenty-year pension plan contributor (as such rate is defined in subdivision forty-five of section 13-501 of this chapter) be less than that established for such contributor as provided in subdivision seven of such section 13-521, nor in the case of an age-fifty-five-increased-benefits pension plan contributor, shall his or her effective contribution rate as an age-fifty-five-increased-benefits pension plan contributor (as such rate is defined in subdivision forty-six of such section 13-501) be less than that established for such contributor as provided in subdivision seven of such section 13-521; provided that nothing contained in this subdivision shall deprive any contributor of a reduction in contributions to which such contributor may be entitled under the provisions of section 13-546 of this chapter;

2. If a present-teacher who is not a twenty-year pension plan contributor or an age-fifty-five-increased-benefits pension plan contributor, withdraw from his or her individual account in the annuity savings fund the amount in excess of his or her minimum accumulation;

3. If he or she is not a twenty-year pension plan contributor or an age-fifty-five-increased benefits pension plan

contributor, withdraw, after having become eligible for service retirement, such part of his or her accumulated deductions as shall be in excess of the amount necessary to procure for him or her an annuity which, if added to his or her prospective pension and his or her pension-providing-for-increased-take-home-pay, if any, will yield a retirement allowance of fifty per cent of his or her average salary.

4. If he or she is a twenty-year pension plan contributor, withdraw, after becoming eligible for service retirement, such part of his or her accumulated deductions as shall be in excess of his or her minimum accumulation; provided, however, that any such contributor who makes an original or any subsequent withdrawal of any such excess or any part thereof shall not be entitled to make a further withdrawal of any such excess or part thereof during a period of one year after the last such withdrawal except that a contributor may make a withdrawal at the time of retirement regardless of any previous withdrawals.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-24.0 added chap 929/1937 § 1

Amended chap 510/1960 § 10

Amended chap 274/1970 § 16

Sub 4 amended chap 282/1972 § 1

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

*NYC Administrative Code 13-526*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-526 Contributions of the city and their use; expense fund.

a. The expense fund shall consist of such amounts as shall be appropriated, if any, by the employer on estimates submitted by the retirement board, to defray the expenses of the administration of this chapter, and such funds as may be secured pursuant to the provisions of subdivision b of section 13-518 of the code, subdivision k of section 13-570 of the code and subdivision b of section 13-582 of the code exclusive of the payment of pensions, of pensions-providing-for-increased-take-home-pay, of annuities, of retirement allowances, and of the other benefits provided for in this chapter.

b. The executive director shall develop procedures to ensure that the amounts expended during a fiscal year by the retirement system do not exceed the amounts paid into the expense fund pursuant to this section. Appropriate reporting will be made to the mayor's office of management and budget so as to provide the city of New York with the ability to conduct an independent analysis. Additionally, expenditures of the retirement system from the expense fund shall be subject to audit by the comptroller, who may recommend procedures designed to improve the accounting and expenditure controls.

**HISTORICAL NOTE**

Section amended chap 593/1996 § 4, eff. Aug. 8, 1996 and budgets

referred to shall be deemed to be established on Apr. 1, 1996

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-25.0 added chap 929/1937 § 1

Amended chap 510/1960 § 11



Administrative Code of the City of New York



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

*NYC Administrative Code 13-527*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-527 Contributions of the city and their use; contingent reserve fund.

a. (1) Subject to the provisions of sections 13-528 and 13-529 of this chapter and subdivision i of this section, the city shall contribute to the contingent reserve fund:

(a) annually an amount computed pursuant to subdivision b of this section, to be known as the "normal contribution"; and

(b) in equal annual installments during the period beginning with fiscal year nineteen hundred seventy-seven-nineteen hundred seventy-eight and ending on the last day of fiscal year nineteen hundred seventy-nine-nineteen hundred eighty, an additional amount computed pursuant to subdivision c of this section, to be known as the "original unfunded accrued liability contribution"; and

(c) in each city fiscal year during the period beginning with fiscal year nineteen hundred eighty-nineteen hundred eighty-one, and ending on the last day of fiscal year two thousand fourteen-two thousand fifteen, the annual installment, applicable to such fiscal year, of an additional amount computed pursuant to subdivision d of this section, to be known as the "revised unfunded accrued liability contribution"; and

(d) in each city fiscal year during the period beginning with fiscal year nineteen hundred eighty-one-nineteen hundred eighty-two, and ending on the last day of fiscal year two thousand twenty-two thousand twenty-one, the annual installment, applicable to such fiscal year, of an additional amount computed pursuant to subdivision f of this section, to be known as the "balance sheet liability contribution"; and

(e) in fiscal year nineteen hundred eighty-nineteen hundred eighty-one, the amount of one year's interest, at the rate of seven and one-half per centum per annum, on the amount of the balance sheet liability as of June thirtieth, nineteen hundred eighty, as determined pursuant to the provisions of subdivision f of this section; and

(f) in each city fiscal year, beginning with fiscal year nineteen hundred eighty-nineteen hundred eighty-one and ending on the last day of fiscal year nineteen hundred ninety-four-nineteen hundred ninety-five, the amount required to fulfill the city's obligation, if any, which accrued in such fiscal year, to make contributions on account of increased-take-home-pay; and

(g) in each fiscal year, beginning with fiscal year nineteen hundred eighty-nineteen hundred eighty-one and ending on the last day of fiscal year nineteen hundred ninety-four-nineteen hundred ninety-five, the amount required to fulfill the city's obligation, which accrued in such fiscal year under the provisions of subdivision twenty of section two hundred forty-three of the military law, to pay in behalf of contributors qualifying for such benefit, member contributions with respect to certain periods of the military service of such contributors.

(2) (a) Subject to the provisions of subparagraph (d) of this paragraph two, if the nineteen hundred eighty unfunded accrued liability adjustment determined pursuant to subdivision e of this section is a credit, the total of the amounts required to be contributed to the contingent reserve fund by the city in each city fiscal year, commencing with the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and ending with the two thousand nine-two thousand ten fiscal year, pursuant to subparagraphs (a), (c), (d), (e), (f) and (g) of paragraph one of this subdivision a and otherwise pursuant to law shall be reduced by the amount of one annual installment of such nineteen hundred eighty unfunded accrued liability adjustment.

(b) Subject to the provisions of sections 13-528 and 13-529 of this chapter, if the nineteen hundred eighty unfunded accrued liability adjustment determined pursuant to such subdivision e is a charge, the city shall contribute in each city fiscal year, commencing with the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and ending with the two thousand nine-two thousand ten fiscal year, in addition to the amounts required to be contributed under the provisions of subparagraph one of this subdivision a, one annual installment of such nineteen hundred eighty unfunded accrued liability adjustment.

(c) Subject to the provisions of subparagraph (d) of this paragraph two, the total of the amounts required to be contributed to the contingent reserve fund in each city fiscal year commencing with the nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year and ending with the two thousand eleven-two thousand twelve fiscal year pursuant to the applicable provisions of subparagraphs (a), (c), (d), (f) and (g) of paragraph one of this subdivision a and the applicable provisions of subparagraphs (a) and (b) of this paragraph two and otherwise pursuant to law shall be reduced by the amount of one annual installment of the nineteen hundred eighty-two unfunded accrued liability adjustment determined pursuant to paragraph nine of subdivision e of this section.

(c-1) Subject to the provisions of subparagraph (d) of this paragraph two, the total of the amounts required to be contributed to the contingent reserve fund in each city fiscal year commencing with the nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year and ending with the two thousand fourteen-two thousand fifteen fiscal year pursuant to the applicable provisions of subparagraphs (a), (c), (d), (f) and (g) of paragraph one of this subdivision a and the applicable provisions of subparagraphs (a) and (b) of this paragraph two and otherwise pursuant to law shall be reduced by the amount of one annual installment of the nineteen hundred eighty-five unfunded accrued liability adjustment determined pursuant to paragraph ten of subdivision e of this section.

(c-2) Subject to the provisions of subparagraph (d) of this paragraph two, the total of the amounts required to be contributed to the contingent reserve fund in each city fiscal year commencing with the nineteen hundred eighty-six-nineteen hundred eighty-seven fiscal year and ending with the two thousand fifteen-two thousand sixteen fiscal year pursuant to the applicable provisions of subparagraphs (a), (c), (d), (f) and (g) of paragraph one of this subdivision a and the applicable provisions of subparagraphs (a) and (b) of this paragraph two and otherwise pursuant to

law shall be reduced by the amount of one annual installment of the nineteen hundred eighty-six unfunded accrued liability adjustment determined pursuant to paragraph eleven of subdivision e of this section.

(d) The installments of the nineteen hundred eighty-two unfunded accrued liability adjustment and the nineteen hundred eighty-five unfunded accrued liability adjustment (determined pursuant to paragraph ten of subdivision e of this section) and the nineteen hundred eighty-six unfunded accrued liability adjustment (determined pursuant to paragraph eleven of such subdivision e), and, if the nineteen hundred eighty unfunded accrued liability adjustment is a credit, the installments of such credit shall be allocated among the city and other obligors required to pay public employer contributions on account of members of the retirement system, such allocation to be made in accordance with the shares of such installments attributable to them pursuant to the provisions of law prescribing their obligations to make or assume responsibility for employer contributions.

(e) For the purpose of effectuating the nineteen hundred eighty-eight unfunded accrued liability adjustment provided for in section 13-638.1 of the code, contributions to the contingent reserve fund on account of charges shall be made by responsible obligors (as defined in paragraph six of subdivision a of such section) or credits shall be allowed to such obligors against contributions otherwise payable by them, as the case may be, to the extent and in the manner provided for in such section. The annual determination of the normal contribution for fiscal years occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-eight shall appropriately take account of the nineteen hundred eighty-eight unfunded accrued liability adjustment in the manner provided for in such section 13-638.1 and the provisions of subdivision b of this section shall be deemed to be conformably modified for such purpose.

(3) (i) Any amount required by the provisions of subparagraphs (c), (d), (e), (f) and (g) of paragraph one of this subdivision a and section 13-704 of this title to be contributed to the contingent reserve fund in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year or any subsequent fiscal year shall be payable with interest on such amount at a rate per centum per annum equal to the rate per centum per annum required to be used for the purpose of any actuarial valuation, determination or appraisal made to determine the amount of the normal contribution payable in such fiscal year.

(ii) Any amount required to be contributed to the contingent reserve fund in any fiscal year of the city preceding the nineteen hundred eighty-nineteen hundred eighty-one fiscal year shall be deemed to have been required to be paid with interest on such amount at a rate per centum per annum equal to the rate per centum per annum required to be used for the purpose of any actuarial valuation, determination or appraisal made to determine the amount of the normal contribution payable to the contingent reserve fund in such fiscal year.

(iii) It is hereby declared that the provisions of subparagraphs (i) and (ii) of this paragraph three, in so far as they relate to provisions of this chapter or other laws requiring payment of employer contributions to the retirement system prior to July thirty-first, nineteen hundred eighty-one, express the intent of such provisions of this chapter or other laws requiring such payment.

b. Normal contribution.

(1) Upon the basis of the latest mortality and other tables herein authorized and regular interest, the actuary shall determine as of June thirtieth, nineteen hundred eighty and as of each succeeding June thirtieth, the amount of the total liability for all benefits provided in this chapter, in articles eleven and fourteen of the retirement and social security law and in any other law prescribing benefits payable by the retirement system on account of all contributors and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions, if any, and the liability for benefits attributable to the annuity savings fund and to the variable annuity savings fund, provided, however, that in determining such total liability as of June thirtieth, nineteen hundred ninety-five and as of each succeeding June thirtieth, the actuary shall include (a) the liability on account of future reserve-for-increased-take-home-pay contributions, if any, (b) the liability on account of future city obligations under the provisions of subdivision twenty of

section two hundred forty-three of the military law, to pay in behalf of contributors qualifying for such benefit, member contributions with respect to certain periods of the military service of such contributors, and (c) the liability for benefits attributable to the annuity savings fund and to the variable annuity savings fund, and provided further that in determining such total liability as of June thirtieth, nineteen hundred ninety-nine and as of each succeeding June thirtieth, the actuary shall include any other liability, as determined by the actuary, for benefits attributable to the variable annuity programs, and provided further that in determining such total liability as of June thirtieth, two thousand and as of each succeeding June thirtieth, the actuary shall include the amount, if any, as estimated by the actuary, of the total liability of the retirement system on account of payments which the retirement system may be required to make to any other fund without a corresponding offset in the liabilities of the retirement system.

(1-a) Notwithstanding any other provision of law to the contrary, for the purpose of calculating the amount of the normal contribution due from the city to the contingent reserve fund pursuant to paragraph four of this subdivision in fiscal year two thousand five-two thousand six, and in each fiscal year thereafter, both the total liability of the retirement system, as calculated by the actuary in accordance with paragraph one of this subdivision, and the normal rate of contribution, as calculated by the actuary in accordance with paragraphs two and three of this subdivision, shall be determined as of June thirtieth of the second fiscal year preceding the fiscal year in which the normal contribution is payable, provided, however, that (a) the actuary shall use for such calculations the mortality and other tables that are applicable at the time he or she performs such calculations; (b) the total funds on hand, as determined by the actuary pursuant to item (v) of subparagraph (a) of paragraph two of this subdivision, shall be adjusted by adding to such amount the present value of all employer contributions required to be paid into the contingent reserve fund in the fiscal year next preceding the fiscal year in which the normal contribution is payable, as determined by the actuary; and (c) the present value of the prospective future salaries of all members, as computed by the actuary for the purposes of subparagraph (c) of paragraph two of this subdivision, shall be reduced by the present value of the salaries expected to be paid to all members in the fiscal year next preceding the fiscal year in which the normal contribution is payable, as determined by the actuary.

(2) The normal rate of contribution shall be the rate per centum obtained:

(a) by adding together:

(i) (1) the amount obtained by adding together the present value of all required future revised unfunded accrued liability contributions and the present value of all required future payments of the nineteen hundred eighty unfunded accrued liability adjustment, determined pursuant to subdivision e of this section, if such adjustment is a charge; or

(2) the remainder obtained by subtracting from the present value of all required future revised unfunded accrued liability contributions, the present value of all future installments of the nineteen hundred eighty unfunded accrued liability adjustment required to be credited, if such nineteen hundred eighty adjustment is a credit; and

(3) minus (whether (1) or (2) of this item (i) is applicable) the sum of the present value of all future installments of the nineteen hundred eighty-two unfunded accrued liability adjustment and the present value of all future installments of the nineteen hundred eighty-five unfunded accrued liability adjustment and (with respect to calculation of the normal contribution for fiscal years succeeding June thirtieth, nineteen hundred eighty-six) the present value of all future installments of the nineteen hundred eighty-six unfunded accrued liability adjustment; and

(ii) the present value of all required future balance sheet liability contributions, plus, in the case of the determination of the normal contribution payable in fiscal year nineteen hundred eighty-nineteen hundred eighty-one, the present value, as of June thirtieth, nineteen hundred eighty, of the payment of interest on the balance sheet liability as required by subparagraph (e) of paragraph one of subdivision a of this section; and

(iii) the present value of all required future payments, pursuant to section 13-704 of this title, of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(iv) in the case of the determination of the normal contribution payable in each fiscal year commencing with fiscal year nineteen hundred ninety-five-nineteen hundred ninety-six, the present value of future member contributions of all contributors; and

(v) the total funds on hand, excluding the amount in pension reserve fund number two, but including the amount of any unpaid moneys appropriated pursuant to section 13-533 of this chapter and, in the case of the determination of the normal contribution payable in each fiscal year commencing with fiscal year nineteen hundred ninety-five-nineteen hundred ninety-six, including the amount in the annuity savings fund and in the variable annuity savings fund; and

(vi) the present value of all other future installments of accrued liability contributions to the retirement system required by the applicable provisions of section 13-638.2 of this title which are not covered by the preceding items of this subparagraph (a); and

(b) by subtracting from the amount of the total liability determined pursuant to paragraph one of this subdivision b the sum resulting from the addition prescribed by subparagraph (a) of this paragraph two; and

(c) by dividing the remainder resulting from the applicable subtraction prescribed by subparagraph (b) of this paragraph two by one per centum of the present value of the prospective future salaries of all contributors, as computed by the actuary on the basis of the latest mortality and service tables adopted pursuant to section 13-514 of this chapter, and on the basis of regular interest.

(3) The normal rate of contribution determined by the actuary shall not be less than zero, shall be certified by the actuary after each valuation and shall continue in force until the next succeeding valuation and certification.

(4) (a) The amount of the normal contribution due from the city to the contingent reserve fund in each city fiscal year, commencing with the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and ending with the two thousand four-two thousand five fiscal year, shall be the amount obtained by multiplying the normal rate of contribution, as determined by the actuary as of June thirtieth next preceding such fiscal year, by the aggregate annual salaries of the members on such June thirtieth next preceding such fiscal year in which such amount is due and shall be payable in such fiscal year next following such June thirtieth, together with such regular interest thereon which may be due, if any, as calculated by the actuary.

(b) The amount of the normal contribution due from the city to the contingent reserve fund in each city fiscal year, commencing with the two thousand five-two thousand six fiscal year, shall be the amount obtained by multiplying the normal rate of contribution, as determined by the actuary as of the second June thirtieth preceding the fiscal year in which the normal contribution is payable, in accordance with the provisions of paragraphs one-a, two and three of this subdivision, by the aggregate amount of the salaries expected to be paid to the members during the fiscal year in which the normal contribution is payable, as determined by the actuary, and such normal contribution shall be payable in the second fiscal year following the June thirtieth as of which the normal rate of contribution is determined, together with such regular interest thereon which may be due, if any, as calculated by the actuary.

(c) In the case of the normal contribution payable in the nineteen hundred eighty-nineteen hundred eighty-one fiscal year and in any subsequent fiscal year, the term "regular interest" as used in this paragraph four shall mean regular interest as defined by the applicable provisions of subparagraph (ii) or subparagraph (iii) of paragraph (c) or paragraph (d) of subdivision twenty-two of section 13-501 of this chapter.

c. Unfunded accrued liability contributions. The original unfunded accrued liability contribution shall be an amount which, if paid to the contingent reserve fund in forty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred seventy-seven-nineteen hundred seventy-eight fiscal year, would be the actuarial equivalent, on the basis of five and one-half percentum interest and the actuarial tables in effect as of July first, nineteen hundred seventy-seven, of the difference between (1) the accrued liability (excluding the liability for benefits attributable to the annuity savings fund and the variable annuity savings fund and to pension reserve fund number two),

on June thirtieth, nineteen hundred seventy-five and (2) the total funds on hand, excluding the amount in the annuity savings fund and variable annuity savings fund and in pension reserve fund number two, but including the amount of any unpaid moneys appropriated pursuant to section 13-533 of this chapter.

d. (1) The revised unfunded accrued liability contribution shall be an amount determined as prescribed in paragraphs two, three, four, five, six and seven of this subdivision d.

(2) To the amount of the difference constituting the unfunded accrued liability as of June thirtieth, nineteen hundred seventy-five heretofore determined pursuant to the provisions of subdivision c of this section as in effect on July first, nineteen hundred seventy-seven, there shall be added interest thereon at the rate of five and one-half per centum per annum for the period from July first, nineteen hundred seventy-five to June thirtieth, nineteen hundred eighty.

(3) (a) There shall be computed, in the manner provided in subparagraph (b) of this paragraph three, the discounted value of each of the installments of the unfunded accrued liability contribution which, in the absence of the enactment of chapter nine hundred fifty-seven of the laws of nineteen hundred eighty-one, were payable or would have been payable in the city's nineteen hundred seventy-seven-nineteen hundred seventy-eight, nineteen hundred seventy-eight-nineteen hundred seventy-nine, nineteen hundred seventy-nine-nineteen hundred eighty, nineteen hundred eighty-nineteen hundred eighty-one and nineteen hundred eighty-one-nineteen hundred eighty-two fiscal year.

(b) Such discounted value of each such installment shall be computed as of January first of the city's second fiscal year preceding the fiscal year in which such installment was payable or would have been payable and on the basis of five and one-half per centum interest per annum on the amount of such installment.

(c) There shall be added to such discounted value of each such installment, interest thereon from January first of such second fiscal year preceding the fiscal year in which such installment was or would have been payable to June thirtieth, nineteen hundred eighty at the rate of five and one-half per centum per annum.

(d) The discounted values of all of such installments with respect to such fiscal years, computed as provided for in subparagraphs (a) and (b) of this paragraph three, together with interest on each such installment as provided for in subparagraph (c) of this paragraph, shall be added together.

(4) From the sum computed pursuant to paragraph two of this subdivision d, the sum computed pursuant to paragraph three of this subdivision shall be subtracted.

(5) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty and ending on June thirtieth, nineteen hundred eighty-two, the revised unfunded accrued liability contribution shall be the annual installment, applicable to such fiscal year, of an amount which, if paid to the contingent reserve fund in thirty-five equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year, would be the actuarial equivalent, on the basis of seven and one-half per centum interest per annum, of the remainder computed pursuant to paragraph four of this subdivision.

(6) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, the revised unfunded accrued liability contribution shall be the annual installment, applicable to such fiscal year, of an amount which, if paid to the contingent reserve fund in thirty-three equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-two on the basis of seven and one-half per centum interest per annum, of the installments of the revised unfunded accrued liability contribution computed pursuant to paragraph five of this subdivision, which installments are hypothetically allocated by such paragraph five to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-two.

(7) With respect to each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending June thirtieth, two thousand fifteen, the revised unfunded accrued liability contribution shall be the annual installment, applicable to such fiscal year, of an amount which, when paid to the contingent reserve fund in twenty-seven equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of the installments of the revised unfunded accrued liability contribution computed pursuant to paragraph six of this subdivision, which installments are hypothetically allocated by such paragraph six to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

e. (1) The nineteen hundred eighty unfunded accrued liability adjustment shall be an amount determined as prescribed in paragraphs two, three, four, five, six and seven of this subdivision e.

(2) (a) Upon the basis of the actuarial tables in effect as of June thirtieth, nineteen hundred eighty for valuation purposes and interest at the rate of seven and one-half per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty, the amount of the total liability for all benefits provided in this chapter, in articles eleven and fourteen of the retirement and social security law and in any other law prescribing benefits payable by the retirement system on account of all contributors and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions, if any, the liability for benefits attributable to the annuity savings fund and to the variable annuity savings fund and the liability attributable to pension reserve fund number two.

(b) From such total liability computed pursuant to subparagraph (a) of this paragraph two, there shall be subtracted the sum of:

(i) the present value, as of June thirtieth, nineteen hundred eighty, of all future normal costs of the retirement system, computed pursuant to the entry age normal cost method of determining such normal costs; and

(ii) the present value, as of such June thirtieth, of all future installments of the balance sheet liability contribution (as defined in subdivision f of this section); and

(iii) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this title, of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(iv) the present value, as of such June thirtieth, of future member contributions of contributors subject to article fourteen of the retirement and social security law; and

(v) the total funds on hand as of such June thirtieth, excluding the amount in the annuity savings fund and in the variable annuity savings fund and in pension reserve fund number two, but including the amount of any unpaid moneys appropriated pursuant to section 13-533 of this chapter.

(3) (a) If the amount computed pursuant to paragraph two of this subdivision e is larger than the amount computed pursuant to paragraph four of subdivision d of this section, the latter amount shall be subtracted from the former amount and the remainder resulting from such subtraction shall constitute a charge.

(b) If the amount computed pursuant to paragraph two of this subdivision is smaller than the amount computed pursuant to paragraph four of subdivision d of this section, the former amount shall be subtracted from the latter amount and the remainder resulting from such subtraction shall constitute a credit.

(4) (a) If the remainder computed pursuant to paragraph three of this subdivision e is a charge, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, if paid to the contingent reserve fund in thirty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred

eighty-nineteen hundred eighty-one fiscal year, shall be the actuarial equivalent, on the basis of seven and one-half per centum interest per annum, of such remainder.

(b) If the remainder computed pursuant to paragraph three of this subdivision is a credit, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, if credited in thirty equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year) in reduction of the amount which the city (and other obligors required to make public employer contributions on account of contributors to the retirement system) would otherwise be required to pay to the contingent reserve fund pursuant to subparagraphs (a), (c), (d), (e), (f) and (g) of paragraph one of subdivision a of this section, would be the actuarial equivalent, on the basis of seven and one-half per centum interest per annum, of such remainder.

(5) If the nineteen hundred eighty unfunded accrued liability adjustment is a credit, the installments of such credit shall be allocated among the city and such other obligors in accordance with the shares thereof attributable to them pursuant to the provisions of law prescribing their obligations to make or assume responsibility for employer contributions.

(6) With respect to determination of the amount of contributions payable to the contingent reserve fund in each of the city's nineteen hundred eighty-nineteen hundred eighty-one and nineteen hundred eighty-one-nineteen hundred eighty-two fiscal years, the annual installment of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to paragraph four of this subdivision e, which installment is applicable to such fiscal year, shall be applied as a charge or a credit, as the case may be, in relation to such contributions payable in such fiscal year.

(7) (a) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, if paid (if a charge) or credited (if a credit) in twenty-eight equal annual installments, commencing with a payment or credit, as the case may be, in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-two on the basis of seven and one-half per centum interest per annum, of the installments of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to paragraph four of this subdivision e, which installments are hypothetically allocated by such paragraph four to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-two.

(b) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand ten, the nineteen hundred eighty unfunded accrued liability adjustment shall be an amount which, when paid (if a charge) or credited (if a credit) in twenty-two equal annual installments, commencing with a payment or credit, as the case may be, in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to subparagraph (a) of this paragraph seven, which installments are hypothetically allocated by such subparagraph (a) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(8) With respect to determination of the amount of contributions payable to the contingent reserve fund in each of such city fiscal years referred to in paragraph seven of this subdivision e, the annual installment of the nineteen hundred eighty unfunded accrued liability adjustment computed pursuant to such paragraph seven, which installment is applicable to such fiscal year, shall be applied as a charge or credit, as the case may be, in relation to such contributions payable in such fiscal year.

(9) (a) The nineteen hundred eighty-two unfunded accrued liability adjustment shall be an amount determined

as prescribed in subparagraphs (b), (c), (d) and (e) of this paragraph nine.

(b) Upon the basis of the actuarial tables in effect as of June thirtieth, nineteen hundred eighty-one for valuation purposes and interest at the rate of seven and one-half per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-two, the amount of the actuarial accrued liability of the retirement system, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(c) Upon the basis of the actuarial tables in effect as of June thirtieth, nineteen hundred eighty-two for valuation purposes and interest at the rate of eight per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-two, the amount of the actuarial accrued liability of the retirement system, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(d) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, the nineteen hundred eighty-two unfunded accrued liability adjustment shall be an amount which, if credited in thirty equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year) in reduction of the amounts which the city (and other obligors required to pay public employer contribution on account of members) would otherwise be required to pay to the contingent reserve fund pursuant to subparagraphs (a), (c), (d), (f) and (g) of paragraph one of subdivision a of this section or otherwise pursuant to law, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the excess of the amount computed pursuant to subparagraph (b) of this paragraph nine over the amount computed pursuant to subparagraph (c) of this paragraph.

(e) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand twelve, the nineteen hundred eighty-two unfunded accrued liability adjustment shall be an amount which, when credited in twenty-four equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the amounts which the city (and other obligors required to pay public employer contribution on account of members) would otherwise be required to pay to the contingent reserve fund pursuant to subparagraphs (a), (c), (d), (f) and (g) of paragraph one of subdivision a of this section or otherwise pursuant to law, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the nineteen hundred eighty-two unfunded accrued liability adjustment computed pursuant to subparagraph (d) of this paragraph nine, which installments are hypothetically allocated by such subparagraph (d) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(10) (a) The nineteen hundred eighty-five unfunded accrued liability adjustment shall be an amount determined as prescribed in subparagraphs (b), (c), (d) and (e) of this paragraph ten.

(b) Upon the basis of the actuarial tables in effect for valuation purposes with respect to determination of the normal contribution payable to the contingent reserve fund in the city's nineteen hundred eighty-four-nineteen hundred eighty-five fiscal year and interest at the rate of eight per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-five, the amount of the actuarial accrued liability of the retirement system, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(c) Upon the basis of the actuarial tables in effect for valuation purposes with respect to determination of the normal contribution payable to the contingent reserve fund in the city's nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year and interest at the rate of eight per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-five, the amount of the actuarial accrued liability of the retirement system, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(d) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight, the nineteen hundred eighty-five unfunded accrued liability adjustment shall be an amount which, if credited in thirty equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year) in reduction of the amounts which the city (and other obligors required to pay public employer contributions on account of members) would otherwise be required to pay to the contingent reserve fund pursuant to subparagraphs (a), (c), (d), (f) and (g) of paragraph one of subdivision a of this section or otherwise pursuant to law, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the excess of the amount computed pursuant to subparagraph (b) of this paragraph ten over the amount computed pursuant to subparagraph (b) of this paragraph ten over the amount computed pursuant to subparagraph (c) of this paragraph.

(e) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand fifteen, the nineteen hundred eighty-five unfunded accrued liability adjustment shall be an amount which, when credited in twenty-seven equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the amounts which the city (and other obligors required to pay public employer contributions on account of members) would otherwise be required to pay to the contingent reserve fund pursuant to subparagraphs (a), (c), (d), (f) and (g) of paragraph one of subdivision a of this section or otherwise pursuant to law, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the nineteen hundred eighty-five unfunded accrued liability adjustment computed pursuant to subparagraph (d) of this paragraph ten, which installments are hypothetically allocated by such subparagraph (d) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(11) (a) The nineteen hundred eighty-six unfunded accrued liability adjustment shall be an amount determined as prescribed in subparagraphs (b), (c), (d) and (e) of this paragraph eleven.

(b) Upon the basis of the actuarial tables in effect for valuation purposes with respect to determination of the normal contribution payable to the contingent reserve fund in the city's nineteen hundred eighty-five-nineteen hundred eighty-six fiscal year and interest at the rate of eight per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-six, the amount of the actuarial accrued liability of the retirement system, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(c) Upon the basis of the actuarial tables in effect for valuation purposes with respect to determination of the normal contribution payable to the contingent reserve fund in the city's nineteen hundred eighty-six-nineteen hundred eighty-seven fiscal year and interest at the rate of eight per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred eighty-six, the amount of the actuarial accrued liability of the retirement system, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

(d) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-six and ending on June thirtieth, nineteen hundred eighty-eight, the nineteen hundred eighty-six unfunded accrued liability adjustment shall be an amount which, if credited in thirty equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-six-nineteen hundred eighty-seven fiscal year) in reduction of the amounts which the city (and other obligors required to pay public employer contributions on account of members) would otherwise be required to pay to the contingent reserve fund pursuant to subparagraphs (a), (c), (d), (f) and (g) of paragraph one of subdivision a of this section or otherwise pursuant to law, would be the actuarial equivalent, on the basis of eight per centum interest per annum, of the excess of the amount computed pursuant to subparagraph (b) of this paragraph eleven over the amount computed pursuant to subparagraph (c) of this paragraph.

(e) With respect to determination of the amount of contributions payable to the contingent reserve fund in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand sixteen, the nineteen hundred eighty-six unfunded accrued liability adjustment shall be an amount which, when credited in twenty-eight equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the amounts which the city (and other obligors required to pay public employer contributions on account of members) would otherwise be required to pay to the contingent reserve fund pursuant to subparagraphs (a), (c), (d), (f) and (g) of paragraph one of subdivision a of this section or otherwise pursuant to law, shall be the actuarial equivalent, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the nineteen hundred eighty-six unfunded accrued liability adjustment computed pursuant to subparagraph (d) of this paragraph eleven, which installments are hypothetically allocated by such subparagraph (d) to designated fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

f. (1) As used in this section, the following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:

(a) (i) "Normal contribution for balance sheet liability purposes". The hypothetical amount which the normal contribution payable in each city fiscal year occurring during the period beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred eighty would have equalled if such normal contribution had been required by law to be paid to the contingent reserve fund in the city fiscal year in which the obligation to make such normal contribution accrued and such normal contribution had been required by law to be determined in the manner provided for in items (ii), (iii) and (iv) of this subparagraph (a).

(ii) Upon the basis of the mortality and other tables effective under this chapter as of July first, nineteen hundred seventy-seven and interest at the rate of five and one-half per centum per annum, the actuary shall determine, as of June thirtieth next preceding each such fiscal year for which such normal contribution is being determined (hereinafter referred to as the "subject fiscal year") the amount of the then total liability for all benefits provided in this chapter, in articles eleven and fourteen of the retirement and social security law and in any other law prescribing benefits payable by the retirement system on account of all then contributors and beneficiaries, excluding the then liability on account of future annual contributions, for balance sheet liability purposes, on account of reserves-for-increased-take-home-pay (as defined in subparagraph (d) of this paragraph one) if any, and the then liability for benefits attributable to the annuity savings fund and the variable annuity savings fund.

(iii) The hypothetical normal rate of contribution with respect to the subject fiscal year shall be the rate per centum obtained:

(A) by adding together:

(1) the present value of all then required future unfunded accrued liability contributions for balance sheet liability purposes (as defined in subparagraph (b) of this paragraph one); and

(2) the present value of all then required future annual contributions, for balance sheet liability purposes, on account of amortization of losses on dispositions of securities within the meaning of section 13-704 of this title (as defined in subparagraph (c) of this paragraph one); and

(3) the present value of future member contributions of contributors subject to article fourteen of the retirement and social security law; and

(4) the amount obtained by adding together the total funds on hand (excluding therefrom the then amount in the annuity savings fund and in the variable annuity savings fund and in pension reserve fund number two) and balance sheet liability as of such June thirtieth next preceding the subject fiscal year; and

(B) by subtracting from the amount of the total liability determined pursuant to item (ii) of this subparagraph (a) the sum resulting from the addition prescribed by sub-item (A) of this item (iii); and

(C) by dividing the remainder resulting from the applicable subtraction prescribed by sub-item (B) of this item (iii) by one per centum of the present value of the prospective future salaries of all contributors, as computed on the basis of the mortality and service tables adopted pursuant to section 13-514 of this chapter and in effect on July first, nineteen hundred seventy-seven and on the basis of interest at the rate of five and one-half per centum per annum.

(iv) The amount of the normal contribution for balance sheet liability purposes hypothetically payable in the subject fiscal year shall be the amount obtained (1) by multiplying such hypothetical normal contribution rate computed with respect to the subject fiscal year by the aggregate annual salaries of the members as of June thirtieth of the subject fiscal year and (2) by adding to the product of such multiplication, interest on such product at the rate of five and one-half per centum per annum for a period of six months.

(b) "Unfunded accrued liability contribution for balance sheet liability purposes".

(i) With respect to the city's nineteen hundred seventy-four-nineteen hundred seventy-five fiscal year, such term shall mean a hypothetical amount which, if paid to the contingent reserve fund in forty equal annual installments, beginning with payment of a first installment in the city's nineteen hundred seventy-four-nineteen hundred seventy-five fiscal year, would be the actuarial equivalent, on the basis of interest at the rate of five and one-half per centum per annum, of the remainder computed in the manner prescribed by items (ii) and (iii) of this subparagraph (b).

(ii) Upon the basis of the actuarial tables in effect as of July first, nineteen hundred seventy-seven for valuation purposes and interest at the rate of five and one-half per centum per annum, there shall be computed, as of June thirtieth, nineteen hundred seventy-four, the amount of the total liability for all benefits provided by this chapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by retirement system on account of all contributors and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions and the liability for benefits attributable to the annuity savings fund and the variable annuity savings fund.

(iii) From such total liability computed pursuant to item (ii) of this subparagraph (b) there shall be subtracted the sum of:

(A) the present value, as of June thirtieth, nineteen hundred seventy-four, of all future normal costs of the retirement system, computed pursuant to the entry age normal cost method of determining such normal costs; and

(B) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this title (as then in effect), of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(C) the sum obtained by adding together the balance sheet liability as of such June thirtieth (as such liability is determined pursuant to the provisions of paragraph two of this subdivision f) and the total funds on hand as of such June thirtieth, excluding the amount in the annuity savings fund and the variable annuity savings fund, but including the amount of any unpaid moneys appropriated pursuant to section 13-533 of this chapter.

(iv) With respect to each of the city's fiscal years occurring during the period from July first, nineteen hundred seventy-five to June thirtieth, nineteen hundred eighty, such term shall mean a hypothetical amount which, if paid to the contingent reserve fund in forty equal annual installments, beginning with payment of a first installment in the city's nineteen hundred seventy-five-nineteen hundred seventy-six fiscal year, would be the actuarial equivalent, on the basis of interest at the rate of five and one-half per centum per annum, of the remainder computed pursuant to items (v) and (vi) of this subparagraph (b).

(v) Upon the basis of the actuarial tables in effect as of July first, nineteen hundred seventy-seven for valuation

purposes and interest at the rate of five and one-half per centum per annum, there shall be computed, as of June thirtieth, nineteen hundred seventy-five, the amount of the total liability for all benefits provided by this chapter, in article eleven of the retirement and social security law and in any other law prescribing benefits payable by the retirement system on account of all contributors and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions and the liability for benefits attributable to the annuity savings fund and the variable annuity savings fund.

(vi) From such total liability computed pursuant to item (v) of this subparagraph (b), there shall be subtracted the sum of:

(A) the present value, as of June thirtieth, nineteen hundred seventy-five, of all future normal costs of the retirement system, computed pursuant to the entry age normal cost method of determining such normal costs; and

(B) the present value, as of such June thirtieth, of all then required future payments, pursuant to section 13-704 of this title (as then in effect), of installments of losses in excess of installments of gains on dispositions of securities within the meaning of such section; and

(C) the sum obtained by adding together the balance sheet liability as of such June thirtieth (as such liability is determined pursuant to the provisions of subparagraphs three to nine, inclusive, of this subdivision (f)*13 and the total funds on hand, as of such June thirtieth, excluding the amount in the annuity savings fund and the variable annuity savings fund, but including the amount of any unpaid moneys appropriated pursuant to section 13-533 of this chapter.

(c) "Annual contribution, for balance sheet liability purposes, on account of amortization of losses on dispositions of certain securities within the meaning of section 13-704 of this title". A hypothetical annual payment to the contingent reserve fund in each of the city's fiscal years occurring during the period beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred eighty, of the amount of the excess of installments (payable in such year) of losses on prior dispositions of securities within the meaning of section 13-704 of this title over installments (creditable in such year) of gains on such prior dispositions, which annual amount shall be determined in the manner provided in subdivision h of such section 13-704.

(d) "Annual contribution, for balance sheet liability purposes, on account of reserves-for-increased-take-home-pay". A hypothetical annual payment to the contingent reserve fund in each of the city's fiscal years occurring during the period from July first, nineteen hundred seventy-four to June thirtieth, nineteen hundred eighty, of the amount required to fulfill the public employer obligation, which accrued in such year, to make contributions on account of increased-take-home-pay.

(e) "Annual military law contribution for balance sheet liability purposes". A hypothetical annual payment to the contingent reserve fund in each of the city's fiscal years occurring during the period beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred eighty, of the amount required to fulfill the public employer obligation, which accrued in such year under the provisions of subdivision twenty of section two hundred forty-three of the military law, to pay in behalf of members qualifying for such benefit member contributions with respect to certain periods of military service of such members.

(f) "Deficiency contribution". The total annual amount which, under the provisions of subdivisions a, c and f of this section, as such provisions were in effect during the period from July first, nineteen hundred seventy-two to June thirtieth, nineteen hundred seventy-seven, the city was required to pay to the contingent reserve fund in each of the city's nineteen hundred seventy-four-nineteen hundred seventy-five, and nineteen hundred seventy-five-nineteen hundred seventy-six and nineteen hundred seventy-six-nineteen hundred seventy-seven fiscal years.

(g) "Contribution on account of amortization, pursuant to section 13-704 of this title, of losses on dispositions of certain securities". The total annual amount by which the sum of the installments of losses, payable pursuant to section 13-704 of this title (as in effect prior to July first, nineteen hundred eighty) in each of the city's fiscal years occurring during the period from July first, nineteen hundred seventy-four to June thirtieth, nineteen hundred eighty in relation to

dispositions of securities.

(2) The balance sheet liability as of June thirtieth, nineteen hundred seventy-four shall be the sum of five hundred thirty-two million, three hundred eighty-two thousand, one hundred forty-eight dollars ($532,382,148), consisting of the sum of:

(a) The discounted value, as of June thirtieth, nineteen hundred seventy-four, of the sum of two hundred fifty million, six hundred fifty-four thousand, two hundred forty dollars ($250,654,240), which constituted the amount payable to the contingent reserve fund in the city's nineteen hundred seventy-four-nineteen hundred seventy-five fiscal year by the city in fulfillment of its obligations to make contributions to the retirement system payable in such year, such discounting being calculated on the basis of interest at the rate of five and one-half per centum per annum and a discount period of six months extending retroactively from January first, nineteen hundred seventy-five to June thirtieth, nineteen hundred seventy-four, and such discounted value being the sum of two hundred forty-four million, thirty-three thousand, two hundred eight dollars ($244,033,208); and

(b) the discounted value, as of June thirtieth, nineteen hundred seventy-four, of the sum of three hundred twelve million, four hundred sixty-one thousand, nine hundred forty dollars ($312,461,940), which constituted the amount payable to the contingent reserve fund in the city's nineteen hundred seventy-five-nineteen hundred seventy-six fiscal year by the city in fulfillment of its obligations to make contributions to the retirement system payable in such fiscal year, such discounting being calculated on the basis of interest at the rate of five and one-half per centum per annum and a discount period of eighteen months extending from January first, nineteen hundred seventy-six retroactively to June thirtieth, nineteen hundred seventy-four, and such discounted value being the sum of two hundred eighty-eight million, three hundred forty-eight thousand, nine hundred forty dollars ($288,348,940).

(3) The balance sheet liability, as of each June thirtieth succeeding June thirtieth, nineteen hundred seventy-four to and including June thirtieth, nineteen hundred eighty, shall be determined as provided for in paragraphs four to ten, inclusive, of this subdivision f.

(4) To the amount of the balance sheet liability as of June thirtieth next preceding the June thirtieth (which last-mentioned June thirtieth is hereinafter referred to as the "subject June thirtieth") as of which the balance sheet liability is being determined as provided for in paragraph three of this subdivision f, there shall be added one year's interest on such amount at the rate of five and one-half per centum per annum.

(5) With respect to the city's fiscal year ending on the subject June thirtieth (hereinafter referred to as the "subject fiscal year"), there shall be added together the contribution components hereinafter specified in this paragraph five, which components, for the purposes of this subdivision f, are hypothetically deemed to have accrued in the subject fiscal year and to have been payable therein, as follows:

(a) the amount of the normal contribution for balance sheet liability purposes (as defined in subparagraph (a) of paragraph one of this subdivision f); and

(b) the amount of the applicable installment of the unfunded accrued liability contribution for balance sheet liability purposes (as defined in subparagraph (b) of paragraph one of this subdivision); and

(c) the amount of the annual contribution, for balance sheet liability purposes, on account of amortization of losses on dispositions of certain securities within the meaning of section 13-704 of this title (as defined in subparagraph (c) of paragraph one of this subdivision); and

(d) the amount of the annual contribution, for balance sheet liability purposes, on account of reserves-for-increased-take-home-pay (as defined in subparagraph (d) of paragraph one of this subdivision); and

(e) the amount of the annual military law contribution for balance sheet liability purposes (as defined in

subparagraph (e) of paragraph one of this subdivision).

(6) To the amount resulting from the addition prescribed by paragraph five of this subdivision, there shall be added interest thereon at the rate of five and one-half per centum per annum from January first of the subject fiscal year to June thirtieth of such fiscal year.

(7) The amount computed pursuant to paragraph four of this subdivision in relation to the balance sheet liability as of June thirtieth next preceding the subject June thirtieth (together with one year's interest on such balance sheet liability) shall be added to the amount computed pursuant to paragraph six of this subdivision in relation to the subject fiscal year.

(8) From the amount computed pursuant to paragraph seven of this subdivision, there shall be subtracted the sum of:

(a) The total amount of the sums paid to the contingent reserve fund during the subject fiscal year by the city on account of its obligations, which accrued during the city's second fiscal year preceding the subject fiscal year, to provide:

(i) the normal contribution payable in the subject fiscal year under the provisions of subdivisions a and b of this section, as then in effect; and

(ii) the installment of the deficiency contribution (as defined in subparagraph (f) of paragraph one of this subdivision f) or the installment of the original unfunded accrued liability contribution (as defined in subparagraph (b) of paragraph one of subdivision a of this section), as the case may be, payable in the subject fiscal year; and

(iii) the amount of the contribution on account of amortization, pursuant to section 13-704 of this title, of losses on dispositions of certain securities (as defined in subparagraph (g) of paragraph one of this subdivision f) payable in the subject fiscal year; and

(iv) the amount payable in the subject fiscal year on account of reserves-for-increased-take-home-pay; and

(v) the amount payable in the subject fiscal year in behalf of contributors pursuant to subdivision twenty of section two hundred forty-three of the military law; plus

(b) interest on such total amount referred to in subparagraph (a) of this paragraph eight at the rate of five and one-half per centum per annum from January first of the subject fiscal year to June thirtieth thereof.

(9) The remainder resulting from the subtraction prescribed by paragraph eight of this subdivision f shall be the balance sheet liability as of June thirtieth of the subject fiscal year.

(10) The balance sheet liability as of June thirtieth, nineteen hundred eighty shall be the amount resulting from the successive computations of the balance sheet liability as of each June thirtieth succeeding June thirtieth, nineteen hundred seventy-four up to and including June thirtieth, nineteen hundred eighty, as prescribed by paragraphs four to nine, inclusive, of this subdivision f.

(11) (a) The balance sheet liability contribution payable in the city's nineteen hundred eighty-one-nineteen hundred eighty-two fiscal year shall be the first annual installment an amount which, if paid to the contingent reserve fund in forty equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-one-nineteen hundred eighty-two fiscal year, would be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-one, on the basis of seven and one-half per centum interest per annum, of an amount equal to the balance sheet liability as of June thirtieth, nineteen hundred eighty.

(b) The balance sheet liability contribution payable in each city fiscal year during the period beginning on July

first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight shall be one annual installment of an amount which, if paid to the contingent reserve fund in thirty-nine equal annual installments, commencing with a first payment in the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year, would be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-two, on the basis of eight per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-two on the basis of seven and one-half per centum interest per annum, of those installments of the balance sheet liability contribution computed pursuant to subparagraph (a) of this paragraph (11), which installments are hypothetically allocated by such subparagraph (a) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-two.

(c) The balance sheet liability contribution payable in each city fiscal year during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, two thousand twenty-one shall be one annual installment of an amount which, when paid to the contingent reserve fund in thirty-three equal annual installments, commencing with a first payment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-eight, on the basis of eight and one-quarter per centum interest per annum, of the present value, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight per centum interest per annum, of those installments of the balance sheet liability contribution computed pursuant to subparagraph (b) of this paragraph (11), which installments are hypothetically allocated by such subparagraph (b) to designated city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

g. Whenever the board, upon recommendation by the actuary, shall determine that it is necessary to increase the reserves held in the annuity reserve fund, the pension reserve fund number one or the pension reserve fund number two or upon recommendation by the executive director, shall determine that it is necessary to increase the reserves held in the expense fund, the board may direct that the amount so needed shall be transferred thereto from the contingent reserve fund.

h. Contributions shall be paid into the contingent reserve fund in the manner and to the extent specified by subparagraph (f) of paragraph one of subdivision a of this section, to provide reserves-for-increased-take-home-pay.

i. Contributions to the contingent reserve fund payable in fiscal years of the city beginning on and after July first, nineteen hundred ninety by the city and other obligors required to make such contributions shall be governed by the provisions of this section, as modified and supplemented by section 13-638.2 of this title and subdivision k of section 13-582 thereof, and such other laws as may be applicable.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par (1) opening clause amended chap 878/1990 § 22 eff. July 25,

1990 applying on and after July 1, 1989

Subd. a par (1) subpars (f), (g) amended chap 249/1996 § 13, eff. June

30, 1996 and deemed in effect on and after July 1, 1995

Subd. a par (2) subpar (c) separately amended chap 579/1989 § 5 and

chap 580/1989 § 4

Subd. a par (2) subpars (c-1), (c-2) added chap 579/1989 § 6

Subd. a par (2) subpar (d) amended chap 579/1989 § 7

Subd. a par (2) subpar (e) separately added chap 580/1989 § 5 and chap 581/1989 § 78

Subd. b par (1) amended chap 85/2000 § 5, eff. June 23, 2000 and deemed to have been in effect on and after July 1, 1999.

Subd. b par (1) amended chap 249/1996 § 14, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. b par (1-a) added chap 152/2006 § 10, eff. July 7, 2006 and deemed to have been in full force and effect on and after July 1, 2005. [See § 13-103 Note 1]

Subd. b par (2) amended chap 579/1989 § 8

Subd. b par (2) subpar (a) item (iv) separately amended chap 580/1989 § 6

Subd. b par (2) subpar (a) items (iv), (v) amended chap 249/1996 § 15, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. b par (2) subpar (a) item (vi) added chap 249/1996 § 16, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. b par (2) subpar (c) amended chap 249/1996 § 17, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. b par (3) amended chap 85/2000 § 6, eff. June 23, 2000 and deemed to have been in effect on and after July 1, 1999.

Subd. b par (4) amended chap 152/2006 § 11, eff. July 7, 2006 and deemed to have been in full force and effect on and after July 1, 2005. [See § 13-103 Note 1]

Subd. b par (4) amended chap 249/1996 § 18, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. d pars (1), (6) amended chap 581/1989 § 17

Subd. d par (7) added chap 581/1989 § 18

Subd. e pars (1), (7) amended chap 581/1989 § 19

Subd. e par (9) subpars (a), (d) amended chap 581/1989 § 20

Subd. e par (9) subpar (e) added chap 581/1989 § 21

Subd. e par (10) added chap 579/1989 § 9

Subd. e par (10) subpars (a), (d) amended chap 581/1989 § 22

Subd. e par (10) subpar (e) added chap 581/1989 § 23

Subd. e par (11) added chap 579/1989 § 9

Subd. e par (11) subpars (a), (d) amended chap 581/1989 § 24

Subd. e par (11) subpar (e) added chap 581/1989 § 25

Subd. f par (11) amended chap 581/1989 § 26

Subd. i amended chap 221/1992 § 1, retroactive to June 30, 1991

Subd. g amended chap 593/1996 § 5, eff. Aug. 8, 1996 and budgets referred to shall be deemed to be established on Apr. 1, 1996

Subd. i added chap 878/1990 § 23 eff. July 25, 1990 applying on and after July 1, 1989

**DERIVATION**

Formerly § B20-26.0 added chap 929/1937 § 1

Amended chap 510/1960 § 12

Repealed and added chap 876/1968 § 8

Amended chap 274/1970 § 17

Subs a, b amended chap 407/1971 § 1

Subs a, b, c amended chap 976/1977 § 9

Sub f repealed chap 976/1977 § 10

Amended chap 957/1981 § 46

Subs a, b, d, e amended chap 914/1982 § 9

Sub f par 1 subpar c amended chap 914/1982 § 10

Sub f par 11 amended chap 914/1982 § 11

**FOOTNOTES**

13

[Footnote 13]: * So in original. (Closing parenthesis missing.)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-528*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-528 Contributions by city university of New York.

a. Subject to the provisions of subdivision b of this section, pursuant to the provisions of section sixty-two hundred twenty-seven of the education law, the contributions to the retirement system which, in any fiscal year of the city occurring after June thirtieth, nineteen hundred seventy-nine, are included in the approved programs and services of the city university of New York, as defined in section sixty-two hundred thirty of such law, shall be paid in such fiscal year by such city university.

b. Nothing contained in subdivision a of this section shall be construed as increasing, decreasing, altering or changing the obligations of the city, under sections sixty-two hundred twenty-one, sixty-two hundred thirty and sixty-two hundred thirty-one of such law (as in effect before and after the enactment of chapter nine hundred fifty-seven of the laws of nineteen hundred eighty-one) to appropriate and provide, in the manner, to the extent and for the periods prescribed by such sections, funds required to pay such contributions with respect to such periods. Nothing contained in subdivision a of this section shall be construed as increasing, decreasing, altering or changing the obligations of the state, under such sections of such law, to appropriate and provide the funds required for payment of such contributions in part or in whole and/or for reimbursement of the city in relation thereto, in accordance with the responsibilities of the state with respect to such payment and/or reimbursement, as provided for in such sections.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-26.1 added chap 957/1981 § 47

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-529*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-529 Contributions by state in relation to certain officers and employees of courts.

For the purpose of subdivision nine of section thirty-nine of the judiciary law, the contributions (other than contributions by contributors) required by law to be made to the retirement system, in so far as such contributions are attributable to elections made by contributors under paragraph (a) of such subdivision nine, including, without limitation, the contributions required to be made in relation to such contributors by sections 13-527 of this chapter and 13-704 of this title, shall be pension costs for which payments shall be made to the retirement system by the comptroller of the state of New York pursuant to the provisions of paragraph (b) of subdivision nine.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-26.2 added chap 957/1981 § 47



Administrative Code of the City of New York



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

*NYC Administrative Code 13-530*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-530 Contributions of the city and their use; pension reserve fund number one.

a. Upon the retirement of a new-entrant, an amount equal to his or her pension reserve and the reserve-for-increased-take-home-pay to which he or she may be entitled, if any, shall be transferred from the contingent reserve fund into a fund to be known as pension reserve fund number one. His or her pension and, in addition, a pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may be entitled, if any, shall be paid from such pension reserve fund number one. Should such new-entrant be subsequently restored to active service, his or her pension reserve and such reserve-for-increased-take-home-pay, if any, shall thereupon be transferred from pension reserve fund number one to the contingent reserve fund.

b. Upon the retirement of a present-teacher, the total of his or her accumulated deductions plus the reserve-for-increased-take-home-pay to which he or she may be entitled, if any, shall be calculated, and an amount equal to such total but not exceeding the amount of his or her pension reserve, shall be transferred from the contingent reserve fund into pension reserve fund number one. A pension which shall be the actuarial equivalent of the amount so transferred shall be paid to such retired present-teacher from such pension reserve fund.

c. In addition, upon the retirement of a present-teacher, the reserve-for-increased-take-home-pay to which he or she may be entitled, if any, shall be transferred from the contingent reserve fund into pension reserve fund number one, and if such a reserve is so transferred, a pension which is the actuarial equivalent of such reserve shall be paid to him or her from such pension reserve fund.

d. Should such present-teacher be subsequently restored to active service the pension reserve on the pension referred to in subdivision b hereof and his or her reserve-for-increased-take-home-pay, if any, shall thereupon be

transferred from pension reserve fund number one to the contingent reserve fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-27.0 added chap 929/1937 § 1

Amended chap 510/1960 § 13



Administrative Code of the City of New York



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

*NYC Administrative Code 13-531*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-531 Contributions of the city and their use; pension reserve fund number two.

Pension reserve fund number two shall consist of the following:

1. The donations, legacies, and gifts which may be made to such system or to the retirement fund of the board of education of the city of New York.

2. The amounts contributed by the city to pay the pensions of the teachers retired on or before the thirty-first day of July, nineteen hundred seventeen, and to pay that part of the pensions and the other benefits of present-teachers who shall be retired or who shall become eligible for retirement after the thirty-first day of July, nineteen hundred seventeen, which are not payable from any other fund provided for by this chapter. Pensions and other benefits, or such part thereof allowable to present-teachers and to present pensioners, provision for the payment of which out of any other fund provided for by this title is not specifically made, shall be paid out of pension reserve fund number two.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-28.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-532*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-532 Pensions for those receiving pension out of retirement fund of board of education.

The pensions of all persons who, prior to the first day of August, nineteen hundred seventeen, were receiving a pension paid out of the teachers' retirement fund of the board of education of the city shall not be increased or decreased, and all such pensions shall be paid as they become due out of pension reserve fund number two.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-29.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-533*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-533 Guarantee of funds.

a. Regular interest, charges payable, the creation and maintenance of reserves in the contingent reserve fund and the maintenance of annuity reserves, pension reserves and reserves-for-increased-take-home-pay as provided for in this chapter and the payment of all pensions, pensions-providing-for-increased-take-home-pay, annuities, retirement allowances, refunds, death benefits, and any other benefits granted under the provisions of this chapter, are hereby made obligations of the city. All income, interest, and dividends derived from deposits and investments authorized by this chapter shall be used and disposed of in the manner prescribed by subdivision b of this section. Upon the basis of each actuarial determination and appraisal provided for in this chapter, the retirement board pursuant to section one hundred twelve of the charter shall prepare and submit to the director of management and budget an itemized estimate of the amounts necessary to be appropriated by the city to the various funds to complete the payment of such obligations accruing during the ensuing fiscal year. There shall be included annually in the budget a sum sufficient to provide for such obligations of the city. The comptroller shall pay the sum so provided into the various funds provided for by this chapter, subject to the provisions of subdivision b of this section.

b. (1) Subject to the provisions of paragraphs two, three, four and five of this subdivision and subdivision k of section 13-582 of this title, all income, interest and dividends derived from deposits and investments authorized by this chapter, which income, interest and dividends were heretofore or are hereafter received during any city fiscal year commencing on or after July first, nineteen hundred eighty, shall be used (in accordance with the respective shares of such income, interest and dividends attributable to the city and other obligors required to pay public employer contributions on account of contributors) in such fiscal year for the purposes hereinafter specified in this paragraph two (to the extent that such income, interest and dividends are sufficient for such purposes), in the order of priority herein

stated, as follows:

(A) first, to pay into the funds of the retirement system the amounts of regular interest which are required to be paid into such funds in such fiscal year by reason of being required to be allowed to such funds pursuant to the provisions of section 13-535 of this chapter, and to pay into such funds the amounts of supplementary interest, if any, required to be so paid in such fiscal year under the applicable provisions of such section, and to pay into the annuity savings fund the amounts of special interest, if any, required to be so paid in such fiscal year under the applicable provisions of such section, and to pay into the contingent reserve fund the amounts of additional interest, if any, required to be paid in such fiscal year under the applicable provisions of such section;

(B) second, to pay into the contingent reserve fund the amount of any losses in excess of gains (i) which net losses the retirement system sustained during such fiscal year by reason of sales or other dispositions of securities, and (ii) for which net losses the retirement system is required to be reimbursed in such fiscal year and (iii) to which net losses section 13-704 of this title, relating to graduated crediting of gains and amortization of losses on dispositions of certain securities, does not apply;

(C) third, if the total amount of such income, interest and dividends received during such fiscal year is in excess of the total amount required to make, in such fiscal year, the payments prescribed by subparagraphs (A) and (B) of this paragraph, the amount of such excess shall be paid into the contingent reserve fund and shall become a part of the assets of such fund.

(2) Notwithstanding the provisions of paragraph one of this subdivision or any other law to the contrary, any such income, interest or dividends which are received by the retirement system may be used for the purpose specified in section 13-705 of this title (relating to expenses incurred in the acquisition, management and protection of investments), regardless of when received and prior to use for the purposes stated in such paragraph one.

(3) (A) Notwithstanding any other provision of this section or any other law to the contrary, the term "all income, interest and dividends derived from deposits and investments", as used in paragraph two of this subdivision (as such subdivision was in effect prior to July first, nineteen hundred eighty), shall be construed, in relation to disposition of all income, interest and dividends received by the retirement system in each of the city's nineteen hundred seventy-six-nineteen hundred seventy-seven and nineteen hundred seventy-seven-nineteen hundred seventy-eight obligations fiscal years (as such fiscal years were defined by paragraph one of this subdivision prior to such July first) as meaning the remainder obtained by subtracting from such income, interest and dividends (as they were after deducting therefrom the amount of any expenses charged thereto pursuant to the provisions of section 13-705 of this title) the sum of (i) the amounts of regular, supplementary and special interest required to be allowed and paid into the appropriate funds of the retirement system in such fiscal year pursuant to the applicable provisions of section 13-535 of this chapter and (ii) the amount of any losses in excess of gains (1) which net losses were sustained by the retirement system during such fiscal year and which net losses were sustained by reason of sales or other dispositions of securities, and (2) to which net losses the provisions of section 13-704 of this title do not apply.

(B) For the purpose of the order of priority governing the disposition of such remainder in the payment fiscal year with respect to each such obligations fiscal year (as such disposition was prescribed by the provisions of this subdivision as in effect during each such payment fiscal year) the provisions of subparagraphs (A) and (B) of such paragraph two shall be deemed to have been inapplicable and the order of priority for such disposition shall be first, the use set forth in subpargraph (C) of such paragraph, second, the use set forth in subparagraph (D) of such paragraph, third, the use set forth in subparagraph (E) of such paragraph and fourth, the use set forth in subparagraph (F) of such paragraph, as such subparagraphs were in effect during such payment fiscal year.

(4) (a) All income, interest and dividends which were derived from deposits and investments authorized by this chapter and which were received during each of the city's nineteen hundred seventy-eight-nineteen hundred seventy-nine and nineteen hundred seventy-nine-nineteen hundred eighty fiscal years shall (after deducting therefrom

any amounts chargeable thereto pursuant to the provisions of section 13-705 of this title) be used (*14 in accordance with the respective shares of such income, interest and dividends attributable to the city and other obligators required to pay public employer contributions on account of contributors in each such fiscal year for the purposes hereinafter stated in this subparagraph (A), in the order of priority herein stated, as follows:

(a) first, (i) to pay into the funds of the retirement system the amounts of regular interest which are required to be paid into such funds in such fiscal year wherein such income, interest and dividends were received, which interest is so payable by reason of being required to be allowed to such funds in such fiscal year pursuant to the provisions of section 13-535 of this chapter, and (ii) to pay into such funds the amounts of supplementary interest required to be so paid in such fiscal year under the applicable provisions of such section, and (iii) to pay into the annuity savings fund the amounts of special interest required to be so paid in such fiscal year under the applicable provisions of such sections, and (iv) to pay into the contingent reserve fund the amounts of additional interest required to be paid in such fiscal year under the applicable provisions of such section;

(b) second, to pay into the contingent reserve fund the amount of any losses in excess of gains (i) which net losses were sustained by the retirement system during such fiscal year in which such income, interest and dividends were received and which net losses were sustained by reason of sales or other dispositions of securities, and (ii) for which net losses the retirement system is required to be reimbursed in such fiscal year, and (iii) to which net losses section 13-704 of this title, relating to graduated crediting of gains and amortization of losses on dispostions of certain securities, does not apply; and

(c) third, to pay into the contigent reserve fund the amount, if any, by which, (i) the total losses which the retirement system sustained during such fiscal year by reason of sales of securities within the meaning of such section 13-704 and which the responsible public employer, as defined in paragraph four of subdivision a of such section 13-704, would otherwise be required to amortize pursuant to such section, exceeds

(ii) the total of all gains which were realized during such fiscal year by reason of sales of securities within the meaning of such section and which would otherwise be required by such section to be credited in favor of the responsible public employer in installments.

(B) If the total amount of such income, interest and dividends received during each such fiscal year referred to in subparagraph (A) of this paragraph four is in excess of the total amount required to make, in the same fiscal year, the payments prescribed by items (a), (b) and (c) of such subparagraph (A), the amount of such excess shall be paid into the contingent reserve fund as of June thirtieth of such fiscal year and shall become a part of the assets of such fund as of such date.

(5) Nothing contained in the preceding paragraphs of this subdivision shall be construed as applicable to income, interest and dividends resulting from deposits or investments made under the variable annuity program of the retirement system.

(c) (1) The comptroller shall make monthly payments, in twelve equal installments, with respect to obligations which the city incurs to pay sums to the retirement system.

(2) In the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year and in each city fiscal year thereafter, the equal monthly payments shall be in respect of obligations which accrue in such fiscal year and shall be made in such fiscal year on or before the last day of each month.

(3) The retirement board of the retirement system may waive the requirements of the foregoing provisions of this subdivision with respect to time of payment to such system, provided that any such waiver of time of payment in any instance shall not apply to the time of subsequent payments unless there shall be a subsequent waiver.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b par (1) open par amended chap 221/1992 § 2, retroactive

to June 30, 1991

**DERIVATION**

Formerly § B20-30.0 added chap 929/1937 § 1

Amended chap 510/1960 § 14

Amended chap 100/1963 § 426

Amended chap 595/1974 § 3

(Legislative findings, investment earnings chap 595/1974 § 1)

(chap 595/1974 § 1 amended chap 801/1975 § 1)

Sub b pars 2, 3 amended chap 801/1975 § 3

Sub b pars 4, 5 repealed chap 801/1975 § 7

(Note amendments by chap 801/1975 expire and revert chap 801/1975 § 8)

Amended chap 976/1977 § 11

Sub c added chap 785/1978 § 8

Subs b, c amended chap 957/1981 § 48

**CASE NOTES FROM FORMER SECTION**

¶ 1. City school teachers who were employed on July 1, 1940, which was the effective date of Art. V § 7 of the State Constitution, declaring that membership in a pension system or retirement system of the State or civil division thereof shall be a contractual relationship, were entitled to have their annuities computed on the basis of tables in existence on said date, rather than on basis of tables adopted in 1943. An action by such teachers to require the board to use the tables in effect on said date in computing their annuities was not barred because it was filed 15 years after the adoption of the new tables in 1943.-Matter of Ayman, 19 Misc. 2d 355, 193 N.Y.S. 2d 2 [1959], mod. 9 N.Y. 2d 119, 211 N.Y.S. 2d 198, 172 N.E. 2d 571 [1961].

¶ 2. In an action by attorneys for services rendered in a special proceeding brought on behalf of certain members of the Teachers' Retirement System, the attorneys claimed that as a result of their services an additional liability of $39,600,000 was imposed upon the Retirement Board and the City of New York which fund was chargeable with payment of attorneys' fees. **Held:** such amount did not represent a "fund" since the order did not direct payment or the segregation of the fund.-Ayman v. Teachers' Retirement Board of the City of New York, 30 Misc. 2d 828, 215 N.Y.S. 2d 933 [1961].

**FOOTNOTES**

14

[Footnote 14]: * So in original. (Opening parenthesis should be omitted.)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-534*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-534 Trustees of funds; investments.

The members of the retirement board shall be the trustees of the several funds provided for by this chapter, and shall have exclusive control and management of such funds, and shall have full power to invest the same, subject to the terms, conditions, limitations, and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and, subject to like terms, conditions, limitations, and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which any of the funds provided for by this chapter shall have been invested as well as of the proceeds of such investments, and of any moneys belonging to such funds.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-31.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Defendant was incompetent, by virtue of the provisions of C.P.A. § 347, to testify as to certain conversations between her and deceased concerning the designation of defendant as the beneficiary of funds to credit of deceased in the Teachers' Retirement System of New York City.-Robillard v. Booth, 271 App. Div. 876, 66 N.Y.S. 2d 261 [1946],

rev'g 115 (43) N.Y.L.J. (2-21-46) 722, Col. 5  T.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-535*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-535 Allowance of interest.

a. Such board shall annually allow regular interest on each of the funds provided for in this chapter with the exception of the expense fund and pension reserve fund number two. The amount so allowed shall be due and payable to such funds and shall be annually credited thereto by such board.

b. The investment earnings of the retirement system shall be determined for the calendar year nineteen hundred sixty-four. To the extent that such earnings are in excess of the amount allowed as regular interest for calendar year nineteen hundred sixty-four, the board shall declare a rate of special interest, expressed to the lower one-tenth of one per centum, but not to exceed one per- centum, to be determined by the amount by which the investment earnings exceed the amount required for the allowance of regular interest divided by the aggregate mean amount for the calendar year nineteen hundred sixty-four in the annuity savings funds of members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-four. Special interest, as determined by multiplying said special interest rate by the mean amount for the calendar year nineteen hundred sixty-four in the individual annuity savings funds of persons who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-four, shall be credited as of December thirty-first, nineteen hundred sixty-four to the individual annuity savings funds of persons who are members, with a balance, after adjustment, as of June thirtieth, nineteen hundred sixty-five and who are allowed regular interest at the rate of three per centum per annum for calendar year nineteen hundred sixty-four. For members who are allowed regular interest at three per centum for calendar year nineteen hundred sixty-four and who do not have a balance, after adjustment, in their annuity savings funds as of June thirtieth, nineteen hundred sixty-five, a payment shall be made equal to the amount of special interest which would have been credited as of December thirty-first, nineteen hundred sixty-four had they had a balance in their annuity savings funds as

of June thirtieth, nineteen hundred sixty-five, provided that the sum of said special interest and any additional interest to be paid pursuant to paragraph c hereof is ten dollars or more. Special interest shall not be considered in determining rates of contribution of members.

c. If the full one per centum of special interest has been allowed, then to the extent that the amount of said earnings exceeds the amount allowed as regular interest and the amount allowed or paid as special interest, the board shall declare a rate of additional interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the sum of the allowance of regular interest and the allowance and payment of special interest divided by the aggregate mean amount for calendar year nineteen hundred sixty-four which would be the reserve-for-increased-take-home-pay of all members to whom special interest is credited or paid pursuant to paragraph b hereof. In determining the reserve-for-increased-take-home-pay of any member to whom special interest is credited pursuant to paragraph b hereof additional interest, as determined by multiplying said additional interest rate by the mean amount for calendar year nineteen hundred sixty-four which would be said member's reserve-for-increased-take-home-pay shall be included. However, for members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-four and who retire or die prior to June thirtieth, nineteen hundred sixty-five, the amount of additional interest for calendar year nineteen hundred sixty-four shall not be included in the retirement allowance, but shall be paid in a single payment provided that the sum of said additional interest and any special interest to be paid pursuant to paragraph b hereof is ten dollars or more. Additional interest shall not be considered in determining rates of contribution of members.

d. The investment earnings of the retirement system shall be determined for the calendar year nineteen hundred sixty-five. To the extent that such earnings are in excess of the amount allowed as regular interest for calendar year nineteen hundred sixty-five, the board shall declare a rate of special interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the amount required for the allowance of regular interest divided by the aggregate mean amount for the calendar year nineteen hundred sixty-five in the annuity savings funds of members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-five. Special interest, as determined by multiplying said special interest rate by the mean amount for the calendar year nineteen hundred sixty-five in the individual annuity savings funds of persons who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-five, shall be credited as of December thirty-first, nineteen hundred sixty-five to the individual annuity savings funds of persons who are members, with a balance, after adjustment, as of June thirtieth, nineteen hundred sixty-six and who are allowed regular interest at the rate of three per centum per annum for calendar year nineteen hundred sixty-five. For members who are allowed regular interest at three per centum for calendar year nineteen hundred sixty-five and who do not have a balance, after adjustment, in their annuity savings funds as of June thirtieth, nineteen hundred sixty-six, a payment shall be made equal to the amount of special interest which would have been credited as of December thirty-first, nineteen hundred sixty-five had they had a balance in their annuity savings funds as of June thirtieth, nineteen hundred sixty-six, provided that the sum of said special interest and any additional interest to be paid pursuant to paragraph e hereof is ten dollars or more. Special interest shall not be considered in determining rates of contribution of members.

e. If the full one per centum of special interest has been allowed, then to the extent that the amount of said earnings exceeds the amount allowed as regular interest and the amount allowed or paid as special interest, the board shall declare a rate of additional interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the sum of the allowance of regular interest and the allowance and payment of special interest divided by the aggregate mean amount for calendar year nineteen hundred sixty-five which would be the reserve-for-increased-take-home-pay of all members to whom special interest is credited or paid pursuant to paragraph d hereof. In determining the reserve-for-increased-take-home-pay of any member to whom special interest is credited pursuant to paragraph d hereof, additional interest as determined by multiplying said additional interest rate by the mean amount for calendar year nineteen hundred sixty-five which would be said member's reserve-for-increased-take-home-pay shall be included. However, for members who are allowed

regular interest at three per centum per annum for calendar year nineteen hundred sixty-five and who retire or die prior to June thirtieth, nineteen hundred sixty-six, the amount of additional interest for calendar year nineteen hundred sixty-five shall not be included in the retirement allowance, but shall be paid in a single payment provided that the sum of said additional interest and any special interest to be paid pursuant to paragraph d hereof is ten dollars or more. Additional interest shall not be considered in determining rates of contribution of members.

f. The investment earnings of the retirement system shall be determined for the calendar year nineteen hundred sixty-six. To the extent that such earnings are in excess of the amount allowed as regular interest for calendar year nineteen hundred sixty-six, the board shall declare a rate of special interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the amount required for the allowance of regular interest divided by the aggregate mean amount for the calendar year nineteen hundred sixty-six in the annuity savings funds of members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-six. Special interest, as determined by multiplying said special interest rate by the mean amount for the calendar year nineteen hundred sixty-six in the individual annuity savings funds of persons who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-six, shall be credited as of December thirty-first, nineteen hundred sixty-six to the individual annuity savings funds of persons who are members, with a balance, after adjustment, as of June thirtieth, nineteen hundred sixty-seven and who are allowed regular interest at the rate of three per centum per annum for calendar year nineteen hundred sixty-six. For members who are allowed regular interest at three per centum for calendar year nineteen hundred sixty-six and who do not have a balance, after adjustment, in their annuity savings funds as of June thirtieth, nineteen hundred sixty-seven, a payment shall be made equal to the amount of special interest which would have been credited as of December thirty-first, nineteen hundred sixty-six had they had a balance in their annuity savings funds as of June thirtieth, nineteen hundred sixty-seven, provided that the sum of said special interest and any additional interest to be paid pursuant to paragraph g hereof is ten dollars or more. Special interest shall not be considered in determining rates of contribution of members.

g. If the full one per centum of special interest has been allowed, then to the extent that the amount of said earnings exceeds the amount allowed as regular interest and the amount allowed or paid as special interest, the board shall declare a rate of additional interest, expressed to the lower one-tenth of one per centum, but not to exceed one per centum, to be determined by the amount by which the investment earnings exceed the sum of the allowance of regular interest and the allowance and payment of special interest divided by the aggregate mean amount for calendar year nineteen hundred sixty-six which would be the reserve-for-increased-take-home-pay of all members to whom special interest is credited or paid pursuant to paragraph f hereof. In determining the reserve-for-increased-take-home-pay of any member to whom special interest is credited pursuant to paragraph f hereof, additional interest as determined by multiplying said additional interest rate by the mean amount for calendar year nineteen hundred sixty-six which would be said member's reserve-for-increased-take-home-pay shall be included. However, for members who are allowed regular interest at three per centum per annum for calendar year nineteen hundred sixty-six and who retire or die prior to June thirtieth, nineteen hundred sixty-seven, the amount of additional interest for calendar year nineteen hundred sixty-six shall not be included in the retirement allowance, but shall be paid in a single payment provided that the sum of said additional interest and any special interest to be paid pursuant to paragraph f hereof is ten dollars or more. Additional interest shall not be considered in determining rates of contribution of members.

h. (1) During the period commencing on July first, nineteen hundred seventy-seven and ending on June thirtieth, nineteen hundred eighty, special interest at the rate of one and one-half per centum per annum, compounded annually, shall be allowed with respect to the individual account of each contributor in the annuity savings fund.

(2) Subject to the provisions of subdivision j of this section, during the period commencing on July first, nineteen hundred eighty and ending on June thirtieth, nineteen hundred eighty-two, special interest at the rate of three and one-half per centum per annum, compounded annually, shall be allowed with respect to the individual account of each contributor in the annuity savings fund.

(3) (a) Subject to the provisions of subdivision j of this section, during the period commencing on July first, nineteen hundred eighty-two and ending on July thirty-first, nineteen hundred eighty-three, special interest at the rate of four per centum per annum, compounded annually, shall be allowed with respect to the individual account of each member in the annuity savings fund.

(b) Subject to the provisions of subdivision j of this section, during the period commencing on August first, nineteen hundred eighty-three and ending on June thirtieth, nineteen hundred eighty-five, special interest at the rate of one per centum per annum, compounded annually, shall be allowed with respect to the individual account of each member in the annuity savings fund.

(c) Subject to the provisions of subdivision j of this section, during the period commencing on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight, special interest at the rate of one per centum per annum, compounded annually, shall be allowed with respect to the individual account of each member in the annuity savings fund.

(d) Subject to the provisions of subdivision j of this section, during the period commencing on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety, special interest at the rate of one and one-quarter per centum per annum, compounded annually, shall be allowed with respect to the individual account of each member in the annuity savings fund.

(4) Such special interest provided for by paragraphs (1), (2) and (3) of this subdivision shall be credited to such individual account of each contributor entitled thereto in the same manner and at the same time as regular interest is required to be credited to such account with respect to the same period of time. Such special interest shall not be considered in determining rates of contributions of contributors. Nothing contained in this subdivision h shall be construed as applicable to any contributor who is subject to the provisions of article fourteen or article fifteen of the retirement and social security law.

i. (1) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each contributor entitled to such a reserve, additional interest at the rate of one and one-half per centum per annum compounded annually shall be included for each city fiscal year occurring during the period beginning on July first, nineteen hundred seventy-seven and ending on June thirtieth, nineteen hundred eighty.

(2) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each contributor entitled to such a reserve, additional interest at the rate of three and one-half per centum per annum compounded annually shall be included for each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty and ending on June thirtieth, nineteen hundred eighty-two.

(3) (a) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each contributor entitled to such a reserve, additional interest at the rate of four per centum per annum, compounded annually, shall be included for each city fiscal year and portion thereof occurring during the period beginning July first, nineteen hundred eighty-two and ending on July thirty-first, nineteen hundred eighty-three.

(b) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each contributor entitled to such a reserve, additional interest at the rate of one per centum per annum, compounded annually, shall be included for each city fiscal year and portion thereof occurring during the period beginning August first, nineteen hundred eighty-three and ending on June thirtieth, nineteen hundred eighty-five.

(c) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of one per

centum per annum compounded annually shall be included for each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-eight.

(d) Subject to the provisions of subdivision j of this section, in determining the reserve-for-increased-take-home-pay of each member entitled to such a reserve, additional interest at the rate of one and one-quarter centum per annum compounded annually shall be included for each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety.

(4) Additional interest shall not be considered in determining rates of contribution of contributors. Nothing contained in this subdivision i shall be construed as applicable to any contributor who is subject to the provisions of article fourteen or article fifteen of the retirement and social security law.

j. (1) The provisions of paragraph two of subdivision h of this section and the provisions of paragraphs one and two of subdivision i of this section, to the extent that any of such provisions grants special or additional interest, as the case may be, for any period prior to July thirty-first, nineteen hundred eighty-one, shall not apply to any person who was not a contributor on such date of enactment and shall not apply to any person to whom, on July thirty-first, a deferred retirement allowance or any part of such a retirement allowance was payable pursuant to the provisions of section 13-556 of this chapter.

(2) (a) The provisions of subparagraph a of paragraph three of subdivision h of this section, to the extent that such subparagraph grants special interest for any period prior to December sixteenth, nineteen hundred eighty-two, and the provisions of subparagraph (a) of paragraph three of subdivision i of this section, to the extent that such subparagraph grants additional interest for any period prior to such date, shall not apply to any person who was not a contributor on such date and shall not apply to any person to whom, on such date, a deferred retirement allowance or any part of such a retirement allowance was payable pursuant to the provisions of section 13-554 of this chapter.

(b) The provisions of subparagraph (d) of paragraph three of subdivision h of this section, to the extent that such subparagraph grants special interest for any period prior to the date of enactment of this subparagraph (b) (as such date is certified pursuant to section forty-one of the legislative law), and the provisions of subparagraph (d) of paragraph three of subdivision i of this section, to the extent that such subparagraph grants additional interest for any period prior to such date of enactment, shall not apply to any person who was not a member on such date of enactment and shall not apply to any person to whom, on such date of enactment, a deferred retirement allowance or any part of such a retirement allowance was payable pursuant to the provisions of section 13-554 of this chapter.

(3) Nothing contained in subdivisions h and i of this section shall be construed as granting special or additional interest, as the case may be, to any person with respect to any period wherein such person was not a contributor entitled to be credited with regular interest for the same period or was not a discontinued member entitled to be credited, as a discontinued member, with regular interest for the same period.

k. (1) As used in this section, the term "funds" shall mean the funds provided for in accordance with the provisions of this chapter, other than the expense fund, pension reserve fund number two and the variable annuity funds.

(2) Subject to the provisions of paragraph five of this subdivision k, in addition to regular interest annually allowed for the period from July first, nineteen hundred seventy-seven to June thirtieth, nineteen hundred eighty on the mean amount for the preceding year in each of the funds of the retirement system, there shall be annually allowed with respect to such period supplementary interest at the rate of one and one-half per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest was credited to such funds with respect to such period.

(3) Subject to the provisions of paragraph five of this subdivision k, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty to June thirtieth, nineteen hundred eighty-two, on the

mean amount for the preceding year in each of the funds of the retirement system, there shall be annually allowed with respect to such period supplementary interest at the rate of three and one-half per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(4) (a) Subject to the provisions of paragraph five of this subdivision k, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty-two to July thirty-first, nineteen hundred eighty-three on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this chapter, there shall be annually allowed with respect to such period supplementary interest at the rate of four per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(b) Subject to the provisions of paragraph (5) of this subdivision k, in addition to regular interest annually allowed for the period from August first, nineteen hundred eighty-three to June thirtieth, nineteen hundred eighty-five on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this chapter, there shall be annually allowed with respect to such period supplementary interest at the rate of one per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(c) Subject to the provisions of paragraph (5) of this subdivision k, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty-five to June thirtieth, nineteen hundred eighty-eight on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this chapter, there shall be annually allowed with respect to such period supplementary interest at the rate of one per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(d) Subject to the provisions of paragraph (5) of this subdivision k, in addition to regular interest annually allowed for the period from July first, nineteen hundred eighty-eight to June thirtieth, nineteen hundred ninety on the mean amount for the preceding year in each of the funds provided for in accordance with the provisions of this chapter, there shall be annually allowed with respect to such period supplementary interest at the rate of one and one-quarter per centum per annum on such mean amount for the preceding year in each of such funds. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(5) The provisions of paragraphs two, three and four of this subdivision k shall not apply to or affect (i) the allowance of interest on or the crediting of interest to accounts of contributors or discontinued members in the annuity savings fund or (ii) to the allowance of interest on or crediting of interest to reserves-for-increased-take-home-pay of contributors or discontinued members or (iii) to the determination of the amount of any benefit payable to any contributor or beneficiary.

l. On or after May first, nineteen hundred eighty-nine and not later than October thirty-first of such year, the retirement board shall submit to the public officers and permanent commission referred to in paragraph (e) of subdivision twenty-two of section 13-501 of this chapter the recommendations of such board:

(1) as to whether legislation should be enacted providing for the crediting of special interest to contributors after June thirtieth, nineteen hundred ninety and if so, the recommended rate thereof and duration of such crediting; and

(2) as to whether legislation should be enacted providing that in the determination of

reserves-for-increased-take-home-pay of contributors entitled to such a reserve, additional interest shall be included for any period after June thirtieth, nineteen hundred ninety, and if so, the recommended rate thereof and the period as to which such interest should be included; and

(3) as to whether legislation should be enacted providing for the crediting of supplementary interest on and after June thirtieth, nineteen hundred ninety to such funds to which subdivision k of this section is applicable and if so, the recommended rate thereof and duration of such crediting.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. h par (3) subpar (c) amended chap 581/1989 § 27 subpar (d) added chap 581/1989 § 28

Subd. i par (3) subpar (c) amended chap 581/1989 § 29 subpar (d) added chap 581/1989 § 30

Subd. j par (2) amended chap 581/1989 § 31

Subd. k par (4) subpar (c) amended chap 581/1989 § 32 subpar (d) added chap 581/1989 § 33

**DERIVATION**

Formerly § B20-32.0 added chap 929/1937 § 1

Amended chap 711/1964 § 4

Amended chap 521/1965 § 1

Subs f, g added chap 638/1966 § 1

Subs h, i added chap 976/1977 § 12

Sub h amended chap 957/1981 § 49

Subs i, j, k added chap 957/1981 § 50

Sub l relettered and amended chap 957/1981 § 51

(formerly sub i added chap 976/1977)

Sub h amended chap 914/1982 § 12

Subs i, j, k amended chap 914/1982 § 13

Sub h pars 3, 4 amended chap 910/1985 § 13

Sub i pars 3, 4 amended chap 910/1985 § 14

Sub k par 4 amended chap 910/1985 § 15

Sub h par 3 subpar c added chap 911/1985 § 13

Sub h pars 3, 4 amended chap 911/1985 § 14

Sub i par 3 subpar c added chap 911/1985 § 15

Sub i pars 3, 4 amended chap 911/1985 § 16

Sub k par 4 subpar c added chap 911/1985 § 17

Sub k par 4 amended chap 911/1985 § 18

Sub l amended chap 911/1985 § 19



Administrative Code of the City of New York



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

*NYC Administrative Code 13-536*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-536 Custodian of funds.

The comptroller shall be the custodian of the several funds provided for by this chapter. The comptroller may designate one of the deputy comptrollers to act in his place and stead at all meetings of the retirement board, and such designation shall be in writing and shall be duly filed in and remain of record in the office of the comptroller and in the office of the executive director of the retirement system. Such deputy comptroller shall possess any and every power and perform any and every duty at the meetings of such board belonging to the office of comptroller.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-33.0 added chap 929/1937 § 1

Amended chap 888/1973 § 13

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

*NYC Administrative Code 13-537*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-537 Payments from funds.

Payments from the funds provided for by this chapter shall be made by the comptroller upon a warrant signed by the chairperson and countersigned by the executive director of the retirement system. No warrant shall be drawn except by order of such board duly entered in the record of its proceedings. The chairperson may by duly written authority and during a period of time not extending beyond three months, and specified in such authority, designate and authorize his or her secretary or any accountant or clerk in the employment of such board to sign in his or her name warrants drawn upon the funds provided for by this chapter. Such written authority shall be duly filed in and remain of record in the office of the comptroller and in the office of the executive director of the retirement system.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-34.0 added chap 929/1937 § 1

Amended chap 888/1973 § 13

**CASE NOTES FROM FORMER SECTION**

¶ 1. The provision of the Admin. Code for ex officio membership of the City Comptroller on the Teachers' Retirement Board is not paralleled by any statutory provision for an ex officio chairmanship of the Board, and hence

when term of office of the comptroller, who had been Chairman of the Board, expired, his successor comptroller, who automatically succeeded as a member of the Board, did not automatically succeed the former Comptroller and Chairman.-Briscoe v. Teachers' Retirement Board, 283 App. Div. 1026, 131 N.Y.S. 2d 112 [1954], modifying 205 Misc. 909, 131 N.Y.S. 2d 587 [1954], aff'd 308 N.Y. 704, 124 N.E. 2d 329 [1954].



Administrative Code of the City of New York



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

*NYC Administrative Code 13-538*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-538 Fund for current needs.

For the purpose of meeting disbursements for pensions, pensions-providing-for-increased-take-home-pay, annuities and other payments in excess of the receipts, there may be kept an available fund, not exceeding ten per cent of the total amount in the several funds provided for by this chapter, on deposit in any bank in this state, organized under the laws thereof or under the laws of the United States, or with any trust company incorporated by any law of this state, provided such bank or trust company shall furnish adequate security for such funds and provided that the sum so deposited in any one bank or trust company shall not exceed twenty-five per cent of the paid-up capital and surplus of such bank or trust company.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-35.0 added chap 929/1937 § 1

Amended chap 510/1960 § 15



Administrative Code of the City of New York



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

*NYC Administrative Code 13-539*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-539 Prohibition upon members and employees.

Except as provided in this chapter, the members and employees of the retirement board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment made by the retirement board or as such, directly or indirectly, from receiving any pay or emolument for their services. The members and employees of such retirement board, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board; nor shall any such member or employee become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed of such board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-36.0 added chap 929/1937 § 1

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

*NYC Administrative Code 13-540*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-540 Rules regulating loans to members.

Any teacher in city-service, who shall have been a contributor continuously for at least three years, may borrow from the retirement system, subject to such rules and regulations as may be approved by such board, an amount not exceeding seventy-five per cent of the sum of the amount of his or her accumulated deductions and his or her account in the variable annuity savings fund. The amount so borrowed, together with interest at the rate of two per cent higher than the rate of regular interest applicable to the member on any unpaid balance thereof, shall be repaid to the retirement system in equal installments at a rate calculated to repay the loan within a period not in excess of four years by deduction from the compensation of the contributor at the same time the compensation is paid; provided, however, that the entire balance of any loan, together with interest, may be paid by the contributor at any time within the period alloted for the repayment of the loan. The above repayment shall be in addition to the rate of contribution for annuity purposes previously certified to the contributor by the retirement board. Each loan made pursuant to this section shall be insured by the retirement system, without cost to the member, against the death of such member in an amount up to but not exceeding ten thousand dollars, as follows: 1. Until thirty days have elapsed after the making thereof, no part of the loan shall be insured.

2. From the thirtieth through the fifty-ninth day after the making thereof, twenty-five per cent of the present value of the outstanding loan shall be insured.

3. From the sixtieth through the eighty-ninth day after the making thereof, fifty per cent of the present value of the outstanding loan shall be insured.

4. On and after the ninetieth day after the making thereof, all of the present value of the outstanding loan shall be

insured. Upon the death of a member, the amount of insurance so payable shall be credited to his or her accumulated deductions. Notwithstanding anything to the contrary in this chapter, the additional deductions required to repay the loan shall be made, and the interest paid on the loan shall be credited to the proper funds of the retirement system. The actuarial equivalent of any unpaid balance of a loan at the time any benefit may become payable shall be deducted from any benefit otherwise payable, in accordance with rules and regulations adopted by the retirement board for this purpose.

**HISTORICAL NOTE**

Section amended chap 630/1986 § 2

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-37.0 added chap 929/1937 § 1

Amended chap 711/1945 § 1

Amended chap 667/1954 § 1

Amended chap 158/1958 § 1

Amended chap 529/1959 § 1

Open par amended chap 314/1964 § 1

Amended chap 286/1968 § 1

Open par amended chap 552/1976 § 1

Amended chap 514/1981 § 1

Amended chap 630/1986 § 1



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

*NYC Administrative Code 13-541*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-541 Termination of membership; resignation, transfer or dismissal.

Withdrawals from the retirement association shall be by resignation, by transfer, or by dismissal.

Should a contributor resign from the position by virtue of which he or she is a contributor under the provisions of this chapter, or should he or she, upon transferring from such a position to another position in the city-service, fail to become a transferred-contributor as provided in section 13-523 of this chapter, his or her membership in such association shall cease except as provided in section 13-556 of this code and he or she shall be paid forthwith the full amount of the accumulated deductions standing to the credit of his or her individual account in the annuity savings fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-38.0 added chap 929/1937 § 1

Sub 1 amended chap 1019/1965 § 2

Amended chap 854/1985 § 1



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

*NYC Administrative Code 13-542*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-542 Death benefits; ordinary death benefits.

a. Upon the death of a contributor before retirement there shall be paid to his or her estate or to such person as he or she shall have nominated by written designation duly executed and filed with the retirement board:

1. His or her accumulated deductions; and, in addition thereto,

2. A sum consisting of:

(i) His or her reserve-for-increased-take-home-pay, if any, which shall be paid out of the contingent reserve fund; and (ii) An amount, payable out of the contingent reserve fund in the case of a new entrant and out of pension reserve fund number two in the case of a present-teacher, equal to the salary earnable by him or her during the six months immediately preceding his or her death, provided that at the time of his or her death he or she had obtained the age of sixty-five years or had a total-service of thirty-five years and was eligible for service retirement.

b. Where any contributor, by any designation heretofore or hereafter filed pursuant to subdivision a of this section and in effect at the time of the death of such contributor, nominated or shall nominate any person to receive the amount payable under subparagraph (ii) of paragraph two of subdivision a of this section, the reserve-for-increased-take-home-pay, if any, of such member, payable under subparagraph (i) of such paragraph two shall be paid to the person so nominated.

c. (1) The retirement board may adopt rules and regulations providing that in any case where a contributor or designated beneficiary authorized by the applicable provisions of this chapter to nominate a beneficiary to receive a

lump sum benefit pursuant to section 13-542 or section 13-543 of this chapter represents to the retirement system that a specified person has been designated by such contributor or designated beneficiary as a trustee of an inter vivos or testamentary trust for the purposes of this subdivision c, such person shall be eligible to be nominated to receive, in the capacity of trustee, such lump sum benefit pursuant to the applicable provisions of either of such sections.

(2) Any proceeds received by a trustee under this section shall not be subject to the debts of the member or to transfer or estate taxes to any greater extent than if such proceeds were payable to the beneficiaries named in the trust and not to the estate of the member.

(3) A payment made in good faith under this section (a) to a person so represented to the retirement system to be a trustee of an inter vivos trust, or (b) to a person who is designated as a successor trustee of an inter vivos trust and who provides a copy of his or her appointment or, (c) to a person who is designated as a trustee or successor trustee of a testamentary trust and who provides a copy of the letters of trusteeship, provided such payment is made to such payee in the capacity of trustee, shall be a complete discharge to the retirement system to the extent of the payment. Such discharge shall not be impaired or affected by an adjudication that a trust is invalid or that a person represented to be or designated as a trustee is not entitled to receive the proceeds, if payment is made in good faith under this section before notice to the retirement system of the claim of invalidity or lack of entitlement on which such adjudication is based.

(4) (a) If no person to whom the retirement system is authorized to make payment in the capacity of trustee, as provided for in paragraph three of this subdivision c, claims the proceeds within eighteen months after the death of the member, payment shall be made to the deceased member's estate and such payment shall be a complete discharge to the retirement system to the extent of the payment.

(b) If satisfactory evidence is furnished within such period of eighteen months that there is or will be no trustee to receive the proceeds, payment shall be made to the deceased member's estate.

(5) In the event that after a person represented to have been designated as a trustee of an inter vivos or testamentary trust is nominated pursuant to rules and regulations adopted under paragraph one of this subdivision c, the contributor or designated beneficiary authorized to make a nomination shall, in compliance with the applicable provisions of this chapter, nominate for receipt of the same lump sum benefit:

(a) a beneficiary other than a person so represented to have been designated as a trustee; or

(b) a person represented to have been designated as a trustee under a different inter vivos or testamentary trust; a payment made in good faith under this section to the last such nominee as of the date of death, whether he or she is a beneficiary not represented to have been designated as trustee or a person represented to have been so designated, shall be a complete discharge to the retirement system to the extent of the payment, provided, however, that if payment is made to a person represented to have been designated as a trustee, the retirement system shall be so discharged if payment is made to such person in the capacity of trustee and if there is compliance with the requirements of paragraph three of this subdivision c with respect to submission of copies. In any case where the last such nominee is a person represented to have been designated as a trustee, the provisions of paragraph four of this subdivision c shall apply.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-39.0 added chap 929/1937 § 1

Amended chap 510/1960 § 16

Amended chap 788/1962 § 5

Sub c added chap 495/1970 § 1

Sub c amended chap 1001/1971 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Deceased wife's designation of her sister as beneficiary of the Reserve Fund set up under the New York City Teachers' Retirement System in connection with the wife's retirement, did not create a Totten Trust, and was not illusory so as to defeat any of the provisions of the Decedent Estate Law or any rights her husband might have had as a surviving spouse. The Reserve Fund was not an asset of decedent's estate and could not pass under her will.-Moyer v. Dunseith 180 Misc. 1004, 46 N.Y.S. 2d 537 [1943], aff'd 266 App. Div. 1008, 45 N.Y.S. 2d 126 [1943].

¶ 2. On death of teacher of New York City school system, fund representing accumulated salary deductions paid by the Teachers' Retirement System to a designated beneficiary, **held** properly included as a part of decedent's estate for tax purposes, inasmuch as the Retirement System was under obligation to decedent to return to her, or her estate or nominee, the amounts deducted from her salary upon her withdrawal or death prior to retirement. Decedent would have been entitled to the fund upon her withdrawal prior to retirement, and a nominee was entitled to it only upon her death. The accumulated deductions did not possess the essentials of insurance, but the situation resembled more closely an annuity.-Est. of Pauline J. Burtman, 180 Misc. 299, 41 N.Y.S. 2d 778 [1943].

¶ 3. That in 1919 plaintiff's father, a school principal, had designated plaintiff as his beneficiary to receive the accumulated salary deductions accruing in event of his death prior to retirement and also to receive all death benefits allowable at time of his death, **held** not to entitle daughter to receive benefits presently payable to her father under the Teachers' Retirement Fund, where prior to his retirement in 1933 her father had revoked plaintiff's designation and had made a new designation in favor of his wife. His designation was not irrevocable, and furthermore the Retirement Board for the past 22 years has uniformly treated such designations as revocable, and this practice violates no law or public policy.-Torok v. Teachers' Retirement Board, 102 (113) N.Y.L.J. (11-15-39) 1634, Col. 6 T.

¶ 4. Persons designated under a prior designation as beneficiaries of deceased's interest in New York City Teachers' Retirement Fund, had sufficient interest to maintain an action to annul a subsequent designation of another person as beneficiary.-Robillard v. Booth, 115 (92) N.Y.L.J. (4-20-46) 1555, Col. 3 M, rev'd on other grounds, 271 App. Div. 878, 66 N.Y.S. 2d 261 [1946].

¶ 5. Designation of defendant as beneficiary of deceased teacher's accumulated salary deductions and death benefit **held** to have been timely filed with the Retirement Board prior to deceased's death on April 25, where the clerk of the Board and the person who delivered the designation to the clerk testified that it was filed on April 20, the time clock stamping showed the date of its receipt as April 20, and it merely appeared that on the reverse side of the paper was a printed form indicating the filing date of May 1, but this was explained as merely showing the date the instrument was processed through the Board's office and placed in the filing compartment with deceased's records.-Id.

¶ 6. In action to have declared void an instrument purporting to designate defendant as beneficiary of deceased teacher's accumulated salary deduction and death benefit, admission of defendant's testimony as to conversation between her and deceased concerning the designation of defendant as beneficiary of the salary deduction and death benefit **held** reversible error, in view of provisions of Civil Practice Act § 347.-Robillard v. Booth, 271 App. Div. 878, 66 N.Y.S. 2d 261 [1946].

¶ 7. The provisions of the Code that rights of members of Teachers' Retirement System are exempt from tax, levy, sale, attachment, and assignment did not destroy or impair the validity or effectiveness of a divorce decree which provided that pensioner's ex-wife be named as irrevocable beneficiary with respect to his pension fund.-Lapolla v. Retirement Board of the Teachers' Retirement, etc., 140 N.Y.S. 2d 449 [1955].

¶ 8. The defendant was liable for interest on the accumulated salary deductions of the decedent where, although it tendered the amount of decedent's contributions to the executrix, the tender was refused because the defendant would not agree that the receipt of the accumulated contributions would be without prejudice to the executrix's claim for death benefits. Although the claim for death benefits was subsequently denied the executrix was entitled to interest.-Winkel v. Teachers' Retirement System of N.Y.C., 149 N.Y.S. 2d 906 [1956].

¶ 9. When plaintiff who was the former wife of a deceased member of the Teachers' Retirement System entered into a separation agreement with him in which he agreed to name "his wife as beneficiary" she was not entitled to recover the benefits as against his subsequently designated beneficiaries.-Caravaggio v. Retirement Board of the Teachers' Retirement System of the City of N.Y., 36 N.Y. 2d 348, 329 N.E. 2d 165, 368 N.Y.S. 2d 475 [1975].

¶ 10. Where beneficiary caused the death of his mother who was a member of the Teachers' Retirement System fact that he was acquitted of murder by reason of mental disease or defect was not res judicata in proceeding to obtain death benefits because of different parties involved and different burden of proof in criminal and civil cases.-Nasper v. City of N.Y., 173 (81) N.Y.L.J. (4-28-75) 15, Col. 6 M.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-543*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-543 Special death and retirement benefits.

a. Upon the death of a contributor, before retirement or within thirty days after the effective date of his or her service retirement, or within thirty days after the filing of his or her application for disability retirement, in lieu of any retirement allowance, or optional benefit, or any death benefit, there shall be paid to his or her estate or to such person as he or she shall have nominated by written designation duly executed and filed with the retirement board:

1. His or her accumulated deductions; and in addition thereto,

2. A sum consisting of:

i. His or her reserve-for-increased-take-home-pay, if any, which shall be paid out of the contingent reserve fund; and

ii. In the case of any contributor whose death heretofore occurred or occurs hereafter and prior to July first, nineteen hundred seventy, an amount, payable out of the contingent reserve fund in the case of a new-entrant and out of pension reserve fund number two in the case of a present-teacher, equal to (a) six per cent of his or her average salary multiplied by the number of his or her years of city-service rendered prior to April tenth, nineteen hundred twenty-nine plus (b) five per cent of his or her average salary multiplied by the number of his or her years of city-service rendered subsequent to such date. In the case of a teacher appointed prior to such date the years of credit under (a) and (b) shall not exceed thirty-five years in total and in the case of a teacher appointed subsequent to such date, the years of credit shall not exceed twenty years in total. In no event shall such amount be less than one-half of his or her average salary, except that in the case of a teacher who has a total city-service of six months or more and less than five years such

amount shall be six times the average monthly salary earnable by him or her during his or her city-service immediately preceding his or her death. If the contributor was a present-teacher, there shall be included a further amount in addition thereto equal to five per cent of his or her average salary multiplied by five sevenths of the number of his or her years of prior-service. The total credit for prior-service so allowed shall not exceed twenty-five years. If in the case of any deceased contributor the total amount payable under this subparagraph (ii) of this paragraph two of this subdivision is greater than the largest maximum annual salary paid to any contributor, such total amount payable shall not be greater than two and three-fourths times the average salary of the deceased contributor, nor less than the largest maximum annual salary paid to any contributor; or

iii. in the case of any contributor whose death occurs on or after July first, nineteen hundred seventy, a sum consisting of:

(a) an amount equal to the salary earnable by him or her while in city-service, during the six months immediately preceding his or her death; or

(b) if the total number of years of city-service credited to him or her is ten or more then an amount equal to the salary earnable by him or her while in city-service during the twelve months immediately preceding his or her death; or

(c) if the total number of years of city-service credited to him or her is twenty or more, then an amount equal to twice the salary earnable by him or her while in city-service during the twelve months immediately preceding his or her death.

3. Where any contributor, by any designation heretofore or hereafter filed pursuant to the preceding provisions of this subdivision and in effect at the time of the death of such contributor, has nominated or shall nominate any person to receive the amount payable under subparagraph (ii) or (iii) of paragraph two of this subdivision a, the reserve-for-increased-take-home-pay, if any, of such contributor payable under subparagraph (i) of such paragraph two shall be paid to the person so nominated.

b. A contributor eligible for retirement pursuant to section 13-545 or 13-557 of this chapter, however, may file with the retirement board an application setting forth that he or she elects to be retired at a time not less than thirty nor more than ninety days after the filing of such application, provided such contributor shall agree in his or her application that such application shall be irrevocable from the date of filing. Such application shall retire such contributor on the date he or she elected to be retired, if then living, and such contributor, on retirement, shall be entitled to receive any annuity, pension, pension-providing-for-increased-take-home-pay to which he or she may be entitled, if any, retirement allowance, or any optional benefit he or she may have selected at the time of the filing of such application or prior thereto pursuant to the provisions of this section.

c. 1. A contributor at any time may file with the retirement board his or her election to have paid to his or her beneficiary, in the event of his or her death, his or her accumulated salary deductions or death benefit, or both, in accordance with one of the following options:

Option A. Upon the death of the contributor the actuarial value of his or her accumulated salary deductions or death benefit, or both, shall be paid in an annuity in monthly installments throughout the life of such beneficiary as he or she shall nominate by written designation duly acknowledged and filed with such board; or

Option B. Upon the death of the contributor the actuarial value of his or her accumulated salary deductions or death benefit, or both, shall be paid in a lesser annuity in monthly installments to such beneficiary as the contributor shall nominate by written designation duly acknowledged and filed with such board with a provision that should such beneficiary die before he or she has received the total actuarial value of the accumulated salary deductions or death benefit, or both, as certified at the time of the death of the contributor, the balance shall be paid to the estate of the contributor or to such other beneficiary or beneficiaries as shall have been nominated by the contributor by written designation duly acknowledged and filed with such board; or

Option C. Upon the death of the contributor, that some other benefit or benefits shall be paid to such beneficiary or beneficiaries as he or she shall have nominated by written designation duly acknowledged and filed with such board, provided such other benefit or benefits shall be certified to by the actuary of such board to be of equivalent actuarial value of the accumulated salary deductions or death benefit, or both, and shall be approved by such board.

2. Where any contributor, by any designation heretofore or hereafter filed pursuant to paragraph one of this subdivision c and in effect at the time of the death of such contributor, nominated or shall nominate any beneficiary or beneficiaries to receive payment of his or her death benefit in accordance with any option mentioned in such paragraph one, the reserve-for-increased-pay, if any, of such contributor shall be paid to such beneficiary or beneficiaries in the same manner and in accordance with the same methods of computation as are prescribed in such paragraph one with respect to payment of such death benefit pursuant to such option.

d. 1. Where a designated beneficiary has been named to receive either the accumulated salary deductions or death benefit, or both, but where no election of an option has been made under the provisions of this section, the designated beneficiary may elect to receive the amount or amounts payable upon the death of the contributor in a lump sum or he or she may elect to have the amount paid under any one of the above options in the same manner as if the contributor had designated the option under which such amount would have been paid.

2. Where any designated beneficiary named as specified in paragraph one of this subdivision d, has heretofore made or shall hereafter make an election pursuant to such paragraph one with respect to receipt of the death benefit, the reserve-for-increased-take-home-pay, if any, of the contributor shall be paid to the same beneficiary or beneficiaries, in the same manner, and in accordance with the same methods of computation as are prescribed by such paragraph one with respect to payment of the death benefit pursuant to such election.

e. The effective date of retirement under section 13-545, 13-547, 13-549 or 13-557 of this chapter, shall be the date specified in the application as the date for retirement, provided that the date so specified is subsequent to the date of filing. In case of disability retirement, the effective date of retirement shall be the date of the medical examination or such other date within thirty days subsequent to the medical examination as shall be mutually agreed upon by the contributor and such board.

f. This section shall not apply to a contributor who prior to the tenth day of October, nineteen hundred twenty-nine shall have filed with such board a statement in writing that he or she elected not to come within the provisions of this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-40.0 added chap 929/1937 § 1

Subs a, b, c, d amended chap 510/1960 § 17

Subs a, c, d amended chap 788/1962 § 6

Subs a, e amended chap 274/1970 § 18

Sub e amended chap 976/1970 § 4

**CASE NOTES FROM FORMER SECTION**

¶ 1. Admin. Code § B20-40.0, providing that upon death of a contributor, before retirement or within 30 days

after filing of his application for retirement, the accumulated deductions and interest should be paid to his estate, applied only where there was a voluntary application but not where the contributor was involuntarily retired because of disability. Furthermore, the 30-day provision did not run from date of the Retirement Board's approval of the contributor's retirement, as on that date the retirement became an accomplished fact. The contributor's application, if any, was to be deemed filed by him, was filed on or prior to the date of his letter to the Board wherein he referred to "my" request to be retired.-Hiney v. Teachers' Retirement Board, 182 Misc. 147, 47 N.Y.S. 2d 648 [1944].

¶ 2. Where teacher who had been retired for disability had elected to retire at the maximum retirement allowance, and following the approval of his retirement but before any payment was received the teacher died, argument of the administratrix of his estate, who sought to recover a sum representing the amount of accumulated deductions and interest made from his salary, that the Retirement Board would be unjustly enriched by the retention of such salary deductions, was without merit, as the teacher had made his election even though it turned out that he was unwise in his election. That the Board made no payments of the retirement allowance was immaterial, as the rights of the parties became fixed upon the Board's approval of the retirement.-Hiney v. Teachers' Retirement Board, 182 Misc. 147, 47 N.Y.S. 2d 648 [1944].

¶ 3. Where propriety of retirement of school teacher by Board rested solely upon difference of opinion among competent physicians, the Court would not substitute its judgment for that of the Board where there was substantial evidence to sustain its findings.-In re Giangrande (Bd. of Education), 111 (6) N.Y.L.J. (1-8-44) 99, Col. 5 F, at 7 T.

¶ 4. The provisions of the Code that rights of members of Teachers' Retirement System are exempt from tax, levy, sale, attachment, and assignment did not destroy or impair the validity or effectiveness of a divorce decree which provided that pensioner's ex-wife be named as irrevocable beneficiary with respect to his pension fund.-Lapolla v. Retirement Board of the Teachers' Retirement, etc., 140 N.Y.S. 2d 449 [1955].

¶ 5. Under § B20-46.0 a contributor may file an election to receive modified retirement benefits at any time up to actual retirement by resolution of the Retirement Board. The provisions of subdivision e of this section did not limit the right of the petitioner to make an election more than thirty days after her medical examination.-Matter of Levy, 298 N.Y. 360, 52 N.E. 2d 902 [1943].

¶ 6. A teacher remained a contributor to the retirement system until such time as her retirement was accomplished by resolution of the Retirement Board and during that period could file an election to take modified benefits. The teacher was not required to file her election within thirty days after the medical examination. Thus, where a request for retirement was made on January 26 and a medical examination was held on March 28, the teacher could file an election to take modified benefits any time before April 28, the date the Retirement Board approved the retirement even though the effective date of the retirement was April 1.-Matter of Katz, 291 N.Y. 360, 52 N.E. 2d 902 [1943].

**CASE NOTES**

¶ 1. Decedent, a member of the teachers' retirement system could not change her option selection from maximum retirement allowance to "Option I" after the effective date of her retirement but before receipt of her first check and before her application was acted on officially by the teachers' retirement board.-Greene v. Teachers' Retirement System of N.Y., 107 Misc. 2d 508 [1980].

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*NYC Administrative Code 13-544*

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Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-544 Accidental death benefits.

a. A contributor may at any time, by written designation filed with the retirement board, elect that, upon his or her accidental death while in the performance of his or her duties, in lieu of the benefits provided by section 13-543 hereof, paragraph b of subdivision two of section 13-545 and section four hundred forty-eight of the retirement and social security law, the benefits provided by subdivision b of this section be paid. A contributor electing the benefits provided by subdivision b of this section may at any time, by a written designation filed with the retirement board, revoke such election.

b. Upon the accidental death, occurring on or after the effective date of this section, of a contributor before retirement, provided that evidence shall be submitted to the retirement board proving that the death of such was the natural and proximate result of an accident while in the performance of duty, in the service upon which membership is based, at some definite time and place and that such death was not the result of wilful negligence on his or her part, the accumulated deductions and the reserve-for-increased-take-home-pay, if any, shall be paid to the estate, or to such person as the contributor shall have nominated by written designation filed with the retirement board; and, upon application filed within two years after the death of the member by or on behalf of the dependents of such deceased, the retirement board shall grant a pension of one-half of the final compensation of such contributor:

1. to the spouse, to continue until death or remarriage; or

2. if there be no spouse, or if the spouse dies or remarries before any child of such deceased shall have attained the age of eighteen years, then to the child or children under said age, divided in such manner as the retirement board in its discretion shall determine, to continue as a joint and survivor pension of one-half his or her final compensation until

every such child dies or attains said age; or

3. if there be no spouse or child under the age of eighteen years surviving such deceased, then to the dependent father or mother, as the deceased shall have nominated by written designation filed with the retirement board; or, if there be no such nomination, then to the dependent father or to the dependent mother, as the retirement board in its discretion shall direct, to continue for life.

c. Any pension, payable pursuant to this section on account of any such death, shall be reduced by the amount of the benefits that are finally determined to be payable under the workers' compensation law by reason of such disability or death. Such reduction shall be effectuated as follows:

1. pension installments shall be reduced by the amount of the concurrent workers' compensation benefits.

2. the pension reserve on account of a pension so payable shall be reduced by the amount of the lump sum workers' compensation benefits. In such case the pension thereafter payable shall be the actuarial equivalent of the pension reserve as so reduced. No such reduction shall be made, however, for the amount of medical, surgical, or other attendance or treatment, nurse and hospital service, medicine, crutches or apparatus and of any funeral expense provided under the workers' compensation law in addition to regular compensation benefits, or of any legal fees awarded under the workers' compensation law.

If any benefits under the workers' compensation law become payable as the result of such accidental death, the New York city teachers' retirement system shall be entitled to reimbursement out of the unpaid installment or installments of compensation due under the workers' compensation law provided that claim therefor is filed pursuant to the provisions of such law.

d. Notwithstanding any other provision of law to the contrary, and solely for the purposes of this section, a member shall be deemed to have died as the natural and proximate result of an accident sustained in the performance of duty upon which his or her membership is based, and not as a result of willful negligence on his or her part, provided that such member was in active service upon which his or her membership is based at the time that such member was ordered to active duty, other than for training purposes, pursuant to Title 10 of the United States Code, with the armed forces of the United States, and such member died while on such active duty on or after the effective date of the chapter of the laws of two thousand five which added this subdivision while serving on such active military duty.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. d added chap 105/2005 § 25, eff. June 14, 2005.

**DERIVATION**

Formerly § B20-40.1 added chap 865/1980 § 1

**CASE NOTES**

¶ 1. Teacher who intends to retire need not give his employer thirty days notice as required by Education Law § 3019-a, this section of the Administrative Code having been interpreted as permitting the teacher the option of selecting his own date of retirement without giving notice within a specified time.-Macchiarola v. Drew, 104 Misc. 2d 1131 [1980].



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

*NYC Administrative Code 13-545*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-545 Retirement; service and superannuation.

Retirement for service shall be as follows:

1. Any contributor may retire fron service upon written application to such board setting forth at what time subsequent to the execution of such application he or she desires to be retired. Such application shall retire such contributor at the time so specified, provided

a. He or she has reached or passed the age of sixty-five years; or

b. If a present teacher, he or she has a total service of thirty-five years or more; or

c. If a new entrant, he or she has a total service of thirty-five years or more, at least twenty of which shall have been city-service; or

d. He or she has reached or passed the age of fifty-five years and has completed thirty years of total-service and provided, that by his or her written application, duly executed and filed with the teachers' retirement board on the first day of February, nineteen hundred sixty or after such date, before any deductions shall have been made from his or her compensation for annuity purposes, the member shall have given his or her consent on an official application form, to contribute the necessary deduction from his or her compensation computed to procure for him or her on service retirement an annuity which will match the pension for service retirement payable pursuant to section 13-554 of this chapter on the basis of retirement after completion of thirty years of total-service but not before age fifty-five. Nothing contained in this paragraph shall deprive any contributor of any reduced rate of contribution to which he or she may be

entitled under the provisions of section 13-546 of this chapter. At any time subsequent to one year after having given such consent, a member may withdraw such consent on an offical*15 withdrawal form, and thereafter any pension allowance for such member shall be calculated in the same manner as though such consent had not been given; or

e. He or she has reached or passed the age of fifty-five years and has completed twenty-five years of total-service and provided that by his or her written application, duly executed and filed with the teachers' retirement board on the first day of February, nineteen hundred sixty-five, or after such date, before any deductions shall have been made from his or her compensation for annuity purposes, the member shall have given his or her consent on an offical*16 application form, to contribute the necessary deduction from his or her compensation computed to procure for him or her on service retirement an annuity which will match the pension for service retirement payable pursuant to section 13-544 of this chapter on the basis of retirement after completion of twenty-five years of total-service but not before age fifty-five. Nothing contained in this paragraph shall deprive any contributor of any reduced rate of contribution to which he or she may be entitled under the provisions of section 13-546 of this chapter. At any time subsequent to one year after having given such consent, a member may withdraw such consent on an offical* withdrawal form, and thereafter any pension allowance for such member shall be calculated in the same manner as though such consent had not been given; or

f. He or she is an age fifty-five-increased-benefits pension plan contributor and has reached or passed the age of fifty-five years; subject, however, to the provisions of section 13-549 of this chapter (relating to deferred eligibility of certain retirees, withdrawn contributors and discontinued members for benefits under certain pension plans).

2. a. (1) Notwithstanding other provisions of this chapter, any rules or regulations adopted by the teachers' retirement board, or any provisions of law to the contrary, a contributor, eligible for retirement by reason of service and/or superannuation, may file with such board a written application for retirement in the form required for such application, electing an option or options in accordance with section 13-558 of this chapter but requesting that such retirement under said option or options shall become effective on the day immediately preceding his or her death.

(2) The application shall be held by such board until the contributor shall file a later application for retirement, or his or her retirement in pursuance of subdivision three of this section shall become effective, or until his or her death, whichever of such events shall first occur; and in the event of such contributor's death while such application shall continue to be so held by such board, his or her said retirement shall become effective with the same benefits to the beneficiary designated pursuant to section 13-558 of this chapter or to the legal representative of such contributor if no beneficiary was so designated:

(i) as if such contributor, if not subject to the provisions of item (ii) of this subparagraph two, had retired and had become entitled to retirement allowance on the day immediately preceding his or her death; or

(ii) as if such contributor, if he or she was a twenty-year pension plan contributor who died on or before his or her initial date of retirement allowance payability, had retired on the day immediately preceding his or her death and had become entitled, on such day, to a retirement allowance beginning on his or her initial date of retirement allowance payability.

b. In the event that a contributor, who would be eligible for retirement by reason of service and/or superannuation, dies while in service before filing with such board an application for retirement in the form required for such application, or who, having filed an application for retirement in the form required, dies before the expiration of a period of thirty days after the effective date of his or her retirement:

(1) he or she shall nevertheless, if not subject to the provisions of subparagraph two of this paragraph b, be deemed to have been retired and to have become entitled to a retirement allowance effective on the day immediately preceding his or her death; or

(2) if he or she was a twenty-year pension plan contributor whose death under the circumstances set forth above

in this paragraph b occurred before his or her initial date of retirement allowance payability, he or she shall nevertheless be deemed to have been retired on the day immediately preceding his or her death and to have become entitled, on such day, to a retirement allowance beginning on his or her initial date of retirement allowance payability; and if he or she had elected to receive his or her benefits without optional modification or if he or she had not indicated his or her election of benefits without optional modification or his or her election of an option under which he or she desired to be retired, he or she shall be considered as having elected to retire under the option designated as Option 1 of section 13-558 of this chapter.

c. The beneficiary designated pursuant to section 13-558 of this chapter, or the legal representative of such contributor if no beneficiary was so designated, to whom benefits are payable under paragraph a or b of this subdivision two may elect, by a statement in writing filed with the board, to receive the benefits payable under section 13-542 or 13-543 of this chapter, whichever is applicable, in lieu of the benefit payable under paragraphs a or b of this subdivision. Any such beneficiary or legal representative who became entitled to the payment or benefits under paragraph a or b of this subdivision on or after April twenty-fourth, nineteen hundred sixty-one but prior to April twenty-fourth, nineteen hundred sixty-two, shall have the right to make such election on or before October thirtieth, nineteen hundred sixty-two.

d. In any case where:

(1) a twenty-year pension plan contributor retires pursuant to section 13-547 of this chapter (relating to the twenty-year pension plan); and

(2) the effective date of his or her retirement precedes the date on which his or her retirement allowance begins; and

(3) such contributor dies more than thirty days after the effective date of his or her retirement and before the expiration of the period of thirty days after the date on which his or her retirement allowance begins; and

(4) on the date of his or her death, an election of Option I, II, III or IV set forth in section 13-558 of this chapter was not in effect with respect to such retirement; he or she shall be deemed to have elected Option I with respect thereto.

e. Notwithstanding any other provision of this chapter to the contrary, in any case where:

(i) any benefit under Option II, III or IV set forth in section 13-558 of this chapter is payable pursuant to paragraph a or b of this subdivision two by reason of the death of a twenty-year pension plan contributor whose initial date of retirement allowance payability is later than the date on which he or she is deemed to have been retired under such paragraph a or b; or

(ii) a twenty-year pension plan contributor who has elected Option II, III or IV set forth in section 13-558 of this chapter retires for service under such circumstances that his or her initial date of retirement allowance payability is later than the effective date of his or her retirement and such contributor dies more than thirty days after such effective date and before his or her initial date of retirement allowance payability; any benefit to which any beneficiary becomes entitled under such Option by reason of such contributor's death shall begin on such initial date.

f. Notwithstanding any other provision of this chapter to the contrary, in any case where a twenty-year pension plan contributor dies in service while such a contributor, after attaining the age of fifty-five years, and, at the time of his or her death, has not completed twenty years of twenty-year pension plan qualifying service, such contributor shall be deemed to have died as an age-fifty-five-increased-benefits pension plan contributor.

g. (1) Notwithstanding any other provision of this chapter to the contrary, in any case where a contributor dies on or after July first, nineteen hundred seventy and prior to November first, nineteen hundred seventy:

(i) under such circumstances that a benefit is payable under paragraph a of this subdivision two; or

(ii) before filing an application for retirement and under such circumstances that a benefit is payable under paragraph b of this subdivision; and such benefit, if this paragraph g had not been enacted, would be otherwise than as prescribed in this paragraph, then irrespective of the pension plan applicable to him or her at the time of his or her death and in lieu of any benefit which would otherwise be payable under the provisions of such paragraph a or b, there shall be paid the benefit which would have been payable if he or she had died while an age-fifty-five-increased-benefits pension plan contributor; provided, however, that if, had he or she died while a twenty-year pension plan contributor:

(a) he or she would have been eligible to retire as a twenty-year pension plan contributor on the day preceding his or her death; and

(b) the benefit payable would be larger than the benefit which would be paid if he or she had died while an age-fifty-five-increased-benefits pension plan contributor;

the benefit payable pursuant to this subparagraph one of this paragraph shall be the benefit which would be payable if he or she had died while a twenty-year pension plan contributor.

(2) In the event that a contributor to whom the provisions of subparagraph one of this paragraph g are applicable dies on July first, nineteen hundred seventy, then for the purposes of this paragraph g, the provisions of this chapter governing the rights, privileges and benefits of an age-fifty-five-increased-benefits pension plan contributor and a twenty-year pension plan contributor shall be deemed to have been in effect on June thirtieth, nineteen hundred seventy.

3. Each and every contributor who has attained or shall attain the age of seventy years shall in any event and whether or not he or she shall have filed an application for retirement in pursuance of subdivision two of this section be retired for service by such board at the end of the school year in which such age of seventy years is attained. For retirement purposes, the school year shall commence on the first day of September and shall terminate on the thirty-first day of August in the year next following.

4. a. Notwithstanding other provisions of this chapter, any rules or regulations adopted by the teachers' retirement board, or any provisions of the law to the contrary, a contributor who applies for retirement in accordance with section 13-545, section 13-547, section 13-548, section 13-549, section 13-550, section 13-551 or section 13-557 of this chapter may in the same application file a conditional election to receive on retirement his or her benefits, at the time prescribed by the applicable provisions of this title, in a retirement allowance payable throughout life or to receive the actuarial equivalent of his or her annuity, his or her pension, or his or her retirement allowance in a lesser annuity, or a lesser pension, or a lesser retirement allowance, payable throughout life in accordance with Option II, Option III or Option IV set forth in section 13-558 of this chapter, subject to the condition that:

(i) if he or she is a contributor other than a twenty-year pension plan contributor described in subparagraph (ii) of this paragraph a and if he or she dies before the effective date of his or her retirement; or

(ii) if he or she is a twenty-year pension plan contributor who has designated in an application for retirement under section 13-547 of this chapter an effective date of retirement occurring before his or her retirement allowance begins and if he or she dies before the date on which his or her retirement allowance begins; he or she shall instead be deemed to have elected Option I set forth in such section 13-558 and a benefit shall be paid under Option I in lieu of any such benefit conditionally elected by him or her.

b. (i) If any such contributor mentioned in subparagraph (i) of paragraph a of this subdivision four does not die under the circumstances set forth in such subparagraph (i) or if any such contributor mentioned in subparagraph (ii) of such paragraph a does not die under the circumstances set forth in such subparagraph (ii), the conditional election of such contributor of benefits without optional modification or Option II, III or IV, as the case may be, shall, as of the date on which his or her retirement allowance begins, cease to be conditional and shall become final and shall supersede

any prior election filed by such contributor under section 13-558 of this chapter.

c. Any contributor who has filed a conditional election pursuant to this paragraph four may at any time before it becomes a regular election file another conditional election conforming with the provisions of this paragraph. Any such subsequent conditional election last filed shall supersede all prior conditional elections filed by such contributor.

5. Notwithstanding other provisions of this chapter, any rules or regulations adopted by the teachers' retirement system, or any provision of the law to the contrary, any member of the faculty or instructional staff of the college of the city of New York, whether or not then having tenure, who was dismissed from such faculty on or before January first, nineteen hundred thirty-four, who shall be living and shall have attained an age of at least seventy years on the effective date of this code, and whose dismissal from such faculty or instructional staff has been, or after the effective date of this code, shall be, determined by the city university of New York to have been without just cause, in lieu of retirement allowance, if any, to which he or she might otherwise have been entitled had he or she continued to be employed as a member of such faculty or instructional staff, shall be entitled to receive, from the city of New York, upon application therefor, a retirement allowance which shall consist of a pension equal to one per cent of the average salary that he or she would have received had he or she continued in the employ of the city university of New York from the date of his or her actual hiring until he or she attained the age of seventy years, as such projected average salary shall be determined by the teachers' retirement system in the exercise of its discretion, making due allowance for probable professional promotions in academic rank and for salary adjustments and increments, multiplied by the total number of years of service that he or she would have rendered prior to the attainment of the age of seventy years in the continuous employ of the city university of New York, had he or she not been dismissed. In addition, he or she may elect, within six months of the effective date of this, to make all or any part of the contribution which he or she would have been required to make in order to be eligible to participate in the annuity savings fund pursuant to section 13-521 of this chapter, or any predecessor act and, upon making such contribution, he or she shall receive an annuity equal in amount to that which he or she would have received had he or she continued in the employ of the city university of New York until attaining the age of seventy years and had made payments as required by law to the annuity savings fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-41.0 added chap 929/1937 § 1

Sub 2 amended chap 264/1949 § 1

Sub 1 amended chap 522/1959 § 1

Sub 1 amended chap 510/1960 § 18

Sub 2 added chap 948/1961 § 1

Sub 3 designated and amended chap 948/1961 § 2

(formerly sub 2)

Sub 2 amended chap 832/1962 § 1

Sub 1 amended chap 959/1964 § 1

Sub 4 added chap 974/1968 § 1

Sub 1 par f added chap 274/1970 § 19

Sub 2 amended chap 274/1970 § 20

Sub 4 amended chap 274/1970 § 21

Sub 5 added chap 606/1970 § 1

Sub 4 par d amended chap 976/1970 § 5

Sub 2 par d subpar 1 amended chap 976/1970 § 9

**CASE NOTES FROM FORMER SECTION**

¶ 1. Teacher's written application for retirement was self-executing, and the Retirement Board was without discretion to reject her application.-In re Tucker (N.Y.C. Teachers' Retirement Bd.), 106 (140) N.Y.L.J. (12-17-41) 2012, Col. 6 M.

¶ 2. That the teacher was under suspension did not work a forfeiture of her retirement rights, and consequently she might validly apply for retirement benefits. Also, the subsequent dismissal of the teacher did not relate back and take effect as of date of the suspension to extent of nullifying the application or effectually blocking its operation.-Id.

¶ 3. Whether petitioner's intestate was mentally incompetent when he applied to the Teachers' Retirement Board for retirement could not be litigated collaterally in a mandamus proceeding directed to the Board to require them to pay petitioner a certain sum as a death benefit (C.P.A. § 1296), particularly where the application showed on its face that the duty enjoined upon the Board was fully performed (Admin. Code § B20-41.0). The intestate's application for retirement was self-executory, and moreover, even if the intestate were incompetent, his application would merely be voidable.-In re Martin (Teachers' Retirement Board of N.Y.C.), 109 (17) N.Y.L.J. (1-21-43) 274, Col. 5 T; see, also, 269 App. Div. 115, 54 N.Y.S. 2d 245 [1945].

¶ 4. An application for retirement submitted by a teacher on March 26 which designated March 27 as the effective day of the retirement was self-executing and effected the retirement of the teacher at the time specified without action of the Retirement Board. The fact that serious charges of misconduct had been made against the teacher on March 25 did not affect his right to retire.-Matter of Rogalin, 290 N.Y. 664, 49 N.E. 2d 623 [1943].

¶ 5. Where applicant for retirement died before date set in his application for retirement, motion for mandamus against Board of Education Retirement Board was denied. The day mentioned on the application being definite, nothing contained in collateral communications to Board affected the formal application.-Matter of Higgins (Board of Education Retirement Board), 97 (61) N.Y.L.J. (3-16-37) 1319, Col. 1 M; aff'd without opinion, 299 N.Y.S. 757 [1937].

¶ 6. Where petitioner's purported application for retirement from his position as an attendance officer, and the Retirement System's action thereon were a nullity because at the time petitioner was critically ill and in a state of semi-consciousness, and petitioner, having miraculously recovered from his illness, thereafter refused to accept retirement payments and repeatedly asserted that the "X" mark on the application was not his signature or voluntary act, petitioner would not be deemed to have ratified the effectiveness of his retirement by applying to the superintendent of schools for reinstatement to his former position. The situation was not comparable to business transactions where the parties are dealing at arm's length, but the relationship bordered upon one of confidence, particularly in view of the merited good favor in which petitioner stood in the attendance bureau and with his superiors, and moreover he had applied for reinstatement at the suggestion of his superior. Also, the Retirement System did not change its position by reason of petitioner's silence upon his claim of non-retirement.-Vivien v. Board of Education Retirement System, 63 N.Y.S. (2d) 390 [1946], aff'd 272 App. Div. 1000, 73 N.Y.S. 2d 836 [1947].

¶ 7. Service retirement of plaintiffs' intestate as a teacher in the City's public schools would not be set aside and his estate be permitted to recover a sum representing his death benefit payable on basis of his having died in service on theory that the teacher had been mentally incompetent at time he filed his application for retirement. It appeared from the evidence that the intestate knew what he was doing when he retired on a maximum retirement allowance, that he had given the question of his retirement considerable thought and understood the nature of the transaction, that no one was financially dependent upon him, that he disdained medical assistance, and that he was optimistic as to living a long life.-Martin v. Teachers' Retirement Board, 70 N.Y.S. 2d 593 [1947].

¶ 8. Petitioner who, after many months of proceedings before the Board of Education and the Teachers' Retirement System seeking to compel his retirement for disability, had submitted his resignation, which had been accepted by the Board of Education, **held** not entitled to an order directing the Board to accept the withdrawal of his resignation, as under the rules of the Board a withdrawal of a resignation is a discretionary matter. Even if the Board's practice was to accept a withdrawal of a resignation within a one-year period, petitioner would have no vested right thereto.-Korey v. Board of Education, 88 N.Y.S. 2d 160 [1949].

¶ 9. Under a 1961 amendment to § B20-41.0 a member of the retirement system who would be eligible for retirement by reason of service and/or superannuation is deemed to have retired as of the day of his death, if he dies before retiring. A war veteran may be eligible to retire after 25 years of service provided he pays to the Board a 5 or 10 year deficit in his annuity contributions. A military veteran died after completing 25 years of service. However he had not applied for early retirement and had not made the required payment. **Held:** the 1961 amendment was not applicable. It applies only to retirement for 30 years of service or for superannuation.-Matter of Margolin, 36 Misc. 2d 1025, 234 N.Y.S. 2d 237 [1962].

¶ 10. Request for terminal leave made by custodial engineer employed by the Board for over 30 years was denied on ground no formal written application therefor had ever been made. **Held:** this constituted an abuse of discretion. No provision of law or rule required the request to be in writing or by special form. Custodian had made his request to the chief of school custodians, and asked him to present the application to the personnel board for processing.-Jones v. Rubin, 150 (2) N.Y.L.J. (7-2-63) 8, Col. 6 M.

¶ 11. A 52-year-old employee of the Board of Education died in service, after 27 years of allowable service. He was entitled to a retirement benefit under Military Law § 245 if he had lived. Subdivision 2 of this section was applicable and retirement was deemed to have taken place the day before death and the advance notice requirements of the Military Law were not applicable. The further requirement of the Military Law that certain payments be made to the Retirement Fund was applicable.-Matter of Margolin, 14 N.Y. 2d 56, 197 N.E. 2d 610, 248 N.Y.S. 2d 209 [1964].

¶ 12. Where contributor's death did not occur within 30 days after the effective date of her service retirement, which was the date stated in her application for retirement, beneficiaries were not entitled to special benefits of death gamble statute.-Finn v. Teachers' Retirement Bd. of City of N.Y., 51 Misc. 2d 693, 273 N.Y.S. 2d 723 [1966], aff'd 28 App. Div. 2d 718, 282 N.Y.S. 2d 684 [1967], aff'd 21 N.Y. 2d 817, 235 N.E. 2d 908, 288 N.Y.S. 2d 904 [1968].

**FOOTNOTES**

15

[Footnote 15]: * So in original. (Word misspelled.)

16

[Footnote 16]: * So in original. (Word misspelled.)

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Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-546 Pensions-for-increased-take-home-pay.

a. 1. The board of estimate, by resolution adopted prior to June first, nineteen hundred sixty, may elect that the provisions of subdivisions b, e and f of this section shall be applicable to and for the benefit of all contributors.

2. In the event that the board of estimate adopts such a resolution, the provisions of subdivisions b, e and f of this section shall, on the date on which such subdivision b becomes operative, become applicable to and for the benefit of all contributors.

3. On and after June first, nineteen hundred sixty, the board of estimate may not rescind such election.

b. In the event that the board of estimate, pursuant to the provisions of subdivision a of this section, elects that the provisions of this subdivision and subdivisions e and f of this section shall be applicable to and for the benefit of contributors, then beginning with the payroll period the first day of which is nearest to July first, nineteen hundred sixty, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-one, the contribution of each contributor, exclusive of any increase in such contribution pursuant to section 13-525 or subdivision two of section 13-554 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by two and one-half per centum of the salary of such member. Where a member's rate of contribution, exclusive of any increase thereof pursuant to such section 13-525 or subdivision two of such section 13-554, or any reduction thereof pursuant to subdivision one of such section one hundred thirty-eight-b, and before reduction thereof pursuant to this subdivision, is equal to or less than two and one-half per centum, such rate shall be discontinued.

c. 1. The board of estimate, by resolution adopted prior to June first, nineteen hundred sixty-one, may elect that the provisions of subdivisions d, e and f of this section shall be applicable to and for the benefit of all contributors.

2. In the event that the board of estimate adopts such a resolution, the provisions of subdivisions d, e and f of this section shall, on the date on which such subdivision d becomes operative, become applicable to and for the benefit of all contributors.

3. On and after June first, nineteen hundred sixty-one, the board of estimate may not rescind such election.

4. In making an election pursuant to the provisions of paragraphs one and two of this subdivision, the board of estimate shall select the percentage by which the contributions of contributors shall be reduced pursuant to the provisions of subdivision d of this section. Such percentage shall be two and one-half per centum or five per centum, whichever such board, in its discretion, shall designate in the resolution making such election. Such percentage shall not be changed after it has been designated in such resolution.

d. In the event that the board of estimate, pursuant to the provisions of subdivision c of this section, elects that the provisions of this subdivision and of subdivisions e and f of this section shall be applicable to and for the benefit of contributors, then beginning with the payroll period the first day of which is nearest to July first, nineteen hundred sixty-one, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-two, the contribution of each contributor, exclusive of any increase in such contribution pursuant to section 13-525 or subdivision two of section 13-554 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by the percentage selected by the board of estimate pursuant to the provisions of paragraph four of subdivision c of this section. Where a member's rate of contribution, exclusive of any increase thereof pursuant to such section 13-525 or subdivision two of such section 13-554, or any reduction thereof pursuant to subdivision one of such section one hundred thirty-eight-b, and before reduction thereof pursuant to this subdivision, is equal to or less than such percentage, such rate shall be discontinued.

e. 1. Any reduction or discontinuance of a member's contribution, as the case may be, made pursuant to the provisions of this section, shall:

(i) Be subject to waiver by the member as provided in subdivision six of section 13-521 of this chapter, and

(ii) Take precedence over the member's privilege under subdivision one of section one hundred thirty-eight-b of the retirement and social security law, to decrease his or her annuity contribution for the purpose of paying his or her contributions for old-age survivors and disability insurance coverage or the tax imposed upon him or her pursuant to the federal insurance contribution act.

2. A contributor to whom or for whose benefit the provisions of subdivison b or d of this section, or both, are applicable under the provisions of subdivisions a and c of this section, or to whom or for whose benefit the provisions of paragraph four of subdivision g, paragraph four of subdivision i, paragraph one of subdivision j, paragraph one of subdivision k, paragraph one of subdivision l, paragraph one of subdivision m, paragraph one of subdivision n, paragraph one of subdivision o or paragraph one of subdivision p of this section are applicable, and who waives any reduction or discontinuance (to which he or she is entitled under the provisions of this section) of his or her contribution, shall be entitled to a pension-providing-for-increased-take-home-pay and death benefit to the same extent as if such waiver had not been made.

f. 1. With respect to each contributor to whom or for whose benefit the provisions of subdivision b or d of this section, or both, are applicable under the provisions of subdivisions a and c of this section, or to whom or for whose benefit the provisions of paragraph four of subdivision g, paragraph four of subdivision i, paragraph one of subdivision j, paragraph one of subdivision k, paragraph one of subdivision l, paragraph one of subdivision m, paragraph one of subdivision n, paragraph one of subdivision o or paragraph one of subdivision p of this section are applicable,

contributions shall be made to the contingent reserve fund by the city with respect to the period of such applicability, at a rate fixed by the actuary which shall be computed to be sufficient to provide the death benefit hereunder and pension-providing-for-increased-take-home-pay which are or may become payable on account of such contributor.

2. Such a benefit and such a pension-providing-for-increased-take-home-pay shall be based on a reserve-for-increased-take-home-pay.

3. (a) Notwithstanding any other provision of this title or any other law to the contrary, all contributions due from the city to the contingent reserve fund with respect to the fiscal year nineteen hundred seventy-one-nineteen hundred seventy-two and with respect to each fiscal year thereafter under the provisions of paragraph one of this subdivision f shall be payable with regular interest thereon in the second fiscal year after the fiscal year with respect to which such contributions are due.

(b) In any case where during the fiscal year nineteen hundred seventy-one-nineteen hundred seventy-two or any succeeding fiscal year, any amount would have been currently deposited and credited to a variable annuity program participant's individual account in the variable pension accumulation fund, if subparagraph (a) of this paragraph three had not been enacted, an equal amount shall be transferred from the contingent reserve fund and shall be deposited and credited to such account at the same time and in the same manner as if such subparagraph (a) had not been enacted.

g. Provisions relating to fiscal year nineteen hundred sixty-two-nineteen hundred sixty-three. 1. The board of estimate, by resolution adopted prior to June first, nineteen hundred sixty-two, may elect that the provisions of paragraph four of this subdivision g and the provisions of subdivisions e and f of this section shall be applicable to and for the benefit of all contributors.

2. In the event that such board adopts such a resolution, the provisions of such paragraph four and of such subdivisions e and f shall, on the date on which such paragraph becomes operative, become applicable to and for the benefit of all contributors.

3. On and after June first, nineteen hundred sixty-two, such board may not rescind such an election.

4. In the event that such board, pursuant to the provisions of paragraphs one and two of this subdivision g, elects that the provisions of this paragraph four and of such subdivisions e and f shall be applicable to and for the benefit of all contributors, then beginning with the payroll period the first day of which is nearest to July first, nineteen hundred sixty-two and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-three, the contribution of each contributor, exclusive of any increase in such contribution pursuant to section 13-525 or subdivision two of section 13-554 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by five per centum of the salary of such contributor.

h. Where the rate of contribution of a contributor to whom or for whose benefit the provisions of paragraph four of subdivision g or paragraph four of subdivision i of this section are applicable, exclusive of any increase in such rate pursuant to section 13-525 or subdivision two of section 13-554 of this chapter, or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and before reduction thereof pursuant to either of such paragraphs four, is equal to or less than five per centum, such rate shall be dis-continued.

i. Provisions relating to fiscal year nineteen hundred sixty-three-nineteen hundred sixty-four and certain subsequent fiscal years.

1. (a) Fiscal year nineteen hundred sixty-three-nineteen hundred sixty-four. The board of estimate, by resolution adopted prior to June first, nineteen hundred sixty, may elect that the provisions of subdivisions b, e and f of this section shall be applicable to and for the benefit of all contributors.

(b) Fiscal year nineteen hundred sixty-four-nineteen hundred sixty-five. The mayor, by executive order adopted prior to June first, nineteen hundred sixty-four, may elect that the provisions of paragraph four of this subdivision i and the provisions of subdivisions e and f of this section shall be applicable to and for the benefit of all contributors.

(c) Fiscal year nineteen hundred sixty-five-nineteen hundred sixty-six. The mayor, by executive order adopted prior to June nineteenth, nineteen hundred sixty-five, may elect that the provisions of paragraph four of this subdivision i and the provisions of subdivisions e and f of this section shall be applicable to and for the benefit of all contributors. On and after June nineteenth, nineteen hundred sixty-five, the mayor may not rescind such an election. The provisions of paragraph three of this subdivision i shall not apply to an election made under this subparagraph (c).

(d) Fiscal year nineteen hundred sixty-six-nineteen hundred sixty-seven. The mayor, by executive order adopted prior to June nineteenth, nineteen hundred sixty-six, may elect that the provisions of paragraph four of this subdivision i and the provisions of subdivisions e and f of this section shall be applicable to and for the benefit of all contributors. On and after June nineteenth, nineteen hundred sixty-six, the mayor may not rescind such an election. The provisions of paragraph three of this subdivision i shall not apply to an election made under this subparagraph (d).

(e) Fiscal year nineteen hundred sixty-seven-nineteen hundred sixty-eight. The mayor, by executive order adopted prior to June seventeenth, nineteen hundred sixty-seven, may elect that the provisions of paragraph four of this subdivision i and the provisions of subdivisions e and f of this section shall be applicable to and for the benefit of all contributors. On and after June seventeenth, nineteen hundred sixty-seven, the mayor may not rescind such an election. The provisions of paragraph three of this subdivision i shall not apply to an election made under this subparagraph (e).

(f) Provisions for fiscal year nineteen hundred sixty-eight-nineteen hundred sixty-nine relating to city university of New York contributors. The mayor, by executive order adopted prior to June seventeenth, nineteen hundred sixty-eight, may elect that the provisions of paragraph four of this subdivision i and the provisions of subdivisions e and f of this section shall be applicable to and for the benefit of all contributors who are employees of the city university of New York. On and after June seventeenth, nineteen hundred sixty-eight, the mayor may not rescind such an election. The provisions of paragraph three of this subdivision i shall not apply to an election made under this subparagraph.

(g) Provisions for fiscal year nineteen hundred sixty-nine-nineteen hundred seventy relating to transferred contributors and contributors other than contributors who are employees of the board of education or the city university of New York. The mayor by executive order adopted prior to June sixteenth, nineteen hundred sixty-nine, may elect that the provisions of paragraph four of this subdivision i and the provisions of subdivisions e and f of this section shall be applicable to and for the benefit of (1) all contributors who are transferred contributors and (2) all contributors other than contributors who are employees of the board of education of the city or city university of New York. On and after June sixteenth, nineteen hundred sixty-nine, the mayor may not rescind such an election. The provisions of paragraph three of this subdivision i shall not apply to an election made under this subparagraph.

(h) Provisions for fiscal year nineteen hundred seventy-nineteen hundred seventy-one relating to transferred contributors and contributors other than contributors who are employees of the board of education or city university of New York. The mayor by executive order adopted prior to June sixteenth, nineteen hundred seventy may elect that the provisions of paragraph four of this subdivision i and the provisions of subdivisions e and f of this section shall be applicable to and for the benefit of (1) all contributors who are transferred contributors and (2) all contributors other than contributors who are employees of the board of education of the city or city university of New York. On and after June sixteenth, nineteen hundred seventy, the mayor may not rescind such an election. The provisions of paragraph three of this subdivision i shall not apply to an election under this subparagraph.

(i) Provisions for fiscal year nineteen hundred seventy-one-nineteen hundred seventy-two relating to transferred contributors and contributors other than contributors who are employees of the board of education or city university of New York. The mayor by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-one may elect that the provisions of paragraph four of this

subdivision i and the provisions of subdivisions e and f of this section shall be applicable to and for the benefit of (1) all contributors who are transferred contributors and (2) all contributors other than contributors who are employees of the board of education of the city or city university of New York. On and after such date forty-five days after such adjournment, the mayor may not rescind such an election. The provisions of paragraph three of this subdivision i shall not apply to an election under this subparagraph.

(j) Provisions for fiscal year nineteen hundred seventy-two-nineteen hundred seventy-three relating to transferred contributors and other contributors who are not employees of the board of education or city university of New York. The mayor, by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-two or June seventeenth of such year, whichever is later, may elect that the provisions of paragraph four of this subdivision i and the provisions of subdivisions c and f of this section shall be applicable to and for the benefit of (1) all contributors who are transferred contributors and (2) all other contributors who are not employees of the board of education of the city or city university of New York. On and after such date forty-five days after such adjournment or such June seventeenth, whichever is later, the mayor may not rescind such an election. The provisons of paragraph three of this subdivision i shall not apply to an election under this subparagraph.

2. In the event that the mayor adopts such an executive order, the provisions of such paragraph four and of such subdivisions e and f shall, on the applicable date on which such paragraph becomes operative with respect to the corresponding fiscal year specified in paragraph one of this subdivision i, become applicable to and for the benefit of all contributors who are designated in paragraph one of this subdivision i as eligible for the benefit of such order with respect to such fiscal year.

3. On and after June first, of the fiscal year described in an executive order issued pursuant to paragraphs one and two of this subdivision i, the mayor may not rescind such an election.

4. In the event that the mayor, pursuant to the provisions of paragraphs one and two of this subdivision i, elects that the provisions of this paragraph four and of such subdivisions e and f shall be applicable to and for the benefit of all contributors designated in the applicable provisions of such paragraph one as eligible for the benefit of such election, then beginning with the payroll period the first day of which is nearest to July first, of the fiscal year described in an executive order issued pursuant to paragraphs one and two of this subdivision i and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, of such fiscal year, the contribution of each contributor so designated as eligible with respect to such fiscal year, exclusive of any increase in such contribution pursuant to section 13-525 or subdivision two of section 13-554 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by five per centum of the salary of such contributor.

j. Provisions relating to the period September first, nineteen hundred sixty-seven through September seven, nineteen hundred sixty-nine for board of education contributors. 1.(a) Subject to the provisions of subparagraph (b) of this paragraph one, beginning with the payroll period the first day of which is nearest September first, nineteen hundred sixty-seven, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight, the contribution of each contributor who is an employee of the board of education of the city of New York, exclusive of any increase in such contribution pursuant to section 13-525 or subdivision two of section 13-554 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by three per centum of the salary of such contributor.

(b) The reduction provided for by subparagraph (a) of this paragraph one shall be in addition to any reduction made during the period mentioned in such subparagraph (a) pursuant to subparagraph (e) of paragraph one of subdivision i of this section. The amount of the reduction made pursuant to subparagraph (a) of this paragraph one in the contribution of any such contributor for such portion of the period mentioned in such subparagraph (a) as precedes

the effective date of this subdivision shall be refunded by the retirement board without interest unless such reduction has been waived pursuant to subdivision e of this section. Where the rate of contribution of such contributor, exclusive of any increase in such rate pursuant to section 13-525 or subdivision two of section 13-554, or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and before reduction thereof pursuant to subparagraph (a) of this paragraph is equal to or less than three per cent during the period mentioned in such subparagraph (a), such rate shall be dis- continued.

(c) Beginning with the payroll period the first day of which is nearest to June thirtieth, nineteen hundred sixty-eight and ending with the payroll period immediately prior to that the first day of which is nearest to September seventh, nineteen hundred sixty-nine, the contribution of each contributor who is an employee of the board of education of the city of New York, exclusive of any increase in such contribution pursuant to section 13-525 or subdivision two of section 13-554 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by eight per centum of the salary of such contributor. Where the rate of contribution of such contributor, exclusive of any increase in such rate pursuant to section 13-525 or subdivision two of section 13-554, or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and before reduction thereof pursuant to this subparagraph (c), is equal to or less than eight per cent, such rate shall be discontinued.

2. The provisions of subdivisions e and f of this section shall be applicable to and for the benefit of all contributors who are employees of the board of education of the city of New York.

k. Provisions relating to the period September first, nineteen hundred sixty-nine through August thirty-first, nineteen hundred seventy for board of education contributors.

1. Beginning with the payroll period the first day of which is September first, nineteen hundred sixty-nine and ending with the payroll period the last day of which is August thirty-first, nineteen hundred seventy, the contribution of each contributor who is an employee of the board of education of the city, exclusive of any increase in such contribution pursuant to section 13-525 or subdivision two of section 13-554 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by eight per centum of the salary of such contributor. Where the rate of contribution of such contributor, exclusive of any increase in such rate pursuant to section 13-525 or subdivision two of section 13-554, or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and before reduction thereof pursuant to this subdivision k, is equal to or less than eight per cent, such rate shall be discontinued.

2. The provisions of subdivision e and f of this section shall be applicable to and for the benefit of all contributors who are employees of the board of education of the city.

l. Provisions relating to the period September first, nineteen hundred sixty-eight through August thirty-first, nineteen hundred seventy for city university of New York contributors. 1. (a) Subject to the provisions of subparagraph (b) of this paragraph one, the mayor by executive order adopted prior to June sixteenth, nineteen hundred sixty-nine, may elect that, beginning with the payroll period the first day of which is nearest September first, nineteen hundred sixty-eight, and ending with the payroll period immediately prior to that the first day of which is nearest to June thirtieth, nineteen hundred sixty-nine, the contribution of each contributor who is an employee of the city university of New York, exclusive of any increase in such contribution pursuant to section 13-525 or subdivision two of section 13-554 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by three percentum of the salary of such contributor. On and after June sixteenth, nineteen hundred sixty-nine, the mayor may not rescind such an election.

(b) Any reduction made pursuant to subparagraph (a) of this paragraph one shall be in addition to any reduction made during the period mentioned in such subparagraph (a) pursuant to subparagraph (f) of paragraph one of subdivision i of this section. The amount of any reduction made pursuant to subparagraph (a) of this paragraph one in

the contribution of any such contributor for such portion of the period mentioned in such subparagraph (a) as precedes July first, nineteen hundred sixty-nine, shall be refunded by the retirement board without interest unless such reduction has been waived pursuant to subdivision e of this section. Where the rate of contribution of such contributor, exclusive of any increase in such rate pursuant to section 13-525 or subdivision two of section 13-554, or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and before reduction thereof pursuant to subparagraph (a) of this paragraph is equal to or less than three percent during the period mentioned in such subparagraph (a), such rate, if such reduction be made pursuant to such subparagraph (a), shall be discontinued.

(c) The mayor by executive order adopted prior to June sixteenth, nineteen hundred sixty-nine may elect that beginning with the payroll period the first day of which is nearest to June thirtieth, nineteen hundred sixty-nine and ending with the payroll period the last day of which is August thirty-first, nineteen hundred seventy, the contribution of each contributor who is an employee of the city university of New York, exclusive of any increase in such contribution pursuant to section 13-525 or subdivision two of section 13-554 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by eight percentum of the salary of such contributor. Where the rate of contribution of such contributor, exclusive of any increase in such rate pursuant to section 13-525 or subdivision two of section 13-554, or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and before reduction thereof pursuant to this subparagraph (c), is equal to or less than eight per cent, such rate, if such reduction be made pursuant to this subparagraph (c), shall be discontinued. On and after June sixteenth, nineteen hundred sixty-nine, the mayor may not rescind such an election.

2. The provisions of subdivisions e and f of this section shall be applicable to and for the benefit of all contributors who are employees of the city university of New York.

m. Provisions relating to the period September first, nineteen hundred seventy through August thirty-first, nineteen hundred seventy-one for board of education contributors.

1. (a) Beginning with the payroll period the first day of which is July first, nineteen hundred seventy and ending with the payroll period the last day of which is August thirty-first, nineteen hundred seventy-one, the contribution of each contributor who is an employee of the board of education of the city, exclusive of any increase in such contribution pursuant to section 13-525 or subdivision two of section 13-554 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall, if a bill entitled "An act to amend the administrative code of the city of New York, in relation to providing additional rights, privileges and benefits for contributors to the New York city teachers' retirement system, including optional retirement plans" is enacted into law, be reduced by five percentum of the salary of such contributor. Where the rate of contribution of such contributor, exclusive of any increase in such rate pursuant to such section 13-525 or subdivision two of such section 13-554, or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and before reduction thereto pursuant to this paragraph one, is equal to or less than five per cent, such rate shall be discontinued.

(b) If such bill referred to in subparagraph (a) of this paragraph one is enacted, (i) the reduction in contributions of contributors provided for in subparagraph (a) of this paragraph one with respect to the months of July and August, nineteen hundred seventy shall be in lieu of and shall supersede the reductions in contributions of contributors provided for with respect to such months by paragraph one of subdivision k of this section, and (ii) the reduction in contributions of contributors provided for with respect to such months by paragraph one of such subdivision k shall not be made.

2. In the event that the bill hereinabove entitled is not enacted into law, then beginning with the payroll period the first day of which is September first, nineteen hundred seventy and ending with the payroll period the last day of which is August thirty-first, nineteen hundred seventy-one, the contribution of each contributor who is an employee of the board of education of the city, exclusive of any increase in such contribution pursuant to section 13-525 or

subdivision two of section 13-554 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by eight per centum of the salary of such contributor. Where the rate of contribution of such contributor, exclusive of any increase in such rate pursuant to such section 13-525 or subdivision two of such section 13-554, or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and before reduction thereof pursuant to this paragraph two, is equal to or less than eight per cent, such rate shall be discontinued.

3. The provisions of subdivisions e and f of this section shall be applicable to and for the benefit of all contributors who are employees of the board of education of the city.

n. Provisions relating to the period September first, nineteen hundred seventy through August thirty-first, nineteen hundred seventy-one for city university of New York contributors.

1. (a) Beginning with the payroll period the first day of which is July first, nineteen hundred seventy and ending with the payroll period the last day of which is August thirty-first, nineteen hundred seventy-one, the contribution of each contributor who is an employee of the city university of New York, exclusive of any increase in such contribution pursuant to section 13-525 on subdivision two of section 13-554 of section one hundred thirty-eight-b of the retirement and social security law, shall, if a bill entitled "An act to amend the administrative code of the city of New York, in relation to providing additional rights, privileges and benefits for contributors to the New York city teachers' retirement system, including optional retirement plans" is enacted into law, be reduced by five percentum of the salary of such contributor. Where the rate of contribution of such contributor, exclusive of any increase in such rate pursuant to section 13-525 or subdivision two of section 13-554, or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and before reduction thereof pursuant to this paragraph one, is equal to or less than five per cent, such rate, if such reduction be made pursuant to this paragraph one, shall be discontinued.

(b) If the bill referred to in subparagraph (a) of this paragraph one is enacted, (i) the reduction in contributions of contributors provided for in subparagraph (a) of this paragraph one with respect to the months of July and August, nineteen hundred seventy shall be in lieu of and shall supersede the reductions in contributions of contributors provided for with respect to such months by subparagraph (c) of paragraph one of subdivision l of this section, and (ii) the reduction in contributions of contributors provided for with respect to such months by such subparagraph (c) shall not be made.

2. In the event that the bill hereinabove entitled is not enacted into law, then beginning with the payroll period the first day of which is September first, nineteen hundred seventy and ending with the payroll period the last day of which is August thirty-first, nineteen hundred seventy-one, the contribution of each contributor who is an employee of the city university of New York, exclusive of any increase in such contribution pursuant to section 13-525 or subdivision two of section 13-554 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by eight percentum of the salary of such contributor. Where the rate of contribution of such contributor, exclusive of any increase in such rate pursuant to section 13-525 or subdivision two of section 13-554, or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and before reduction thereof pursuant to this paragraph two, is equal to or less than eight per cent, such rate, if such reduction be made pursuant to this paragraph two, shall be discontinued.

3. The provisions of subdivisions e and f of this section shall be applicable to and for the benefit of all contributors who are employees of the city university of New York.

o. Provisions relating to the period September first, nineteen hundred seventy-one through August thirty-first, nineteen hundred seventy-two for board of education and city university of New York contributors. 1. Beginning with the payroll period the first day of which is September first, nineteen hundred seventy-one and ending with the payroll

period the last day of which is August thirty-first, nineteen hundred seventy-two, the contribution of each contributor who is an employee of the board of education or city university of New York, exclusive of any increase in such contribution pursuant to section 13-525 or subdivision two of section 13-554 of this chapter or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by five percentum of the salary of such contributor. Where the rate of contribution of such contributor, exclusive of any increase in such rate pursuant to such section 13-525 or subdivision two of such section 13-554, or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and before reduction thereof pursuant to this paragraph one, is equal to or less than five per cent, such rate shall be discontinued.

2. The provisions of subdivisions e and f of this section shall be applicable to and for the benefit of all contributors who are employees of the board of education or city university of New York.

p. Provisions relating to the period September first, nineteen hundred seventy-two through August thirty-first, nineteen hundred seventy-three for board of education and city university of New York. 1. The mayor, by executive order adopted prior to the date forty-five days after the adjournment of the regular session of the legislature in nineteen hundred seventy-two or June seventeenth of such year, whichever is later, may elect that beginning with the payroll period the first day of which is September first, nineteen hundred seventy-two and ending with the payroll period the last day of which is August thirty-first, nineteen hundred seventy-three, the contribution of each contributor who is an employee of the board of education or city university of New York, exclusive of any increase in such contribution pursuant to section 13-525 or subdivision two of section 13-554 of this chapter of any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, shall be reduced by five percentum of the salary of such contributor. If such election is made by the mayor, then in any case where the rate of contribution of any such contributor, exclusive of any increase in such rate pursuant to such section 13-525 or subdivision two of such section 13-554, or any reduction thereof pursuant to subdivision one of section one hundred thirty-eight-b of the retirement and social security law, and before reduction thereof pursuant to this paragraph one, is equal to or less than five per cent, such rate shall be discontinued.

2. The provisions of subdivisions e and f of this section shall be applicable to and for the benefit of all contributors who are employees of the board of education or city university of New York.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-41.1 added chap 510/1960 § 1

Sub g added chap 788/1962 § 1

Sub h added chap 788/1962 § 2

Subs e, f amended chap 788/1962 § 3

Sub i added chap 519/1963 § 1

Sub h amended chap 519/1963 § 2

Subs e, f amended chap 519/1963 § 3

Sub i heading amended chap 623/1964 § 1

Sub i par 1 subpar a designated, heading added chap 623/1964 § 2

Sub i par 1 subpar b added chap 623/1964 § 3

Sub i pars 3, 4 amended chap 623/1964 §§ 4, 5

Sub h amended chap 623/1964 § 6

Sub i par 1 subpar c added chap 382/1965 § 3

Sub i par 1 subpar d added chap 611/1966 § 3

Sub i par 1 subpar e added chap 379/1967 § 3

Sub e par 2 amended chap 826/1968 § 1

Sub f par 1 amended chap 826/1968 § 2

Sub i par 1 subpar f added chap 826/1968 § 3

Sub j added chap 826/1968 § 4

(Special provision chap 826/1968 § 5)

Sub e par 2 amended chap 870/1969 § 3

Sub f par 1 amended chap 870/1969 § 4

Sub i par 1 subpar g added chap 870/1969 § 5

Subs k, l added chap 870/1969 § 6

Sub e par 2 amended chap 960/1970 § 3

Sub f par 1 amended chap 960/1970 § 4

Sub i par 1 subpar h added chap 960/1970 § 5

Sub i pars 2, 4 amended chap 960/1970 § 6

Subs m, n added chap 960/1970 § 7

Sub m par 1 amended chap 961/1970 § 1

Sub n par 1 amended chap 961/1970 § 2

Sub f par 3 added chap 407/1971 § 2

Sub e par 2 amended chap 615/1971 § 4

Sub f par 1 amended chap 615/1971 § 5

Sub i par 1 subpar i added chap 615/1971 § 6

Sub m par 1 subpar b amended chap 615/1971 § 7

Sub n par 1 subpar b amended chap 615/1971 § 8

Sub o added chap 615/1971 § 9

Sub e par 2 amended chap 921/1972 § 4

Sub f par 1 amended chap 921/1972 § 5

Sub i par 1 subpar j added chap 921/1972 § 6

Sub p added chap 921/1972 § 7



Administrative Code of the City of New York



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

*NYC Administrative Code 13-547*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-547 Optional service retirement upon completion of minimum period of service under twenty-year pension plan.

a. (1) (a) Any contributor in member-service may elect, by a written application duly executed and filed with the retirement board on or after the date of enactment of this section and prior to July first, nineteen hundred seventy, to become a twenty-year pension plan contributor commencing on July first, nineteen hundred seventy and to contribute to the retirement system for the right to retire under the twenty-year pension plan; provided, however, that if any contributor filing such an application is not in member-service on July first, nineteen hundred seventy, such application shall be void and of no effect.

(b) Any contributor in member-service on June thirtieth, nineteen hundred seventy, who at the time of filing an application as hereinafter in this subparagraph (b) provided, is in member-service, may elect, by a written application duly executed and filed with the retirement board on or after July first, nineteen hundred seventy and no later than June thirtieth, nineteen hundred seventy-two, to become a twenty-year pension plan contributor commencing on July first, nineteen hundred seventy and to contribute to the retirement system for the right to retire under the twenty-year pension plan.

(c) Any contributor who was in member-service on June thirtieth, nineteen hundred seventy-two, who at the time of filing an application as hereinafter in this subparagraph provided is in member-service, may elect, by a written application duly executed and filed with the retirement board on or after July first, nineteen hundred eighty and no later than June thirtieth, nineteen hundred eighty-one, to become a twenty-year pension plan contributor commencing on July first, nineteen hundred eighty and to contribute to the retirement system for the right to retire under the twenty-year pension plan.

(2) Subject to the provisions of subdivision c of this section, the normal rate of contribution of any such contributor making such election pursuant to paragraph one of this subdivision a, shall, commencing on the date he or she elected to become a twenty-year pension plan contributor, be that which would have been established for such contributor if:

(a) on his or her contribution rate fixation date, the provisions of this section had been in effect, and he or she had been eligible for and had on such date elected the benefits of the twenty-year pension plan; and

(b) his or her rate of contribution had then been fixed on the basis of mortality and other tables authorized in this chapter and interest at four per centum as a per cent of his or her earnable salary which, when deducted from each payment of his or her prospective earnable salary prior to his or her completion of his or her twentieth year of twenty-year pension plan qualifying service and accumulated at interest at four per centum until completion of such twenty years of service, would be computed to provide an annuity, which, as of the initial date of retirement allowance payability with respect to such contributor, would be equal to one-eighth of his or her prospective average salary upon the completion of such period of twenty years of service.

b. (1) Subject to the provisions of paragraph five of this subdivision b, any contributor who was not in member-service on June thirtieth, nineteen hundred seventy, and who, on or after July first, nineteen hundred seventy enters for the first time or first re-enters member-service, may, if he or she is in member-service at the time of filing an application as hereinafter in this paragraph one provided, elect to contribute to the retirement system for the right to retire under the twenty-year pension plan, by duly executing a written application and by filing same with the retirement board within two years after the date on which he or she so enters for the first time or first re-enters member-service. Any contributor making such election shall become a twenty-year pension plan contributor commencing on the date as of which, under the applicable provisions of paragraph two or paragraph three of this subdivision b, he or she is required to begin contributing for such right to retire.

(2) Upon the basis of the mortality and other tables authorized in this chapter and regular interest, the actuary of the retirement board shall determine for each such contributor who:

(a) first enters member-service under the conditions specified in paragraph one of this subdivision b and makes such election pursuant to such paragraph one; or

(b) first re-enters member-service under the conditions specified in such paragraph one and makes such election and at the time of such first re-entry into member-service has a contribution rate fixation date coinciding with the date of such first re-entry; the per cent of his or her earnable salary which, when deducted from each payment of his or her prospective earnable salary, from the date of such first entry or first re-entry into member-service, as the case may be, and prior to his or her completion of twenty years of twenty-year pension plan qualifying service and accumulated at regular interest until completion of such twenty years of service, shall be computed to provide an annuity which, as of the initial date of retirement allowance payability with respect to such contributor, shall be equal to one-eighth of his or her prospective average salary upon the completion of such period of twenty years of service. The normal rate of contribution of such contributor shall be such per cent determined as prescribed in this paragraph two, commencing on the date on which he or she first so enters or first so reenters member-service.

(3) Subject to the provisions of subdivision c of this section, the normal rate of contribution of each such contributor who:

(a) first re-enters member-service under the conditions specified in paragraph one of this subdivision b; and

(b) makes such election pursuant to such paragraph one; and

(c) at the time of such first re-entry into member-service, has a contribution rate fixation date occurring during his or her member-service preceding the date of such first re-entry; shall, beginning on the date on which he or she first

so re-enters member-service, be that which would have been established for such contributor if: (i) on his or her contribution rate fixation date; he or she had been eligible for and had on such date elected the benefits of the twenty-year pension plan; and

(ii) his or her rate of contribution had then been fixed in accordance with the method of computation prescribed in subparagraph (b) of paragraph two of subdivision a of this section.

(4) In any case where the provisions of this section were not in effect on the contribution rate fixation date of a twenty-year pension plan contributor for whom a normal rate of contribution is required to be fixed pursuant to the provisions of paragraph three of this subdivision b, they shall be deemed to have been in effect on such date for the purposes of such paragraph.

(5) (a) In any case where a twenty-year pension plan contributor ceases to be a member of the retirement system while such a contributor and subsequently and next after such cessation of membership re-enters member-service without being entitled to service credit and status prior to withdrawal as provided for in section 13-506 of this chapter (relating to withdrawn contributors who re-enter service), such contributor shall, upon such re-entry into member-service, become a twenty-year pension plan contributor.

(b) Subject to the provisions of subdivision c of this section, the normal rate of contribution and minimum accumulation of any such contributor mentioned in subparagraph (a) of this paragraph five shall be the normal rate of contribution and minimum accumulation which would have been established for him or her if he or she had first become a twenty-year pension plan contributor on the date of such re-entry into member-service.

c. (1) In any case where prior to the date on which a twenty-year pension plan contributor first or last becomes such a contributor, he or she had completed twenty or more years of twenty-year pension plan qualifying service, the normal rate of contribution of such contributor shall be fifteen per centum.

(2) In any case where a twenty-year pension plan contributor, on the date on which he or she first or last becomes such a contributor, has twenty-year pension plan qualifying service which

(a) was rendered prior to such date; and

(b) aggregates less than twenty years; and

(c) consists of a number of whole years of such service plus a fractional part of a year of such service;

the actuary may determine the normal rate of contribution of such contributor on the basis of interpolation.

(3) In any case where a twenty-year pension plan contributor shall, after his or her normal rate of contribution as such a contributor is fixed pursuant to the applicable provisions of this section, acquire credit for twenty-year pension plan qualifying service by transfer as described in subdivision forty-four of section 13-501 of this chapter (relating to definitions), a new normal rate of contribution shall be fixed for such contributor pursuant to the applicable provisions of this section on the basis of his or her twenty-year pension plan qualifying service as recomputed to include such transferred service credit. Such new normal rate of contribution shall be effective with respect to such contributor as of the date on which the original normal rate of contribution of such contributor was effective. Appropriate adjustment shall be made in the contributions of such contributor until his or her contributions as a twenty-year pension plan contributor are as they would be if he or she had been contributing at such new normal rate of contribution from the date on which such original normal rate of contribution was effective.

d. (1) A twenty-year pension plan contributor may at any time cancel his or her election to be such a contributor by duly executing and filing with the retirement board a written cancellation; provided, however, that any twenty-year pension plan contributor who has attained a status requiring that he or she be retired pursuant to subdivision three of

section 13-545 of this chapter (relating to retirement for superannuation), and who, as of the date on which he or she is required to be retired pursuant to such subdivision, is not eligible to retire for service pursuant to this section, shall be deemed to have cancelled such election as of the date next preceding the date on which he or she is required to be retired.

(2) After the filing of a cancellation by a contributor pursuant to paragraph one of this subdivision d:

(a) the provisions of this section, other than this paragraph two and paragraphs three and four of this subdivision d, shall be inapplicable to such contributor; and

(b) he or she shall not be a twenty-year pension plan contributor; and

(c) he or she shall not be eligible to elect again the benefits of this section.

(3) On and after the date of which such provisions of this section become inapplicable to any such contributor under the provisions of paragraph two of this subdivision d:

(i) such contributor shall be an age-fifty-five-increased-benefits pension plan contributor; and

(ii) the normal rate of contribution of such contributor shall be that which would have been established for such contributor if he or she had elected, as of his or her contribution rate fixation date, to become a twenty-five-year-age-fifty-five-one-per-centum contributor; and

(iii) the eligibility and rights of such contributor with respect to benefits under this chapter shall be governed by the applicable provisions thereof in the same manner as if such contributor had not elected to become a twenty-year pension plan contributor.

(4) In any case where a contributor elects to cancel his or her election pursuant to paragraph one of this subdivision d, the provisions of subdivision f of section 13-548 of this chapter (relating to fixation of the normal rate of contribution of age fifty-five-increased-benefits pension plan contributors) shall apply to the fixation of the normal rate of contribution of such contributor.

e. (1) Any twenty-year pension plan contributor may retire from service on written application to such board setting forth at what time subsequent to the execution of such application he or she desires to be retired. Such application shall retire such contributor at the time so specified, provided:

(a) he or she shall have completed, at such time, twenty years of twenty-year pension plan qualifying service; and

(b) he or she would have been able, if he or she remained in cityservice, to complete at least twenty-five years of twenty-year pension plan qualifying service before the date as of which he or she would be required to be retired for superannuation pursuant to subdivision three of section 13-545 of this chapter.

(2) Such contributor shall receive, in lieu of any other retirement allowance, a retirement allowance which shall be computed pursuant to subdivision f and g of this section and which shall begin with respect to such contributor on the latest of the following dates: (a) the date on which he or she attains the age of fifty-five years; or

(b) the date next following the earliest date on which, had he or she remained in city-service, he or she could have completed twenty-five years of twenty-year pension plan qualifying service; or

(c) the effective date of his or her retirement.

f. Subject to the provisions of subdivision g of this section, such retirement allowance to which such contributor

is entitled shall consist of:

(1) an annuity which shall be the actuarial equivalent, as of the date on which such contributor's retirement allowance begins, of his or her accumulated deductions as they were on such date; and

(2) for the first twenty years of his or her twenty-year pension plan qualifying service: (a) a pension-providing-for-increased-take-home-pay which is the actuarial equivalent, as of the date on which his or her retirement allowance begins, of the reserve-for-increased-take-home-pay, if any, to which he or she may be entitled for such period of twenty years of twenty-year pension plan qualifying service; and

(b) a pension equal to the amount obtained: (i) by adding together the amount of the pension-providing-for-increased-take-home-pay computed pursuant to subparagraph (a) of this paragraph two and his or her minimum accumulation factor, as defined in subdivision twenty-a of section 13-501 of this chapter; and

(ii) by subtracting the sum resulting from the addition prescribed by item (i) of this subparagraph (b) from an amount equal to one-half of his or her average salary; and (3) in addition, for total-service credited in excess of such first twenty years of twenty-year pension plan qualifying service: (a) A pension equal to the product obtained by multiplying the number of such years of excess service by one and two-tenths per centum of his or her average salary, and by adding to such product for any years of such excess service occurring after June thirtieth, nineteen hundred seventy, a further pension equal to the product obtained by multiplying the number of such years of excess service occurring after such date by five tenths of one per centum of his or her average salary; and

(b) A pension-providing-for-increased-take-home-pay which is the actuarial equivalent, as of the date when his or her retirement allowance begins, of the reserve-for-increased-take-home-pay, if any, to which he or she may be entitled for all periods of twenty-year pension plan qualifying service rendered by him or her, other than such first twenty years of such service.

g. (1) In any case where a twenty-year pension plan contributor who retires pursuant to this section is a participant in the variable annuity program on the date when his or her retirement allowance begins, he or she shall receive, in lieu of the retirement allowance provided for in subdivision f of this section and in lieu of any other retirement allowance, a retirement allowance, which, subject to the provisions of paragraph two of this subdivision g, shall consist of: (a) an annuity which shall be the actuarial equivalent, as of the date on which his or her retirement allowance begins, of his or her accumulated deductions as they are on such date; and

(b) a pension-providing-for-increased-take-home-pay which is the actuarial equivalent, as of the date on which his or her retirement allowance begins, of the reserve-for-increased-take-home-pay, if any, which is credited to his or her account in the contingent reserve fund as of the date on which his or her retirement allowance begins; and

(c) a pension, for the first twenty years of his or her twenty-year pension plan qualifying service, equal to the amount obtained:

(i) by computing an amount equal to a pension-providing-for-increased-take-home-pay which is the actuarial equivalent, as of the date on which his or her retirement allowance begins, of the reserve-for-increased-take-home-pay, if any, to which he or she would have been entitled for his or her first twenty years of twenty year pension plan qualifying service, if he or she had never been a participant in the variable annuity program; and

(ii) by adding together the amount computed pursuant to item (i) of this subparagraph (c) and his or her minimum accumulation factor, as defined in subdivision twenty-a of section 13-501 of this chapter; and

(iii) by subtracting the sum resulting from the addition prescribed by item (ii) of this subparagraph (c) from an amount equal to one-half of his or her average salary; and

(d) in addition, for total-service credited in excess of such first twenty years of twenty-year pension plan qualifying service, a pension computed in the manner prescribed by subparagraph (a) of paragraph three of subdivision f of this section; and

(e) the variable annuity and variable pension to which he or she may be entitled.

(2) The retirement allowance to which such contributor shall be entitled under the provisons of this subdivision g shall be the amount remaining after there is deducted from the total of the components mentioned in subparagraphs (a), (b), (c), (d) and (e) of paragraph one of this subdivision, the actuarial equivalent of the amount of regular interest which, if such contributor had never been a participant in the variable annuity program, would have accrued, during his or her period of service, if any, in excess of his or her first twenty years of twenty-year pension plan qualifying service upon the reserve-for-increased-take-home-pay, if any, credited to him or her with respect to such first twenty years of service.

h. (1) Notwithstanding any other provision of this chapter to the contrary, but subject to paragraph two of this subdivision, in any case where, on or after the date this subdivision becomes a law, a fifty-five-year-increased-benefits pension plan member dies in service while such a member, after completing twenty or more years of career pension plan qualifying service such member shall be deemed to have died as a twenty-year pension plan member, if status as such a twenty-year pension plan member at the time of his or her death would result in a benefit larger than the benefit which would be payable if such member died while a fifty-five-year-increased-benefits pension plan member.

(2) In any case where a member referred to in paragraph one of this subdivision is a Tier II member at the time of his or her death, any change in the plan membership of such member pursuant to such paragraph one shall not change, alter or affect the applicability of article eleven of the retirement and social security law to such member.

i. (1) Subject to the provisions of subdivision d of this section, or after the date this subdivision becomes a law, any fifty-five-year-increased-benefits pension plan member in city-service may elect, by a written application duly executed and filed with the board, to become a twenty-year pension plan member and to contribute to the retirement system, pursuant to the appropriate provisions of this section, for the right to retire under the twenty-year pension plan.

(2) Such member shall become a twenty-year pension plan member upon the filing of such application.

j. (1) In any case where on or after the date this subdivision becomes a law, a twenty-year pension plan member becomes a fifty-five-year-increased-benefits pension plan member by reason of his or her withdrawal pursuant to subdivision d of this section, of his or her election to be a twenty-year pension member, such member shall not thereafter be eligible to elect, pursuant to the applicable provisions of subdivision i of this section, again to become a career pension plan member, except as otherwise provided in paragraph three of this subdivision.

(2) In any case where on or after such effective date, a fifty-five-year-increased-benefits pension plan member becomes a twenty-year pension plan member by reason of such member's election to do so pursuant to the applicable provisions of subdivision i of this section, such member who made such election shall not thereafter be eligible to withdraw, pursuant to paragraph one of this subdivision, such election except as otherwise provided in paragraph three of this subdivision.

(3) Any member referred to in paragraph one or paragraph two of this subdivision shall be eligible to file an election or a withdrawal, as the case may be, provided (i) such member files an application for service retirement no more than thirty days after the filing of such election or withdrawal and retires pursuant to such application or (ii) such member, under circumstances qualifying him or her for a vested rights retirement allowance, discontinues city-service no more than thirty days after the filing of such election or withdrawal.

k. In any case where any member, at the time of making any election or filing any withdrawal authorized by the preceding provisions of this section, is a Tier II member and in any case where a Tier II member becomes subject to the

provisions of paragraph two of subdivision d of this section, the making of such election or the filing of such withdrawal or the status of such member as subject to such paragraph two shall not change, alter or affect the applicability of article eleven of the retirement and social security law to such member and nothing contained in such preceding provisions of such paragraph two shall be construed as changing, altering or affecting the applicability of such article to such member.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. h added chap 628/1999 § 1, eff. Nov. 16, 1999.

Subd. i added chap 628/1999 § 2, eff. Nov. 16, 1999.

Subd. j added chap 628/1999 § 3, eff. Nov. 16, 1999.

Subd. k added chap 628/1999 § 4, eff. Nov. 16, 1999.

**DERIVATION**

Formerly § B20-41.2 added chap 274/1970 § 3

Sub g added chap 976/1970 § 10

Sub a par 1 subpar c added chap 860/1980 § 1

Sub a par 2 open par amended chap 860/1980 § 2

**CASE NOTES**

¶ 1. Petitioner who submitted her resignation from the Teachers' Retirement System in October 1972 and in 1978 was re-employed by the board of education and rejoined the system as a member of the Co-Esc Plan was not entitled to become a "twenty year pension plan" (Plan A) contributor under the amendment to this section that provides that any contributor in service on June 30, 1972 can elect to become a 20-year pension plan contributor by filing an application between July 1, 1980 and June 30, 1981 where petitioner had not returned to membership in the system within five years after resigning and had withdrawn her contributions to the annuity savings fund.-Wertheim v. N.Y.C. Teachers' Retirement System, 91 App. Div. 2d 514 [1982], aff'd 58 N.Y. 2d 1043 [1983].



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Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-548 Age-fifty-five-increased-benefits pension plan.

a. Any contributor:

(1) who did not prior to filing an application to become an age-fifty-five-increased-benefits pension plan contributor as hereinafter in this subdivision a provided, file an application to become a twenty-year pension plan contributor pursuant to subparagraph (a) of paragraph one of subdivision a of section 13-547 of this chapter (relating to the twenty-year pension plan); and

(2) who is in member-service at the time of filing such application to become an age-fifty-five-increased-benefits pension plan contributor;

may by a written application duly executed and filed with the retirement board on or after the date of enactment of this section and prior to July first, nineteen hundred seventy, elect to become an age-fifty-five-increased-benefits pension plan contributor commencing on July first, nineteen hundred seventy, and to contribute for the right to retire under the age-fifty-five-increased-benefits pension plan; provided, however that if any contributor filing such an application to become an age-fifty-five-increased-benefits pension plan contributor is not in member-service on July first, nineteen hundred seventy, such application shall be void and of no effect.

b. Any contributor in member-service on June thirtieth, nineteen hundred seventy:

(1) who is not, at the time of filing an application as hereinafter in this subdivision b provided, either a twenty-year pension plan contributor or a former twenty-year pension plan contributor who, by reason of cancellation,

is an age-fifty-five-increased-benefits pension plan contributor pursuant to subparagraph (i) of paragraph two of subdivision d of section 13-547 of this chapter (relating to the twenty-year pension plan); and

(2) who is in member-service at the time of filing an application as hereinafter in this subdivision b provided:

may by a written application duly executed and filed with the retirement board on or after July first, nineteen hundred seventy and no later than June thirtieth, nineteen hundred seventy-two, elect to become an age-fifty-five-increased-benefits pension plan contributor and to contribute for the right to retire under the age-fifty-five-increased-benefits pension plan.

c. The normal rate of contribution of each contributor making such an election pursuant to subdivision a or b of this section shall, commencing on July first, nineteen hundred seventy, be that which would have been established and in effect for such contributor on such July first if he or she had elected, as of his or her contribution rate fixation date, to become a twenty-five-year-age-fifty-five-one-per-centum contributor (as defined in subdivision forty-eight of section 13-501 of this chapter).

d. (1) Notwithstanding any other provision of this chapter to the contrary, but subject to the provisions of paragraph three of this subdivision, any contributor who, on or after July first, nineteen hundred seventy:

(a) enters member-service for the first time; or

(b) re-enters member-service as a withdrawn contributor without being entitled to service credit and status prior to withdrawal as provided for in section 13-506 of this chapter (relating to withdrawn contributors who re-enter service); or

(c) re-enters member-service after having become a discontinued member and is not entitled, at the time of such re-entry, to service credit and status prior to withdrawal as provided for in subdivision h of section 13-556 of this chapter (relating to credit for service and status prior to withdrawal upon restoration of a discontinued member to service); shall, upon such entry or re-entry into member-service, as the case may be, become an age-fifty-five-increased-benefits pension plan contributor and shall contribute as hereinafter provided in paragraph two of this subdivision d for the right to retire under the age-fifty-five-increased-benefits pension plan.

(2) The normal rate of contribution of each contributor who becomes an age-fifty-five-increased-benefits pension plan contributor pursuant to paragraph one of this subdivision d shall, commencing on the date of his or her entry or re-entry into member-service (as the case may be), be that which would have been established for such contributor if on such date he or she had been eligible to elect and had elected to become a twenty-five-year-age-fifty-five-one-per-centum contributor (as defined in subdivision forty-eight of section 13-501 of this chapter).

(3) The provisions of paragraphs one and two of this subdivision d shall be inapplicable to any contributor therein mentioned during any period wherein he or she is a twenty-year pension plan contributor by reason of (a) his or her election to become such a contributor pursuant to section 13-547 of this chapter (relating to the twenty-year pension plan) or (b) the provisions of paragraph five of subdivision b of such section 13-547 (relating to re-entry of twenty-year pension plan contributors into member-service).

e. (1) Notwithstanding any other provision of this chapter to the contrary, any contributor:

(a) who, on or after July first, nineteen hundred seventy:

(i) re-enters member-service after being a retired contributor immediately prior to such re-entry; or

(ii) re-enters member-service as a withdrawn contributor entitled to credit for service and status prior to

withdrawal, by reason of qualification for such credit under section 13-506 of this chapter (relating to withdrawn contributors who re-enter service); or

(iii) re-enters member-service after having become a discontinued member and is entitled, at the time of such re-entry, to service credit and status prior to withdrawal as provided for in subdivision h of section 13-556 of this chapter (relating to credit for service and status prior to withdrawal upon restoration of a discontinued member to service); and

(b) who is not a twenty-year pension plan contributor by reason of his or her status at the time of such re-entry into member-service or by reason of an election made, after such re-entry, to become such a contributor pursuant to section 13-547 of this chapter (relating to the twenty-year pension plan); and

(c) who did not previously become a fifty-five-year-increased benefits pension plan contributor under subdivision a, b or d of this section;

may, by a written application duly executed and filed with the retirement board within two years after such re-entry into member-service, elect to become an age-fifty-five-increased-benefits pension plan contributor and to contribute to the retirement system for the right to retire under the age-fifty-five-increased-benefits pension plan.

(2) the normal rate of contribution of any contributor making an election pursuant to paragraph one of this subdivision e, shall, commencing upon the date of his or her re-entry into member-service, be that which would have been established and in effect for such contributor on such date if he or she had been eligible to elect and had elected, as of his or her contribution rate fixation date, to become a twenty-five-year-age-fifty-five-one-per-centum contributor (as defined in subdivision forty-eight of section 13-501 of this chapter).

f. In any case where the provisions of law under which a contributor may elect to become a twenty-five-year-age-fifty-five-one-per-centum contributor were not in effect on the contribution rate fixation date of a fifty-five-year-increased-benefits pension plan contributor for whom a normal rate of contribution is required to be fixed pursuant to subdivision c or e of this section, such rate shall be determined in the same manner as if such provisions of law had been in effect on such date and thereafter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-41.3 added chap 274/1970 § 4

**CASE NOTES FROM FORMER SECTION**

¶ 1. Petitioner was not entitled to receive maximum retirement allowance under the 20/25 year pension plan immediately upon his retirement where he had been an employee of the Board of Higher Education and the faculty of City University from 1949 until his retirement in 1971 and for thirteen years prior thereto had been a professor in various universities other than New York State and City and had purchased credit for ten years of his prior teaching service outside the State since the 10 years purchased for his prior non-City service could not count as part of the City service.-In re Lee (Teachers' Retirement System), 169 (49) N.Y.L.J. (3-13-73) 2, Col. 3 T.



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Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-549 Deferred eligibility of certain retirees, withdrawn contributors and discontinued members for benefits under certain pension plans.

a. Notwithstanding any other provision of this title to the contrary, any contributor:

(1) Who:

(a) heretofore and on or after July first, nineteen hundred sixty-nine, re-entered member-service (as defined in subdivision fifteen-a of section 13-501 of this chapter) or shall hereafter re-enter member-service, after having been, immediately prior to any such re-entry, a person whose last preceding member-service was terminated by retirement, withdrawal from membership in the retirement system or discontinuance of service so as to become a discontinued member, and at the time of his or her retirement, withdrawal or discontinuance of service so as to become a discontinued member, as the case may be, was not a twenty-year pension plan contributor or an age-fifty-five-increased-benefits pension plan contributor; or

(b) first enters member-service on or after July first, nineteen hundred seventy after having rendered city-service prior to the date of such first entry; and

(2) who:

(a) where eligible to elect to become a twenty-year pension plan contributor under section 13-547 of this chapter (relating to the twenty-year pension plan), elects to become such a contributor; or

(b) where eligible to elect to become an age-fifty-five-increased benefits pension plan contributor under section 13-548 of this chapter (relating to the age-fifty-five-increased-benefits pension plan), elects to become such a contributor; or

(c) becomes an age-fifty-five-increased-benefits pension plan contributor under the provisions of subdivision d of such section 13-548 of this chapter (relating to required membership in the age-fifty-five-increased-benefits pension plan) or subdivision d of section 13-547 of this chapter (relating to cancellation of election to be a twenty-year pension plan contributor);

shall, until such contributor has rendered four years of credited service after such re-entry into member-service or first entry into member-service, as the case may be:

(i) be ineligible, if such contributor is a twenty-year pension plan contributor, to retire for service in accordance with the eligibility requirements for retirement under section 13-547 of this chapter (relating to the twenty-year pension plan); and

(ii) be ineligible to become entitled to the retirement allowance prescribed for retired twenty-year pension plan contributors by subdivisions f and g of section 13-547 of this chapter or to the retirement allowance prescribed for age-fifty-five-increased-benefits pension plan contributors by paragraph e of subdivision one of section 13-554 of this chapter, as the case may be.

b. (1) In the case of any contributor mentioned in subdivision a of this section who discontinued service as a discontinued member, the provisions of such subdivision shall be applicable to such contributor, whether or not he or she heretofore was or hereafter is receiving a deferred retirement allowance under section 13-556 of this chapter (relating to vested retirement rights) at the time of his or her reentry into member-service and whether or not he or she heretofore was or hereafter is entitled, at the time of such re-entry, to credit for service and status prior to withdrawal as provided for in subdivision h of such section.

(2) In the case of any contributor mentioned in subdivision a of this section who re-entered member-service as a withdrawn contributor, the provisions of such subdivision shall be applicable to such contributor, whether or not he or she heretofore was or hereafter is entitled, at the time of such re-entry, to service credit and status prior to withdrawal as provided for in section 13-506 of this chapter (relating to withdrawn contributors who re-enter service).

c. Any twenty-year pension plan contributor or age-fifty-five-increased-benefits pension plan contributor to whom the provisions of subdivisions a and b are applicable, may, before he or she has completed a period of four years of credited service after his or her first entry into member-service or re-entry into member-service, as the case may be, retire from service upon written application to the retirement board setting forth at what time subsequent to the execution of such application he or she desires to be retired. Such application shall retire such contributor at the time so specified, provided he or she has reached or passed the age of fifty-five years.

d. Any twenty-year pension plan contributor or age-fifty-five-increased benefits pension plan contributor who retires pursuant to subdivision c of this section shall receive, in lieu of any other retirement allowance, a retirement allowance which shall consist of:

(1) an annuity which is the actuarial equivalent of his or her accumulated deductions at the time of such retirement; and

(2) a pension-providing-for-increased-take-home-pay which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may be entitled, if any; and

(3) a pension as provided for by the applicable provisions of subdivision e, f or g of this section.

e. Any such contributor mentioned in subdivision d of this section, if he or she has not reached the age of sixty-five years at the time of such retirement and at such time is credited with at least twenty-five years of total-service, shall receive a pension which shall be equal to the sum obtained by adding together:

(1) the amount obtained by multiplying the number of years of city-service credited to him or her at such time by one per centum of his or her average salary; and

(2) the amount obtained by multiplying the number of years of prior outside service for which he or she is credited at such time:

(a) by one and two-tenths per centum of his or her average salary, if such contributor purchased credit for such service pursuant to subparagraph (j) of paragraph three of subdivision a of section 13-505 of this chapter (relating to purchase of credit for prior outside service by certain contributors who last entered member-service prior to July first, nineteen hundred seventy) or paid a purchase price therefor computed pursuant to item two of subparagraph (1) of such paragraph three; or

(b) by one and fifty-three one hundredths per centum of his or her average salary, if such contributor purchased credit for such service pursuant to subparagraph k of such paragraph three or paid a purchase price therefor computed pursuant to item three of subparagraph (1) of such paragraph three.

f. Any such contributor mentioned in subdivision d of this section, if he or she has not reached the age of sixty-five years at the time of such retirement and at such time is credited with less than twenty-five years of total-service, shall receive a pension which shall be equal to the sum obtained:

(1) by adding together:

(a) the number of his or her years of member-service rendered after his or her last entry into member-service; and

(b) the number of years of city-service, if any, which:

(i) were rendered by him or her prior to such last entry; and

(ii) do not exceed the number of his or her years of member-service rendered after such last entry; and

(iii) are credited to him or her at the time of such retirement; and

(2) by multiplying that part, if any, of the total period of service computed pursuant to paragraph one of this subdivision f, which part was rendered prior to July first, nineteen hundred seventy, by one and two-tenths per centum of his or her average salary; and

(3) by multiplying that part, if any, of the total period of service computed pursuant to such paragraph one, which part was rendered after June thirtieth, nineteen hundred seventy, by one and fifty-three one-hundredths per centum of his or her average salary; and

(4) by multiplying the number of years of prior outside service, if any, for which he or she is credited at the time of such retire- ment:

(a) by one and two-tenths per centum of his or her average salary, if such contributor purchased credit for such service pursuant to subparagraph (j) of paragraph three of subdivision a of section 13-505 of this chapter (relating to purchase of credit for prior outside service by certain contributors who last entered member-service prior to July first, nineteen hundred seventy); or

(b) by one and fifty-three one hundredths per centum of his or her average salary, if such contributor purchased credit for such service pursuant to subparagraph k of such paragraph three or paid a purchase price therefor computed pursuant to item three of subparagraph (1) of such paragraph three; and

(5) by adding together the products obtained pursuant to paragraphs two, three and four of this subdivision.

g. (1) Subject to the provisions of paragraph two of this subdivision, any such contributor mentioned in subdivision d of this section, if he or she has reached the age of sixty-five years at the time of such retirement, shall receive a pension which shall be equal to the sum obtained by computing with respect to such contributor the products specified in paragraphs one and two of subdivision e of this section, and by adding such products together.

(2) If a pension, as computed for such contributor pursuant to the provisions of paragraphs one to five, inclusive, of subdivision f of this section, is greater than such pension computed pursuant to paragraph one of this subdivision g, such contributor shall receive such greater pension.

h. (1) The normal rate of contribution of any twenty-year pension plan contributor or age-fifty-five-increased-benefits pension plan contributor to whom the provisions of subdivisions a and b of this section are applicable shall be as prescribed by the applicable provisions of section 13-547 of this chapter (relating to the twenty-year pension plan) governing the normal rate of contribution of a twenty-year pension plan contributor or the applicable provisions of section 13-548 of this chapter (relating to the age-fifty-five-increased-benefits pension plan) governing the normal rate of contribution of an age-fifty-five-increased-benefits pension plan con- tributor.

(2) Any twenty-year pension plan contributor or age fifty-five-increased-benefits pension plan contributor to whom the provisions of subdivisions a and b of this section are applicable shall, unless he or she retires for service within the applicable period of four years of credited service mentioned in such subdivision a, be entitled to the same rights, benefits and privileges as such a contributor, including rights, benefits and privileges in the event of death, retirement for superannuation pursuant to subdivision three of section 13-545 of this chapter or retirement for disability pursuant to section 13-550 or 13-551 of this chapter, as if such subdivisions a and b were not applicable to him or her.

(3) For the purposes of paragraph two of this subdivision h, the presumed retirement, under paragraphs a and b of subdivision two of section 13-545 of this chapter (relating to cases of presumed retirement in the event of death of a contributor) of a contributor who dies under such circumstances that he or she is deemed under such subdivision to have been retired, shall not be deemed a retirement for service mentioned in such paragraph two.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-41.4 added chap 274/1970 § 5

Sub h par 1 amended chap 976/1970 § 3

**CASE NOTES FROM FORMER SECTION**

¶ 1. In absence of any charge of bad faith or any showing of abuse of discretionary power, Court would not interfere with determination of the Teachers' Retirement Board retiring petitioner for mental disability on basis of a report of its Medical Board, even though petitioner could and would produce contrary medical testimony.-In re Panaroni (Bonashe), 104 (133) N.Y.L.J. (12-9-40) 1941, Col. 3 F.

¶ 2. Where teacher had been retired pursuant to Admin. Code § B20-42.0, which provides that upon application of head of the department the Retirement Board shall retire the contributor for disability provided the Medical Board,

after an examination of the contributor, shall certify that the contributor is physically or mentally incapacitated for performance of duties and ought to be retired, findings of Medical Board **held** conclusive upon the Retirement Board and the Court as well, in view of the direction that the board "shall retire" for disability provided the Medical Board so certifies after an examination.-Ruth v. Teachers' Retirement Bd., 100 (136) N.Y.L.J. (12-13-38) 2112, Col. 6 F.

¶ 3. The Medical Board acting on the advice of its own qualified medical staff acted legally in recommending petitioner for retirement on the ground of a mental disability even though petitioner produced contrary medical testimony.-In re Schilke (Teachers' Retirement Board) 133 (4) N.Y.L.J. (3-4-55) 8, Col. 2 F.

¶ 4. Provision of § 19 of Rules and Regulations of the Board of Education Retirement System, that once each year the Retirement Board "may, and upon his application shall, require any disability pensioner who has not attained age sixty to undergo medical examination", **held** to entitle the pensioner to a first examination for reinstatement at any time within the year that he might requet or the Retirement Board direct, although if he were found still disabled he would then have to wait a full year before obtaining another examination. The pensioner was therefore not obliged to wait a year after retirement before making his first application for re-examination.-In re Vivien (Bd. of Education Retirement System), 30 N.Y.S. 2d 73 [1941].

¶ 5. The actual confirmation by the Board of Education Retirement Board of a certification by its physician that an application for retirement should be granted is a condition precedent to effectuation of a member's retirement, and hence member who applied for retirement and was certified therefor but died before the Retirement Board confirmed the physician's report and directed his retirement, was deemed to have died while still engaged in "active service", and was therefore entitled to benefits payable to such a person.-McAllen v. Marshall, 105 (108) N.Y.L.J. (5-9-41) 2092, Col. 3 F, aff'd without opinion, 266 App. Div. 673, 40 N.Y.S. 2d 864 [1943], aff'd 291 N.Y. 795, 53 N.E. 2d 368 [1944].

¶ 6. Where the Teachers' Retirement Board, upon the finding of its Medical Board that a teacher was suffering from impaired hearing and hypertension, had approved her retirement for physical disability, but it appeared that no real physical examination was given the teacher as to either of said alleged defects, the Retirement Board was ordered to revoke the retirement and restore the teacher to her duties.-In re Collery (Teachers' Retirement Board), 43 N.Y.S. 2d 130 [1943], reversed on ground the record merely disclosed a conflict of medical opinion, 267 App. Div. 835, 46 N.Y.S. 2d 88 [1944], aff'd without opinion, 294 N.Y. 705, 61 N.E. 2d 477 [1945].

¶ 7. Since only a "contributor" has the right to file his election "at any time," and since a teacher ceases to be a "contributor" and becomes a "beneficiary" after retirement and receipt of retirement benefits, the right to file an election does not survive after retirement is complete.-Katz v. New York City Teachers' Retirement Board, 291 N.Y. 360, 52 N.E. 2d 902 [1943].

¶ 8. Where the Board of Education had requested the Retirement Board to retire petitioner for disability and pursuant to Admin. Code § B20-42.0 a medical examination of the teacher was made by a physician designated by the Medical Board, and after such examination the Medical Board certified to the Retirement Board that petitioner ought to be retired, and on April 10 the Board sent petitioner a notice that her retirement would be considered on April 28, to take effect as of April 1, petitioner's filing, after receipt of a notice and before April 28, of her election to receive her retirement allowance in accordance with Option 1, **held** timely, since, at the time of the medical examination, a teacher is a "contributor" to the Retirement Fund and may file an election "at any time" before retirement occurs, which is when the Retirement Board acts upon the certificate of the Medical Board.-Id.

¶ 9. Education Law § 2568 has no bearing on the question of retirement of the teacher, which in New York City is controlled by Admin. Code § B20-42.0.-Silverman v. Moss, 107 N.Y.S. 2d 475 [1951].

¶ 10. Admin. Code § B20-42.0 does not afford an employee the right to have her own physician present at the time of her physical examination by the Medical Board of the Teachers' Retirement Board, and moreover at no time did the teacher in the instant case request that she be permitted to have her own physician present.-Id.

¶ 11. Petitioner was entitled to a trial of the allegations of her petition to effect that findings of the Medical Board were without reasonable basis and therefore arbitrary. Although mere existence of difference of opinion as to petitioner's physical fitness was insufficient to warrant a finding by the court that the Retirement Board's determination on advice of its own medical staff was arbitrary, it did not follow that petitioner was not entitled to a trial of the contentions made in her petition.-Schilke v. Teachers' Retirement Board, 127 (54) N.Y.L.J. (3-19-52) 1100, Col. 1 M.

¶ 12. Where statute relative to retirement of teachers for disability did not provide that Retirement Board, on receipt of certificate of incapacity from the Medical Board, should retire contributor for disability but merely made such a certificate a condition precedent to compulsory retirement, the Retirement Board was not obligated to retire contributor in absence of an independent finding of disability. Hence contributor was entitled to alternative order of mandamus to determine question of disability.-Matter of Brand (Teachers' Retirement Board), 163 Misc. 217, 296 N.Y.S. 649 [1937].

¶ 13. The Board of Education could not retire a secretary who held tenure on the basis of a letter from the school principal and medical reports which she was not allowed to see.-Matter of Franck, 33 Misc. 2d 1075, 229 N.Y.S. 2d 193 [1960].

¶ 14. Teacher who upon order of Superintendent of Schools submitted herself for a medical examination before medical staff of Board of Education and was thereafter without a hearing notified to appear before Medical Board of Teachers' Retirement System upon request of Superintendent of Schools that teacher be retired for disability was entitled to an order cancelling the request of the Superintendent to retire teacher as he had no authority to do so. Such request could be made only by Board of Education.-Munter v. Gross, 42 Misc. 2d 690, 248 N.Y.S. 2d 717 [1964].

¶ 15. Petition which would deter respondents from taking steps to retire petitioner for disability was dismissed since where the procedure set forth in this section is followed the court may not interfere with the judgment of officials who decide whether petitioner should be retired. The court found petitioner's argument that the automatic accrual of sick leave gives petitioner a "bank" of unused sick leave and so makes her retirement for disability impossible to be without merit.-Asheroff v. Board of Education, 161 (118) N.Y.L.J. (6-18-69) 19, Col. 4 M, aff'd 33 App. Div. 2d 992, aff'd 29 N.Y. 2d 538 [1971].

¶ 16. Retirement of high school teacher of physical education by Board of Education for service-connected injuries was not arbitrary even though petitioner had requested an independent evaluation by an ad hoc committee of physicians which had never been appointed where he did not thereafter call attention to the fact that his request had been overlooked or ignored and he had twenty-two examinations and twenty-two visits at the board by eleven different staff doctors and by seven panel consultants in the course of ten different examinations.-Rubin v. Bd. of Education, 165 (26) N.Y.L.J. (2-8-71) 18, Col. 2 F.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-550*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-550 Retirement; for disability.

a. Upon the application of the head of the department in which a contributor is employed, or upon the application of such contributor or of one acting in his or her behalf, such board shall retire such contributor for disability, provided the medical board, after a medical examination of such contributor, shall certify to such board that such contributor is physically or mentally incapacitated for the performance of duty and that such contributor ought to be retired, and, provided, further, that such contributor has had ten or more years of city-service.

b. Notwithstanding any law to the contrary, a member who satisfies the requirements of subdivision a of this section and is otherwise eligible (disregarding any service requirement) to retire for disability pursuant to this section or section five hundred six or six hundred five of the retirement and social security law, as applicable, may elect to receive a benefit equal to the death benefit which would have been paid, had such member died on the member's last day on the payroll in full pay status pursuant to section 13-542, 13-543 or 13-545 of this chapter, section four hundred forty-eight, five hundred eight or six hundred six of the retirement and social security law, as applicable.

c. To be eligible for the benefit provided in subdivision b of this section, a member must have been determined in accordance with subdivision a of this section to have (i) a terminal illness resulting in a life expectancy of no more than twelve months, or (ii) a medical condition of a long continued and indefinite duration requiring extraordinary care or treatment regardless of life expectancy.

d. The benefit provided in subdivision b of this section shall be in lieu of any disability benefit to which the member may otherwise be entitled. A member who is otherwise eligible to retire for disability must elect the benefit provided in subdivision b of this section no later than the thirtieth day following the day on which (i) the system notifies

the member that the member has been retired for disability, or (ii) the member is first eligible to commence receiving a disability retirement benefit, whichever is later. Such election when made shall be irrevocable.

e. Except as provided in this subdivision, a member electing the benefit provided in subdivision b of this section shall for all purposes be deemed to have been retired for disability. Notwithstanding the foregoing, should a member who has elected the benefit provided in subdivision b of this section thereafter be restored to active service and again become a member of the system,

(i) no death benefit shall be payable pursuant to section 13-542 of this chapter, section four hundred forty-eight, five hundred eight or six hundred six of the retirement and social security law, as applicable in the event of the member's subsequent death, and

(ii) unless such member shall have rendered five years of credited service since last becoming a member of the system, any retirement benefit to which such member may thereafter become entitled shall be reduced by the actuarial value of the benefit paid pursuant to subdivision b of this section (less the actuarial value of any applicable post-retirement death benefit which would have been available but for this subdivision).

f. The retirement board is authorized to adopt such rules and regulations as it may deem necessary to implement the provisions of this section.

**HISTORICAL NOTE**

Section amended chap 616/1998 § 2, eff. Sept. 13, 1998.

Section added chap 907/1985 § 1

Subd. b amended chap 409/1999 § 1, eff. Aug. 9, 1999 and applying to

applications filed subsequent to Oct. 13, 1998.

**DERIVATION**

Formerly § B20-42.0 added chap 929/1937 § 1

Amended chap 274/1970 § 22



*NYC Administrative Code 13-551*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-551 Retirement for accident disability.

a. Subject to the provisions of subdivision b of this section, medical examination of a contributor in city-service accident disability and investigation of all statements and certifications by such contributor or on his or her behalf in connection therewith shall be made upon the application of the head of the agency in which the contributor is employed, or upon the application of a contributor or a person acting in his or her behalf:

(1) stating that such contributor is physically or mentally incapacitated for the performance of city-service, as a natural and proximate result of such city-service; and

(2) certifying the time, place and conditions of such city-service performed by such contributor resulting in such alleged disability and that such alleged disability was not the result of wilful negligence on the part of such contributor and that such contributor should, therefore, be retired.

b. The provisions of this section shall apply only where such application is based on an accident which occurred on or after July first, nineteen hundred seventy.

c. Any such application shall be filed within two years after the happening of such accident.

d. If such medical examination and investigation shows that any such contributor, by whom or with respect to whom an application is filed under this section, is physically or mentally incapacitated for the performance of city-service as a natural and proximate result of an accidental injury received in such city-service by reason of an accident which occurred on or after July first, nineteen hundred seventy and while a contributor, and that such disability

was not the result of wilful negligence on the part of such contributor and that such contributor should be retired, the medical board shall so certify to the retirement board stating the time, place and conditions of such city-service performed by such contributor resulting in such disability, and the retirement board shall retire such contributor for accident disability forthwith.

e. If such application is denied solely on the ground that such contributor is not, at the time of such examination, physically or mentally incapacitated for the performance of city-service, such application may thereafter be renewed during such contributor's city-service at any time within five years from the happening of the accident but preceding the date on which such member shall have become eligible for service retirement, provided he or she submits himself or herself to such further examinations as the medical board may require.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-42.1 added chap 274/1970 § 23

**CASE NOTES**

¶ 1. Teacher who was eligible for an accidental disability retirement in the Teachers' Retirement System and who was found not to be qualified for an accidental disability retirement because of a failure to his medical proof was excluded from obtaining benefits under the Workers' Compensation Law.-Davis v. N.Y.C. Board of Education, 85 App. Div. 2d 816 [1981].

¶ 2. An applicant for accidental disability retirement must be an active and current employee. A person who has already retired on ordinary disability is not eligible. Grezinsky v. Teachers Retirement Board of the Teachers Retirement System, 642 N.Y.S.2d 888 (App.Div. 1st Dept. 1996).



Administrative Code of the City of New York



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

*NYC Administrative Code 13-552*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-552 Retirement allowances; restrictions on.

a. If a lump sum which has been paid or which is payable under the provisions of the workers' compensation law equals or exceeds the present value of all amounts otherwise payable out of moneys provided or to be provided by the city under the provisions of this chapter on account of the same disability of the same person, no payment shall be made to such person under the provisions of this chapter. If such lump sum be a percentage less than one hundred per cent of the present value of all such amounts, there shall be paid as it becomes due under the provisions of this chapter, in lieu of each amount otherwise payable, an amount equal to the percentage thereof which is the difference between such lesser per cent and one hundred per cent.

b. If an amount which is payable throughout a period under the provisions of the workers' compensation law equals or exceeds the amounts otherwise payable during the same period out of the moneys provided or to be provided by the city under the provisions of this chapter on account of the same disability of the same person, no payment shall be made to such person under the provisions of this chapter during such period nor thereafter, until the total amount of such omitted payments, together with the regular interest which they would have accumulated, equals the amount paid under the workers' compensation law, together with the regular interest which it would have accumulated. If an amount which is payable throughout a period under the provisions of the workers' compensation law be a percentage less than one hundred per cent of the amounts otherwise payable during the same period out of moneys provided or to be provided by the city under the provisions of this chapter on account of the same disability of the same person, there shall be paid during such period as it becomes due under the provisions of this chapter, in lieu of each amount otherwise payable, the percentage thereof which is the difference between such lesser per cent and one hundred per cent.

c. No decision of the workers' compensation board shall be binding on the medical board or on the retirement

board in the determination of eligibility of a claimant for benefits for retirement for accident disability.

d. Notwithstanding any of the foregoing provisions of this section or any other law to the contrary, pending the final determination of a claim for workers' compensation benefits, the retirement board may authorize payment of all or any part of the benefits which are payable under this chapter and to which any of the foregoing provisions of this section apply, and in that event the retirement system shall be entitled to reimbursement out of the unpaid installment or installments of compensation due under the workers' compensation law provided that claim therefor is filed with the workers' compensation board, together with proof of the fact and amount of payment.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-42.2 added chap 274/1970 § 23

Sub d added chap 1007/1972 § 4



Administrative Code of the City of New York



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

*NYC Administrative Code 13-552.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-552.1 *18 Medical review in member disability cases.

a. As used in this section, the following terms shall mean and include:

(1) "Panel of medical experts". Those physicians whose names are set forth in a list of medical experts prepared annually by the administrator of health services and filed in his office and with the executive director of the retirement system on or before July first. The experts so designated shall be physicians having qualifications as specialists in such fields of medicine as such administrator deems an essential background (i) for ascertaining, in cases where a medical examination is required in relation to disability retirement under section 13-550, 13-551 or 13-553 of this chapter, whether such member is physically or mentally incapacitated for the performance of city service, and (ii) for rendering of reports or certifications as to diagnosis and issues of causal relationship with respect to such applications. Each of such physicians shall have had, prior to his designation, at least ten years of practice in the field with respect to which he is designated. The names of such physicians shall be separately grouped in such list, according to the fields of medicine in which they are expert, and the names in each group shall be consecutively numbered.

(2) "Party entitled to review". Either of the following:

(i) the member; or

(ii) the appropriate agency head.

b. (1) In any case where an application for retirement of a member for disability has been filed pursuant to section 13-550 or 13-551 of this chapter, or a medical examination has been held in relation to restoration to service

under section 13-553 of this chapter, the executive director of the retirement system, promptly after he receives the report or certification of the medical board with respect to such application or medical examination, shall give notice of such report or certification to such member and to the appropriate agency head. Within fifteen days after such notification, any party entitled to review may file with the executive director a written request that a special medical committee, as provided for in this section, shall review the conclusions and recommendations of the medical board set forth in its report or certification.

(2) (i) Any request for review filed by a member with respect to such application for disability retirement or with respect to restoration to service, shall be void and of no effect unless such request includes a waiver, as hereinafter provided, duly executed and acknowledged by the member or by a person acting in his behalf as hereinafter provided. Such waiver may be executed by a person acting in behalf of such member in any case where, at the time of the execution of such waiver by such person, the circumstances are such that if such application for disability retirement had not been previously filed by or with respect to such member, such person would at such time of execution be authorized under the provisions of section 13-550 or 13-551 of this chapter, as the case may be, to file, as a person acting in behalf of such member, an application for disability retirement of such member.

(ii) Such waiver shall provide that the execution thereof by such member or by a person acting in behalf of such member as hereinabove authorized shall constitute an agreement by such member that his application for disability retirement or for medical review in relation to restoration to service, as the case may be, shall be disposed of upon the recommendations of the special medical committee pursuant to the provisions of this section, that such action shall be final and conclusive, and that he waives any and all rights which he might otherwise have to seek or obtain any other disposition of such application for disability retirement or review of medical findings in relation to restoration to service, by court or administrative proceedings or otherwise. A waiver so executed and filed shall be effective and binding upon such member, in accordance with its terms.

c. Promptly after the filing of a request for review to be made by a special medical committee, the executive director shall transmit a copy of such request and of the report or certification of the medical board to the administrator of health service.

d. The administrator, upon receipt of such report or certification and request, shall promptly designate three of the physicians on the panel of medical experts as a special medical committee for the purpose of reviewing the recommendations and conclusions of the medical board in such case. Such physicians shall be selected by him from the panel group possessing the specialist qualifications deemed essential by him for such review. All selections of physicians pursuant to this subdivision d shall be made in order of numerical standing in the group from which selection is to be made, and on the basis of continuous rotation within the group.

e. (1) Promptly after making the selection prescribed by subdivision d of this section, the administrator of health service shall notify the selected physicians and the executive director thereof.

(2) Such special medical committee shall, within thirty days after such notification to the physicians constituting such committee is completed, perform, with respect to the application for retirement of such member for disability, or with respect to restoration to service, the same functions of medical examination or otherwise as are prescribed by applicable provisions of law for performance by the medical board with respect to retirement or restoration to service, and shall, within such period adopt by majority vote, and file with the executive director, a report or certification, as the case may be, stating the conclusions and recommendations of such committee concerning the matters required to be reported on or certified by the medical board, pursuant to applicable provisions of law.

f. The conclusions and recommendations of the special medical committee shall supersede those of the medical board.

g. (1) Each physician who serves as a member of a special medical committee shall receive a fee for such

service, to be determined by the comptroller of the city.

(2) With respect to each case in which a special medical committee acts upon the request by a member, one-half of the fees of the members of such committee shall be paid by the appropriate agency. The other half of such fees shall be paid by the member.

(3) With respect to each such case in which a special medical committee acts upon the request by an appropriate agency head, the fees of the members of such committee shall be paid by such agency.

h. In any case where a request for review by a special medical committee is filed pursuant to the provisions of this section, the provisions of sections 13-550, 13-551 and 13-553 of this chapter shall be superseded by the provisions of this section to the extent that the provisions of this section are inconsistent therewith.

i. (1) In any case where the provisions of this section require the executive director to give notice to a member, the executive director may give such notice by delivery to such member personally or by mailing same to his last known address, as shown by the records of the retirement system.

(2) In any case where the provisions of this section require the giving of notice or the transmission of papers to any other person, such notice may be given or transmission effected by delivery to such person, by delivery at his office to any of his employees, or by mailing to the office address of such person.

(3) In any case where notice is given by mail pursuant to this subdivision, such notice shall be deemed to be given on the date of mailing.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-42.3 added chap 376/1984 § 1

(Repealed, on certain date, chap 376/1984 § 2)

**NOTE**

Expired per chap 376/1984 § 2

§ 2. This act shall take effect on the first day of July next succeeding the date on which it shall have become a law and shall remain in full force and effect to and including the first day of July in the second year next succeeding such effective date and upon such date the provisions of section B20-42.3 of the administrative code of the city of New York, as added by this act, shall be deemed to be repealed.

FISCAL NOTE.-The enactment of this bill into law would result in a financial saving to the City. The required payment of the City's share of the fees to the medical review panel, would be more than offset by savings in litigation costs, since the member waives the right to seek redress from the decision of the panel.

The actuary of the New York City Teachers' Retirement System asserts that there are no fiscal implications in this bill.

**FOOTNOTES**

18

[Footnote 18]: * Expired-See Note.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-552.2*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-552.2 Medical review in member disability cases.

a. As used in this section, the following terms shall mean and include:

(1) "Panel of medical experts". Those physicians whose names are set forth in a list of medical experts prepared annually by the administrator of health services and filed in his office and with the executive director of the retirement system on or before July first. The experts so designated shall be physicians having qualifications as specialists in such fields of medicine as such administrator deems an essential background (i) for ascertaining, in cases where a medical examination is required in relation to disability retirement under section 13-550, 13-551 or 13-553 of this chapter, whether such member is physically or mentally incapacitated for the performance of city service, and (ii) for rendering of reports or certifications as to diagnosis and issues of casual*19 relationship with respect to such applications. Each of such physicians shall have had, prior to his designation, at least ten years of practice in the field with respect to which he is designated. The names of such physicians shall be separately grouped in such list, according to the fields of medicine in which they are expert, and the names in each group shall be consecutively numbered.

(2) "Party entitled to review". Either of the following:

(i) the member; or

(ii) the appropriate agency head.

b. (1) In any case where an application for retirement of a member for disability has been filed pursuant to section 13-550 or 13-551 of this chapter, or a medical examination has been held in relation to restoration to service

under section 13-553 of this chapter, the executive director of the retirement system, promptly after he receives the report or certification of the medical board with respect to such application or medical examination, shall give notice of such report or certification to such member and to the appropriate agency head. Within thirty days after such notification, any party entitled to review may file with the executive director a written request that a special medical committee, as provided for in this section, shall review the conclusions and recommendations of the medical board set forth in its report or certification.

(2) (i) Any request for review filed by a member with respect to such application for disability retirement or with respect to restoration to service, shall be void and of no effect unless such request includes a waiver, as hereinafter provided, duly executed and acknowledged by the member or by a person acting in his behalf as hereinafter provided. Such waiver may be executed by a person acting in behalf of such member in any case where, at the time of the execution of such waiver by such person, the circumstances are such that if such application for disability retirement had not been previously filed by or with respect to such member, such person would at such time of execution be authorized under the provisions of section 13-550 or 13-551 of this chapter, as the case may be, to file, as a person acting in behalf of such member, an application disability retirement of such member.

(ii) Such waiver shall provide that the execution thereof by such member or by a person acting in behalf of such member as hereinabove authorized shall constitute an agreement by such member that his application for disability retirement or for medical review in relation to restoration to service, as the case may be, shall be disposed of upon the recommendations of the special medical committee pursuant to the provisions of this section, that such action shall be final and conclusive, and that he waives any and all rights which he might otherwise have to seek or obtain any other disposition of such application for disability retirement or review of medical findings in relation to restoration to service, by court or administrative proceedings or otherwise. A waiver so executed and filed shall be effective and binding upon such member, in accordance with its terms.

c. Promptly after the filing of a request for review to be made by a special medical committee, the executive director shall transmit a copy of such request and of the report or certification of the medical board to the administrator of health service.

d. The administrator, upon receipt of such report or certification and request, shall promptly designate three of the physicians on the panel of medical experts as a special medical committee for the purpose of reviewing the recommendations and conclusions of the medical board in such case. Such physicians shall be selected by him from the panel group possessing the specialist qualifications deemed essential by him for such review. All selections of physicians pursuant to this subdivision d shall be made in order of numerical standing in the group from which selection is to be made, and on the basis of continuous rotation within the group.

e. (1) Promptly after making the selection prescribed by subdivision d of this section, the administrator of health service shall notify the selected physicians and the executive director thereof.

(2) Such special medical committee shall, within thirty days after such notification to the physicians constituting such committee is completed, perform, with respect to the application for retirement of such member for disability, or with respect to restoration to service, the same functions of medical examination or otherwise as are prescribed by applicable provisions of law for performance by the medical board with respect to retirement or restoration to service, and shall, within such period adopt by majority vote, and file with the executive director, a report or certification, as the case may be, stating the conclusions and recommendations of such committee concerning the matters required to be reported on or certified by the medical board, pursuant to applicable provisions of law.

f. The conclusions and recommendations of the special medical committee shall supersede those of the medical board.

g. (1) Each physician who serves as a member of a special medical committee shall receive a fee for such

service, to be determined by the comptroller of the city.

(2) With respect to each case in which a special medical committee acts upon the request by a member, one-half of the fees of the members of such committee shall be paid by the appropriate agency. The other half of such fees shall be paid by the member.

(3) With respect to each such case in which a special medical committee acts upon the request by an appropriate agency head, the fees of the members of such committee shall be paid by such agency.

h. In any case where a request for review by a special medical committee is filed pursuant to the provisions of this section, the provisions of sections 13-550, 13-551 and 13-553 of this chapter shall be superseded by the provisions of this section to the extent that the provisions of this section are inconsistent therewith.

i. (1) In any case where the provisions of this section require the executive director to give notice to a member, the executive director may give such notice by delivery to such member personally or by mailing same to his last known address, as shown by the records of the retirement system.

(2) In any case where the provisions of this section require the giving of notice or the transmission of papers to any other person, such notice may be given or transmission effected by delivery to such person, by delivery at his office to any of his employees, or by mailing to the office address of such person.

(3) In any case where notice is given by mail pursuant to this subdivision, such notice shall be deemed to be given on the date of mailing.

**HISTORICAL NOTE**

Section added chap 835/1987 § 1 and shall be deemed to have been in

full force and effect on and after July 1, 1987 (as per chap 357/1989

§ 1)

**FOOTNOTES**

19

[Footnote 19]: * So in original. Should probably be "causal".



Administrative Code of the City of New York



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

*NYC Administrative Code 13-553*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-553 Safeguards on disability retirement.

a. Once each year, such board may require any disability pensioner while still under the age of sixty-five years to undergo medical examination by a physician or physicians designated by the medical board. Such examinations shall be made at the place of residence of such beneficiary or other place mutually agreed upon. Should the medical board, as the result of such examination, report and certify to such board that such disability beneficiary is no longer physically or mentally incapacitated for the performance of duty, the head of the department in which such beneficiary was employed at the time of his or her retirement, upon notification by such board of such report of the medical board, shall reappoint such beneficiary to such a position as was held by, and at such a rate or salary as was paid to, such beneficiary at the time of his or her retirement. However, after the expiration of ten years subsequent to the retirement of such beneficiary, his or her restoration to duty, notwithstanding the recommendation of the medical board, shall be optional with such head of the department.

b. Should any disability beneficiary, while under the age of sixtyfive years, refuse to submit to at least one medical examination in any year by a physician or physicians designated by the medical board, his or her pension and pension-providing-for-increased-take-home-pay, if any, shall be discontinued until the withdrawal of such refusal. Should such refusal continue for one year, all his or her rights in and to the pension and pension-providing-for-increased-take-home-pay, if any, constituted by this chapter shall be forfeited.

c. Upon application of any beneficiary under the age of sixty-five years drawing a pension, a pension-providing-for-increased-take-home-pay or a retirement allowance under the provisions of this chapter, approved by such board, such beneficiary may be restored to active service by the head of the department in which such beneficiary was employed at the time of his or her retirement. Upon the restoration of a beneficiary to active service his

or her retirement allowance shall cease.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-43.0 added chap 929/1937 § 1

Subs b, c amended chap 510/1960 § 19

**CASE NOTES FROM FORMER SECTION**

¶ 1. Board of Education's refusal to reinstate petitioner as teacher, after retirement following a finding of mental disability, **held** not arbitrary, unreasonable or capricious where evidence of Board's doctors was adverse to the finding of Teachers' Retirement Board that petitioner's disability had been removed.-Adams v. Board of Education, 131 (123) N.Y.L.J. (6-28-54) 8, Col. 8 F, aff'd 286 A.D. 868, 142 N.Y.S. 2d 184 [1955].

¶ 2. Under this section, a disabled pensioner who is subsequently found no longer incapacitated is entitled to be reinstated to the position he held at the time of his retirement. And reinstatement must be made at the time the department head receives notice of the annual examination. Reinstatement could not be postponed by the Board of Education pending another physical examination of the pensioner to confirm the findings of the Retirement Board.-Shapiro v. Board of Education, 148 (94) N.Y.L.J. (11-15-62) 19, Col. 7 M.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-554*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-554 Retirement allowances.

A contributor, on retirement, shall receive a retirement allowance which shall consist of:

1. A pension calculated as follows:

a. For retirement prior to July first, nineteen hundred seventy for disability, as defined in subdivision seventeen-a of section 13-501 of this chapter, twenty per cent of his or her average salary and an additional one-fifth of one per cent of his or her average salary for each year of city service in excess of ten. In no event shall the total pension for retirement prior to July first, nineteen hundred seventy for disability exceed twenty-five per cent of his or her average salary.

b. For service retirement, or for retirement prior to July first, nineteen hundred seventy for disability after he or she becomes eligible for service retirement, twenty-five per cent of his or her average salary. If a contributor has rendered less than twenty years of city service at the time his or her service retirement becomes effective, his or her pension allowance shall be based on one per cent of his or her average salary for each year of city service.

c. If the contributor retiring is a present-teacher, he or she shall receive, in addition to the pension prescribed in subdivision (a) or (b) a pension computed at the rate of one-one hundred fortieth of his or her average salary for each year of service rendered prior to the sixteenth day of September, nineteen hundred seventeen as certified to such present-teacher in his or her prior-service certificate. In no event shall the total pension exceed fifty per cent of his or her salary.

d. In lieu of any other pension provided for under this subdivision and based on the years of credited service rendered on or after the sixteenth day of September, nineteen hundred seventeen, for all New York city public school contributors and for all college contributors, one per centum of his or her average salary multiplied by the number of such years, provided, that by his or her written application, duly executed and filed with the teachers' retirement board, on or before the first day of December, nineteen hundred sixty-six, or, after such date, before any deduction shall have been made from his or her compensation for annuity purposes, the member shall have given his or her consent on an official application form, to the necessary deductions from his or her compensation for a like annuity, except such deduction shall not be in excess of fifteen per centum unless the member so elects. At any time subsequent to one year after having given such consent a member may withdraw such consent on an official withdrawal form, and thereafter any pension allowance for such member shall be calculated in the same manner as though such consent had not been given. The provisions of this subdivision shall not be construed to impair or take away any rights of any present-teacher for service rendered prior to the sixteenth day of September, nineteen hundred seventeen as certified in his or her prior service certificate, but in no event shall the total pension exceed fifty per cent of his or her salary. In no event shall the provisions of this subdivision be construed so as to result in a smaller pension benefit than was provided prior to the enactment of chapter eight hundred thirty-seven of the laws of nineteen hundred fifty-one. The provisions of this paragraph shall not be construed to apply to members who purchased prior outside service credit in accordance with the provisions of paragraph three of subdivision a of section 13-505 of this chapter unless such a member elects one of the following: (1) to pay the difference between the cost of the prior outside service credit in accordance with the provisions of paragraph a or b of subdivision one of section 13-554 of this chapter and the cost for such prior outside service credit in accordance with the provisions of this paragraph, or (2) such a member cancels his or her election for prior outside service credit and accepts a refund of his or her purchase price for such prior outside service credit and shall have any such prior outside service credit canceled, or (3) elects a recalculation of his or her prior outside service credit as a result of which his or her prior outside credit service shall be reduced in proportion to the credit which his or her purchase price would have bought under the provisions of this paragraph. The provisions of this paragraph shall not deprive any contributor of any right to a reduced contribution to which he or she may be entitled under the provisions of section 13-546 of this chapter.

e. (1) a pension computed pursuant to the provisions of this paragraph e, in lieu of any other pension provided for in paragraphs a, b or d of this subdivision one, in the case of any age-fifty-five-increased-benefits pension plan contributor.

(2) Such pension computed pursuant to this paragraph e shall consist of the following: (a) for the years of his or her credited service rendered prior to July first, nineteen hundred seventy, a pension equal to the product obtained by multiplying the number of such years by one and two-tenths per centum of his or her average salary; and

(b) for the years of his or her credited service rendered after June thirtieth, nineteen hundred seventy, a pension equal to the product obtained by multiplying the number of such years by one and fifty-three one-hundredths per centum of his or her average salary.

f. (1) For retirement for ordinary disability, as defined in subdivision seventeen-b of section 13-501 of this chapter, a pension, subject to the provisions of subparagraph two of this paragraph f, computed as follows:

(a) for the years of his or her credited service rendered to July first, nineteen hundred seventy, a pension equal to the product obtained by multiplying the number of such years by one and two-tenths per centum of his or her average salary; and

(b) for the years of his or her credited service rendered after June thirtieth, nineteen hundred seventy, a pension equal to the product obtained by multiplying the number of such years by one and fifty-three one-hundredths per centum of his or her average salary.

(2) The pension provided for by subparagraph one of this paragraph f shall in no event be less than it would have

been if it had been computed in accordance with the method of computation which would have been applicable if his or her retirement had instead been a retirement prior to July first, nineteen hundred seventy for disability, as defined in subdivision seventeen-a of section 13-501 of this chapter.

g. For retirement for accident disability, as defined in subdivision seventeen-c of section 13-501 of this chapter, a pension of three-fourths of his or her average salary, as defined in subdivision eighteen of such section 13-501. His or her average salary, as so defined, shall be used in computing such pension, whether or not he or she would be entitled to computation of any other benefit under this chapter on the basis of average salary as defined in subdivision eighteen-a or eighteen-b of such section 13-501.

h. (1) Notwithstanding any other provision of this chapter to the contrary, in any case where a contributor is retired pursuant to subdivision three of section 13-545 of this chapter (relating to retirement for superannuation) by reason of attainment of age seventy in the school year nineteen hundred sixty-nine-nineteen seventy, and the pension payable to him or her, if this paragraph h had not been enacted, would be otherwise than as prescribed in this paragraph, such contributor, irrespective of the pension plan applicable to him or her at the time of this retirement, shall be entitled to receive, in lieu of any pension otherwise payable under the provisions of this chapter, the pension which would have been payable to such contributor if he or she had been an age-fifty-five-increased-benefits pension plan contributor at the time of his or her retirement; provided, however, that if such contributor, had he or she been a twenty-year pension plan contributor at the time of his or her retirement:

(1) would have been eligible to retire as a twenty-year pension plan contributor; and

(2) would have been entitled to a retirement allowance beginning on the date of his or her retirement; and

(3) would have been entitled to a pension larger than that to which he or she would have been entitled if he or she had been an age-fifty-five-increased-benefits pension plan contributor at the time of his or her retirement;

the pension payable to such contributor pursuant to this paragraph h shall be the pension which he or she would have received if he or she had retired as a twenty-year pension plan contributor.

1-a. A pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may be entitled, if any.

2. An annuity, in addition to the pensions above provided which shall be the actuarial equivalent of his or her accumulated deductions at the time of his or her retirement. A contributor, in order to increase his or her annuity at the time of his or her retirement, may increase his or her rate of contribution by such rate as he or she may choose up to fifty per centum or such greater percentum as the retirement board may allow in accordance with section 13-525 of this chapter in addition to the rate needed to provide his or her part of half pay retirement allowance, excluding from consideration any portion of the retirement allowance which may be provided by a pension-providing-for-increased-take-home-pay. In no case shall such annuity be less for each one hundred dollars of accumulated deductions of a present-teacher at the time of retirement than is shown in the following schedule:

**[See tabular material in printed version]**

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-44.0 added chap 929/1937 § 1

Sub 2 amended chap 562/1950 § 1

Sub 1 amended chap 627/1950 § 1

Sub 1 amended chap 837/1951 § 1

Sub 1 amended chap 682/1952 § 1

Sub 1 par d amended chap 683/1952 § 1

Sub 1 par d amended chap 725/1957 § 1

(Special provision chap 522/1959 § 2)

Sub 1-a added chap 510/1960 § 20

Sub 1 par d amended chap 510/1960 § 21

Sub 2 amended chap 510/1960 § 22

Sub 1 par d amended chap 883/1963 § 3

Sub 1 par c amended chap 682/1964 § 1

Sub 1 par d amended chap 682/1964 § 2

Sub 1 par d amended chap 1067/1965 § 1

Sub 1 par d amended chap 270/1966 § 1

Sub 2 amended chap 973/1968 § 1

Sub 1 pars a, b amended chap 274/1970 § 24

Sub 1 pars e, f, g, h added chap 274/1970 § 25

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where teacher retired in 1951 his annuity allowance was based upon a mortality table adopted by the Retirement Board in 1933 and not on the table existing in 1917. Prior to 1940 the Retirement Board had the authority to adopt up to date mortality tables and all retirements were governed by the table then in use. After such date (1940) the constitutional amendment froze the benefits prohibiting their reduction by later tables showing increased longevity.-Matter of Haupt (Teachers' Retirement Board), 144 (93) N.Y.L.J. (11-15-60) 14, Col. 6 T.

**CASE NOTES**

¶ 1. Teachers who work in voluntary "per session" employment (e.g. summer school, adult education or working with extracurricular programs) can have that salary included in their pensionable salary base. Weingarten v. Board of Trustees of the New York City Teachers Retirement System, 98 N.Y.2d 575, 750 N.Y.S.2d 573 (2002).



Administrative Code of the City of New York



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

*NYC Administrative Code 13-555*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-555 Supplemental pension fund establishment; payment of supplemental pension allowances from such fund.

There is hereby established a supplemental fund to be known as the supplemental pension fund. Such fund shall consist of such moneys as may be appropriated thereto and all other moneys received for such fund from any other source pursuant to law. The supplemental pension fund shall be under the jurisdiction and control of the comptroller, who shall be the custodian thereof. The fund shall be held separate and apart from other funds and shall be used exclusively for the purpose of making payments of supplemental pension allowances, as hereinafter provided, to retired teachers. The comptroller is authorized and directed to prescribe such rules and regulations as may be required for the effective administration of the provisions of this section in making such pension allowances.

In addition to any pension allowance directed to be paid pursuant to section 13-554 of this chapter and notwithstanding any other provision of this law, the retirement and social security law or any other state or local law, any teacher, except as hereinafter provided, who retired prior to September second, nineteen hundred fifty-six, who had at least ten years credited service at the time of retirement, shall be granted and entitled to receive a supplemental pension allowance, based upon the year of retirement and computed upon the years of service, in accordance with the following schedule:

**[See tabular material in printed version]**

For the purposes of this schedule, the year of retirement shall extend from September second of any one year to September first inclusive of the following year.

The supplemental pension allowance granted under the provisions of this section shall be paid from the

supplemental pension fund established by this section, in so far as practicable, at the times and in the same manner as the regular retirement allowances, authorized and granted, under this chapter, are paid.

Any retired teacher already receiving a supplemental pension under the provisions of the retirement and social security law or any other state or local law shall continue to receive such supplemental pension or shall receive the supplemental allowance provided under this section, whichever shall be greater.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-44.1 added chap 1006/1962 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-556*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-556 Vested retirement rights.

a. (1) Except as provided in paragraph three of this subdivision a, any contributor who has been a member of the retirement system and has had five or more years of accredited service, who discontinues service in the schools or colleges of the city other than by death or retirement and who does not withdraw his or her accumulated deductions shall have a vested right to receive a deferred retirement allowance on attaining the age at which he or she would first be eligible for retirement had he or she remained in service but in no case, except as otherwise provided in paragraph two of this subdivision, prior to the date he or she attains the age of sixty years. Such member shall be known as a discontinued member.

(2) A discontinued member who has such vested right when he or she attains the age of fifty-five years and who was an age-fifty-five-increased benefits pension plan contributor when he or she discontinued service shall be entitled to receive a deferred retirement allowance under this section on the date when he or she attains the age of fifty-five years.

(3) The provisions of this section shall be inapplicable to a twenty-year pension plan contributor.

b. The deferred retirement allowance provided by this section shall vest automatically upon such discontinuance of service by such member and shall become payable on the day he or she reaches the age at which he or she would first be eligible for retirement had he or she remained in service but in no case prior to the date he or she attains age sixty, except as otherwise provided in paragraph two of subdivision a of this section.

c. (1) In the case of any discontinued member who was not an age-fifty-five-increased-benefits pension plan contributor when he or she discontinued service, the deferred retirement allowance provided for in this section shall be

determined in accordance with the provisions of section 13-554, except that where the total service for any discontinued member whose retirement allowance is required to be determined pursuant to this paragraph one is less than twenty-five years, the pension shall be based on one per cent of this average salary for each year of accredited service.

(2) In the case of any discontinued member who was an age-fifty-five-increased-benefits pension plan contributor when he or she discontinued service, the deferred retirement allowance provided for in this section, shall, subject to the provisions of subdivision i of this section, be determined in accordance with the provisions of such section 13-554 governing the retirement allowance of an age-fifty-five-increased-benefits pension plan contributor, in the same manner as if he or she had retired for service on the date on which he or she attained the age of fifty-five years. In any case where, for the purpose of computing such retirement allowance, his or her average salary is required to be determined pursuant to subdivision eighteen of section 13-501 of this chapter, any reference in such subdivision to salary earnable during a period preceding the date of retirement shall, for the purposes of this paragraph two, be deemed to mean salary earnable during an equal period preceding the date of his or her discontinuance of service and any reference in such subdivision to selection of a period of service prior to the date of retirement, shall, for the purposes of this paragraph, be deemed to mean selection of such period prior to the date on which such discontinued member attains the age of fifty-five years.

d. Interest on the accumulated deductions and on the reserve-for-increased-take-home-pay of a discontinued member shall be credited after the discontinuance of service at the same rate as prior to the discontinuance.

e. If a member who has withdrawn from the service should die before becoming eligible for a deferred retirement allowance under this section his or her accumulated deductions and his or her reserve-for-increased-take-home-pay shall be paid to his or her beneficiary, and in the absence of a designated beneficiary, to his or her estate.

f. A member, who has withdrawn from the service in accordance with the provisions of this section, may elect any of the options available under the provisions of section 13-558 providing he or she files with the retirement board an application for such option prior to the day he or she becomes eligible for a deferred retirement allowance.

g. A member who has resigned from service may withdraw his or her accumulated contributions at any time subject to the limitations contained in section 13-541 of this chapter. The withdrawal of a member's accumulated contributions shall terminate his or her right to a vested deferred retirement allowance.

h. Subject to the provisions of section 13-549 of this chapter (relating to deferred eligibility of certain retirees, withdrawn contributors and discontinued members for benefits under certain pension plans), a member who has discontinued service but has not withdrawn his or her accumulated contributions and is subsequently restored to service in the city's schools or colleges, shall be entitled to the service credit and status to which he or she was entitled immediately prior to his or her withdrawal and shall also be credited with interest on his or her accumulated deductions and on his or her reserve-for-increased-take-home-pay between the time of his or her withdrawal and the time of his or her restoration to service.

i. (1) In any case where:

(a) a contributor:

(i) on or after July first, nineteen hundred sixty-nine, re-entered member-service (as defined in subdivision fifteen-a of section 13-501 of this chapter) or shall hereafter re-enter member-service; or

(ii) on or after July first, nineteen hundred seventy, first enters member-service; and

(b) such contributor, while an age-fifty-five-increased-benefits pension plan contributor and before completing four years of member-service after such re-entry or first entry into member-service, as the case may be, discontinued

service so as to become a discontinued member; and

(c) his or her right to receive a deferred retirement allowance as a discontinued member is not terminated;

the deferred retirement allowance to which he or she is entitled as a discontinued member shall be computed as provided for by paragraph two of subdivision c of this section, except as otherwise provided in paragraph two of this subdivision h.

(2) The pension component of such deferred retirement allowance shall not be as prescribed by paragraph two of such subdivision c, but shall instead be the larger of:

(a) a pension determined pursuant to the method of computation set forth in paragraphs one to five, inclusive, of subdivision f of section 13-549 of this chapter (relating to computation of the pension of certain retirees having deferred eligibility for benefits under certain pension plans); or

(b) the pension to which he or she would have been entitled under the provisions of paragraph one of subdivision c of this section, if he or she had not been an age-fifty-five-increased-benefits pension plan contributor when he or she discontinued service.

(3) The provisions of this subdivision (i) shall apply to any contributor who re-entered or shall re-enter member-service under the circumstances set forth in paragraph one of this subdivision, whether or not such re-entry was or shall be with credit for service and status at the termination of his or her prior membership in the retirement system.

j. Notwithstanding any other provision of law, a discontinued member with ten or more years of credited service in such system who dies before a retirement benefit becomes payable and who is otherwise not entitled to a death benefit from the system shall be deemed to have died on the last day that he or she was in service upon which his or her membership was based for purposes of eligibility for the payment of a death benefit pursuant to the provisions of section 13-542 or 13-543 of this title. The death benefit payable in such case shall be one-half of that which would have been payable had such member died on the last day that service was rendered.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par (1) amended chap 389/1998 § 10, eff. July 17, 1998.

Subd. j added chap 388/1998 § 7, eff. July 17, 1998.

**DERIVATION**

Formerly § B20-44.2 added chap 1019/1965 § 1

Amended chap 274/1970 § 26

Sub i par 1 subpar c designated and amended chap 976/1970 § 6

(formerly subpar d)

Sub a par 1 amended chap 854/1985 § 2



Administrative Code of the City of New York



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

*NYC Administrative Code 13-557*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-557 Special provisions on retirement of teachers for service and allowances thereon.

Subject to such terms and conditions and to such rules and regulations as such board may adopt, any teacher may retire upon written application to such board after he or she has completed thirty years of service upon a retirement allowance consisting of:

1. An annuity which shall be the actuarial equivalent of his or her accumulated deductions; and, in addition thereto,

2. Such pension as shall be certified by the actuary of such board to have an actuarial value equivalent to the reserve which would be in the contingent reserve fund had the city contributed on account of such teacher from the date of his or her entrance into service in such manner as is provided for the city's contributions on behalf of new-entrants in section 13-527 of this chapter, the amount determined by the actuary of such board to be necessary to provide for the death benefit and for the pension reserve required at the time of retirement to pay the pension allowable by the city as provided in this chapter. In determining the amount of the reserve the actuary of such board shall base his or her calculations on the tables then in use as the basis for determining the rates of contribution required of the city on account of new-entrants and, in addition thereto,

3. A pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he or she may be entitled, if any.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-45.0 added chap 929/1937 § 1

Amended chap 627/1947 § 1

Amended chap 510/1960 § 23

**CASE NOTES FROM FORMER SECTION**

¶ 1. Under a 1961 amendment to § B20-41.0 a member of the retirement system who would be eligible for retirement by reason of service and/or superannuation is deemed to have retired on the day of his death, if he dies before retiring. A war veteran may be eligible to retire after 25 years of service provided he pays to the board a 5 or 10 year deficit in his annuity contributions. A military veteran died after completing 25 years of service. However he had not applied for early retirement and had not made the required payment. **Held:** the 1961 amendment was not applicable. It applies only to retirement for 30 years of service or for superannuation.-Matter of Margolin, 36 Misc. 2d 1025, 234 N.Y.S. 2d 237 [1962].



Administrative Code of the City of New York



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

*NYC Administrative Code 13-558*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-558 Retirement; options in which retirement allowances may be taken.

a. A contributor may at any time file with such board his or her election to receive on retirement his or her benefits in a retirement allowance payable throughout life or to receive the actuarial equivalent of his or her annuity, his or her pension, or his or her retirement allowance in a lesser annuity, or a lesser pension, or a lesser retirement allowance, payable throughout life, with the provision that;

Option I. If he or she dies before he or she has received in payments the present value of his or her annuity, his or her pension, or his or her retirement allowance, as it was at the time of his or her retirement, the balance shall be paid to his or her legal representative or to such person as he or she shall nominate by written designation duly acknowledged and filed with such board. The contributor may provide by written designation duly acknowledged and filed with such board, that if such balance shall be in the sum of ten thousand dollars or more, the same shall be paid to the person designated in accordance with one of the following options:

Option Ia. Upon the death of the contributor such balance shall be paid to the person designated in the form of an annuity, in monthly installments, throughout his or her life. The annuity to the beneficiary, if payable, shall be calculated on the basis of regular interest and the mortality table for Option A; or

Option Ib. Upon the death of the contributor such balance shall be paid in a lesser annuity in monthly installments to the person designated with a provision that should such beneficiary die before he or she has received the total actuarial value of such balance, the unused portion shall be paid to the estate of the contributor or to such other person as he or she shall nominate by written designation duly acknowledged and filed with such board. The lesser annuity to the beneficiary, if payable, shall be calculated on the basis of regular interest and the mortality table for

Option B.

In the event that the contributor has made no election of Option Ia or Option Ib, the designated beneficiary may elect to receive the balance payable upon the death of the contributor in a lump sum or he or she may elect to have such balance paid under any one of the above options in the same manner as if the contributor had designated the option under which such balance would have been paid. The beneficiary nominated in such designation may be changed by the contributor at any time either before or after retirement by a new designation or designations filed prior to the death of the contributor.

Option II. Upon his or her death, his or her annuity, his or her pension, or his or her retirement allowance, shall be continued throughout the life of and paid to such person as he or she shall nominate by written designation duly acknowledged and filed with such board.

Option III. Upon his or her death, one-half of his or her annuity, his or her pension, or his or her retirement allowance, shall be continued throughout the life of and paid to such person as he or she shall nominate by written designation duly acknowledged and filed with such board.

Option IV. Some other benefit or benefits shall be paid either to the contributor or to such person or persons as he or she shall nominate, provided such other benefit or benefits together with such lesser annuity, or lesser pension, or lesser retirement allowance shall be certified by the actuary of such board to be of equivalent actuarial value and shall be approved by such board.

b. For purposes of this section, the words "pension" and "retirement allowance" shall be deemed to include the pension-providing-for-increased-take-home-pay.

c. Notwithstanding any other provision of this title to the contrary, a twenty-year pension plan contributor who has made an election, pursuant to subdivision a of this section, prior to the effective date to his or her retirement, may, at any time before his or her retirement allowance as such a contributor begins, change any such election made by or her to any other election authorized by such subdivision, by filing such changed election with the board. Any such changed election may, at any time before such retirement allowance begins, be further changed in the same manner to any other election authorized by such subdivision. Any such changed election last filed shall supersede all elections previously filed.

d. (1) The retirement board may adopt rules and regulations providing that in any case where a contributor or designated beneficiary authorized by the applicable provisions of this chapter to nominate a beneficiary to receive a lump sum benefit under this section represents to the retirement system that a specified person has been designated by such contributor or designated beneficiary as a trustee of an inter vivos or testamentary trust for the purpose of this subdivision d, such person shall (a) be eligible to be nominated to receive, in the capacity of trustee, a lump sum benefit under Option I and (b) be eligible to be nominated to receive, in the capacity of trustee, any benefit under Option IV which the retirement board shall deem appropriate.

(2) Any proceeds received by a trustee under this section shall not be subject to the debts of the member or to transfer or estate taxes to any greater extent than if such proceeds were payable to the beneficiaries named in the trust and not to the estate of the member.

(3) A payment made in good faith under this section (a) to a person so represented to the retirement system to be a trustee of an inter vivos trust, or (b) to a person who is designated as a successor trustee of an inter vivos trust and who provides a copy of his or her appointment, or (c) to a person who is designated as a trustee or successor trustee of a testamentary trust and who provides a copy of the letters of trusteeship, provided such payment is made to such payee in the capacity of trustee, shall be a complete discharge to the retirement system to the extent of the payment. Such discharge shall not be impaired or affected by an adjudication that a trust is invalid or that a person represented to be or designated as a trustee is not entitled to receive the proceeds, if payment is made in good faith under this section before

notice to the retirement system of the claim of invalidity or lack of entitlement on which such adjudication is based.

(4) If no person to whom the retirement system is authorized to make payment in the capacity of trustee, as provided for in paragraph three of this subdivision d, claims the proceeds within eighteen months after the death of the retired member, payment shall be made to the deceased retired member's estate and such payment shall be a complete discharge to the retirement system to the extent of the payment.

(a) If satisfactory evidence is furnished within such period of eighteen months that there is or will be no trustee to receive the proceeds, payment shall be made to the deceased retired member's estate.

(5) In the event that after a person represented to have been designated as a trustee of an inter vivos or testamentary trust is nominated pursuant to rules and regulations adopted under paragraph one of this subdivision d, the contributor or designated beneficiary authorized to make a nomination shall, in compliance with the applicable provisions of this chapter, nominate for receipt of the same lump sum benefit:

(a) a beneficiary other than a person so represented to have been designated as a trustee; or

(b) a person represented to have been designated as a trustee under a different inter vivos or testamentary trust;

a payment made in good faith under this section to the last such nominee as of the date of death, whether he or she is a beneficiary not represented to have been designated as trustee or a person represented to have been so designated, shall be a complete discharge to the retirement system to the extent of the payment, provided, however, that if payment is made to a person represented to have been designated as a trustee, the retirement system shall be so discharged if payment is made to such person in the capacity of trustee and if there is compliance with the requirements of paragraph three of this subdivision d with respect to submission of copies. In any case where the last such nominee is a person represented to have been designated as a trustee, the provisions of paragraph four of this subdivision d shall apply.

e. Notwithstanding section 13-565 and any other provision of this title, an option selection previously filed by a contributor or retired contributor may be changed no later than thirty days following the date of payability of his or her retirement allowance. A retired contributor who has been retired for disability may change an option selection previously filed no later than (1) thirty days following the date on which such contributor's application for disability retirement was approved by the retirement board or (2) thirty days following the date on which the contributor was retired for disability, whichever is later.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. e amended chap 447/2004 § 1, eff. Sept. 14, 2004 and deemed in

full force and effect on and after June 30, 2003.

Subd. e added chap 661/2003 § 1, eff. Oct. 7, 2003 and deemed in full

force and effect on and after June 30, 2003.

**DERIVATION**

Formerly § B20-46.0 added chap 929/1937 § 1

Amended chap 510/1960 § 24

Amended chap 957/1962 § 1

Amended chap 260/1966 § 1

Amended chap 274/1970 § 27

Amended chap 495/1970 § 2

Amended chap 1001/1971 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. Deceased teacher's administrator who claimed that upon deceased's retirement a year and a half before her death she was mentally incompetent to make an election as to benefits and that her retirement under the normal annuity was therefore ineffective, **held** not entitled to mandamus order directing Teachers' Retirement Board to pay administrator sum she would have received had she elected to take a lump sum, since even if election of option were rescinded, one to be chosen was that which was to incompetent's best interests, not one which in event of her death might be most beneficial to her relatives. Furthermore, it was to be considered that deceased had drawn her annuity for a year and a half, and that no showing was made that election was not to her best interests.-Matter of Loeb (Teachers' Retirement Board), 98 (8) N.Y.L.J. (7-10-37) 97, Col. 1 M; aff'd 4 N.Y.S. 2d 180 [1938].

¶ 2. Complaint, in action by personal representative of deceased school teacher to set aside his retirement from the school system two months before his death, on ground that he was mentally incompetent at the time he elected to retire, **held** sufficient, since, if the application for retirement were made at a time when deceased was mentally incompetent, such act might not be regarded as voluntary and the legal representative might disaffirm the transaction.-Martin v. Teachers' Retirement Board, 269 App. Div. 115, 54 N.Y.S. 2d 245 [1945].

¶ 3. Evidence **held** to establish that teacher was mentally incompetent at time of her revocation of her previous selection of option No. 1 of the Retirement System and at time she elected to receive the maximum allowance payable during her life without optional modification. Hence such revocation and new selection were ineffectual. The evidence failed to establish that at time of execution of such document her sanity had temporarily returned so that it could be held that she signed the paper during a lucid period.-Schwartzberg v. Teachers' Retirement Board, 70 N.Y.S. 2d 770 [1947], aff'd on this point, 273 App. Div. 240, 76 N.Y.S. 2d 488 [1948], aff'd without opinion, 298 N.Y. 741, 83 N.E. 2d 146 [1948].

¶ 4. Where teacher in 1930 had elected to receive option No. 1 of the Teachers' Retirement System upon her retirement from service, whereby she would receive a certain monthly payment and any balance on her death would pass to her son and daughters, but in 1943 she was retired for disability and her attempted change of her selection of options so that she would receive the maximum allowance payable during her life without optional modification, was deemed ineffective because of her mental incompetency at the time, the burden rested upon the Retirement Board to establish that the teacher's urgent needs required revocation of option No. 1, and this situation was not shown as the teacher's three children were mature and able to make up the difference between the amounts payable under the two options during life.-Schwartzberg v. Teachers' Retirement Board, 70 N.Y.S. 2d 770 [1947], aff'd on this point, 273 App. Div. 240, 76 N.Y.S. 2d 488 [1948], aff'd without opinion, 298 N.Y. 741, 83 N.E. 2d 146 [1948].

¶ 5. Under this section a contributor to the Teachers' Retirement System may at any time file an election to take an optional modified benefit. Thus, a teacher had a right to choose an optional benefit up to the time of actual retirement by resolution of the Retirement Board. Contention that under § B20-40.0 the teacher had to make her election within thirty days after her medical examination was rejected. That section must be read in conjunction with this section which gives a contributor the right at any time to file an election.-Matter of Levy, 298 N.Y. 360, 52 N.E. 2d 902 [1943].

¶ 6. Contention that the designation of a beneficiary under this section was an attempt to make a will and dispose of the property of a deceased teacher contrary to Decedent's Estate Law was rejected. The husband of the deceased teacher claimed that her act in naming her sister as beneficiary pursuant to this section created a Totten Trust.-Moyer v.

Dunseith, 180 Misc. 1004, 46 N.Y.S. 2d 360 [1943], aff'd 266 App. Div. 1008, 45 N.Y.S. 2d 126 [1943].

¶ 7. Petitioners were not entitled to special benefits provided for under § B20-40.0 but were limited to benefits payable under Option IV of this section which decedent-teacher had selected where she requested that her retirement become effective on January 10th and died on February 11th.-Finn v. Teachers' Retirement Bd. of City of N.Y., 21 N.Y. 2d 817, 235 N.E. 2d 908, 288 N.Y.S. 2d 904 [1968], aff'g 28 App. Div. 2d 718, 282 N.Y.S. 2d 684 [1967].

¶ 8. Where decedent filed a new designation of beneficiary with the retirement board, previously designated beneficiary was not entitled to benefits although decedent had agreed in a separation agreement to make the designation irrevocable and separation agreement was subsequently incorporated in a foreign divorce decree.-Caravaggio v. Retirement Bd. of the Teachers' Retirement System, 36 N.Y. 2d 348, 329 N.E. 2d 165, 30 N.Y.S. 2d 475 [1975].

¶ 9. The right to receive benefits under the Teachers' Retirement System is unassignable and benefits payable on death may not be bargained away in a separation agreement.-Id.

¶ 10. Plaintiff in matrimonial action was entitled to dismissal of counterclaim of former wife who sought specific performance of an alleged contract with her former husband whereby plaintiff agreed to irrevocably designate her the beneficiary of his benefits from the N.Y.C. Retirement Fund and to elect an option at the time of his retirement which would insure that she receive at least one half of his yearly benefits during her lifetime since specific performance of such contracts violates public policy. Defendant, however, can replead a cause of action to recover damages for breach of the alleged contract.-Leavitt v. Leavitt, 54 A.D. 2d 707 [1976].

**CASE NOTES**

¶ 1. The decedent, a New York City school teacher, executed a designation of beneficiary form indicating that his retirement death benefits were to go to a named friend. Years later, he married but never changed the designation form. When he died, his widow sought to recover the death benefits, contending that her husband intended to leave his entire estate to her, proferring her husband's will as evidence of that intent. The court, however, held that even though the friend and the decedent had been estranged for from each other for many years, the court had no power to award death benefits to anyone other than the named beneficiary. Thus, the friend rather than the widow received the benefits. Venet v. Teachers Retirement System of the City of New York, 159 A.D.2d 273, 552 N.Y.S.2d 275 (1st Dept. 1990).



Administrative Code of the City of New York



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

*NYC Administrative Code 13-559*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-559 Termination of options.

Where a contributor has elected an option in accordance with section 13-558 of this chapter and where such option provides that upon the death of the contributor after retirement a guaranteed lump sum payment in a stated dollar amount, or that a guaranteed lump sum payment of a specific number of variable annuity units equal to a stated dollar amount, or that a guaranteed lump sum payment of a specific number of variable annuity units shall be payable to a designated beneficiary, and where such designated beneficiary predeceases the retired contributor, then the retired contributor may file a fully certified request, upon a form provided by such board, that his or her optional election terminate. Upon such request, accompanied by evidence of the death of the designated beneficiary, the previously elected option shall be null and void, and the retirement allowance thereafter payable to such retired contributor shall be such greater amount that the actuary shall compute to be the equivalent of the benefits payable had no such option been filed.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-46.1 added chap 779/1983 § 1

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

*NYC Administrative Code 13-559.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-559.1 Modified Option 1 pension computation formula.

a. The retirement board may by resolution direct that under such circumstances as are designated in such resolution, benefits under Option 1 which consist of or are derived from the pension component of a retirement allowance and which are payable to or on account of Tier I members who:

(1) became members prior to the date of enactment (as certified pursuant to section forty-one of the legislative law) of this section; and

(2) retired or retire, on or after August first, nineteen hundred eighty-three, for service or superannuation or for ordinary or accident disability, or on or after such August first, discontinued or discontinue service so as to become discontinued members; shall be determined under the modified Option 1 pension computation formula (as defined in subdivision fifty-nine of section 13-501 of the code).

b. If the retirement board makes a direction, pursuant to the provisions of subdivision a of this section, for use of such formula, it may also direct by resolution:

(1) that any member who is subject to the modified Option 1 pension computation formula may elect, at such time and in accordance with such procedures as are prescribed in such resolution, that such formula shall not apply to such member and that the initial reserve determined for the purpose of providing the benefits payable by reason of his or her selection of Option 1 and the pension component of his or her Option 1 retirement allowance shall be determined on the basis of gender-neutral mortality tables and regular interest of seven per centum per annum, compounded annually; and

(2) that the benefit payable upon the death of the member making such election, to his or her beneficiary or estate shall be the difference between such Option 1 initial reserve and the total of the payments of such pension component received by or payable to such member for the period prior to his or her death; and

(3) that if such Option 1 beneficiary's benefit is payable pursuant to Option 1a or Option 1b, the benefits payable to a beneficiary or estate by reason of selection of such Option 1a or Option 1b shall be the greatest of the three benefits computed for such beneficiary or estate in accordance with the methods of computation set forth in the applicable provisions of subparagraph (ii) or subparagraph (iii) of paragraph (e) of subdivision fifty-nine of section 13-501 of the code; and

(4) that where any member subject to the modified Option 1 pension computation formula retired before the effective date of a retirement board resolution adopted pursuant to subdivision a of this section, and where the retirement allowance of a discontinued member who is subject to such formula began before the effective date of such resolution, such retiree or discontinued member, within such period of time after such effective date and in accordance with such procedures as are prescribed in such resolution, may elect the method of Option 1 benefit determination set forth in the preceding paragraphs of this subdivision b.

c. In any case where, pursuant to retirement board resolution, a benefit is required to be determined under the modified Option 1 pension computation formula and the determination of such benefit is also required by a retirement board resolution adopted pursuant to sub-item (3) of item (A) of subparagraph (ii) of paragraph (g) of subdivision twenty-two of section 13-501 of the code to reflect different computations of separate portions of such benefit, the methods of computation under the modified Option 1 pension computation formula shall be appropriately adjusted so as to give effect to the provisions of such resolution adopted pursuant to such sub-item (3).

**HISTORICAL NOTE**

Section added chap 910/1985 § 16, section number supplied by the

Legislative Bill Drafting Commission

**DERIVATION**

Formerly § B20-46.2 added chap 910/1985 § 16



Administrative Code of the City of New York



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

*NYC Administrative Code 13-560*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-560 Monthly payments.

A pension, a pension-providing-for-increased-take-home-pay, an annuity, or a retirement allowance, granted under the provisions of this chapter, shall be paid in equal monthly instalments, and shall not be decreased, increased, revoked or repealed except as otherwise provided in section 13-553 of this chapter. The instalment for the month in which a retired contributor shall die or for any other reason cease to be a retired contributor shall be prorated.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-47.0 added chap 929/1937 § 1

Amended chap 510/1960 § 25

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

*NYC Administrative Code 13-561*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-561 Exemption from tax, execution, etc.

1. The right of a person to a pension, a pension-providing-for-increased-take-home-pay, an annuity, or a retirement allowance, to the return of contributions, the pension, pension-providing-for-increased-take-home-pay, annuity, or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the various funds provided for by this chapter, are hereby exempt from any state or municipal tax, and exempt from levy and sale, garnishment, attachment or any other process whatsoever, and shall be unassignable except as in this chapter specifically otherwise provided.

2. Notwithstanding the foregoing provisions of this section, a retired member who, immediately prior to his or her retirement, was a member of an employee organization, certified or recognized pursuant to article fourteen of the civil service law as the representative of all employees in the negotiating unit in which such retired member was then employed, and had duly executed and filed a deduction authorization card, authorizing the payment of membership dues and such retired member's share of the cost for employee organization-sponsored benefit plans to such employee organization, which was in effect at the time of his or her retirement, shall have the right, at any time after his or her retirement, to execute and file a new deduction authorization card authorizing the payment of membership dues and such retired member's share of the cost for employee organization-sponsored benefit plans to an employee organization of which he or she is then a member and which is then so certified or recognized as the representative of all employees in such negotiating unit. Such authorization shall continue in effect until revoked by such retired member or superseded by a new deduction authorization card executed and filed by such retired member in the form and manner prescribed by executive order of the mayor. The board shall determine the cost of administering deductions for employee organization-sponsored benefit plans and the cost incurred by the retirement system and the comptroller in

administering the same shall be paid by the employee organization.

3. Notwithstanding the foregoing provisions of this section, a retired member shall have the right, at any time after his or her retirement, to execute and file a deduction authorization card authorizing the payment of voluntary contributions to the political committee, as defined in subdivision one of section 14-100 of the election law, of such member's employee organization provided such organization is certified or recognized pursuant to article fourteen of the civil service law as the representative of all employees in the negotiating unit in which such retired member was then employed. Such authorization shall continue in effect until revoked in writing by such member. The board shall determine the cost of administering deductions for voluntary contributions to the political committee and the cost incurred by the retirement system and the comptroller in administering such contributions shall be paid from the funds of the political committee.

4. Notwithstanding the foregoing provisions of this section, a retired member who has elected to defer the commencement of the distribution of his or her tax-deferred annuity account pursuant to subdivision g of section 13-582 of this chapter, shall have the right, at or any time on or after his or her retirement, to file with the retirement system a duly executed deduction authorization card directing repayment of a tax-deferred annuity loan from the retired member's retirement allowance payments in accordance with rules and regulations which shall be adopted by the retirement board. Such authorization shall continue in effect until revoked in writing by such retired member.

**HISTORICAL NOTE**

Section amended chap 556/2003 § 2, eff. Sept. 17, 2003 and deemed to

have been in full force and effect on and after June 30, 2003.

Section amended chap 248/1994 § 1, eff. July 6, 1994

Section added chap 907/1985 § 1

Subd. 4 added chap 267/2006 § 1, eff. July 26, 2006. [See Note 1]

**DERIVATION**

Formerly § B20-48.0 added chap 929/1937 § 1

Amended chap 510/1960 § 26

Par added chap 338/1975 § 1

**NOTE**

1. Provisions of chap 267/2006:

§ 2. This act shall take effect immediately [July 26, 2006], provided, however, that the rights conferred by this act shall not be implemented with respect to eligible retired members until the teachers' retirement board has adopted the rules and regulations necessary for the implementation of this act.

**CASE NOTES FROM FORMER SECTION**

¶ 1. Greater New York Charter § 1092, subd. w, providing that the right of a person to a pension, annuity or retirement allowance under the Teachers' Retirement Fund or "any other right accrued or accruing to any person under the provisions of this act" should be exempt from creditors' claims, **held** to immunize pension paid to administratrix of deceased teacher from claim of creditor, since a corollary or purpose of the statute to stabilize status of persons in the

educational system and to guard member against results of his own improvidence, was the protection of the member's dependents.-Est. of Alfredo Distefano, 167 Misc. 678, 5 N.Y.S. 2d 87 [1938], aff'd without opinion, 255 App. Div. 957, 8 N.Y.S. 2d 669 [1938].

¶ 2. Accumulated deductions standing to petitioner's credit in the annuity savings fund of the Teachers' Retirement System were exempt from claims of creditors.-In re Lewittes (Briscoe), 120 (87) N.Y.L.J. (11-4-48) 1032, Col. 2 F.

¶ 3. In view of provisions of Greater New York Charter § 1092, subd. w, and Admin. Code § B20-48.0, providing that right of a person to a pension under the act should be exempt from execution and unassignable, assignment of death benefit made by the designated beneficiary a short time after death of the teacher-member of the Retirement System but before actual payment of the benefit, **held** void, since design of the act is to protect the beneficiary as well as the member from the results of his own improvidence, although after the death benefit is actually paid over the legal and moral responsibility of the Retirement System ceases.-Hecht v. Whalen, 174 Misc. 146, 18 N.Y.S. 2d 488 [1940].

¶ 4. Provisions of Admin. Code § B20-48.0, exempting from tax the benefits of the Teachers' Retirement Fund, **held** not to prevent the imposition of an estate tax upon that portion of the sum which became payable to a designated beneficiary as represented accumulated salary deductions of a member of the fund, inasmuch as Tax Law § 249kk, providing that no exemptions provided for in any other law of the state should be construed as being applicable under Art. 10c of the Tax Law, repealed by implication the exemption provision of § B20-48.0. Even though the Admin. Code was enacted in 1937 and therefore subsequent to Tax Law § 249kk, which became effective in 1930, the effect was the same as if the exemption provision of the Code had been enacted prior to 1930, as Admin. Code § 982-6.0 prohibits repeal by implication of any existing provision of law, and § 983-1.0 provides that for purpose of determining effect, upon any provision of the Code, of any statute theretofore enacted and not specifically repealed by the Code, such provision should not be considered a new enactment if it re-enacted any prior law, and it appeared that the exemption provision of the Code was substantially the same as § 1092 of the previous Charter.-Matter of Newton, 177 Misc. 877, 32 N.Y.S. 2d 473 [1942], aff'd without opinion, 267 App. Div. 913, 47 N.Y.S. 2d 332 [1944], aff'd 294 N.Y. 687, 60 N.E. 2d 842 [1945].

¶ 5. Provisions of Insurance Law § 200, subd. 7, stating that the property of a retirement system and all rights of an employee in the funds of the system should be exempt from taxation, was inapplicable to benefits payable under the New York City Teachers' Retirement System, since such system was the creation of special legislation and contained its own exemption clause, and such special statute would seem exclusively applicable. Moreover the intent of the Legislature seemed clear to restrict the application of Insurance Law § 200, sub. 7, to retirement systems created and existing under and in pursuance of the Insurance Law.-Id.

¶ 6. It has been held that Tax Law § 249-kk, enacted in 1930, has impliedly repealed the estate tax exemption contained in the Admin. Code.-In re Herman K. Endemann, dec'd 201 Misc. 1077, 106 N.Y.S. 2d 849 [1951].

¶ 7. On death of a teacher of a New York City School System, fund paid by the Teachers' Retirement System to a designated beneficiary, held properly included as part of decedent's estate for tax purposes, inasmuch as the retirement system was under obligation to the decedent to return to her, or to her estate or nominee, the amounts deducted from her salary upon her withdrawal or death prior to retirement. Decedent would have been entitled to the fund upon her withdrawal prior to retirement, and a nominee was entitled to it only upon her death. The accumulated deductions did not possess the essentials of insurance, but the situation resembled more closely an annuity.-Est. of Pauline J. Burtman, 180 Misc. 299, 41 N.Y.S. 2d 778 [1943].

¶ 8. The provisions of the Code, that rights of members of Teachers' Retirement System are exempt from tax, levy, sale, attachment, and assignment did not destroy or impair the validity or effectiveness of a divorce decree which provided that pensioner's ex-wife be named as irrevocable beneficiary with respect to his pension fund.-Lapolla v. Retirement Board of the Teachers' Retirement, etc., 140 N.Y.S. 2d 449 [1955].

¶ 9. The amount paid to the beneficiary of a deceased school teacher representing the deductions from the teacher's salary together with interest, was subject to the New York Estate Tax. Contention that the accumulated deductions constituted life insurance exempt from estate tax by Tax Law § 249-r(9) or in the alternative that they were exempted from estate tax by this section were rejected. Tax Law § 249-k providing, in effect, that no exemption provided by any other law of the State should be applicable to the estate tax, was applicable.-Matter of Newton, 294 N.Y. 687, 60 N.E. 2d 842 [1945].

**CASE NOTES**

¶ 1. A separation agreement expressly distributing pension benefits as marital property pursuant to Domestic Relations Law § 236(B) is enforceable and exempt from application of the statutory anti-assignment provision governing the Teachers' Retirement System pension funds, Ad Code § 13-561. In this case spouse #1 was allowed to receive 100% of the death benefits as agreed to her in the separation agreement, despite a different beneficiary designation by the decedent. Kaplan v Kaplan, 82 NY 2d 300, affg. 185 AD 2d 179; revg. Caravaggio v Retirement Bd. of Teachers Ret. Sys., 36 NY 2d 348 [1994].

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

*NYC Administrative Code 13-561.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-561.1 Eligible rollover distributions.

a. Notwithstanding anything to the contrary contained in section 13-561 of this chapter, in the event that, under the terms of this chapter, a person becomes entitled to a distribution from the retirement system which constitutes an "eligible rollover distribution" within the meaning of paragraph thirty-one of subsection a of section four hundred one of the internal revenue code, such distributee may elect, subject to any rules and regulations adopted pursuant to subdivision b of this section, to have such distribution, or a portion thereof, paid directly to an "eligible retirement plan" within the meaning of paragraph thirty-one of subsection a of section four hundred one of the internal revenue code.

b. The retirement board is authorized to adopt such rules and regulations as it finds to be necessary in administering the provisions of this section, provided that they are not inconsistent with the applicable provisions of the internal revenue code and rules and regulations thereunder.

**HISTORICAL NOTE**

Section added chap 510/1993 § 5 retro. to Jan. 1, 1993



Administrative Code of the City of New York



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

*NYC Administrative Code 13-562*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-562 State supervision.

The retirement system shall be subject to the supervision of the department of insurance in accordance with the provisions of sections three hundred seven through three hundred twelve of the insurance law, so far as the same are applicable thereto, and are not inconsistent with the provisions of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-49.0 added chap 929/1937 § 1

Amended chap 805/1984 § 108



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

*NYC Administrative Code 13-563*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-563 Extension of system to college participants and provisions relative thereto.

Membership in the public school teachers' retirement system, besides including teachers enumerated in definition seven of section 13-501 of this chapter, and members described in section 13-503 of this chapter, is hereby extended to include all officers of administration and instruction of the College of the city of New York, and also others at present employed by such college, who are not members of any other retirement system supported in whole or in part by the city and who hold appointment to service at annual salaries paid out of appropriations made by the city and also all lecturers employed by the city university of New York who serve on a per hour, per diem, per monthly or per semester basis under such appropriate rules and regulations as the retirement board shall adopt, elect to become members of the retirement system provided however that such lecturers are not members of any other retirement system supported in whole or in part by the city. All such members shall hereinafter be referred to as college participants and all the provisions of this chapter shall apply to such participants except as hereinafter provided:

1. All the definitions of section 13-501 of this chapter shall hold in the application of the retirement provisions to college participants. The college of the city of New York with all its divisions including its prepatory high school is deemed to be part of the public school system together with the public schools enumerated in definition six of section 13-501 of this chapter. Such college participants are deemed teachers of the public school system together with those enumerated in definition seven of section 13-501 of this chapter. The present-teachers shall be those in the service of the college on June first, nineteen hundred twenty-three. New-entrants shall be those appointed to service after such date. In applying definition fourteen of section 13-501 of this chapter to college participants, prior-service shall be calculated for present-teachers up to such date.

2. The membership of the retirement board constituted by section 13-507 of this chapter shall not be changed

because of the inclusion of employees of the college of the city of New York in the retirement system. All the duties of such board shall be exercised in reference to college participants.

3. All the funds provided for by this chapter shall be administered for and in behalf of college contributors in like manner as for all other contributors, and the city shall pay each year into the contingent reserve fund ten thousand dollars on account of present-college teachers, which payment shall continue until the present value of such amounts so paid into the contingent reserve fund together with the amounts restored to the contingent reserve fund from pension reserve fund number one on account of present-college teachers restored to active service, shall equal the present value of all amounts which have been transferred from the contingent reserve fund to pension reserve fund number one on account of present-college teachers, plus the present value of all amounts, other than reserves-for-increased-take-home-pay, thereafter to be transferred from the contingent reserve fund to such pension reserve fund number one on account of present-college teachers. Such amounts shall be computed on the basis of such mortality and other tables as shall be adopted by the retirement board, and on regular interest. Deductions shall be made from the salaries of college participants on each and every payroll, in the manner set forth in section 13-521 of this chapter, and the provisions of section 13-533 of this chapter, shall apply to college members as to all other members.

4. In computing the length of service of a college contributor all the provisions of section 13-505 of this chapter shall apply and all service in the college of the city of New York shall be credited for college contributors exactly as analogous service in the schools under the management and control of the board of education is credited to other contributors.

5. All the provisions of sections 13-523, 13-506, 13-541, 13-545, 13-550 and 13-553 of this chapter, shall apply to college contributors except that no college contributor who is dismissed from service shall be paid anything out of the teachers' retirement fund of the board of education of the city of New York as it existed prior to the first day of August, nineteen hundred seventeen and for college contributors service shall be counted as equivalent to city-service wherever such service is designated in such sections as necessary to meet a retirement requirement.

6. Each college pensioner duly retired under the provisions of the college officials and professors' retirement fund prior to May twenty-second, nineteen hundred twenty-three shall receive from pension reserve fund number two, in regular monthly installments, the same annual pension which was assigned to him or her at the time of retirement and the city shall contribute to pension reserve fund number two sums equal to the amounts paid to such pensioners.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-50.0 added chap 929/1937 § 1

Sub 2 amended chap 915/1939 § 2

Sub 5 amended LL 50/1942 § 66

Sub 3 amended chap 510/1960 § 27

Open par amended chap 815/1970 § 2

(Legislative findings, lecturers membership, chap 815/1970 § 1)

**CASE NOTES**

¶ 1. Tenured faculty members of the instructional staff of the College of Staten Island were entitled to transfer of

their membership from the N.Y.C. Employees' Retirement System to the N.Y.C. Teachers' Retirement System since the college was a senior level college and not a community college and is partially funded as such.-Matter of Albright (N.Y. City Employees' Retirement System), 183 (25) N.Y.L.J. (2-5-80) 5, Col. 2  B.



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

*NYC Administrative Code 13-564*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-564 Amendment of chapter.

Notwithstanding the provisions of section 1-110 of this code, or the provisions of any other law to the contrary, the provisions of this chapter shall not be superseded, supplemented, modified or amended by local law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-51.0 added chap 929/1937 § 1



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

*NYC Administrative Code 13-565*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-565 Retired employees; change of options.

a. A beneficiary shall be permitted to change an optional selection as provided in subdivisions b and c of this section.

b. A change of optional selection may be made by a twenty-year pension plan retiree having a deferred payability date pursuant to paragraph d of subdivision four of section 13-545 of this chapter (relating to change of conditional elections by such retirees) and subdivision c of section 13-558 of this chapter (relating to change of elections by such retirees).

c. If the survivor beneficiary nominated under option two, three or four of section 13-558 of this chapter is a spouse of the retired member, and such person by causes other than death ceases to be his or her spouse or is separated from him or her, or if such option was selected in contemplation of marriage which has not taken place, then the board of estimate shall have authority to permit the change of the optional benefit to the maximum benefit that is the actuarial equivalent by and with the consent of all parties.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 447/2004 § 2, eff. Sept. 14, 2004 and deemed in

full force and effect on and after June 30, 2003.

**DERIVATION**

Formerly § B20-52.0 added chap 566/1957 § 1

Amended chap 274/1970 § 28

**CASE NOTES**

¶ 1. Decedent a member of the Teachers' Retirement System could not change her option selection from maximum retirement allowance to "Option I" after the effective date of her retirement but before receipt of her first check and before her application was acted on officially by the Teachers' Retirement Board.-Greene v. Teachers' Retirement System of N.Y., 107 Misc. 2d 508 [1980].



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

*NYC Administrative Code 13-566*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-566 Optional retirement program.

Notwithstanding any other law to the contrary, certain employees of the city university of New York shall be permitted to participate in an optional retirement program pursuant to article one hundred twenty-five-A of the education law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-53.0 added chap 1028/1965 § 2



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

*NYC Administrative Code 13-567*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-567 Variable annuity funds.

a. There shall be established, in addition to the funds already provided for, five funds to be known collectively as the variable annuity funds and individually as: (i) the variable annuity savings fund, (ii) the variable annuity reserve fund, (iii) the variable pension accumulation fund, (iv) the variable pension reserve fund, and, (v) as a segregated portion of the contingency reserve fund, the variable contingency reserve fund, respectively.

b. The variable annuity funds A and B shall continue, subject to the provisions of subdivision c of this section.

c. Subject to the provisions of subdivsion d of section 13-570 of this chapter, the retirement board may, from time to time, establish, modify or abolish such additional variable annuity fund or funds, including, but not limited to such funds as described in subdivision b of this section, each of which shall include (i) a variable annuity savings fund, (ii) a variable annuity reserve fund, (iii) a variable pension accumulation fund, and (iv) a variable pension reserve fund. Each such variable annuity fund shall be invested in the manner described in the resolution creating or modifying the variable annuity fund and the retirement board shall establish a new start date and initial unit value for each such fund.

d. In establishing and investing or abolishing the variable annuity funds the retirement board shall take no action that would render the retirement system not a qualified plan under Section 401 (a) of the Internal Revenue Code of 1986 or the tax-deferred annuity program in violation of Section 403 (b) of the Internal Revenue Code of 1986.

e. With respect to any member or retired member, a reference to any of the variable annuity funds without further specification shall be taken as a reference to the fund or funds in which such member has an account. A general reference to any one of the variable annuity funds without further specification shall be taken as a reference to the one,

or more, or all such funds, according to the context. A provision invoking an election or other transaction which requires a distinction among the variable annuity funds shall apply when such election or other transaction is effective on or after the new start date. Should the retirement board, by resolution, establish one or more additional variable annuity funds pursuant to subdivision c of this section, each such fund or funds shall be governed by and be subject to the provisions specified in this chapter as applicable to funds A and B, as appropriate.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subds. b-d added chap 517/1993 § 1 eff. Jan. 1, 1994 repealed chap 517/1993 § 1 eff. Jan. 1, 1994

Subd. e amended chap 724/2004 § 2, eff. Nov. 24, 2004

Subd. e added chap 517/1993 § 1 eff. Jan. 1, 1994

**DERIVATION**

Formerly § B20-54.0 added chap 544/1966 § 2

(Legislative findings chap 544/1966 § 1)

Amended chap 735/1982 § 2

(Legislative findings chap 735/1982 § 1)



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

*NYC Administrative Code 13-568*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-568 Elections to participate in the variable annuity program; variable annuity savings fund and variable pension accumulation fund.

a. A contributor, by written notice of his or her intention to participate in the variable annuity program duly filed with the retirement board, may elect to have currently deposited and credited to his or her account in the variable annuity savings fund such portion as the retirement board may permit by duly adopted rules and regulations of the deductions from his or her salary that would otherwise be credited to his or her accumulated deductions. If a contributor makes such an election, an equal percentage of the amount that would otherwise be credited to his or her reserve-for-increased-take-home-pay shall be currently deposited and credited to his or her account in the variable pension accumulation fund. The contributor or beneficiary shall also elect the particular variable annuity funds established by the retirement board pursuant to section 13-567 of this chapter in which such deductions and reserves shall be deposited and credited.

b. Pursuant to section 13-513 of this chapter, the retirement board may establish rules and regulations applicable to similarly situated contributors and/or beneficiaries with respect to the variable annuity funds, including, without limitation, rules and regulations governing:

1. The percentage of deductions from salary that may be contributed to the variable annuity funds, and the distribution therefrom among the various particular variable annuity funds that the retirement board may establish pursuant to section 13-567 of this chapter;

2. Transfers of a contributor's accumulated deductions between the annuity savings fund and the variable annuity savings fund and reserve-for-increased-take-home-pay between the contingent reserve fund and the variable pension

accumulation fund;

3. Transfers of accumulated deductions and reserve-for-increased-take-home-pay among the investment accounts which the

retirement board may establish pursuant to section 13-567 of this chapter;

4. Changes and revocations of elections made pursuant to subdivision a of this section;

5. Deposits to the variable annuity savings fund of monies attributable to a contributor who has transferred from the board of education retirement system;

c. In promulgating and administering rules and regulations pursuant to subdivision b of this section the retirement board shall take no action that would render the retirement system not a qualified plan under Section 401(a) of the Internal Revenue Code of 1986 or the tax-deferred annuity program in violation of Section 403(b) of the Internal Revenue Code of 1986.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 517/1993 § 2 eff. Jan. 1, 1994 amended chap 273/1988 § 1

Subd. b repealed and added chap 517/1993 § 3 eff. Jan. 1, 1994 amended chap 273/1988 § 2

Subd. c. repealed and added chap 517/1993 § 3 eff. Jan. 1, 1994

Subd. d repealed chap 517/1993 § 3 eff. Jan. 1, 1994

**DERIVATION**

Formerly § B20-55.0 added chap 544/1966 § 2

Amended chap 735/1982 § 3

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*NYC Administrative Code 13-569*

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Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-569 Variable contingency reserve fund.

There shall be maintained, within the contingency reserve fund, a segregated portion to be known as the variable contingency reserve fund, the purpose of which shall be to accumulate such assets as may be necessary to effect the net transfers from the contingency reserve fund to the variable annuity reserve fund and the variable pension reserve fund, as required by subdivision a of section 13-577 of this chapter. The actuary shall prepare an annual estimate of the assets necessary to make such future adjustments with respect to all benefits to be provided out of the current assets of the variable annuity funds other than the variable contingency reserve fund. Such estimate shall be based on the mortality experienced among beneficiaries of the annuity reserve fund and pension reserve fund number one, as shown by the most recent actuarial investigation pursuant to section 13-514 of this chapter. When, in accordance with a determination by the actuary, there is sufficient experience in the operation of the variable annuity program, the estimate shall recognize the mortality experienced among participating beneficiaries. The assets of the variable contingency reserve fund shall be maintained at a level as nearly as possible consistent with such estimates.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-56.0 added chap 544/1966 § 2



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

*NYC Administrative Code 13-570*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-570 Administration; investment of funds; units and unit values; expenses.

a. The retirement board may enter into a contract or contracts with one or more agencies to invest and otherwise administer the variable annuity funds. The retirement board shall retain the responsibility for determination of benefits and final authority for making investments. A contract with any one agency shall be for a period not to exceed five years but may be renewed with the same agency. Any such contract shall be filed with the New York state superintendent of insurance within thirty days prior to its effective date and the operations of the contracting agency, insofar as they affect the operation of the variable annuity program, shall be subject to examination by the superintendent of insurance.

b. The retirement board as an alternative to entering into a contract or contracts as provided in subdivision a hereof, may, only to the extent permitted by the insurance law, enter into a variable payment annuity contract or contracts with insurance companies providing for the benefits payable under the variable annuity program.

c. The variable annuity funds shall, for investment purposes, be treated as a single fund but may be invested by more than one agency.

d. 1. Notwithstanding the provisions of any state or city law to the contrary, the assets of each of the variable annuity funds may be invested up to one hundred percent in such domestic or foreign equities and other securities as are permissible for domestic life insurance companies or savings banks, subject only to the following limitations:

(i) No investment shall be made in the stock, shares or securities convertible into stock or shares of any one corporation and its subsidiaries which, at the time such investment is made will cause the aggregate market value of the

stock, shares and securities convertible into stock or shares of such corporation and its subsidiaries owned by the variable annuity funds to exceed five percent of the aggregate market value of the assets of such funds.

(ii) Not more than two percent of the issued and outstanding stock, shares or securities convertible into stock or shares of any class of any one corporation shall be owned by such funds.

The foregoing provisions shall not limit the investment of the assets of variable annuity funds in municipal, county, state, federal or corporate obligations, not convertible into stock or shares, otherwise permitted by law.

2. In addition to any investments permitted by paragraph one of this subdivision, and notwithstanding any provision of any state or city law to the contrary, the assets of each of the variable annuity funds may be invested in investments not qualifying under such paragraph one, provided:

(i) the investments made by a fund pursuant to this paragraph shall not at any time exceed fifteen percent (or such higher percentage as may be authorized by any other state or city law) of the assets of such fund; and

(ii) such investments shall be for the exclusive benefit of the participants and beneficiaries, and the trustee or trustees of the fund shall make such investments with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

3. In the event of any conflict or inconsistency between the provisions of this subdivision and any provisions of state or city law setting forth the percentage of assets of a fund which may be invested in any one type of investment or any particular investment, including without limitation the provisions of article four-A of the retirement and social security law, the provisions of this subdivision shall govern.

e. Investment income and appreciation and depreciation of the assets shall be allocated to the individual variable annuity funds on a proportionate basis as of the end of each month.

f. Sections 13-535, 13-536 and 13-537 of this chapter shall not apply to the variable annuity funds.

g. Deposits and transfers to the variable annuity savings fund and the variable pension accumulation fund pursuant to section 13-568 of this chapter shall be converted at once into units of equal value. At the end of each month, the number of units in the accounts of each individual in each such fund shall be increased by 0.3274 per cent, the percentage by which a sum of money is increased in one month if invested at an effective rate of interest of four per cent per year. Residual fractions of a unit shall be determined to the nearest hundreth of a unit.

h. The value of a unit for January, nineteen hundred sixty-eight shall be ten dollars. For any month thereafter it shall be determined in accordance with paragraphs one, two and three following:

1. For any month preceding the month in which the method set forth in paragraph two below is applicable, the value of a unit shall be equal to the combined assets of the variable annuity savings fund and the variable pension accumulation fund at the beginning of such month, divided by the total number of units then in the individual accounts in such funds.

2. The retirement board shall establish the first month for which the method set forth in this paragraph applies. For such first month, and for any month thereafter, the value of a unit shall be equal to the value of a unit for the preceding month, multiplied by a factor which is equal to the ratio of (i) the amount resulting from ten thousand dollars invested for one month at a rate equal to (I) the average rate of investment results (including market value changes) in the variable annuity funds during the preceding month, less (II) the rate at which expenses are charged against such funds during such preceding month pursuant to subdivision j of this section, and less (III) the rate at which expenses and transfers for such preceding months are charged or deducted from the variable annuity funds, other than the variable

contingency reserve fund, pursuant to subdivision k of this section, to (ii) ten thousand thirty-two dollars and seventy-four cents, the amount of ten thousand dollars invested for one month at an effective rate of interest of four per cent per year. Such average rate of investment results, net of such expense charges and such transfers, shall be determined in accordance with rules and procedures established by the retirement board.

3. Unit values shall be determined to the nearest tenth of a cent.

i. The retirement board shall: 1. Publish, or provide for the publication of, an annual report of the operations of the variable annuity funds.

2. Furnish, or provide for the furnishing of, to each contributor who has units credited to him in the variable annuity savings fund and the variable pension accumulation fund an annual statement showing, as of the beginning of the current year, the value of a unit in such funds and the number of units credited to him in each fund.

j. Expenses incurred in the operation and administration of the variable annuity funds shall be charged against such funds.

k. The retirement board shall prepare an annual estimate of the additional expenses, if any, it has incurred that are attributable to the variable annuity program. An amount equal to such additional expenses shall be charged to and accounted for on a proportionate basis and transferred from the variable annuity funds other than the variable contingency reserve fund to the expense fund. Such transfer shall be made in twelve equal monthly installments immediately following the month in which such estimate is made, except that the transfer with respect to additional expenses incurred before January first, nineteen hundred sixty-eight, and the transfer with respect to the additional expenses incurred before the new start date in connection with the establishment of the B funds shall be made in from twelve to sixty equal monthly installments, at the discretion of the retirement board.

l. Assets shall be valued at their market value or, in the absence of a readily available market value, then at a fair market value as determined in accordance with accepted practices.

m. The value of a unit in the B funds for the month beginning with the new start date shall be ten dollars, and for any month thereafter it shall be determined in accordance with paragraphs one, two and three of subdivision h of this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 517/1993 § 4 eff. Jan. 1, 1994.

Subd. d amended chap 567/2005 § 2, eff. Aug. 23, 2005. [See Note 1]

Subd. d amended chap 517/1993 § 4 eff. Jan. 1, 1994.

Subd. k amended chap 724/2004 § 1, eff. Nov. 24, 2004 and deemed to

have been in full force and effect on and after Mar. 21, 2002.

Subd. m relettered (formerly subd. (n)) chap 724/2004 § 3, eff. Nov. 24,

2004 and deemed to have been in full force and effect on and after

Mar. 21, 2002.

Subd. m repealed chap 724/2004 § 3, eff. Nov. 24, 2004 and deemed to

have been in full force and effect on and after Mar. 21, 2002.

**DERIVATION**

Formerly § B20-57.0 added chap 544/1966 § 2

Sub d amended chap 169/1968 § 1

Sub h amended chap 925/1968 § 1

Sub h par 2 amended chap 735/1982 § 4

Sub k amended chap 735/1982 § 5

Subs m, n added chap 735/1982 § 6

**NOTE**

1. Provisions of chap 567/2005:

Section 1. Intent and purposes. Chapter 544 of the laws of 1966 established a variable annuity program within the New York city teachers' retirement system. Its purpose was to make available a means by which a teacher may protect the purchasing power of his or her retirement income by investing a part of his or her retirement funds in equities to serve as a hedge against inflation and the reduction in value of the dollar. It accomplished this purpose by permitting, subject to election by the contributor, one-half or all of his or her salary deductions, and thereby a portion of his or her retirement allowance, to vary according to the fluctuations in the value of the investments which the retirement board was directed to make with the funds that became available through such election.

In accordance with the objectives of the variable annuity program, it was intended that up to one hundred percent of the variable annuity fund could be invested in common stocks or other equity-type securities and such other securities permissible for domestic life insurance companies or savings banks, subject to certain percentage limitations as set forth under subdivision d of section 13-570 of the administrative code of the city of New York. Consistent with this intent, the variable annuity fund A has consistently been invested almost entirely in equities and equity-type securities since its establishment and currently remains so invested. The purpose of this act is to clarify the authority of the New York city teachers' retirement board to direct the investments of the variable annuity funds in accordance with their purposes and the investment policies of the teachers' retirement board as implemented since the establishment of the variable annuity program.

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*NYC Administrative Code 13-571*

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Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-571 Revocation of election to participate.

[Repealed]

**HISTORICAL NOTE**

Section repealed chap 517/1993 § 5 eff. Jan. 1, 1994

Subds. a, c amended chap 273/1988, §§4, 5

**DERIVATION**

Formerly § B20-58.0 added chap 544/1966 § 2

Sub c added chap 735/1982 § 7



Administrative Code of the City of New York



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

*NYC Administrative Code 13-572*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-572 Withdrawal of participant in variable annuity program; reentry into service.

a. If a participant in the variable annuity program withdraws from the retirement association with vested rights, his or her accounts in the variable annuity savings fund and variable pension accumulation fund shall be maintained, subject to the provisions of this subdivision. Unless the provisions of section 13-523 of this chapter apply, further deposits and transfers to his or her accounts shall be discontinued.

1. Upon his or her request before his or her retirement, he or she shall be paid from the variable annuity savings fund an amount equal to the value, as of the month following the receipt of such request, of the units credited to him or her in such fund. An amount equal to the value, as of such month, of the units credited to him or her in the variable pension accumulation fund shall be transferred from such fund to the contingency reserve fund, and his or her accounts in the variable annuity savings fund and variable pension accumulation fund and his or her right to a vested deferred retirement allowance shall thereupon be cancelled.

2. If he or she transfers his or her membership pursuant to section forty-three of the retirement and social security law or section five hundred twenty-two of the education law, amounts equal to the value of the units credited to him or her in the variable annuity savings fund and variable pension accumulation fund shall be transferred from such funds to his or her accumulated deductions and to the contingency reserve fund, respectively, and in the latter case shall be credited to his or her reserve-for-increased-take-home-pay. His or her accounts in the variable annuity savings fund and variable pension accumulation fund shall thereupon be cancelled. The value of a unit for the purpose of this provision shall be as of the month following his or her withdrawal or application for transfer, whichever is later.

3. If he or she re-enters service before his or her accounts in the variable annuity savings fund and variable

pension accumulation fund are cancelled, deposits to such accounts shall be resumed in accordance with the election in effect at the time of his or her withdrawal.

b. If a participant in the variable annuity program withdraws from the retirement association without vested rights, other than by dismissal, an amount equal to the value, as of the date of withdrawal, of the units credited to him or her in the variable pension accumulation fund shall be transferred from such fund to the contingency reserve fund and credited to his or her reserve-for-increased-take-home-pay. His or her account in the variable pension accumulation fund shall thereupon be cancelled. His or her account in the variable annuity savings fund shall be maintained, subject to the provisions of this paragraph. Unless the provisions of section 13-523 of this chapter apply, further deposits to his or her account shall be discontinued.

1. Upon his or her request, he or she shall be paid from such fund an amount equal to the value, as of the month following the receipt of such request, of the units credited to him or her in such fund, and his or her account in such fund shall thereupon be cancelled. If no request is made before the expiration of such time limit as the retirement board may by regulation prescribe, an amount equal to the value, as of the month following the expiration of such time limit, shall be transferred from such fund to his or her accumulated deductions and his or her account in such fund shall thereupon be cancelled.

2. If he or she transfers his or her membership pursuant to section forty-three of the retirement and social security law or section five hundred twenty-two of the education law, an amount equal to the value of the units credited to him or her in such fund shall be transferred from such fund to his or her accumulated deductions and his or her account in such fund shall thereupon be cancelled. The value of a unit, for the purpose of this provision, shall be as of the month following his or her withdrawal or application for transfer, whichever is later.

3. If he or she re-enters service before his or her account in the variable annuity savings fund is cancelled, deposits to such account shall be resumed in accordance with the election in effect at the time of his or her withdrawal. A new account shall be established for him or her in the variable pension accumulation fund to receive deposits and transfers pursuant to subdivisions a and b of section 13-568 of this chapter.

c. If a participant in the variable annuity program withdraws from the retirement association by dismissal, he or she shall be paid from the variable annuity savings fund an amount equal to the value, as of the month following his or her withdrawal, of the units credited to him or her in such fund. An amount equal to the value of the units credited to him or her in the variable pension accumulation fund shall be transferred from such fund to the contingency reserve fund, and his or her accounts in the variable annuity savings fund and variable pension accumulation fund shall thereupon be cancelled.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-59.0 added chap 544/1966 § 2

Sub b amended chap 925/1968 § 2

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

*NYC Administrative Code 13-573*

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CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-573 Death of participant in variable annuity program.

The beneficiary of any benefits payable pursuant to section 13-542, section 13-543, or subdivision e of section 13-556 of this chapter on the death of a participant in the variable annuity program shall be paid from the variable annuity savings fund and the variable pension accumulation fund amounts equal to the value, as of the date of death, of the units credited to the participant in the respective fund. The participant's accounts in such fund shall thereupon be cancelled.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-60.0 added chap 544/1966 § 2



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

*NYC Administrative Code 13-574*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-574 Variable annuity reserve fund; variable annuity.

a. A participant in the variable annuity program to whom a retirement allowance becomes payable shall, as provided in paragraph one of subdivision b of this section or in paragraph one of subdivision c of this section, as the case may be, have the choice of having the portion deriving from the units credited to him or her in the variable annuity savings fund paid in fixed or variable instalments.

b. (1) A participant who is not an applicant for retirement with a deferred payability date (as defined in subdivision thirty-nine of section 13-501 of this chapter), shall make such choice prior to the effective date of his or her retirement and if the choice is for:

(i) Fixed instalments, he or she shall be credited in the annuity reserve fund, to be applied toward the payment of an annuity, with an amount equal to the value of such units. An equal amount shall be transferred from the variable annuity savings fund to the annuity reserve fund and his or her account in the variable annuity savings fund shall thereupon be cancelled.

(ii) Variable instalments, he or she shall be credited in the variable annuity reserve fund with the same number of units credited to him or her in the variable annuity savings fund and shall be paid a variable annuity from the variable annuity reserve fund. An amount equal to the value of such units shall be transferred from the variable annuity savings fund to the variable annuity reserve fund and his or her account in the variable annuity savings fund shall thereupon be cancelled.

(2) The value of a unit, for the purpose of this subdivision b, shall be as of the effective date of the contributor's

retirement.

(3) Any such variable annuity provided for in this subdivision b shall be computed in terms of units actuarially equivalent to the units credited to the contributor in the variable annuity reserve fund.

c. (1) A participant who is an applicant for retirement with a deferred payability date (as defined in subdivision thirty-nine of section 13-501 of this chapter) may make the choice referred to in subdivision a of this section by an election filed with the retirement board prior to the date next preceding the date on which his or her retirement allowance begins in accordance with rules and regulations established by the retirement board; provided, however, that such participant may, at any time after such election is filed and before his or her retirement allowance begins, change such election by filing a superseding election with the retirement board in accordance with rules and regulations established by the retirement board.

(2) On the effective date of the retirement of a participant who is an applicant for retirement with a deferred payability date (as defined in subdivision thirty-nine of section 13-501 of this chapter), he or she shall be credited in the variable annuity reserve fund with a number of units equal to the number of units credited to him or her as of such date in the variable annuity savings fund. An amount equal to the value of such units as of such date shall be transferred from the variable annuity savings fund to the variable annuity reserve fund and his or her account in the variable annuity savings fund shall thereupon be canceled.

(3) Except as otherwise provided by paragraph four of subdivision f of section 13-581 of this chapter, if the choice of such a participant is fixed instalments, an amount equal to the value, as of the date on which is or her retirement allowance begins, of the number of units which would have been credited to him or her as of such date in the variable annuity savings fund if his or her account therein had not been canceled as provided for in paragraph two of this subdivision c, shall be transferred from the variable annuity reserve fund to the annuity reserve fund and such amount shall be applied toward the payment of an annuity.

(4) Except as otherwise provided by paragraph four of subdivision f of section 13-581 of this chapter, if the choice of such a participant is variable instalments, he or she shall be paid a variable annuity computed in terms of units actuarially equivalent, as of the date on which his or her retirement allowance begins, to the number of units which would have been credited to him or her as of such date in the variable annuity savings fund if his or her account therein had not been canceled as provided for in paragraph two of this subdivision c.

d. For the first month established by the retirement board for this purpose and for any subsequent months, any such variable annuity provided for in subdivision b or c of this section shall be paid in dollars according to the value of a unit for the month payment is due, and for any month preceding such first month the variable annuity shall be paid in dollars according to the value of a unit for the month preceding the month payment is due.

e. On the death of a contributor receiving a variable annuity, or, if he or she has elected Option II, III, or a joint and survivor form of IV, on the death of the last survivor of the contributor and the person designated to receive payments on his or her death, the account of the contributor or the joint account of the contributor and his or her designee, as the case may be, in the variable annuity reserve fund shall be cancelled.

f. If a retired contributor receiving a variable annuity is subsequently restored to active service, his or her variable annuity shall cease, his or her account in the variable annuity reserve fund shall be cancelled, an amount equal to the actuarial equivalent of the variable annuity that was payable to him or her shall be transferred from the variable annuity reserve fund to the variable annuity savings fund, and he or she shall be credited in such fund with units having a value, as of the date of re-entry into service, equal to such amount. Deposits and transfers to the variable annuity savings fund shall be resumed in accordance with the election in effect at the time of his or her retirement.

g. If a twenty-year pension plan retiree with a deferred payability date (as defined in subdivision forty of section 13-501 of this chapter) is restored to active service after the effective date of his or her retirement and before his or her

retirement allowance begins:

(1) his or her account in the variable annuity reserve fund shall be cancelled; and

(2) an amount equal to the value, as of the date of his or her restoration to active service, of the number of units in the variable annuity reserve fund shall be transferred from the variable annuity reserve fund to the variable annuity savings fund.

h. Except as provided for in section 13-581 of this chapter, a transfer pursuant to this section between variable annuity funds shall be from an A fund to an A fund or from a B fund to a B fund or within such additional variable annuity fund or funds which may be established pursuant to subdivision c of section 13-567 of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. c pars (1), (3), (4) amended chap 517/1993 § 6 eff. Jan. 1, 1994

Subds. g, h amended chap 517/1993 § 7 eff. Jan. 1, 1994

**DERIVATION**

Formerly § B20-61.0 added chap 544/1966 § 2

Sub b amended chap 925/1968 § 3

Amended chap 274/1970 § 29

Sub h added chap 735/1982 § 8



Administrative Code of the City of New York



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

*NYC Administrative Code 13-575*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-575 Variable pension reserve fund; variable pension.

a. A participant in the variable annuity program to whom a retirement allowance becomes payable shall, as provided in paragraph one of subdivision b of this section or in paragraph one of subdivision c of this section, as the case may be, have the choice of having the portion deriving from the units credited to him or her in the variable pension accumulation fund paid in fixed or variable instalments.

b. (1) A participant who is not an applicant for retirement with a deferred payability date (as defined in subdivision thirty-nine of section 13-501 of this chapter), shall make such choice prior to the effective date of his or her retirement and if the choice is for:

(i) Fixed instalments, he or she shall be credited in the pension reserve fund number one, to be applied toward the payment of a pension, with an amount equal to the value of such units. An equal amount shall be transferred from the variable pension accumulation fund to the pension reserve fund number one and his or her account in the variable pension accumulation fund shall thereupon be cancelled.

(ii) Variable instalments, he or she shall be credited in the variable pension reserve fund with the same number of units credited to him or her in the variable pension accumulation fund and shall be paid a variable pension from the variable pension reserve fund. An amount equal to the value of such units shall be transferred from the variable pension accumulation fund to the variable pension reserve fund and his or her account in the variable pension accumulation fund shall thereupon be cancelled.

(2) The value of a unit, for the purpose of this subdivision b, shall be as of the effective date of the contributor's

retirement.

(3) Any such variable pension provided for in this subdivision b shall be computed in terms of units actuarially equivalent to the units credited to the contributor in the variable pension reserve fund.

c. (1) A participant who is an applicant for retirement with a deferred payability date (as defined in subdivision thirty-nine of section 13-501 of this chapter) may make the choice referred to in subdivision a of this section by an election filed with the retirement board prior to the date next preceding the date on which his or her retirement allowance begins in accordance with rules and regulations established by the retirement board; provided, however, that such participant may, at any time after such election is filed and before his or her retirement allowance begins, change such election by filing a superseding election with the retirement board in accordance with rules and regulations established by the retirement board.

(2) On the effective date of the retirement of a partcipant who is an applicant for retirement with a deferred payability date (as defined in subdivison thirty-nine of section 13-501 of this chapter), he or she shall be credited in the variable pension reserve fund with a number of units equal to the number of units credited to him or her as of such date in the variable pension accumulation fund. An amount equal to the value of such units as of such date shall be transferred from the variable pension accumulation fund to the variable pension reserve fund and his or her account in the variable pension accumulation fund shall thereupon be canceled.

(3) Except as otherwise provided by paragraph four of subdivision f of section 13-581 of this chapter, if the choice of such a participant is fixed instalments, an amount equal to the value, as of the date on which his or her retirement allowance begins, of the number of units which would have been credited to him or her as of such date in the variable pension accumulation fund if his or her account therein had not been cancelled as provided for in paragraph two of this subdivision c, shall be transferred from the variable pension reserve fund to the pension reserve fund number one and such amount shall be applied toward the payment of a pension.

(4) Except as otherwise provided by paragraph four of subdivision f of section 13-581 of this chapter, if the choice of such a participant is variable instalments, he or she shall be paid a variable pension computed in terms of units actuarially equivalent, as of the date on which his or her retirement allowance begins, to the number of units which would have been credited to him or her as of such date in the variable pension accumulation fund if his or her account therein had not been cancelled as provided for in paragraph two of this subdivision.

d. For the first month established by the retirement board for this purpose and for any subsequent months, any such variable pension provided for in subdivision b or c of this section shall be paid in dollars according to the value of a unit for the month payment is due, and for any month preceding such first month the variable pension shall be paid in dollars according to the value of a unit for the month preceding the month payment is due.

e. On the death of a contributor receiving a variable pension, or, if he or she has elected Option II, III, or a joint and survivor form of IV, on the death of the last survivor of the contributor and the person designated to receive payments upon his or her death, the account of the contributor or the joint account of the contributor and his or her designee, as the case may be, in the variable pension reserve fund shall be cancelled.

f. If a retired contributor receiving a variable pension is subsequently restored to active service, his or her variable pension shall cease, his or her account in the variable pension reserve fund shall be cancelled, an amount equal to the actuarial equivalent of the variable pension that was payable to him or her shall be transferred from the variable pension reserve fund to the variable pension accumulation fund, and he or she shall be credited in such fund with units having a value, as of the date of re-entry into service, equal to such amount. Deposits and transfers to the variable pension accumulation fund shall be resumed in accordance with the election in effect at the time of his or her retirement.

g. If a twenty-year pension plan retiree having a deferred payability date (as defined in subdivision forty of section 13-501 of this chapter) is restored to active service after the effective date of his or her retirement and before his

or her retirement allowance begins: (1) his or her account in the variable pension reserve fund shall be canceled; and

(2) an amount equal to the value, as of the date of his or her restoration to active service, of the number of units in the variable pension reserve fund shall be transferred from the variable pension reserve fund to the variable pension accumulation fund.

h. The provisions of subdivision b of section 13-553 of this chapter applicable to a pension-providing-for-increased-take-home-pay shall apply also to a variable pension.

i. Except as provided for in section 13-581 of this chapter, a transfer pursuant to this section between variable annuity funds shall be from an A fund to an A fund or from a B fund to a B fund or within such additional variable annuity fund or funds which may be established pursuant to subdivision c of section 13-567 of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. c pars (1), (3), (4) amended chap 517/1993 § 8 eff. Jan. 1, 1994

Subds. g, i amended chap 517/1993 eff. Jan. 1, 1994

**DERIVATION**

Formerly § B20-62.0 added chap 544/1966 § 2

Sub b chap 925/1968 § 4

Amended chap 274/1970 § 30

Sub i added chap 735/1982 § 9



Administrative Code of the City of New York



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

*NYC Administrative Code 13-576*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-576 Options; variable designated beneficiary's annuity; variable joint annuity or pension.

a. An option elected pursuant to subdivision c or d of section 13-543 of this chapter with respect to the manner of payment of the accumulated deductions or death benefit shall, in the case of a participant in the variable annuity program, apply also to the units credited to him or her in the variable annuity savings fund or variable pension accumulation fund, respectively. The contributor or beneficiary electing the option shall have the choice of having the designated beneficiary's annuity deriving from such units paid in fixed or variable instalments. If the choice is for:

1. Fixed instalments, the beneficiary shall be credited in the pension reserve fund number one, to be applied toward the payment of a designated beneficiary's annuity, with the amount otherwise payable pursuant to section 13-573 of this chapter. An equal amount shall be transferred from the variable annuity fund holding the contributor's account with respect to which the election is made to the pension reserve fund number one.

2. Variable instalments, the beneficiary shall be credited in the variable pension reserve fund with units equal in value to the amount otherwise payable pursuant to section 13-573 of this chapter and shall be paid a variable designated beneficiary's annuity from such fund. If Option C is elected in a form prescribing the payment of a specified lump sum amount on the death of the beneficiary, the amount provided for by the contributor's account in the variable annuity savings fund shall be limited to the extent that the total amount elected can not be provided for by his or her accumulated deductions. The lump sum amount as herein determined shall be paid from the pension reserve fund number one, and the units credited to the beneficiary in the variable pension reserve fund shall be reduced by the number actuarially computed to be necessary to provide such amount. There shall be transferred from the variable annuity savings fund (i) to the variable pension reserve fund an amount equal to the value of the units with which the beneficiary is credited in such fund and (ii), if Option C is elected, to the pension reserve fund number one an amount

equal to the value of the units deducted from the beneficiary's account as required by such election.

The value of a unit, for the purpose of this subdivision, shall be as of the date of death of the contributor.

b. An option elected pursuant to section 13-558 of this chapter with respect to the manner of payment of an annuity, pension, or retirement allowance shall, in the case of a participant in the variable annuity program, apply also to the payment of a variable annuity, variable pension,or both, respectively. If the option elected is:

1. Option I, the balance payable on the death of the contributor shall be an amount equal to the value, as of the date of death, of the excess, if any, of the units credited to him or her in the variable annuity reserve fund or variable pension reserve fund at the time of his or her retirement over the units paid to him or her. The amount shall be paid from the variable annuity fund holding the account with respect to which the election is made.

2. Option II, III, or a joint and survivor form of IV, the account of the contributor in the variable annuity reserve fund or variable pension reserve fund shall be kept as a joint account of the contributor and his or her designee.

3. Option IV in a form prescribing the payment:

(i) of a specified lump sum amount on the death of the contributor, the amount provided for by his or her account in the variable annuity reserve fund shall be limited to the extent that the total amount elected cannot be provided for by his or her annuity reserve. The units credited to the contributor in the variable annuity reserve fund shall be reduced by the number actuarially computed to be necessary to provide the lump sum amount as herein determined. There shall be transferred from the variable annuity reserve fund to the annuity reserve fund an amount equal to the value, as of the date of the contributor's retirement, of the units deducted from his or her account as required by such election, and the amount shall be paid from the annuity reserve fund; provided, however, that in the case of a twenty-year pension plan retiree having a deferred payability date (as defined in subdivision forty of section 13-501 of this chapter), such transferred amount shall be equal to the value of such deducted units as of the date on which his or her retirement allowance begins.

(ii) of a number of units equal in value, as of the date of the contributor's retirement, to a specified lump sum and payable on the death of the contributor, the amount provided for by his or her account in the annuity reserve fund be limited to the extent that the total amount elected cannot be provided for by his or her variable annuity reserve. The amount credited to the contributor in the annuity reserve fund shall be reduced to the extent actuarially computed to be necessary to provide the number of units as herein determined and such amount shall be transferred from the annuity reserve fund to the variable annuity reserve fund, and the units shall be paid from the variable annuity reserve fund; provided, however, that in the case of a twenty-year pension plan retiree having a deferred payability date as defined in subdivision forty of section 13-501 of this chapter, such transferred amount shall be based upon the value of units at such time as his or her retirement allowance begins.

c. If the total amount payable pursuant to section 13-573 of this chapter or paragraph one or three (ii) of subdivision b of this section is at least five thousand dollars, the designated beneficiary may elect, by written notice duly filed with the retirement board within sixty days after the death of the contributor, to be paid an amount equal to twenty per cent of the total amount due, to have credited to his or her own account in the variable annuity fund from which the amount is payable units equal in value, as of the date of death, to the portion not paid, and to be paid in each of four successive annual instalments an amount equal to the then value of one-fourth of the original number of units credited. If the beneficiary dies before the expiration of the five years, an amount equal to the then value of the units in his or her account shall be paid to his or her beneficiary. Upon the payment of any amount pursuant to this subdivision, the number of units represented in such payment shall be cancelled.

d. If an election is made to have the amount payable pursuant to paragraph one or three (ii) of subdivision b of this section paid as an annuity, the contributor or beneficiary making the election shall have the choice of having the designated beneficiary's annuity deriving from such amount paid in fixed or variable instalments. If the choice is for:

1. Fixed instalments, the beneficiary shall be credited in the pension reserve fund number one, to be applied toward the payment of a designated beneficiary's annuity, with such amount. An equal amount shall be transferred from the variable annuity fund holding the contributor's account with respect to which the election is made to the pension reserve fund number one.

2. Variable instalments, the beneficiary shall be credited in the variable annuity fund from which the amount is payable with units equal in value, as of the date of death of the contributor, to such amount and shall be paid a variable designated beneficiary's annuity from such fund.

e. The variable designated beneficiary's annuity shall be computed in terms of units actuarially equivalent to the units credited to the beneficiary. For the first month established by the retirement board for this purpose and for any subsequent months, any such variable designated beneficiary's annuity shall be paid in dollars according to the value of a unit for the month payment is due, and for any month preceding such first month the variable designated beneficiary's annuity shall be paid in dollars according to the value of a unit in effect during the month preceding the month payment is due.

f. In the case of a variable designated beneficiary's annuity paid in accordance with the terms of Option B, the balance payable upon the death of the designated beneficiary shall be an amount equal to the value, as of the date of death, of the excess, if any, of the units on the basis of which the annuity was computed over the units paid to the beneficiary. The balance, if any, shall be paid from the fund from which the variable designated beneficiary's annuity is payable and the beneficiary's account in such fund shall thereupon be cancelled.

g. A participant who is an applicant for retirement with a deferred payability date (as defined in subdivision thirty-nine of section 13-501 of this chapter) may make the choice referred to in paragraph three of subdivision b of this section by an election filed with the retirement board prior to the date next preceding the date on which his or her retirement allowance begins in accordance with rules and regulations established by the retirement board; provided, however, that such participant may at any time after such election is filed and before his or her retirement allowance begins, change such election by filing a superseding election with the retirement board in accordance with rules and regulations established by the retirement board.

h. Except as provided for in section 13-581 of this chapter, a transfer pursuant to this section between variable annuity funds shall be from an A fund to an A fund or from a B fund to a B fund or within such additional variable annuity fund or funds which may be established pursuant to subdivision c of section 13-567 of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subds. g, h amended chap 517/1993 § 10 eff. Jan. 1, 1994

**DERIVATION**

Formerly § B20-63.0 added chap 544/1966 § 2

Sub e amended chap 925/1968 § 5

Sub b par 3 subpar i amended chap 274/1970 § 31

Sub g added chap 274/1970 § 32

Sub b par 3 amended chap 377/1979 § 1

Sub h added chap 735/1982 § 10



Administrative Code of the City of New York



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

*NYC Administrative Code 13-577*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-577 Adjustment of variable annuity funds for mortality and investment experience, and certain other adjustments.

a. The actuary shall determine as of July first of each year the number of units represented by the actuarial equivalent of the benefits payable from each of the variable annuity reserve fund and the variable pension reserve fund, on the basis set forth in section 13-578 of this chapter. If the value of such number of units exceeds the assets of the respective fund, there shall be transferred to such fund from the contingency reserve fund an amount equal to such excess. If the value of such number of units is exceeded by the assets of the respective fund, there shall be transferred from such fund to the contingency reserve fund an amount equal to such excess.

b. As of July first of each year, the value of the number of units in the individual accounts in the variable annuity savings fund and the variable pension accumulation fund shall be compared with the value of the assets held in each of such funds. If the value of such number of units exceeds the assets of the respective fund, there shall be transferred to such fund from the contingency reserve fund an amount equal to such excess. If the value of such number of units is exceeded by the assets of the respective fund, there shall be transferred from such fund to the contingency reserve fund an amount equal to such excess.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-64.0 added chap 544/1966 § 2

Amended chap 925/1968 § 6

Subs b, c repealed chap 1043/1970 § 3

Sub b relettered chap 1043/1970 § 3

(formerly sub d)

(Special provision chap 1043/1970 § 4)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-578*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-578 Regular interest and mortality tables for participants in variable annuity program.

a. Subject to the provisions of subdivision b of this section, for the purpose of determining the actuarial equivalent of a benefit payable under the variable annuity program to a contributor or his or her beneficiary, (i) the mortality table applied shall be the table applicable to the determination of the contributor's annuity pursuant to paragraph one of subdivison f of section 13-547 or paragraph one of subdivision d of section 13-549, or subdivision two of section 13-554 or subdivision one of section 13-557, or to the determination of the beneficiary's annuity pursuant to subdivision c of section 13-543, respectively, and (ii) the rate of interest applied, definition twenty-two of section 13-501 of this chapter notwithstanding, shall be the uniform rate of four percent.

b. The retirement board may by resolution direct that where any variable annuity program benefit (as defined in subdivision fifty-eight of section 13-501 of the code) which is an actuarial equivalent benefit (as defined in subdivision fifty of such section) is payable to any member or other beneficiary by reason of:

(1) the retirement of a member for service or superannuation or for ordinary or accident disability, where such retirement occurred on or after August first, nineteen hundred eighty-three or hereafter occurs; or

(2) discontinuance of service or termination of employment of a member, where such discontinuance or termination occurred or occurs on or after such August first under such circumstances that such member became or becomes (i) a discontinued member possessing a vested right to receive a retirement allowance pursuant to section 13-556 of the code (and, in the case of a Tier II member, article eleven of the retirement and social security law) or (ii) a Tier III member entitled to a vested benefit or a Tier IV member entitled to a vested benefit; or

(3) the death, on or after such August first, of a member, different computations, based on different mortality tables, shall be used to determine separate portions of such benefit.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-65.0 added chap 544/1966 § 2

Amended chap 274/1970 § 33

Amended chap 976/1970 § 7

Amended chap 910/1985 § 17

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-579*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-579 Monthly payments.

A variable annuity, variable pension, or variable designated beneficiary's annuity shall be paid in monthly instalments. The instalment of the variable annuity or variable pension due for the month in which the retired contributor dies, or, if he or she has elected Option II, III, or a joint and survivor form of IV, for the month in which the last survivor of the contributor and his designee dies shall be prorated. The instalment of the variable designated beneficiary's annuity due for the month in which the beneficiary dies shall be prorated.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-66.0 added chap 544/1966 § 2

Amended chap 925/1968 § 7

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

*NYC Administrative Code 13-580*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-580 Miscellaneous provisions.

a. Benefits payable under the variable annuity program shall be in addition to other benefits payable pursuant to this chapter.

b. In the case of a contributor who is a participant in the variable annuity program, an election, pursuant to section 13-523 of this chapter, to leave his or her accumulated deductions with the annuity savings fund and to continue to contribute to such fund shall be deemed to be an election to continue as a participant. If all of his or her accumulated deductions have already been credited to his or her account in the variable annuity savings fund, he or she may, subject to the provisions of such section, elect to continue as a participant.

c. In applying the provisions of paragraphs two, three and four of section 13-525 of this chapter in the case of a participant in the variable annuity program, the value of any units credited to his or her account in the variable annuity savings fund shall, for the purpose of determining his or her entitlement to, and the amount of, a withdrawal, be deemed to be part of his or her accumulated deductions, and the determination of the amount of annuity, pension-providing-for-increased-take-home-pay, and retirement allowance shall be made as if he or she were not a participant.

d. The provisions of section 13-561 of this chapter shall apply in the case of benefits under the variable annuity program.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B20-67.0 added chap 544/1966 § 2

Sub c amended chap 274/1970 § 34

Sub c amended chap 282/1972 § 2

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-581*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-581 Convertible instalments.

a. (1) At the time and in the manner prescribed by subdivision e of this section:

(i) a retired member who retired on or after September first, nineteen hundred sixty-seven, and before August first, nineteen hundred sixty-eight; or

(ii) any other member; or

(iii) the designated beneficiary of a member who dies on or after June twenty-second, nineteen hundred sixty-eight; or

(iv) a retired member who retired on or after September first, nineteen hundred sixty-seven and who continues to hold retired member status on or after July first, nineteen hundred seventy-five; may elect, in accordance with this section, to convert a portion, hereinafter referred to as the "convertible amount", of his or her fixed instalments to a variable basis over a period of months, hereinafter referred to as the "conversion period".

(2) In the event such election is made, each instalment payable with respect to such convertible amount after the beginning of the conversion period shall be referred to as a "convertible instal- ment".

(3) (i) During each month of such conversion period each convertible instalment shall be the sum of a fixed portion and a variable portion.

(ii) The amount of such fixed portion payable in the first month of the conversion period shall be the convertible

amount reduced by the amount to be converted each month, which is determined by dividing the convertible amount by the number of months in the conversion period.

(iii) Subject to the provisions of subparagraphs (iv) and (v) of this paragraph three, the amount of such fixed portion payable in any such month after the first shall be the previous month's amount thereof, reduced by the amount converted each month. The amount, in units, of the variable portion in any such month will be equal to the number of units in the previous month's variable portion, if any, plus the quotient of (A) the amount of the fixed instalments converted each month and (B) the current month's unit value.

(iv) In any case where, pursuant to any provision of law and/or resolution of the retirement board adopted thereunder, the rate of regular interest and/or mortality tables, which were required to be used in the actuarial determination of such fixed benefit being converted, are different from the rate of regular interest and/or mortality tables which would have been required to be used to determine a like variable benefit as of the same date (hereinafter referred to as the "calculation date") as of which such fixed benefit was required to be determined as an actuarial equivalent, the composition of the variable portion of each convertible instalment for each month of the conversion period shall be determined in the manner prescribed in subparagraph (v) of this paragraph.

(v) The amount, in units, of the variable portion for any such conversion month to which subparagraph (iv) of this paragraph applies will be equal to the number of units in the previous month's variable portion, if any, plus a number of units which is the actuarial equivalent, as of the calculation date, of the fixed portion converted each month. Such actuarial equivalent units for each such month shall be determined on the basis of the unit value for such month, in accordance with a scientific formula which recognizes the difference in the rates of regular interest and/or mortality tables referred to in subparagraph (iv) of this paragraph.

(4) After the conversion period, the amount of each convertible instalment, in units, will be equal to the number at the end of the conversion period.

b. (1) At the time and in the manner prescribed by subdivision e of this section:

(i) a contributor; or

(ii) the designated beneficiary of a member who dies after June twenty-second, nineteen hundred sixty-eight; or

(iii) a retired member who retired on or after September first, nineteen hundred sixty-seven and who continues to hold retired member status on or after July first, nineteen hundred seventy-five; may elect, in accordance with this section, to convert a portion, hereinafter referred to as the "convertible amount", of his or her variable instalments to a fixed basis over a period of months, hereinafter referred to as the "conversion period".

(2) In the event of such election, each instalment payable with respect to such convertible amount after the beginning of the conversion period shall be referred to as a "convertible instalment".

(3) (i) During each month of such conversion period each convertible instalment shall be the sum of a variable portion and a fixed portion.

(ii) The amount in units of such variable portion payable in the first month of the conversion period shall be the number of units in the convertible amount reduced by the number of units to be converted each month, which is determined by dividing the number of units in the convertible amount by the number of months in the conversion period. The amount, in units, of such variable portion payable in any such month after the first shall be the previous month's amount thereof, reduced by the number of units converted each month.

(iii) Subject to the provisions of subparagraphs (iv) and (v) of this paragraph three, the amount of the fixed portion in any such month will be equal to the previous month's fixed portion, if any, plus the product of (A) the number

of units converted each month and (B) the current month's unit value.

(iv) in any case where, pursuant to any provision of law and/or any resolution of the retirement board adopted thereunder, the rate of regular interest and/or mortality tables, which were required to be used in the actuarial determination of such variable benefit being converted, are different from the rate of regular interest and/or mortality tables which would have been required to be used to determine a like fixed benefit as of the same date (hereinafter referred to as the "calculation date") as of which such variable benefit was required to be determined as an actuarial equivalent, the composition of the fixed portion of each convertible instalment for each month of the conversion period shall be determined in the manner prescribed in subparagraph (v) of this paragraph.

(v) The amount of the fixed portion for any such conversion month to which subparagraph (iv) of this paragraph applies will be equal to the previous month's fixed portion, if any, plus a fixed amount which is the actuarial equivalent, as of the calculation date, of the number of units converted each month. Such actuarial equivalent fixed amount for each month shall be determined on the basis of the unit value for such month, in accordance with scientific formula which recognizes the difference in the rates of regular interest and/or mortality tables referred to in subparagraph (iv) of this paragraph.

(4) After the conversion period, the dollar amount of each convertible instalment will be equal to the amount at the end of the conversion period.

c. The total dollar amount of the convertible instalment for any month shall be the fixed portion, if any, plus the product of (1) the number of units in the variable portion, if any, and (2) the unit value for the same month.

d. For each conversion made as set forth in subdivision a or b above, the actuarial equivalent value of the instalments converted shall be transferred between the appropriate reserve funds for the variable and fixed instalments.

e. (1) An election of convertible instalments shall not take effect unless written notice thereof is duly filed with the retirement board before the applicable date or within the applicable period set forth below:

(i) In the case of instalments payable to a retired member who retired on or after September first, nineteen hundred sixty-seven and before August first, nineteen hundred sixty-eight: the applicable date shall be September first, nineteen hundred sixty-eight; and

(ii) In the case of instalments payable to any other member electing to convert under subdivision a or b of this section, other than a member described in subparagraph (iii) of this paragraph one: the applicable period shall begin on the date of the filing of the application for retirement and shall end on the date next preceding the date on which the retirement allowance begins; and

(iii) In the case of an applicant for retirement with a deferred payability date (as defined in subdivision thirty-nine of section 13-501 of this chapter): the applicable period shall begin on the date of the filing of his or her application for retirement and end on the date next preceding the date on which his or her retirement allowance begins; provided, however, that any such applicant may, at any time after he or she files such notice of election and before his or her retirement allowance begins, change such election pursuant to rules and regulations established by the retirement board; and

(iv) In the case of instalments payable to the designated beneficiary of a member who dies after June twenty-second, nineteen hundred sixty-eight: the applicable date shall be that on which the first such instalment is paid; and

(v) In the case of a retired member who retired on or after September first, nineteen hundred sixty-seven, the applicable date shall be such date as determined by rules and regulations duly adopted by the retirement board.

(2) In each case the applicable conversion period shall commence on the first day of the month coinciding with or otherwise next following (i) the applicable date or (ii) the date next following the end of the applicable period.

f. (1) An election to convert a portion of fixed instalments to a variable basis made by a member or retired member pursuant to paragraph one of subdivision a of this section shall be subject to the applicable terms and conditions set forth in paragraphs two, three, and four of this subdivision f.

(2) If such member is not a participant in the variable annuity program on the date when he or she makes such election, the election shall provide that such portion as the retirement board may by duly adopted rules and regulations permit of both his or her annuity and his or her pension-providing-for-increased-take-home-pay shall be a convertible amount, to be converted to a variable basis. The convertible instalments pursuant to such election shall be paid from the A funds or the B funds, or from such additional variable annuity fund or funds which may be established pursuant to subdivision c of section 13-567 of this chapter.

(3) If such member is a participant in the variable annuity program on the date when he or she makes such election:

(i) the election, subject to the provisions of subparagraph (ii) of this paragraph three, shall provide that such portion as the retirement board may by duly adopted rules and regulations permit of the fixed instalments of both his or her annuity and his or her pension-providing-for-increased-take-home-pay shall be a convertible amount, to be converted to a variable basis; or

(ii) if a transfer of his or her accumulated deductions and of his or her reserve-for-increased-take-home-pay from a fixed basis to a variable basis pursuant to subdivision b of section 13-568 of this chapter is in process on the date when such member makes his or her election, then in lieu of electing the convertible amount specified in subparagraph (i) of this paragraph three, he or she may elect that the part of his or her fixed instalments provided by such portion of his or her accumulated deductions and of his or her reserve-for-increased-take-home-pay whose transfer has not yet been completed be a convertible amount, to be converted to a variable basis.

The convertible instalments pursuant to such election shall be paid from the A funds or the B funds, or from such additional variable annuity fund or funds which may be established pursuant to subdivision c of section 13-567 of this chapter. If he or she chooses funds other than those in which he or she is a participant, the units credited to him or her in such other funds shall be cancelled. Such member shall be credited in the corresponding funds of his or her choice with units equal in value to the value of the cancelled units and an amount equal to the value of such units shall be transferred accordingly.

(4) For the purposes of this subdivision, the election referred to herein shall be deemed to mean, in the case of an applicant for retirement with a deferred payability date (as defined in subdivision thirty-nine of section 13-501 of this chapter), the election to convert accumulated deductions previously transferred to the reserve funds pursuant to sections 13-574 and 13-575 of this chapter. Such elections shall permit transfers between the annuity reserve fund and the variable annuity reserve fund and between the pension reserve fund and the variable pension reserve fund in such a manner as prescribed by rules and regulations to be established by the retirement board. Such elections shall be during such applicable period of time as provided by subparagraph (iii) of paragraph 1 of subdivision e of this section 13-581.

g. A contributor may elect that, if a transfer of funds to a variable basis pursuant to subdivision b of section 13-568 of this chapter is in process on the date of his or her death, (1) the amount of such funds then not yet transferred should be applied to provide fixed instalments for a designated beneficiary pursuant to subdivision c of section 13-543 of this chapter, and (2) such fixed instalments be a convertible amount, to be converted to a variable basis. The convertible instalments pursuant to such election shall be paid from the A funds or the B funds, or from such additional variable annuity fund or funds which may be established pursuant to subdivision c of section 13-567 of this chapter, according to the election pursuant to subdivision b of section 13-568 of this chapter.

In the event of the death of a contributor for whom a transfer of funds to a variable basis pursuant to subdivision b of section 13-568 of this chapter was in process on the date of his or her death, and who made no election under the provisions of this subdivision, but who either elected instalments for a designated beneficiary pursuant to subdivision c of section 13-543 of this chapter, or did not prevent the election by his or her designated beneficiary of instalments pursuant to subdivision d of section 13-543 of this chapter, then such designated beneficiary may elect to receive the amount payable upon the death of the contributor paid in the same manner as if the contributor had made the election under the provisions of this section.

h. If a conversion of fixed instalments to a variable basis pursuant to subdivision f of this section is in process for a retired member on the date he or she dies, and if such member or his or her designated beneficiary has elected that the death benefit provided with respect to the instalments not yet converted be applied to provide fixed instalments for such designated beneficiary pursuant to section 13-558 of this chapter, then such member or designated beneficiary making such election may also elect that such fixed instalments provided for such designated beneficiary be a new convertible amount, to be converted to a variable basis.

i. The length of the conversion period for conversion of fixed instalments to a variable basis shall be determined pursuant to rules and regulations adopted by the retirement board.

j. If a member or a retired member or a designated beneficiary commences to receive variable instalments pursuant to subdivision a of section 13-574, subdivision a of section 13-575, item 2 of subdivision a of section 13-576, item 2 of subdivision d of section 13-576, or this section 13-581 of this chapter, the member or retired member or designated beneficiary to whom the variable instalments are payable may elect, at the time such instalments become payable, or before the applicable date or within the applicable period set forth in subdivision e of this section 13-581 of this chapter that such variable instalments be a convertible amount, to be converted to a fixed basis. The length of the conversion period for conversion of such variable instalments to a fixed basis shall be determined pursuant to rules and regulations adopted by the retirement board.

k. Any option elected pursuant to subdivision c or d of section 13-543 of this chapter or pursuant to section 13-558 of this chapter shall apply to the convertible instalments arising from the convertible amount affected by the option. If Option I or Ib has been elected pursuant to section 13-558 of this chapter, or if Option B has been elected pursuant to section 13-543 of this chapter, the death benefit applicable thereto in any month shall be the same multiple of the instalment payable in such month as would have been applicable if no convertible instalments had been elected.

l. If a member or a retired member or a designated beneficiary commences to receive variable instalments pursuant to subdivision a of section 13-574, subdivision a of section 13-575, paragraph two of subdivision a of section 13-576, paragraph two of subdivision d of section 13-576 of this chapter, or this section, the member or retired member or designated beneficiary to whom the variable instalments are payable may elect, at the time such instalments become payable, or before the applicable date or within the applicable period set forth in subdivision e of this section that such variable instalments be a convertible amount, to be converted to a variable basis, with the variable instalments payable from the funds other than those from which the converted variable instalments were payable. The length of the conversion period for such conversion shall be determined pursuant to rules and regulations adopted by the retirement board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par (3) amended chap 831/1987 § 5

Subd. b par (3) amended chap 831/1987 § 6

Subd. e par (1) subpars (ii), (iii) amended chap 517/1993 § 11 eff. Jan. 1, 1994

Subd. e par (1) subpar (v) amended chap 517/1993 § 11 eff. Jan. 1, 1994

Subd. e par (1) subpar (v) amended chap 273/1988, § 6

Subd. f par (2) amended chap 517/1993 § 12 eff. Jan. 1, 1994

Subd. f pars (2), (3), (4) amended chap 517/1993 § 13 eff. Jan. 1, 1994

Subd. g amended chap 517/1993 § 14 eff. Jan. 1, 1993

Subd. i amended chap 517/1993 § 14 eff. Jan. 1, 1993 amended chap 273/1988 § 7

Subd. j amended chap 517/1993 § 14 eff. Jan. 1, 1993 amended chap 273/1988 § 8

Subd. l amended chap 517/1993 § 14 eff. Jan. 1, 1993 amended chap 273/1988 § 9

**DERIVATION**

Formerly § B20-68.0 added chap 883/1968 § 1

Subs a, b, e, f amended chap 274/1970 § 35

Subs i, j amended chap 902/1971 § 1

Sub a par 1 amended chap 617/1975 § 1

Sub b par 1 amended chap 617/1975 § 2

Sub e par 1 subpar v added chap 617/1975 § 3

Sub j amended chap 617/1975 § 4

Sub e par 1 subpar v amended chap 735/1982 § 11

Sub f amended chap 735/1982 § 12

Sub g amended chap 735/1982 § 13

Sub l added chap 735/1982 § 14



Administrative Code of the City of New York



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

*NYC Administrative Code 13-582*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-582 Tax-deferred annuity program.

a. Any member for whom a salary reduction agreement is executed pursuant to section three hundred ninety-nine-A or section three thousand one hundred nine-A of the education law shall thereby become a participant in the tax-deferred annuity program. The head of each department shall adjust the salary payments of each participant in accordance with the salary reduction agreement in effect for the participant. Each of such amounts so deducted shall be paid to the retirement system. Such agreement and any change in such agreement shall become effective on the first effective date which follows the filing of such agreement or change by at least thirty days. Effective dates shall be February first, nineteen hundred seventy, and such subsequent dates as may be determined by the retirement board for each calendar year. However, the participant may terminate the agreement as of the first day of any calendar month which commences at least thirty days after appropriate written notice thereof has been filed.

b. A portion of each such payment may be withheld by the retirement board to provide for the additional expenses that are attributable to the tax-deferred annuity program and shall be transferred to the expense fund. The remainder shall be referred to in this section as the participant's tax-deferred annuity net contributions. The portion to be withheld shall be determined in advance in accordance with rules established by the retirement board.

c. A participant in the tax-deferred annuity program, by written notice duly filed with the retirement board, shall elect whether all, none or such portion as the retirement board by duly adopted rules and regulations may permit of such net contributions is to be currently deposited in the variable annuity savings fund and credited to a separate tax-deferred account maintained for him or her in such fund. The balance, if any, of such net contributions shall be currently deposited in the annuity savings fund and credited to a separate tax-deferred account maintained for him or her in such fund. The tax-deferred account established pursuant to this paragraph shall be maintained in the A fund and/or the B

fund or in such additional variable annuity fund or funds which may be established pursuant to subdivision c of section 13-567 of this chapter as elected by the participant.

d. Interest shall be allowed on the participant's tax-deferred account in the annuity savings fund at the same rate and in accordance with the same rules and procedures applicable to any account in the annuity savings fund, as provided in this chapter.

e. Any deposit or transfer to the variable annuity savings fund pursuant to subdivision c above shall be converted at once into units having a total value equal to such deposit or transfer. The number of units in a participant's tax-deferred account in such fund shall be increased each month in the same manner as any account in the variable annuity savings fund would be increased, as set forth in subdivision g of section 13-570, and the value of a unit shall be determined as set forth in subdivision h thereof.

f. Sections 13-501, 13-503, 13-506, 13-511, 13-512, 13-513, 13-514, 13-520, 13-521, 13-522, 13-523, 13-527, 13-533, 13-535, 13-537, 13-541, 13-542, 13-543, 13-545, 13-550, 13-553, 13-554, 13-556, 13-557, 13-558, 13-560, 13-561, 13-562, 13-563, 13-565, 13-567, 13-569, 13-572, 13-573, 13-574, 13-576, 13-577, 13-578, 13-579, 13-580 and 13-581 of this title, and subdivisions f, h and i of section 13-638.2 of this title (to the extent that such subdivisions apply to this retirement system), as such sections and subdivisions apply to the contributions made by a contributor and the benefits provided thereby, shall apply separately and independently to the tax-deferred annuity net contributions and the benefits provided thereby, except as otherwise specified in this section. Sections 13-534, 13-536 and 13-570, as they apply to the contributions made by a contributor and the benefits provided thereby, shall apply to the tax-deferred annuity net contributions and the benefits provided thereby, except as otherwise specified in this section.

g. 1. If the full amount of the participant's accounts in the annuity savings fund and the variable annuity savings fund, other than the tax-deferred accounts, are paid to him or her pursuant to the provisions of section 13-541, subdivision g of section 13-556 or 13-572, then the full amount of the corresponding tax-deferred accounts must also be paid to him or her. Notwithstanding any other provision of this chapter, any rules or regulations adopted by the retirement board, or any provisions of law to the contrary, a participant in the tax-deferred annuity program who retires pursuant to the provisions of section 13-545, 13-547, 13-550, or 13-551, or who meets all the requirements for vested retirement rights pursuant to section 13-556, may elect, at such time and in such manner as determined by the retirement board, to defer the commencement of the distribution of his or her tax-deferred account to the latest date permitted for the deferral of tax-deferred annuities by the provisions of section 403(b) of the Internal Revenue Code. Should such an election be made, the provisions of section 13-522 would not be applicable as of the participant's retirement date, but would become applicable as of such later date. If, upon making such application, the participant elects that his or her tax-deferred account be distributed under option IV, pursuant to section 13-545, 13-547, 13-550, 13-551, or 13-556 and section 13-558, the maximum period over which the funds held in such account may be distributed shall not exceed the maximum period permitted by the provisions of section 403(b) of the Internal Revenue Code.

2. Notwithstanding any other provision of this chapter, any rules or regulations adopted by the retirement board, or any other provisions of law to the contrary, the beneficiary of a deceased participant in the tax-deferred annuity program who had not, prior to his or her death, selected an option governing the manner in which his or her tax-deferred account would be payable to his or her beneficiary, may, subject to paragraphs three, four, and five of this subdivision, elect, at such time and in such manner as determined by the retirement board, to defer the distribution to him or her from the participant's tax-deferred account to the extent permitted by, and in a manner consistent with, the provisions of section 403(b) of the Internal Revenue Code and the regulations promulgated pursuant to such section.

3. Notwithstanding any other provision of this chapter, any rules or regulations adopted by the retirement board, or any other provisions of law to the contrary, a beneficiary's election pursuant to paragraph two of this subdivision shall be in lieu of any options or elections for the distribution to such beneficiary of the deceased participant's tax-deferred account provided in any other provisions of this chapter or of the retirement and social security law.

4. An election pursuant to paragraph two of this subdivision shall be made within six months of the date of death of the participant.

5. If a beneficiary of a deceased participant elects the deferral provided for in paragraph two of this subdivision, the funds held in the tax-deferred account for such beneficiary may be held only in the variable annuity funds provided pursuant to section 13-567.

h. The tax-deferred annuity net contributions shall not be included in determining the amount, if any, that may be withdrawn pursuant to paragraph three of section 13-525.

i. Subject to the following provisions and to such additional terms and conditions and rules and regulations as the retirement board may adopt to accomplish the purpose of the tax-deferred annuity program, a participant may withdraw all or part of his accumulations in the annuity savings fund and variable annuity savings fund arising from tax-deferred annuity net contributions.

1. The amount of any such withdrawal from the variable annuity savings fund shall be based on the value of a unit for the month following the date written request for such withdrawal is filed with the retirement board.

2. If a transfer of the member's tax-deferred accounts has not yet been completed on the date of a partial withdrawal pursuant to this subdivision, then subsequent monthly transfers shall be continued in the same number of dollars or units, as the case may be, until the transfer requested has been completed. In case of a partial withdrawal, the member's tax-deferred account in the annuity savings fund shall be exhausted first before any portion of his or her tax-deferred account in the variable annuity savings fund is so used. Furthermore, if only a portion of the member's tax-deferred account in the annuity savings fund is being transferred, the portion not being transferred shall be exhausted first before the transferable portion is used.

3. The exemption from state and municipal tax provided in section 13-561 for return of contributions shall not apply to withdrawal of tax-deferred annuity net contributions.

j. Nothing contained in this section shall be construed to diminish or impair any benefits to which a member or his legal representatives would be otherwise entitled had such member not participated in the tax-deferred annuity program in accordance with the provisions of this section.

k. 1. As used in this subdivision, the following terms shall have the following meanings, unless a different meaning is plainly required by the context:

(i) "Annuity savings fund". The annuity savings fund under the tax-deferred annuity program.

(ii) "Annuity reserve fund". The annuity reserve fund under the tax-deferred annuity program.

(iii) "Variable annuity reserve fund". The variable annuity reserve fund under the tax-deferred annuity program.

(iv) "Interest allowance". (A) In the case of the annuity savings fund, such term shall mean the amount of interest required by subdivision d of this section to be credited to such fund with respect to any fiscal year.

(B) In the case of the annuity reserve fund, such term shall mean the amount of interest required by section 13-535 of this title (incorporated by reference by subdivision f of this section) and subdivision i of section 13-638.2 thereof to be credited to such fund with respect to any fiscal year.

(v) "Surplus investment income". The amount, if any, by which the total of all income, interest and dividends derived in any fiscal year by reason of deposits and investments of the assets of the annuity savings fund or the assets of the annuity reserve fund exceeds the amount of the interest allowance required to be credited to such fund in such fiscal year.

2. (i) On the basis of the latest mortality and other tables herein authorized and the valuation rate of interest (as defined in paragraph eleven of subdivision a of section 13-638.2 of this title), the actuary shall determine as of June thirtieth, nineteen hundred ninety-one and each succeeding June thirtieth the liabilities of the annuity reserve fund for benefits.

(ii) If the amount of such liabilities exceeds the assets of such fund, an amount equal to such excess shall be transferred to the annuity reserve fund from the contingent reserve fund of the retirement system.

(iii) If such assets exceed the amount of such liabilities, an amount equal to such excess shall be transferred from the annuity reserve fund to the contingent reserve fund of the retirement system.

3. Any such transfer required to be made on the basis of the actuary's determination of liabilities made as of any such June thirtieth pursuant to paragraph two of this subdivision shall be recognized in the determination of the normal contribution payable to the contingent reserve fund of the retirement system pursuant to section 13-527 of this title with respect to the fiscal year next succeeding such June thirtieth.

4. Any transfer required by subdivision f of this section and subdivision a of section 13-577 of this title to be made to or from the contingent reserve fund of the retirement system pursuant to a determination of the actuary made as of July first, nineteen hundred ninety-one of any subsequent July first shall be recognized in the determination of the normal contribution payable to the contingent reserve fund of the retirement system pursuant to section 13-527 of this title with respect to the fiscal year commencing on such July first.

5. (i) There shall be determined, as of June thirtieth, nineteen hundred ninety-one, the total amount of surplus investment income accumulated and on hand on such June thirtieth. Such amount shall be transferred to the contingent reserve fund of the retirement system.

(ii) There shall be determined as of June thirtieth, nineteen hundred ninety-two, and as of each succeeding June thirtieth, whether surplus investment income was produced in the fiscal year ending on such June thirtieth. Any such surplus on hand as of any such June thirtieth shall be transferred to the contingent reserve fund of the retirement system.

(iii) Except as provided for in subparagraph (iv) of this paragraph any transfer required to be made on the basis of a determination made as of any June thirtieth mentioned in subparagraph (i) or subparagraph (ii) of this paragraph shall be recognized in the determination of the normal contribution payable to the contingent reserve fund of the retirement system pursuant to section 13-527 of this title with respect to the fiscal year next succeeding the June thirtieth as of which the surplus to be transferred was determined.

(iv) Notwithstanding any other provision of law to the contrary, the amount of the normal contribution which would otherwise be payable with respect to the nineteen hundred ninety-six-nineteen hundred ninety-seven fiscal year to the contingent reserve fund of the retirement system pursuant to section 13-527 of this title shall be reduced by a credit equal to the amount of the surplus investment income produced in the fiscal year ending on June thirtieth, nineteen hundred ninety-six.

6. Notwithstanding any other provision of law to the contrary, the amount of the normal contribution which would otherwise be payable, with respect to the nineteen hundred ninety-one-nineteen hundred ninety-two fiscal year, to the contingent reserve fund of the retirement system pursuant to section 13-527 of this title and the provisions of the preceding paragraphs of this subdivision shall be reduced by a credit equal to the amount obtained:

(i) by adding together:

(A) the excess required to be transferred, with respect to such fiscal year, from the annuity reserve fund to the contingent reserve fund under the provisions of subparagraph (iii) of paragraph two of this subdivision; and

(B) the surplus investment income required by subparagraph (i) of paragraph five of this subdivision to be transferred to the contingent reserve fund; and

(ii) by subtracting from such sum computed pursuant to subparagraph (i) of this paragraph the amount required by subdivision f of this section and section 13-577 of this title to be transferred, with respect to such fiscal year, from the contingent reserve fund to the variable annuity reserve fund.

l.*20 1. Notwithstanding any other provision of law to the contrary, in the event that a person becomes entitled to a distribution from the tax-deferred annuity program which constitutes an "eligible rollover distribution" within the meaning of paragraph thirty-one of subsection a of section four hundred one of the internal revenue code (as such section is made applicable to the tax-deferred annuity program by paragraph ten of subsection b of section four hundred three of the internal revenue code), such person may elect, subject to any rules and regulations adopted pursuant to paragraph three of this subdivision, to have such distribution, or a portion thereof, paid directly to an "eligible retirement plan" within the meaning of paragraph thirty-one of subsection a of section four hundred one of the internal revenue code.

2. Nothing contained in this section or in section 13-561 of this chapter shall be construed to prohibit a participant in the tax-deferred annuity program from electing to transfer all or a portion of his or her tax-deferred annuity net contributions to another annuity contract described in subsection b of section four hundred three of the internal revenue code where a nontaxable trustee-to-trustee transfer of tax-deferred annuities is permitted by subsection b of section four hundred three of such code or the applicable rules and regulations or rulings promulgated thereunder.

3. The retirement board is authorized to adopt such rules and regulations as it finds to be necessary in administering the provisions of this section, provided that they are not inconsistent with the applicable provisions of the internal revenue code and the rules and regulations thereunder.

l.* Pursuant to section 13-513 of this chapter, the retirement board may establish rules and regulations applicable to similarly situated contributors and/or all beneficiaries with respect to the tax-deferred annuity program including, without limitation, rules and regulations governing:

1. Changes and revocations of elections made pursuant to subdivisions a and c of this section;

2. Loans from monies accumulated in the tax-deferred annuity program;

3. Monies withheld from participants' payments in the tax-deferred annuity program relating to expenses incurred by the retirement board attributable to the tax-deferred annuity program pursuant to subdivision b of this section;

4. Deposits to the tax-deferred annuity program of monies attributable to a contributor who has transferred from the board of education retirement system;

5. Transfers of monies between the variable annuity savings fund tax-deferred account and the annuity savings fund tax-deferred account;

6. Transfers of accumulated contributions among the tax-deferred investment accounts which the retirement board may establish; 7. Withdrawls of all or part of contributors' accumulations in the annuity savings fund and variable annuity savings funds arising from tax-deferred annuity net contributions.

m. In promulgating and administering rules and regulations pursuant to paragraph 1 of this section, the retirement board shall take no action that would render the tax-deferred annuity program in violation of Section 403(b) of the Internal Revenue Code of 1986.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 715/2006 § 1, eff. Sept. 13, 2006.

Subd. b amended chap 593/1996 § 6, eff. Aug. 8, 1996

Subd. c so designated and amended chap 517/1993 § 15 eff. Jan. 1, 1993 (formerly subd. c par 1 amended chap 273/1988 § 10)

Subd. c par 2 repealed chap 517/1993 § 16 eff. Jan. 1, 1994

Subd. c par 2 amended chap 273/1988 § 11

Subd. c pars 3, 4 repealed chap 517/1993 § 16 eff. Jan. 1, 1994

Subd. c par 5 repealed chap 517/1993 § 16 eff. Jan. 1, 1994

Subd. c par 5 amended chap 273/1988 § 12

Subd. f amended chap 221/1992 § 3, retroactive to July 1, 1990

amended chap 878/1990 § 24 eff. July 25, 1990 applying on and after July 1, 1989

Subd. g amended chap 677/2003 § 1, eff. Oct. 15, 2003 and applying to beneficiaries of TDA participants who die on or after that date.

Subd. g amended chap 243/1994 § 1, eff. July 6, 1994

amended chap 182/1988 § 1

Subd. i amended chap 369/2002 § 1, eff. Aug. 13, 2002.

Subd. i par 1 amended chap 273/1988 § 13

par 3 amended chap 517/1993 § 17 eff. Jan. 1, 1994

Subd. k added chap 221/1992 § 4, retroactive to June 30, 1991

Subd. k par 5 amended chap 592/1996 § 1, eff. Aug. 8, 1996

Subd. l added chap 510/1993 § 6 eff. Oct. 24, 1993 (laid out first)

added chap 517/1993 § 18 eff. Jan. 1, 1993 (laid out second)

Subd. m added chap 517/1993 § 18 eff. Jan. 1, 1993

**DERIVATION**

Formerly § B20-69.0 added chap 1047/1969 § 4

(Legislative findings chap 1047/1969 § 1)

Sub a amended chap 511/1970 § 1

Sub c amended chap 735/1982 § 15

**FOOTNOTES**

20

[Footnote 20]: * There are 2 subdivisions l.

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-583*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 4 TEACHERS' RETIREMENT SYSTEM

§ 13-583 Excess benefit plan.

a. As used in this section, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

(1) "Retirement benefits" shall mean benefits payable to a beneficiary by the retirement system which are subject to the limitations imposed by section 415(b) of the Internal Revenue Code.

(2) "Beneficiary" shall mean a person who is receiving retirement benefits from the retirement system.

(3) "Excess benefit plan" shall mean the excess benefit plan established by this section for the sole purpose of paying benefits as permitted under section 415(m) of the Internal Revenue Code.

(4) "Eligible participant" shall mean a beneficiary who is entitled to replacement benefits from the excess benefit plan for a plan year in accordance with subdivisions d and e of this section.

(5) "Replacement benefits" shall mean the benefits payable by the excess benefit plan to an eligible participant as determined pursuant to subdivision e of this section.

(6) "Internal Revenue Code" shall mean the Federal Internal Revenue Code of 1986, as amended.

(7) "Plan year" shall mean the limitation year of the retirement system as provided in section six hundred twenty of the retirement and social security law.

b. There is hereby established an excess benefit plan, the sole purpose of which shall be to provide replacement benefits, as permitted by section 415(m) of the Internal Revenue Code, to beneficiaries whose annual retirement benefits have been reduced because such benefits exceed the limitations imposed by section 415(b) of the Internal Revenue Code. The excess benefit plan shall be administered by the retirement board.

c. There is hereby established a fund to be known as the excess benefit fund which shall be maintained for the sole purpose of providing replacement benefits to eligible participants in the excess benefit plan established by this section, as permitted under section 415(m) of the Internal Revenue Code. Such fund shall consist of such employer contributions as shall be made thereto pursuant to subdivision f of this section. Such contributions to the excess benefit fund shall be held separate and apart from the assets held by the other funds of the retirement system, provided, however, that the assets of the excess benefit fund may be invested with the other retirement system assets, but such excess benefit fund assets shall be accounted for separately from the other retirement system assets.

d. All beneficiaries of the retirement system whose retirement benefits for a plan year are being reduced because of section 415(b) of the Internal Revenue Code shall be eligible participants in the excess benefit plan for that plan year. Participation in the excess benefit plan shall be determined for each plan year. No beneficiary of the retirement system shall be an eligible participant in the excess benefit plan for any plan year for which his or her retirement benefits are not reduced because of section 415(b) of the Internal Revenue Code.

e. (1) For each plan year in which a beneficiary is an eligible participant in the excess benefit plan, such eligible participant shall receive replacement benefits from the excess benefit plan equal to the difference between the full amount of the retirement benefits otherwise payable to the eligible participant for that plan year prior to any reduction because of section 415(b) of the Internal Revenue Code, and the retirement benefits payable to the eligible participant for that plan year as reduced because of section 415(b) of the Internal Revenue Code. No replacement benefits for any plan year shall be paid pursuant to this subdivision to any beneficiary who is not receiving retirement benefits from the retirement system for that plan year.

(2) Replacement benefits pursuant to this section shall be paid at the same time and in the same manner as the retirement benefits which are being replaced. At no time shall an eligible participant be permitted directly or indirectly to defer compensation under the excess benefit plan.

f. (1) The required employer contributions to the excess benefit fund for each plan year shall be an amount, as determined by the actuary, which is necessary to pay the total amount of replacement benefits that are payable pursuant to this section to eligible participants for that plan year.

(2) Such required employer contributions shall be paid into the excess benefit fund from an allocation of the employer contribution amounts paid by the city and other public employers pursuant to sections 13-527 and 13-528 of this chapter and other applicable provisions of law. Such allocation of employer contribution amounts shall be paid into the excess benefit fund at such times and in such amounts as determined by the actuary.

(3) The benefit liabilities of the excess benefit plan shall be funded on a plan year to plan year basis, provided, however, any employer contributions to the excess benefit fund, including any investment earnings on such contributions, which are not used to pay replacement benefits for the current plan year shall be used to pay replacement benefits for future plan years.

g. The right of an eligible participant to receive replacement benefits pursuant to this section, and the replacement benefits received pursuant to this section, shall be exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment or any other process whatsoever, and shall be unassignable, except as otherwise specifically provided for benefits payable by the retirement system.

**HISTORICAL NOTE**

Section added chap 623/2004 § 4, eff. Oct. 19, 2004 and deemed to have been in full force and effect on and after July 1, 2000. [See § 13-196 Note 1]

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Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 1 RELIEF AND PENSION FUND OF THE DEPARTMENT OF STREET CLEANING

§ 13-601 Organization and membership.

The relief and pension fund of the department of street cleaning as now constituted shall be continued only for the benefit of members of such fund on December first, nineteen hundred twenty-nine, and the widows, orphans and dependent parents of such members, as hereinafter provided.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1282

(formerly § G41-1.0)

**CASE NOTES FROM FORMER SECTION**

¶ 1. Application of petitioners, who were originally appointed as extra sweepers or extra drivers in the Department

of Street Cleaning and for the past 14 years had been members of the New York City Employees' Retirement System, for a transfer from such Retirement System to the Relief and Pension Fund of the Department of Street Cleaning, **held** to present triable issues as to the circumstances under which they joined the Retirement System, whether they had waived their rights in the Relief and Pension Fund, and as to the nature and extent of the benefits they received during their membership in the Retirement System.-In re Barbarita (Board of Estimate), 62 N.Y.S. 2d 424 [1946].

¶ 2. Petition, in proceeding for order directing Board of Estimate to transfer petitioners from the Employees' Retirement System to the Relief and Pension Fund of the Department of Street Cleaning inasmuch as they had been placed on the eligible list by the Department of Street Cleaning prior to December 1, 1929, on which date such Department was abolished, even though they were appointed to their present positions after the abolition of the Department, was dismissed, as insufficient. Furthermore, statements made to petitioners by their supervisors and foremen that they had become members of the Department of Street Cleaning and entitled to the benefits of the Relief and Pension Fund were mere expressions of opinion on part of such municipal officers, and could not amount to an estoppel.-Abatemarco v. Board of Estimate, 124 N.Y.S. 2d 828 [1953]. See also, 125 N.Y.S. 2d 159 [1953].



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

*NYC Administrative Code 13-602*

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Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 1 RELIEF AND PENSION FUND OF THE DEPARTMENT OF STREET CLEANING

§ 13-602 Continuance of status in fund.

A member of the relief and pension fund of the department of street cleaning appointed to a position in the exempt class in the department of sanitation shall continue to have the same rights, privileges, obligations and status with respect to such fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-2.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1283

(formerly § G41-2.0)



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

*NYC Administrative Code 13-603*

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Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 1 RELIEF AND PENSION FUND OF THE DEPARTMENT OF STREET CLEANING

§ 13-603 Composition of fund.

The relief and pension fund of the department of street cleaning shall consist of the following:

1. The capital, interest, income, dividends, cash, deposits, securities and credits in such fund on the first day of January, nineteen hundred thirty-eight.

2. A sum of money equal to, but no greater than, three per cent of the weekly or monthly pay, salary or compensation of each member, which sum shall be deducted, weekly or monthly, as the case may be, by the comptroller from the pay, salary or compensation, of each and every member, and such comptroller is hereby authorized, empowered and directed to deduct such sum of money, and to pay the same monthly to the treasurer and trustee of the relief and pension fund of the department of street cleaning.

3. All money, pay, compensation or salary, or any part thereof, forfeited, deducted or withheld from any member on account of fines, suspensions or absence for any cause, loss of time, sickness or other disability, physical or mental, to be paid monthly by the comptroller to the treasurer and trustee of such fund, except in the case of a sweeper, driver, or other employee who may have been sick or absent for any cause, and whose position has been filled by an extra sweeper, driver, or other temporary employee, to whom compensation has been paid.

4. All moneys received for the privilege of scow trimming or assorting of refuse at the various dumps in the city,

or at any other place where refuse may be disposed of.

5. All moneys received from the sale of steam or house ashes, garbage and refuse, collected by the department of sanitation, and any moneys that may be received for the disposal of such steam or house ashes, garbage or refuse.

6. So much of the proceeds of sales of unharnessed trucks, carts, wagons and vehicles of any description, and of all boxes, barrels, bales or other merchandise, or other movable property, found in any public street or place and removed therefrom by the commissioner of sanitation under any provision of law authorizing such commissioner to remove and to sell such incumbrances, as exceeds the necessary expense of the sales of such condemned property or unredeemed incumbrances and which is not, under such provision of the law, paid to the lawful owner or owners of such incumbrances sold, and all moneys collected for the release of merchandise, unharnessed vehicles or movable property so removed.

7. All gifts or bequests which may be made to such fund or the commissioner of sanitation as treasurer and trustee of such fund. Such commissioner is hereby authorized and empowered to take and hold such gifts or bequests for the use of such fund.

8. In case the amount derived from the different sources included in this section shall not be sufficient at any time to enable the trustee of the fund to pay in full the pensions which have been or which may hereafter be granted, it shall be the duty of the commissioner of sanitation each year at the time of making up the departmental estimate, to prepare a full and detailed statement of the assets of such fund and the amount which is required to pay in full all such pensions, and to present the same to the director of the budget, together with a statement of the amount of money required to enable such treasurer and trustee to pay such pensions in full. There shall be included annually in the budget a sum sufficient to provide for such deficiency. The comptroller shall pay over the money so provided to the trustee of the relief and pension fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-3.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1284

(formerly § G41-3.0)

Sub 8 amended chap 100/1963 § 1284

**CASE NOTES FROM FORMER SECTION**

¶ 1. Deceased employee of Department of Sanitation was never the owner of the money that was deducted from his salary pursuant to Greater New York Charter § 549, subd. 1, for purpose of creating pension fund, and hence amounts so deducted could not be recovered by his widow where he was separated from the service prior to death.-Solow v. Carey, 163 Misc. 924, 297 N.Y.S. 530 [1937], aff'd without opinion, 257 App. Div. 929, 12 N.Y.S. 2d 1002 [1938].

¶ 2. Petitioners, who were "extra" employees of the Department of Street Cleaning, **held** entitled to be transferred from the New York City Employees' Retirement System to the Department of Street Cleaning Relief and Pension Fund. Petitioners were in the service of the Department and were members of its Relief and Pension Fund from time of their respective appointments as extra street sweepers or drivers. They could not be deemed to have waived their rights to membership in the old Pension Fund when they joined the Retirement System, in view of fact that both they and the

City were unaware that they had any rights in the old fund. In any event, under Admin. Code § B3-1.0, subd. 3-a, the Retirement Fund was made inapplicable to the petitioners.-Barbarita v. Bd. of Estimate, 83 N.Y.S. 2d 854 [1948], aff'd 276 App. Div. 751, 92 N.Y.S. 2d 608 [1949], aff'd 301 N.Y. 529, 93 N.E. 2d 479 [1950].

¶ 3. Petitioners who prior to December 1, 1929, were members of the New York City Employees' Retirement System and had never been members of the Relief and Pension Fund of the Department of Street Cleaning, **held** not entitled to be transferred from the Retirement System to the Pension Fund of the Department of Street Cleaning pursuant to Local Law No. 13 of 1929. That the duties they performed and the titles they held in the Bureaus of Street Cleaning of the Borough President's offices in Queens and Richmond were the same as those of employees of the old Department of Street Cleaning, was immaterial, where they were never in fact employed by the Department of Street Cleaning.-Welsing v. Board of Estimate, 109 N.Y.S. 2d 417 [1951].

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Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 1 RELIEF AND PENSION FUND OF THE DEPARTMENT OF STREET CLEANING

§ 13-604 Relief from contributions.

The board of estimate is authorized to adopt a resolution providing that the deduction from the pay, salary or compensation of a member made pursuant to this subchapter shall be reduced to one-half of one per centum instead of three per centum or that no such deduction at all need be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing July first, nineteen hundred sixty-two.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-3.2 added chap 775/1962 § 3

Renumbered chap 100/1963 § 1286

(formerly § G41-3.2)



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

*NYC Administrative Code 13-605*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 1 RELIEF AND PENSION FUND OF THE DEPARTMENT OF STREET CLEANING

§ 13-605 Relief from contributions.

The mayor is authorized to adopt an executive order providing that the deduction from the pay, salary or compensation of a member made pursuant to this subchapter shall be reduced to one-half of one per centum instead of three per centum or that no such deduction at all need be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing July first, nineteen hundred sixty-three.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-3.3 added chap 516/1963 § 3

(added as § G41-3.3 and never renumbered)

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*NYC Administrative Code 13-606*

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Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 1 RELIEF AND PENSION FUND OF THE DEPARTMENT OF STREET CLEANING

§ 13-606 Relief from contributions.

a. The mayor is authorized to adopt an executive order providing that no deduction from the pay, salary or compensation of a member pursuant to this subchapter need be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing July first, nineteen hundred sixty-four.

b. The mayor is authorized to adopt an executive order providing that no deduction from the pay, salary or compensation of a member pursuant to this subchapter need be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing July first, nineteen hundred sixty-five.

c. The mayor is authorized to adopt an executive order providing that no deduction from the pay, salary or compensation of a member pursuant to this subchapter need be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing July first, nineteen hundred sixty-six.

d. The mayor is authorized to adopt an executive order providing that no deduction from the pay, salary or compensation of a member pursuant to this subchapter need be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing July first, nineteen hundred sixty-seven.

e. The mayor is authorized to adopt an executive order providing that no deduction from the pay, salary or compensation of a member pursuant to this subchapter need be made and that no contribution in lieu thereof need be

made by such a member during the one-year period commencing with July first, nineteen hundred sixty-eight.

f. The mayor is authorized to adopt an executive order providing that no deduction from the pay, salary or compensation of a member pursuant to this subchapter need be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing July first, nineteen hundred sixty-nine.

g. The mayor is authorized to adopt an executive order providing that no deduction from the pay, salary or compensation of a member pursuant to this subchapter need be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing July first, nineteen hundred seventy.

h. The mayor is authorized to adopt an executive order providing that no deduction from the pay, salary or compensation of a member pursuant to this subchapter need be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing July first, nineteen hundred seventy-one.

i. The mayor is authorized to adopt an executive order providing that no deduction from the pay, salary or compensation of a member pursuant to this subchapter need be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing July first, nineteen hundred seventy-two.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-3.4 added chap 638/1964 § 3

Amended chap 382/1965 § 9

Sub c added chap 611/1966 § 8

Sub d added chap 379/1967 § 8

Sub e added chap 825/1968 § 3

Sub f added chap 870/1969 § 10

Sub g added chap 960/1970 § 11

Sub h added chap 615/1971 § 16

Sub i added chap 921/1972 § 13

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Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 1 RELIEF AND PENSION FUND OF THE DEPARTMENT OF STREET CLEANING

§ 13-607 Trustee of fund.

The commissioner of sanitation shall be the treasurer and trustee of such relief and pension fund. Before entering upon his or her duties as such treasurer and trustee, he or she shall deliver to the comptroller a bond in the penal sum of seventy-five thousand dollars, to be approved by the comptroller, conditioned for the faithful discharge and performance of his or her duties as such treasurer and trustee. Compensation shall be made to him or her for the expense of procuring sureties for such bond to be paid out of such fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-4.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1287

(formerly § G41-4.0)



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

*NYC Administrative Code 13-608*

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Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 1 RELIEF AND PENSION FUND OF THE DEPARTMENT OF STREET CLEANING

§ 13-608 Duties of trustee.

a. Such treasurer and trustee shall have charge of and administer such fund. He or she shall receive all moneys applicable to such fund, and, from time to time, shall invest such moneys, or any part thereof, in any manner allowed by law for investments by savings banks, as he or she shall deem beneficial to such fund. He or she is empowered to make all necessary contracts and to conduct necessary and proper actions and proceedings in the premises, and to pay from such fund the relief or pensions granted in pursuance of this subchapter. He or she is authorized and empowered from time to time, to establish such rules and regulations for the disposition and investment, preservation and administration of such fund as he or she may deem best. No payment whatever shall be allowed or made by such treasurer and trustee from such fund as reward, gratuity or compensation to any person for salary or service rendered to or for such treasurer and trustee, except payment of necessary legal expenses and compensation as aforesaid for the expense of procuring sureties on his or her bond.

b. The commissioner of sanitation, as such treasurer and trustee may employ the members of the clerical force in such clerical work as may be necessary for the care and administration of such fund as a part of their regular duties and without extra compensation.

c. Such commissioner is authorized and empowered to make and enforce all such rules, orders and regulations as may be necessary to carry out the provisions of this subchapter relative to pensions, and may employ members of the department for such purpose so far as may be required.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-5.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1288

(formerly § G41-5.0)

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*NYC Administrative Code 13-609*

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Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 1 RELIEF AND PENSION FUND OF THE DEPARTMENT OF STREET CLEANING

§ 13-609 Reports and audits.

a. On or before the first day of February of each year, such treasurer and trustee shall make a verified report to the mayor containing a statement of the account of such fund under his or her control and of all receipts, investments and disbursements, on account of such fund, together with the name and residence of each beneficiary.

b. There shall be an auditing committee, consisting of three members, to be appointed by the mayor. Such committee, annually on or before March first, shall examine the condition of such fund, audit the accounts of such treasurer and trustee and make report thereon to the mayor within thirty days thereafter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-6.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1289

(formerly § G41-6.0)

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*NYC Administrative Code 13-610*

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Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 1 RELIEF AND PENSION FUND OF THE DEPARTMENT OF STREET CLEANING

§ 13-610 Payment of pensions; disability; death.

a. The commissioner of sanitation shall have power in his or her discretion, as hereinafter provided, to retire and dismiss any member from service in his or her department. The commissioner shall grant relief or a pension to such member so retired and dismissed, and to the spouses and orphans of members who may be entitled to receive such relief or pension, to be paid from such fund, in monthly installments, as follows:

1. To any such member who, at any time, while in the actual performance of duty, and without fault or misconduct on the part of such member, has become permanently disabled, physically or mentally, so as to be unfit to perform the duties required of such member, provided that such unfitness for duty has been certified to by a majority of the medical examiners of such department, the sum of fifty dollars per month.

2. To the spouse of any member who has been killed while in the actual performance of his or her duty, or has died from the effects of any injury received while in the actual performance of such duty, the sum of six hundred dollars per annum; and to the spouse of any member who has died and who has been ten years in the service in such department or in the former department of street cleaning, or both such departments, at the time of his or her death, or who, after having been retired on a pension, as hereinafter provided, if there shall be no child or children of such member under eighteen years of age, the sum of six hundred dollars per annum, in the discretion of such treasurer and trustee. If there be such child or children of such member under the age aforesaid, then such sum may be divided between such spouse, child or children in such proportion and in such manner as such treasurer and trustee may direct. The right of such

spouse to such pension shall cease and terminate at his or her death or remarriage; or if he or she shall have been guilty of conduct which in the opinion of such treasurer and trustee renders payment inexpedient.

3. To any child or children under eighteen years of age of such member so killed or dying, or dying after retirement leaving no spouse, or if a spouse, then after her death or remarriage or loss of pension due to conduct aforesaid, the sum of six hundred dollars per annum to be paid as such treasurer and trustee shall direct until such child or children shall have attained the age of eighteen years or shall have married.

4. To the dependent parent or parents of any such member who has died and dying leaves no spouse surviving him or her or child under the age of eighteen years the sum of six hundred dollars per annum, for their support, divided between them to or either one as such treasurer and trustee may direct, to cease as to the one dying upon his or her death or after the death of one to be continued to the other in such sum as the treasurer and trustee may direct, to cease as to either upon remarriage.

b. Notwithstanding the provisions of this section or any other provision of law, a person who is a spouse, minor child or dependent parent of any member who shall die or retire after the effective date of this subdivision as hereby enacted, and who, as a result of the death of such member or retired member, receives a pension pursuant to paragraph two, three or four of subdivision a of this section, shall receive in addition to such pension, a supplemental pension payment to be known as a supplemental pension, payable annually in monthly installments in an amount which, together with the pension received by such spouse, minor child or dependent parent pursuant to paragraph two, three or four of subdivision a of this section, shall equal but not exceed ninety-eight dollars and thirty-three cents per month, provided, however, that the amount of such supplemental pension shall not exceed forty-eight dollars and thirty-three cents per month. Such supplemental pension payment, however, shall not extend beyond December thirty-first, nineteen hundred sixty-five. If more than one such person shall receive pensions pursuant to paragraph two, three or four of subdivision a of this section on or after the date of death of such member or retired member as a result of being a spouse, minor child or dependent parent of the same deceased member or deceased retired member, they shall collectively be deemed to be one person receiving one pension within the meaning of this subdivision and a supplemental pension granted to such persons collectively under this subdivision shall be divided among such persons in the same proportion as the pensions received by them and shall be subject to termination upon the same terms and conditions as govern the termination of such pensions.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-7.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1290

(formerly § G41-7.0)

Open par amended chap 972/1964 § 1

(designated sub a)

Sub b added chap 972/1964 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. In determining whether deceased had rendered the requisite ten years of service in the uniformed force of the Department of Street Cleaning so as to entitle his widow to the pension benefits prescribed for widows by Greater New

York Charter § 552, period spent by deceased as an "extra" sweeper was to be included as a part of the ten-year period, since "extra" sweepers appointed pursuant to § 536 are members of the uniformed force and deceased became a member of the Pension Fund by mandate of the statute when service began as a member of the uniformed force. Comptroller's failure to perform his statutory duty of making deductions from deceased's salary for the Pension Fund during his period as an "extra" sweeper would not defeat the widow's right to a pension.-Verdecanna v. Carey, 285 N.Y. 130, 33 N.E. 2d 58 [1941], rev'g 260 App. Div. 844, 23 N.Y.S. 2d 205, [1940] which had aff'd 170 Misc. 236, 9 N.Y.S. 2d 38 [1939].

¶ 2. Discretionary power of chairman of the Sanitary Commission under old Charter § 552 to retire or dismiss members of Pension Fund of Department of Street Cleaning, is limited to a decision to retire or dismiss, and where the chairman had exercised his discretion and dismissed an employee of the Department, such employee was entitled to a pension or relief if he came within provision of § 552 granting a pension to a member who became disabled "while in the actual performance of duty".-Cosgrove v. Carey, 253 App. Div. 613, 3 N.Y.S. 2d 500 [1938], rev'd 278 N.Y. 350, 16 N.E. 2d 361 [1938] on ground evidence was that petitioner's disabilities bore no relationship to any injuries sustained in line of duty.

¶ 3. Employee of Department of Sanitation who had grown old in the service and was found to be incapacitated as result of the usual degenerative changes of old age, **held** entitled to the retirement pension of $50 per month provided for by old Charter § 552, since reference in § 552 to permanent disability sustained "while in the actual performance of duty" was not limited to "service incurred disability".-Id.

¶ 4. In the exercise of his discretion, the Commissioner of Sanitation as treasurer and trustee of the Relief and Pension Fund of the Department of Street Cleaning had the right to fix the commencement date of a pension awarded a widow of a deceased Street Cleaning Department employee at a time subsequent to the date of death. In the immediate case the starting of the pension on July 1, 1941 instead of May 14, 1939, when the employee died, was not unreasonable, where formal application for a pension was not made until June, 1941, and the widow had received relief from the Board of Child Welfare between November, 1939 and July, 1941, and had also received assistance from the Welfare Honor Relief Fund of the Sanitation Department (Admin. Code §§ G41-1.0 to G41-10.0).-Andreozzi v. Carey, 262 App. Div. 485, 30 N.Y.S. 2d 528 [1941], aff'd without opinion, 287 N.Y. 827, 41 N.E. 2d 99 [1942].

¶ 5. Where petitioner's deceased husband, who was employed in the Street Cleaning Department, had died in 1925 but petitioner had not made application to the Commissioner of Sanitation for a pension pursuant to Admin. Code § 941-7.0 until 1942, and upon such application the Commissioner in his discretion granted the widow a pension of $600 per year beginning on the date of the application, refusal of the Commissioner to grant her further application for an accrued pension from the date of her husband's death to 1942 would not be disturbed by the Court, as the granting of a pension was a matter of discretion for the Commissioner, and he was not shown to have acted arbitrarily.-Siragusa v. Carey, 112 (54) N.Y.L.J. (9-2-44) 411, Col. 3 F, aff'd 269 App. Div. 817 [1945].

¶ 6. If the refusal of the trustee of the Relief Pension Fund of the Department of Street Cleaning to grant petitioner a widow's pension was based on a policy of the Department not to award a pension to the widow of a deceased employee who at the time of his marriage was retired from active service, and on a pension, such refusal would be arbitrary and illegal, as there was nothing in § 552 of the old Greater New York Charter, which controlled, which imposed such condition. If any other impediment existed, respondent failed to disclose it. Merely to assert that he had exercised a "lawful" discretion was a legal conclusion. Nothing in the law conferred upon respondent an uncontrolled discretion.-Calzaretta v. Mulrain, 131 N.Y.S. 2d 76 [1954], adhered to on reargument in 132 N.Y.S. 2d 704 [1954].



Administrative Code of the City of New York



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

*NYC Administrative Code 13-611*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 1 RELIEF AND PENSION FUND OF THE DEPARTMENT OF STREET CLEANING

§ 13-611 Retirement for service.

Any member who has performed duty for a period of ten years or upwards shall be relieved and dismissed from such force upon his or her own application, or by order of the commissioner, upon an examination by the medical examiners of such department, to be made at any time when so applied for or when so ordered, if a majority of such medical examiners certify that such member is permanently disabled, physically or mentally, so as to be unfit for duty. Such member so relieved and dismissed from such force shall be paid from such fund in monthly installments during his or her lifetime a sum not less than one-half of the annual salary or compensation of such member when so retired. A member who has performed duty on such force for a period of twenty-five years or upwards, whether continuous or rendered during different periods, upon the application of such member in writing, setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, shall be relieved and dimissed from such force and service and shall be paid from such fund in monthly installments during his or her lifetime a sum not less than one-half of the annual salary or compensation of such member when so retired, provided that at the time so specified for his or her retirement, his or her term or tenure of office or employment shall not have terminated or been forfeited, and provided further that upon his or her request in writing the member shall be granted a leave of absence from the date of filing said application until the date the retirement becomes effective. No member shall be retired or granted a pension while there are charges of official misconduct pending against him or her. Pensions granted under this section shall be for the life of the pensioner, and shall not be revoked, repealed or diminished.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-8.0 added chap 929/1937 § 1

Amended LL 75/1951 § 1

Renumbered chap 100/1963 § 1291

(formerly § G41-8.0)

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-612*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 1 RELIEF AND PENSION FUND OF THE DEPARTMENT OF STREET CLEANING

§ 13-612 Pension after service as commissioner or deputy commissioner.

Any member who has performed duty in the uniformed force of the department of street cleaning or sanitation for a period of twenty years and upwards and as commissioner or deputy commissioner of street cleaning or sanitation for a period of eighteen months or upwards, six months of which period must have been served after May twenty-second, nineteen hundred twenty-three, upon payment by him or her to the relief and pension fund of the department of street cleaning of three per cent of his or her salary as such commissioner or deputy commissioner, as the case may be, from the date of his or her appointment as such to the date of his or her retirement, may be retired by the mayor and placed upon the pension roll of the relief and pension fund of the department of street cleaning and granted an annual pension equal in amount to one-half the salary of commissioner or deputy commissioner as the case may be, at the time of such retirement. In the event that any such commissioner or deputy commissioner is a member of any other retirement system in the city, it is hereby directed that his or her membership be transferred from such other system to the relief and pension fund of the department of street cleaning, and that all deductions theretofore made from his or her compensation as commissioner or deputy commissioner as the case may be, to the fund of such other retirement system, be refunded to him or her.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-9.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1292

(formerly § G41-9.0)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-613*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 1 RELIEF AND PENSION FUND OF THE DEPARTMENT OF STREET CLEANING

§ 13-613 Exemption from execution and process.

The moneys or other property of the relief and pension fund of the department of street cleaning and all pensions or relief moneys granted and payable from such fund shall be, and the same are, exempt from levy and sale under execution, and from all processes or proceedings to enjoin payment, or to recover such moneys or property, by or on behalf of any creditor or other person having or asserting any claim against, or debt or liability of any person entitled to such pension or relief.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-10.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1293

(formerly § G41-10.0)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-614*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 1 RELIEF AND PENSION FUND OF THE DEPARTMENT OF STREET CLEANING

§ 13-614 Termination of membership; transfer to New York city employees' retirement system.

a. Notwithstanding any other provision of law, any officer or employee of the department of sanitation who is a member of or entitled to membership in the relief and pension fund, and who, prior to the eighteenth day of May, nineteen hundred fifty, executed and filed an application for membership in the New York city employees' retirement system and made contributions to such retirement system in the same manner as a member thereof, may, prior to the first day of January, nineteen hundred fifty-two, elect to become a member of the New York city employees' retirement system by complying with the following conditions:

1. He or she shall file with the secretary of such retirement system a duly executed and acknowledged instrument of election renouncing all rights in the relief and pension fund, and

2. If the accumulated deductions of such officer or employee in such retirement system have been withdrawn or refunded, he or she shall pay into such retirement system the amount thereof, together with further interest thereon at an unchanged rate from the time of withdrawal or refund, and

3. If such officer or employee cease making contributions to such retirement system by reason of being entered on the rolls of the relief and pension fund as a member thereof, he or she shall pay into the New York city employees' retirement system the amount of accumulated deductions, computed to the time of payment, which would have been produced during such period of non-contribution by the contributions which would have been payable during such

period if such officer or employee had been then a member of such retirement system.

b. Upon compliance by any such officer or employee with the conditions specified in subdivision a of this section, all rights in the relief and pension fund of such officer or employee shall terminate, and he or she shall become a member of the New York city employees' retirement system. The membership of such officer or employee in such system shall be deemed to have originally begun on the date when it would have begun (as determined by the commencement of the period with respect to which such officer or employee made contributions to such retirement system) if such officer or employee had been eligible for membership in such retirement system at the time of his or her original appointment to the department of street cleaning; provided that any such officer or employee shall be credited as a member of such retirement system with all periods of service which would have been credited to such officer or employee (including service credit purchased) if his or her membership in such retirement system had actually begun on the date when it is deemed to have begun as above provided. For the purpose of this section, the term "service" shall mean service (1) for which such officer or employee was paid and (2) with respect to which equivalent accumulated deductions (i) are on deposit in such retirement system to the credit of such officer or employee at the time of the enactment of this section, or (ii) are paid into such retirement system by such officer or employee pursuant to the provisions of paragraphs two and three of subdivision a of this section.

c. Any sum in the relief and pension fund representing contributions thereto by any such officer or employee making such election, together with interest thereon, if such interest was theretofore paid into such fund by or for the account of any such officer or employee, shall be transferred to the New York city employees' retirement system and shall be credited toward any payments required to be made by him or her under the provisions of paragraphs two and three of subdivision a of this section.

d. No such officer or employee making such election shall acquire any greater rights in such retirement system than he or she would possess if he or she had actually become a member thereof at the time when his or her membership is deemed to have commenced under the provisions of subdivision b of this section.

e. The privilege of electing to become a member of the New York city employees' retirement system conferred by this section shall apply only to living persons who qualify for the exercise of such privilege under this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-10.1 added chap 462/1951 § 1

Renumbered chap 100/1963 § 1294

(formerly § G41-10.1)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-615*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 2 HUNTER COLLEGE RETIREMENT SYSTEM OF THE CITY OF NEW YORK

§ 13-615 Merger of system with teachers' retirement system and provisions relative thereto.

Notwithstanding anything to the contrary in this code, on the first day of July nineteen hundred thirty-eight, the administration of the funds of the Hunter college retirement system as provided for in this code shall be transferred to the teachers' retirement board of the teachers' retirement system of the city of New York as provided for in chapter four of this title, and all cash and securities, and other assets held by the Hunter college retirement system shall be transferred and merged with the assets held by the teachers' retirement system of the city of New York, the reserves in the annuity savings fund, the annuity reserve fund, the contingent reserve fund, the pension reserve fund number one, and the pension reserve fund number two being credited to the corresponding funds of the same name of the teachers' retirement system. All appropriations made for the Hunter college retirement system shall be transferred to the credit of the teachers' retirement system. The equities in the funds of the Hunter college retirement system, which are held by the members of such system as of the thirtieth day of June, nineteen hundred thirty-eight, shall not in anywise be impaired by such transfer and the funds so transferred shall continue to be held in trust in the teachers' retirement system for the payment of the benefits to such members for which they were set aside. On the first day of July, nineteen hundred thirty-eight, all contributors of the Hunter college retirement system shall become and shall thereafter be contributors of the teachers' retirement system and members of the teachers' retirement association as constituted by section 13-503 of this title. The present-teachers of the Hunter college retirement system shall become and shall thereafter be present-teachers of the teachers' retirement system, and the new-entrants of the Hunter college retirement system shall become and shall thereafter be new-entrants of the teachers' retirement system, with all the rights and privileges of their

respective classifications as provided in chapter four of this title, with the same force and effect as if they had originally been contributors of the teachers' retirement system and members of the teachers' retirement association. All those who now are present-teachers of the Hunter college retirement system, upon becoming contributors of the teachers' retirement system and members of the teachers' retirement association as provided in this section, shall, notwithstanding anything to the contrary in chapter four of this title, continue to have all the rights and privileges to which they were entitled under the provisions of law in existence at the time of the merger. All those who were entitled to prior service credit in the Hunter college retirement system with prior service certificates issued to them before the first day of July, nineteen hundred thirty-eight, shall be entitled to such prior service as was granted in the prior service certificates issued by the Hunter college retirement board, without increase or decrease, and all such certificates are hereby validated and confirmed, to the same extent and with the same effect as if issued pursuant to express authority of law. All beneficiaries of the Hunter college retirement system as of the thirtieth day of June, nineteen hundred thirty-eight, shall continue to receive their retirement allowances thereafter in the same manner, amount, and form, from the corresponding fund or funds of the teachers' retirement system as that from which their benefits were paid from the Hunter college retirement system.

The purpose of this act is to unify and simplify the retirement of members of the educational institutions of New York city, and after the respective reports of the teachers' retirement board and the Hunter college retirement board for the period including the thirtieth day of June, nineteen hundred thirty-eight, which reports shall include a complete statement as to the merger, no special reports shall thereafter be required concerning the membership of the Hunter college retirement system transferred to the teachers' retirement system. After the thirtieth day of June, nineteen hundred thirty-eight, the Hunter college retirement board shall cease to function, and all the duties of such board shall thereafter be performed by the teachers' retirement board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-51.1 added chap 47/1938 § 1

Renumbered and amended chap 100/1963 § 1297

(formerly § G41-51.1)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-616*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 3 HEALTH DEPARTMENT PENSION FUND

§ 13-616 Organization and membership.

The health department pension fund as now constituted shall be continued only for the benefit of members of such fund on October first, nineteen hundred twenty.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-52.0 added chap 929/1937 § 1

Amended chap 589/1941 § 1

Renumbered chap 100/1963 § 1298

(formerly § G41-52.0)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-617*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 3 HEALTH DEPARTMENT PENSION FUND

§ 13-617 Composition of fund.

a. The health department pension fund shall consist of the following:

1. The capital, interest, income, dividends, cash, deposits, securities and credits in such fund on the day this section, as amended, shall take effect.

2. Except as provided in subdivision c of this section, all moneys collected from fines and penalties for violations of the health code or health laws in the city, including fines for violations of orders issued pursuant to sections 17-104, 17-107, 17-108 and 17-165 of the code and all moneys received from the issuance or granting of permits by the board of health of the department of health and mental hygiene and by the commissioner of health and mental hygiene pursuant to the health code.

3. A sum of money equal to but not greater than one percent of the monthly pay, salary or compensation of each member of such fund, which sum shall be deducted semi-monthly by the comptroller from the pay, salary or compensation of each member, and such comptroller is hereby authorized, empowered and directed to deduct such sum of money, and forthwith to pay the same to the board of trustees of the health department pension fund.

4. If the assets in the sources enumerated in paragraphs one and three of this subdivision shall be insufficient, during an ensuing fiscal year, to pay all pensions, allowances, benefits, grants, awards and payments pursuant to this

subchapter during such fiscal year, it shall be the duty of the board of trustees at the time of submitting its estimate to the director of the budget for such year, to submit a full and detailed statement of the assets of such fund and the amount required, during such year, to pay all such sums in full. There shall be included in the budget for such year a sum sufficient to provide for such deficiency. The comptroller shall pay the money so provided to the board of trustees.

b. All such moneys collected by the department, officers, clerks, judges of the criminal courts and courts shall be paid to the commissioner of finance within thirty days after such payment. Except as provided in subdivision c of this section, such moneys shall be paid over to the board of trustees of the health department pension fund.

c. In the event that the assets in the sources enumerated in paragraphs one and three of subdivision a of this section shall be sufficient, during an ensuing fiscal year, to pay all pensions, allowances, benefits, grants, awards, and payments pursuant to this subchapter during such fiscal year or when the city shall make appropriation for such year pursuant to paragraph four of subdivision a of this section, the moneys collected during such year pursuant to paragraph two of subdivision a and subdivision b of this section shall be paid into the general fund of the city.

d. In the event that the assets in the fund at the end of the fiscal year terminating June thirtieth, nineteen hundred forty-one, shall exceed the amount required to pay all pensions, allowances, benefits, grants, awards and payments pursuant to this subchapter during the next fiscal year, the surplus therein shall be paid into the general fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par 2 amended L.L. 22/2002 § 13, eff. July 29, 2002 and deemed

in effect as of July 1, 2002.

**DERIVATION**

Formerly § G51-53.0 added chap 929/1937 § 1

Amended chap 589/1941 § 1

Sub a par 2 amended LL 65/1950 § 1

Renumbered and amended chap 100/1963 § 1299

(formerly § G41-53.0)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-618*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 3 HEALTH DEPARTMENT PENSION FUND

§ 13-618 Relief from contributions.

The board of estimate is authorized to adopt a resolution providing that the deduction from the pay, salary or compensation of a member made pursuant to this subchapter need not be made and that no contribution in lieu thereof need be made by such a member during the one year period commencing with July first, nineteen hundred sixty-two.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-53.2 added chap 775/1962 § 2

Renumbered chap 100/1963 § 1301

(formerly § G41-53.2)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-619*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 3 HEALTH DEPARTMENT PENSION FUND

§ 13-619 Relief from contributions.

The mayor is authorized to adopt an executive order providing that the deduction from the pay, salary or compensation of a member made pursuant to this subchapter need not be made and that no contribution in lieu thereof need be made by such a member during the one year period commencing with July first, nineteen hundred sixty-three.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-53.3 added chap 516/1963 § 2

(added as § G41-53.3 and never renumbered)

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

*NYC Administrative Code 13-620*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 3 HEALTH DEPARTMENT PENSION FUND

§ 13-620 Relief from contributions.

a. The mayor is authorized to adopt an executive order providing that the deduction from the pay, salary or compensation of a member made pursuant to this subchapter need not be made and that no contribution in lieu thereof need be made by such a member during the one year period commencing with July first, nineteen hundred sixty-four.

b. The mayor is authorized to adopt an executive order providing that the deduction from the pay, salary or compensation of a member made pursuant to this subchapter need not be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing with July first, nineteen hundred sixty-five.

c. The mayor is authorized to adopt an executive order providing that the deduction from the pay, salary or compensation of a member made pursuant to this subchapter need not be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing with July first, nineteen hundred sixty-six.

d. The mayor is authorized to adopt an executive order providing that the deduction from the pay, salary or compensation of a member made pursuant to this subchapter need not be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing with July first, nineteen hundred sixty-seven.

e. The mayor is authorized to adopt an executive order providing that the deduction from the pay, salary or compensation of a member made pursuant to this subchapter need not be made and that no contribution in lieu thereof

need be made by such a member during the one-year period commencing with July first, nineteen hundred sixty-eight.

f. The mayor is authorized to adopt an executive order providing that no deduction from the pay, salary or compensation of a member pursuant to this subchapter need be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing July first, nineteen hundred sixty-nine.

g. The mayor is authorized to adopt an executive order providing that no deduction from the pay, salary or compensation of a member pursuant to this subchapter need be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing July first, nineteen hundred seventy.

h. The mayor is authorized to adopt an executive order providing that no deduction from the pay, salary or compensation of a member pursuant to this subchapter need be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing July first, nineteen hundred seventy-one.

i. The mayor is authorized to adopt an executive order providing that no deduction from the pay, salary or compensation of a member pursuant to this subchapter need be made and that no contribution in lieu thereof need be made by such a member during the one-year period commencing July first, nineteen hundred seventy-two.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-53.4 added chap 638/1964 § 2

Amended chap 382/1965 § 10

Sub c added chap 611/1966 § 9

Sub d added chap 379/1967 § 9

Sub e added chap 825/1968 § 4

Sub f added chap 870/1969 § 11

Sub g added chap 960/1970 § 12

Sub h added chap 615/1971 § 17

Sub i added chap 921/1972 § 14



Administrative Code of the City of New York



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

*NYC Administrative Code 13-621*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 3 HEALTH DEPARTMENT PENSION FUND

§ 13-621 Trustees of fund.

The board of estimate shall be the board of trustees of the health department pension fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-54.0 added chap 929/1937 § 1

Amended chap 589/1941 § 1

Renumbered chap 100/1963 § 1302

(formerly § G41-54.0)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-622*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 3 HEALTH DEPARTMENT PENSION FUND

§ 13-622 Duties of trustees.

Such board of trustees shall have charge of and administer such fund. From time to time such board shall invest the same, or any part thereof, as they shall deem most beneficial to such fund and shall liquidate the assets of such fund to provide moneys to make payments pursuant to the provisions of this subchapter. Such board is empowered to make all necessary contracts, take all necessary and proper actions and proceedings in the premises; and make payments from such fund of pensions, allowances, benefits, grants, awards and payments granted in pursuance of this subchapter. Such trustees from time to time shall establish such rules and regulations for the administration of such fund as they may deem best. No payments whatever shall be allowed to, or made by, such trustees as reward, gratuity or compensation to any person for salary or services rendered to, or for, such board of trustees.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-55.0 added chap 929/1937 § 1

Amended chap 589/1941 § 1

Renumbered chap 100/1963 § 1303

(formerly § G41-55.0)

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

*NYC Administrative Code 13-623*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 3 HEALTH DEPARTMENT PENSION FUND

§ 13-623 Reports.

Such board of trustees shall report in detail to the mayor annually in the month of January, the condition of such fund and the items of their receipts and disbursements on account of the same.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-56.0 added chap 929/1937 § 1

Amended chap 589/1941 § 1

Renumbered chap 100/1963 § 1304

(formerly § G41-56.0)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-624*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 3 HEALTH DEPARTMENT PENSION FUND

§ 13-624 Pension for service.

a. Any member who has or shall have performed duty in the department of health, for a period of twenty years or upwards, upon his or her own written application to and filed with the board of trustees, setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, or upon a certificate and report of a board of physicians, appointed by the board of health, certifying that such member is permanently disabled so as to be unfit for further duty in such department, or upon attaining the age of seventy years, shall be retired from active service by resolution of the board of estimate, as of the date specified in said application, or certificate, or upon attaining such seventieth year, and shall be placed upon the health department pension roll, provided that at the time so specified for his or her retirement, his or her term or tenure of office or employment shall not have terminated or have been forfeited, and provided further that upon his or her request in writing the member shall be granted a leave of absence from the date of filing said application until the date the retirement becomes effective. A member in city-service, however, who has or shall have attained the age of seventy years, upon the approval of the commissioner of health, may request the board of estimate to be continued in the public service for a period of two years and such board, where advantageous to the public service, may grant such request for such period, not exceeding two years as such board may determine. At the termination of such additional period of service, such board in like manner may permit such employee to continue in the public service for successive two year periods or any portion thereof. In no case shall public service be continued after a member shall have attained the age of eighty years. Any member placed upon the health department pension roll under the provisions of this section shall be awarded, granted and paid from such

fund by the trustees thereof an annual sum during his or her lifetime equal to one-half of the annual salary received by such member at the time of retirement plus one and one-half per centum of the annual salary received by him or her each year subsequent to the completion of his or her thirtieth year of service, provided that paid-for service before October first, nineteen hundred twenty shall be credited whether in the department of health or in any other city department.

b. Pensions granted under this section shall be for the life of person receiving the same, and shall not be revoked, repealed or diminished.

c. When a member has been awarded and granted a pension pursuant to the provisions of this section and shall die prior to receiving payments from such pension fund equal to the compensation earned by him or her in the city service while a member during the twelve months immediately preceding his or her retirement, there shall be paid by the trustees of the pension fund to his or her estate, or to such person as he or she has nominated or shall nominate by written designation duly executed and filed with the board of trustees during his or her lifetime, a sum of money equal to the difference between the compensation earned by him or her in the city service while a member during the twelve months immediately preceding his or her retirement and the total payments received by him or her from such pension fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-57.0 added chap 929/1937 § 1

Amended chap 589/1941 § 1

Amended LL 7/1947 § 1

Sub a amended LL 74/1951 § 1

Sub a amended LL 123/1953 § 1

Renumbered chap 100/1963 § 1305

(formerly § G41-57.0)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-625*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 3 HEALTH DEPARTMENT PENSION FUND

§ 13-625 Ordinary death benefits.

Upon the death of a member in city service, there shall be paid to his or her estate, or to such person as he or she has nominated or shall nominate by written designation duly executed and filed with the board of trustees during the lifetime of the member, a sum of money equal to the compensation earnable by him or her in the city service, while a member during the twelve months immediately preceding his or her death.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-58.0 added chap 929/1937 § 1

Amended chap 589/1941 § 1

Renumbered chap 100/1963 § 1306

(formerly § G41-58.0)



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

*NYC Administrative Code 13-626*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 3 HEALTH DEPARTMENT PENSION FUND

§ 13-626 Order of discontinuance of pension in certain cases.

The board of trustees, in its discretion, may order any pension granted or any part thereof to cease, except as provided in section 13-624 of this chapter, but in all such cases such board shall make a written statement of the causes determining such action. Such statement shall be entered in the minutes of the board of trustees. Nothing in this subchapter or in any other act, shall render the granting or payment of such pension obligatory upon the trustees, or chargeable as a matter of right upon such fund, except as provided in section 13-624 of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-59.0 added chap 929/1937 § 1

Amended chap 589/1941 § 1

Renumbered and amended chap 100/1963 § 1307

(formerly § G41-59.0)

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

*NYC Administrative Code 13-627*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 3 HEALTH DEPARTMENT PENSION FUND

§ 13-627 Exemption from tax and legal process.

The right of a person to a pension, allowance, benefit, grant, award or payment heretofore or hereafter granted or any other right accrued or accruing to any person under the provisions of this subchapter and the money in the funds provided for by this subchapter, are hereby exempt from any state or municipal tax, shall be unassignable hereafter, and shall not be subject to execution, garnishment, attachment or any other process whatsoever.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-60.0 added chap 929/1937 § 1

Amended chap 589/1941 § 1

Renumbered chap 100/1963 § 1308

(formerly § G41-60.0)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-628*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 3 HEALTH DEPARTMENT PENSION FUND

§ 13-628 Guaranty of funds.

All pensions, allowances, benefits, grants, awards or payments and any other benefits heretofore or hereafter granted under the provisions of the health department pension fund or of this subchapter, are hereby made obligations of the city.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-61.0 added chap 929/1937 § 1

Amended chap 589/1941 § 1

Renumbered chap 100/1963 § 1309

(formerly § G41-61.0)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-629*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-629 Transfer of officers and employees to the department of traffic.

Notwithstanding the provisions of any other general, special or local law, officers and employees of any agency may, with the consent of the head of such agency, be transferred to the department of traffic in accordance with the provisions of the civil service law and the rules and regulations of the municipal civil service commission. Officers and employees of any agency who are members of any pension or retirement system and who are transferred to the department of traffic, pursuant to the provisions of this subchapter, shall continue to be members of such pension or retirement system and shall continue to have the rights, privileges, obligations and status with respect to membership in such pension or retirement system as though they had remained members of the agency from which they were transferred.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § F51-20.0 added LL 2/1949 § 4

Renumbered chap 100/1963 § 1268

(formerly § F41-20.0)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-630*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-630 Employees of community colleges.

Any person employed by the city of New York on the non-instructional staff of a community college operated pursuant to article one hundred twenty-six of the education law is eligible for membership in the New York city employees' retirement system.

**HISTORICAL NOTE**

Section amended chap 793/1986 § 4

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § F51-24.0 added chap 455/1956 § 1

(Special provisions chap 455/1956 § 3)

Renumbered chap 100/1963 § 1276

(formerly § F41-24.0)

Amended chap 793/1986 § 3

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

*NYC Administrative Code 13-631*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-631 Preservation of retirement and civil service rights; members of police and fire departments holding civil defense positions.

a. Notwithstanding any other provision of this code or any other law, in any case where any member of any pension or retirement system maintained under chapter two of this title or subchapter one or two of chapter three of this title, is granted a leave of absence from any position held by such person while such a member, and thereafter and during such leave of absence, is appointed to any position in the office of civil defense of the city, or to any position which has been designated, with the approval of the city civil service commission, as an emergency defense position, such member, in the same manner and to the same extent as if his or her service in such new position were service in the position from which such leave of absence was granted, and were service at the salary of such latter position, shall retain all of his or her rights, privileges and obligations as a member of such retirement system, and shall be entitled to service credit in such system for the period of his or her service in such new position.

b. Any member of the police force of the police department of the city, or of the uniformed force of the fire department of the city, who, while on leave of absence from any position in the competitive class of the civil service in either such department, holds another position in the office of civil defense of the city, or another position which has been designated, with the approval of the city civil service commission, as an emergency defense position, shall, except as to payment of compensation suspended by reason of such leave of absence, retain all of the rights, privileges and status of the position from which such leave of absence was granted, and shall be credited with service in the same manner as if service in such position in the office of civil defense or emergency defense position were service in such

position from which a leave of absence was granted, and were service at the salary of such latter position.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § F51-24.1 added chap 594/1956 § 1

(Special provision chap 594/1956 § 2)

Renumbered chap 100/1963 § 1277

(formerly § F41-24.0)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-632*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-632 Transfer of retirement system membership of certain board of education personnel to teachers' retirement system.

a. As used in this section, the following terms shall mean and include:

(1) "Teachers' retirement system." The retirement system maintained under chapter four of this title.

(2) "Eligible position holder." Any member of the board of education retirement system of the city or of the New York city employees' retirement system who holds, under the board of education of the city, a position of such a nature that under subdivision seven of section 13-501 of this title and section 13-503 of this title, a person who receives an appointment to such position, and who does not exercise any rights which he or she may have to become a transferred contributor in another retirement system, would become, by reason of such appointment, a member of the teachers' retirement system.

(3) "First retirement system." The retirement system of which an eligible position holder is a member, immediately prior to the transfer of his or her retirement system membership pursuant to this section.

(4) "Board." (i) In the case of the New York city employees' retirement system, the board of trustees provided for by section 13-103 of this title; and (ii) in the case of the board of education retirement system, the retirement board thereof.

(5) "Transferred member." An eligible position holder who has transferred his or her membership to the teachers' retirement system pursuant to this section.

b. Any person who is an eligible position holder at the time of filing an application as hereinafter in this subdivision b provided, may transfer his or her membership in the board of education retirement system or the New York city employees' retirement system to the teachers' retirement system by filing, no later than December thirty-first, nineteen hundred seventy with the board of the first retirement system, a written application, duly executed and acknowledged, requesting such transfer.

c. Upon the filing of such application, the first retirement system shall transfer to the contingent reserve fund of the teachers' retirement system, in the manner provided for in section forty-three of the retirement and social security law, the reserve on the benefits allowable to such member as a result of employer contributions, including the reserve-for-increased-take-home-pay. In addition, the first retirement system shall thereupon transfer his or her accumulated deductions (as they would be in the absence of a loan, less the unpaid balance of any outstanding loan) to the annuity savings fund of the teachers' retirement system.

d. Any such transferred member shall be deemed to have been a member of the teacher's retirement system during the period of member service which (1) is credited to him or her in the first retirement system and (2) was rendered after the commencement of his or her last membership in the first retirement system.

e. The rate of contribution of any member who has elected such transfer of membership shall, on and after the date of the filing of his or her application therefor, be that (before any reduction in rate of contribution to which such member, after such election, may be entitled by reason of any plan for pensions-providing-for-increased-take-home-pay) at which he or she would have been contributing on such date to the teachers' retirement system if he or she had become a member of such retirement system on the date when he or she last became a member of the first retirement system; provided, however, that if such member, pursuant to the applicable provisions of chapter four of title thirteen of the code, elects a retirement plan prescribing a different rate of contribution, he or she shall contribute in accordance with the requirements of such plan.

f. As of the date of the filing of an application for such transfer of membership, the reserve-for-increased-take-home-pay credited in the teachers' retirement system to the member filing such application shall be equal to the amount of the reserve-for-increased-take-home-pay credited to such member in the first retirement system on the day next preceding the date of the filing of such application.

g. In any case where, at the time when an eligible position holder seeks to file an application for transfer of membership, there remains unpaid any part of the principal or interest with respect to any loan made by such member while a member of the first retirement system, he or she shall not have the right to make such election unless he or she shall execute and acknowledge, and file with the board of the first retirement system, a written agreement providing that from and after the execution of such agreement all of his or her obligations and rights with respect to the principal and interest remaining unpaid on such loan shall be governed by rules and regulations which shall be adopted by the retirement board of the teachers' retirement system for the purpose of prescribing with respect to repayment of any such unpaid amounts to the teachers' retirement system, and the member's status with respect to such loan, terms and conditions which conform so far as may be reasonable and practicable with the provisions of section 13-540 of this title.

h. (1) In any case where a transferred member elects to participate in the variable annuity program of the teachers' retirement system as provided for in subdivision a of section 13-568 of this title, by a written notice duly filed with the retirement board of the teachers' retirement system before the first deduction is made from his or her salary at the rate of contribution prescribed by subdivision e of this section, such election shall take effect as of the date of filing of his or her application for a transfer of membership pursuant to this section.

(2) In the event that any transferred member makes an election as provided for in subdivision b of section 13-568 of this title with respect to a transfer of accumulated deductions and reserve-for-increased-take-home-pay to the appropriate variable annuity funds, such transfer, notwithstanding any other provision of law to the contrary, shall not commence earlier than the first day of the seventh month after the month in which he or she transferred his or her membership to the teachers' retirement system.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § F51-29.0 added chap 763/1970 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-634*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-634 Transfer of members of the police force of the board of water supply to the police department of the city of New York.

The members of the police force of the board of water supply of the city, upon the termination of their service on such force by reason of the completion of the work for which they were appointed by such board shall be severally eligible for transfer to the position of patrolman in the police department of the city upon the written request in each case of the board, accompanied by the consent, also in writing, of the person to be transferred, and the further consent of the police commissioner. The time served by any member of such board of water supply police force who has become a member of such police force of the city, whether by transfer or as a result of competitive examination and appointment, and who is still a member of the police force of the city, shall be included and counted as service in the police department of the city in determining salary and eligibility for advancement, promotion, retirement and pension as provided in this code, provided, however, that no person becoming a member of the police department of the city in the manner herein provided, shall be entitled to participate in the benefits of the police pension fund, unless he shall pay into such fund the total sum that he would have been required to pay in order to participate therein had he been a member of such force from the time he entered the service of such board of water supply, and provided further, that no person not a member of the police force of the board of water supply on the ninth day of May, nineteen hundred nineteen shall be eligible for transfer to the position of patrolman in the police department of the city in accordance with the provisions hereof. These provisions shall not be subject to any restriction relative to transfers contained in the civil service law or in the rules and regulations of the civil service commission of the state, or any subdivision thereof.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § F51-5.0 added chap 929/1937 § 1

Amended LL 50/1942 § 194

Renumbered chap 100/1963 § 1250

(formerly § F41-5.0)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-635*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-635 Computation of length of service of physicians and surgeons.

In determining the terms of service of any member of the police force, service in the municipal and metropolitan force, or service as a physician and surgeon in the classified service in any other department of the city or service not exceeding three years as an intern duly appointed and removable by the city of New York, of any hospital owned and operated by such city, provided, that for any such period maintenance, consisting of room and board was received without accompanying cash payment and provided further, that such intern shall pay into the fund an amount equal to the amount he or she would have paid during such service if he or she had been a physician or surgeon in such force, receiving compensation based on an annual rate of five thousand dollars and subsequently in the police force of the city, as constituted prior to chapter three hundred seventy-eight of laws of eighteen hundred ninety-seven or in any police force within the limits of the city as constituted by chapter three hundred seventy-eight of the laws of eighteen hundred ninety-seven, and thereafter in the police force created by the greater New York charter as amended by chapter four hundred sixty-six of the laws of nineteen hundred one, shall be counted and held to be service in the police force of the city. Any person, however, becoming a member of the police department of the city, in the manner herein provided, shall not be entitled to participate in the benefits of the police pension fund, unless he or she shall pay into such fund the total amount that he or she would have been required to pay in order to participate therein had he or she been a member of such force from the time he or she entered the service of such other department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § F51-8.0 added chap 929/1937 § 1

Amended LL 50/1942 § 195

Amended chap 729/1958 § 1

Renumbered chap 100/1963 § 1252

(formerly § F41-8.0)

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

*NYC Administrative Code 13-636*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-636 Trustees of the exempt firemen's benevolent fund of the late city of Brooklyn.

a. Upon the settlement of the accounts of the surviving trustees and officers of the corporation known as the exempt firemen's benevolent fund of the late city of Brooklyn and upon the payment of the balance of the funds and assets of such corporation to the fire commissioner and upon the resignation of the trustees and officers of such corporation, the fire commissioner is hereby designated and empowered to act as sole trustee of such corporation. The fire commissioner, is hereby charged and directed to continue to pay relief donations to the surviving members of the exempt firemen's benevolent associations of the late city of Brooklyn and to the surviving spouses of the members of such associations, as they appear upon the records now in the hands of the trustees of the exempt firemen's benevolent fund of the late city of Brooklyn, until the decease of the last of the members of such associations and of the surviving spouses of the members of such associations. The amounts of the respective relief donations so to be paid the aforesaid beneficiaries by the fire commissioner, as such trustee, shall be determined by him or her on the basis of the financial status of the beneficiary and the actuarial sufficiency of the funds of the corporation at the time. In no case, however, shall the annual relief donation to any beneficiary exceed six hundred dollars.

b. The fire commissioner, as such trustee, is hereby empowered and directed to receive all moneys and assets applicable to such benevolent fund and shall deposit all such moneys and assets to the credit of such benevolent fund in banks or trust companies to be selected by such commissioner. Such fire commissioner, as such trustee, is hereby empowered and directed to invest the moneys and convertible assets applicable to or belonging to such benevolent fund in bonds or other securities of the city or state of New York or of the government of the United States.

c. The fire commissioner, as trustee of such benevolent fund, shall give a bond with one or more sureties, in the sum of ten thousand dollars for the faithful performance of his or her duties. Such bond shall be approved by the comptroller and shall be filed in the office of the comptroller.

d. The fire commissioner, as such trustee, shall submit a verified report, on or before the first day of Feburary of each year, to the mayor, in which report shall be set forth the account of his or her proceedings as such trustee during the twelve months from January first to and including December thirty-first immediately preceding, including a statement of all receipts and disbursements on account of such benevolent fund, a list of the names, residences and ages of the beneficiaries of such benevolent fund during such period, and the respective amounts paid to them in the way of relief donations during such period.

e. The clerk of the fire department in charge of the bureau of accounts and pensions shall have charge of and keep the accounts of the fire commissioner as trustee of such exempt firemen's benevolent fund.

f. Upon the decease of the last of the members and of the surviving spouses of members of such associations whose names appear on the records now in the hands of the trustees of the exempt firemen's benevolent fund of the late city of Brooklyn, the fire commissioner, as such trustee, shall prepare a final report of his or her accounts which shall be audited by the comptroller. After such audit a copy of such final report shall be filed with the city clerk and upon the filing thereof and upon the payment into the New York fire department pension fund of the balance of the funds and assets of such benevolent fund then remaining in his or her possession, the fire commissioner shall cease to be the sole trustee of such exempt firemen's benevolent fund of the late city of Brooklyn. Such funds and assets shall thereupon become merged in and a part of such fire department pension fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-62.1 added LL 180/1939 § 3

Subs e, f amended LL 50/1942 § 198

Renumbered chap 100/1963 § 1311

(formerly § G41-62.1)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-637*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-637 Pension to members of police force disabled in military or naval service of the United States.

The board of trustees of the police pension fund shall have power to retire from membership in the police force and thereupon to grant an annual pension to any member of such department, who, while in the military, naval or marine service of the United States has become permanently disabled physically or mentally, so as to be unfit to perform the full duty of his or her employment in such department. Such pension shall not exceed one-half of the annual compensation earned by such member at the time of his or her retirement and shall be paid in like manner as pensions are paid out of the police pension fund of such city.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-63.0 added chap 929/1937 § 1

Amended LL 11/1946 § 1

Renumbered and amended chap 100/1963 § 1312

(formerly § G41-63.0)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-638*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-638 Pension to members of the fire force disabled in military or naval service of the United States.

The board of trustees of the fire department pension fund shall have the power to retire from membership in the fire department and thereupon to grant an annual pension to any member of such department, who, while in military, naval or marine service of the United States has become permanently disabled, physically or mentally, so as to be unfit to perform the full duty of his or her employment in such department. Such pension shall not exceed one-half of the annual compensation earned by such member at the time of his or her retirement and shall be paid in like manner as pensions are paid out of the fire department pension fund of such city. Such board of trustees may increase the pension of any member of such department who has been retired, prior to the sixth day of May, nineteen hundred twenty-one, by reason of disability, physical or mental, sustained while in the military, naval or marine service of the United States. Such pension as increased shall not exceed one-half of the annual salary earned by such member at the time of his or her retirement.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § G51-64.0 added chap 929/1937 § 1

Amended LL 10/1946 § 1

Renumbered chap 100/1963 § 1313

(formerly § G41-64.0)

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

*NYC Administrative Code 13-638.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-638.1 Nineteen2 hundred eighty-eight unfunded accrued liability adjustment.

a. As used in this section, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

1. "Retirement system." Any of the following: the New York city employees' retirement system; the teachers' retirement system; the police pension fund provided for by subchapter two of chapter two of this title; the fire department pension fund provided for by subchapter two of chapter three of this title; and the board of education retirement system of the city.

2. "Teachers' retirement system." The retirement system of the teachers' retirement association provided for by chapter four of this title.

3. "Contingent reserve fund." The contingent reserve fund of a retirement system.

4. "Governmental entity." The city, the state or a public authority, corporation or body corporate or other agency of government.

5. "Normal contribution." Where used in relation to the following retirement systems, such term shall have the following meanings:

(a) New York city employees' retirement system; the employer contribution determined pursuant to paragraph two of subdivision b of section 13-127 of the code;

(b) New York city teachers' retirement system; the employer contribution determined pursuant to subdivision b of section 13-527 of the code;

(c) New York city police pension fund, subchapter two; the employer contribution determined pursuant to paragraph two of subdivision b of section 13-228 of the code;

(d) New York city fire department pension fund, subchapter two; the employer contribution determined pursuant to paragraph two of subdivision b of section 13-331 of the code; and

(e) Board of education retirement system of the city; the employer contribution determined pursuant to subparagraph four of paragraph two of subdivision sixteen of section twenty-five hundred seventy-five of the education law.

6. "Responsible obligor." Any governmental entity required by any provision of law to pay contributions to a retirement system on behalf of any members thereof, whether or not such entity is the employer of such members.

7. "Valuation rate of interest." Where used herein with respect to a retirement system in relation to any fiscal year of the city, the term "valuation rate of interest" shall mean the rate per centum per annum of interest required by law to be used for the purpose of any actuarial valuation, determination or appraisal made to determine the amount of the normal contribution payable to the contingent reserve fund of such retirement system in such fiscal year.

b. In relation to each responsible obligor, the nineteen hundred eighty-eight unfunded accrued liability adjustment shall be an amount determined pursuant to the applicable provisions of subdivisions c through s, inclusive, of this section.

c. Upon the basis of the actuarial tables and actuarial methods in effect for valuation purposes with respect to determination of the normal contribution payable to the contingent reserve fund of each retirement system in the city's nineteen hundred eighty-seven-nineteen hundred eighty-eight fiscal year and the valuation rate of interest for such retirement system for such fiscal year, there shall be determined, as of June thirtieth, nineteen hundred eighty-eight, the amount of the actuarial accured liability of each retirement system, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

d. Upon the basis of the actuarial tables and actuarial methods in effect for valuation purposes with respect to determination of the normal contribution payable to the contingent reserve fund of such retirement system in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year and the valuation rate of interest for such retirement system for such fiscal year, there shall be determined, as of June thirtieth, nineteen hundred eighty-eight, the amount of the actuarial accrued liability of each retirement system, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

e. In any case where no more than one responsible obligor is required by law to make contributions to the contingent reserve fund of a retirement system on account of its members:

(1) if the amount computed with respect to such retirement system pursuant to subdivision d of this section is greater than the amount computed in relation to such system pursuant to subdivision c of this section, the nineteen hundred eighty-eight unfunded accrued liability adjustment with respect to such obligor shall be a charge in an amount which, when paid by such obligor to the contingent reserve fund of such retirement system in ten equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of the valuation rate of interest for such retirement system for such nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, of the excess of the

amount computed pursuant to such subdivision d over the amount computed pursuant to such subdivision c.

(2) if the amount computed with respect to such retirement system pursuant to subdivision c of this section is greater than the amount computed in relation to such system pursuant to subdivision d of this section, the nineteen hundred eighty-eight unfunded accrued liability adjustment with respect to such obligor shall be a credit in an amount which, when credited in ten equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the contributions which such obligor would otherwise be required to pay to the contingent reserve fund pursuant to law, shall be the actuarial equivalent, on the basis of the valuation rate of interest for such retirement system for such nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, of the excess of the amount computed pursuant to such subdivision c over the amount computed pursuant to such subdivision d.

f. In any case where more than one responsible obligor is required by law to make contributions to the contingent reserve fund of a retirement system on account of any of its members:

(1) The actuary shall determine the portion of the liability (other than any liability on account of employees of the senior colleges of the city university) computed for such retirement system pursuant to subdivision c of this section, which portion is attributable to each such obligor on the basis of the members with respect to whom such obligor is required by law to make contributions to such retirement system.

(2) The actuary shall determine the portion of the liability (other than any liability on account of employees of such senior colleges) computed pursuant to subdivision d of this section, which portion is attributable to each such obligor on such basis.

g. If the portion computed pursuant to paragraph two of subdivision f of this section with respect to any such obligor is greater than the portion computed pursuant to paragraph one of such subdivision with respect to such obligor, the nineteen hundred eighty-eight unfunded accrued liability adjustment with respect to such obligor shall be a charge in an amount which, when paid by such obligor to the contingent reserve fund of such retirement system in ten equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of the valuation rate of interest for such retirement system for such nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, of the excess of the amount of such portion computed pursuant to such paragraph two over the amount of such portion computed pursuant to such paragraph one.

h. If the portion computed pursuant to paragraph one of subdivision f of this section with respect to any such obligor is greater than the portion computed pursuant to paragraph two of such subdivision with respect to such obligor, the nineteen hundred eighty-eight unfunded accrued liability adjustment with respect to such obligor shall be a credit in an amount which, when credited in ten equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the amounts which such obligor would otherwise be required to pay to the contingent reserve fund pursuant to law, shall be the actuarial equivalent, on the basis of the valuation rate of interest for such retirement system for such nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, of the excess of the amount of such portion computed pursuant to such paragraph one over the amount of such portion computed pursuant to such paragraph two.

i. (1) If the nineteen hundred eighty-eight unfunded accrued liability adjustment determined with respect to any responsible obligor in relation to a retirement system pursuant to the preceding subdivisions of this section is a charge, the total of the amounts otherwise required to be contributed by such obligor to the contingent reserve fund of such retirement system in each fiscal year commencing with the nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year and ending with the nineteen hundred ninety-seven-nineteen hundred ninety-eight fiscal year pursuant to law shall be increased by the amount of one annual installment of such nineteen hundred eighty-eight unfunded accrued liability adjustment determined with respect to such obligor.

(2) If the nineteen hundred eighty-eight unfunded accrued liability adjustment determined with respect to any responsible obligor in relation to a retirement system pursuant to the preceding subdivisions of this section is a credit, the total of the amounts otherwise required to be contributed by such obligor to the contingent reserve fund of such retirement system in each city fiscal year commencing with the nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year and ending with the nineteen hundred ninety-seven-nineteen hundred ninety-eight fiscal year pursuant to law shall be reduced by the amount of one annual installment of such nineteen hundred eighty-eight unfunded accrued liability adjustment with respect to such obligor.

j. The actuary shall determine the portion of the liability computed in relation to the New York city employees' retirement system pursuant to subdivision c of this section, which portion is attributable to employees of the senior colleges of the city university of New York.

k. The actuary shall determine the portion of the liability computed in relation to such retirement system pursuant to subdivision d of this section, which portion is attributable to employees of such senior colleges.

l. If the portion computed pursuant to subdivision k of this section is greater than the portion computed pursuant to subdivision j of this section, the New York city employees' retirement system nineteen hundred eighty-eight unfunded accrued liability adjustment attributable to the senior colleges of the city university of New York shall be a charge in an amount which, when paid by the state and the city to the contingent reserve fund of such retirement system pursuant to section sixty-two hundred thirty-one of the education law in ten equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of the valuation rate of interest for such nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, of the excess of the amount of such portion computed pursuant to such subdivision k over the amount of such portion computed pursuant to such subdivision j.

m. If the portion computed pursuant to subdivision j of this section is greater than the portion computed pursuant to subdivision k of this section, the New York city employees' retirement system nineteen hundred eighty-eight unfunded accrued liability adjustment attributable to such senior colleges shall be a credit in an amount which, when credited (pursuant to section sixty-two hundred thirty-one of the education law) in ten equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the amounts which the state and the city would otherwise be required to pay to the contingent reserve fund of such employees' retirement system pursuant to law, shall be the actuarial equivalent, on the basis of the valuation rate of interest of such retirement system for such nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, of the excess of the amount of such portion computed pursuant to such subdivision j over the amount of such portion computed pursuant to such subdivision k.

n. The actuary shall determine the portion of the liability computed in relation to the teachers' retirement system pursuant to subdivision c of this section, which portion is attributable to employees of the senior colleges of the city university of New York.

o. The actuary shall determine the portion of the liability computed in relation to the teachers' retirement system pursuant to subdivision d of this section, which portion is attributable to employees of such senior colleges.

p. If the portion computed pursuant to subdivision o of this section is greater than the portion computed pursuant to subdivision n of this section, the New York city teachers' retirement system nineteen hundred eighty-eight unfunded accrued liability adjustment attributable to employees of the senior colleges of the city university of New York shall be a charge in an amount which, when paid by the state and the city to the contingent reserve fund of the teachers' retirement system pursuant to section sixty-two hundred thirty-one of the education law in ten equal installments, commencing with payment of a first installment for the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of the valuation rate of interest for such retirement system for such nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year of the excess of the amount of

such portion computed pursuant to such subdivision o over the amount of such portion computed pursuant to such subdivision n.

q. If the portion computed pursuant to subdivision n of this section is greater than the portion computed pursuant to subdivision o of this section, the New York city teachers' retirement system nineteen hundred eighty-eight unfunded accrued liability adjustment attributable to employees of such senior colleges shall be a credit in an amount which, when credited pursuant to section sixty-two hundred thirty-one of the education law in ten equal annual installments (the first of which installments is to be credited for the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the amounts which the state and the city would otherwise be required to pay to the contingent reserve fund of the teachers' retirement system pursuant to law, shall be the actuarial equivalent, on the basis of the valuation rate of interest for such retirement system for such nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, of the excess of the amount of such portion computed pursuant to such subdivision n over the amount of such portion computed pursuant to such subdivision o.

r. If the New York city employees' retirement system nineteen hundred eighty-eight unfunded accrued liability adjustment attributable to employees of the senior colleges of the city university of New York, as determined pursuant to subdivisions j, k and l of this section, or the New York city teachers' retirement system nineteen hundred eighty-eight unfunded accrued liability adjustment attributable to employees of such senior colleges, as determined pursuant to subdivisions n, o and p of this section is a charge:

(1) the state, with respect to each fiscal year of the city occurring during the period commencing on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-eight, and at the time and in the manner prescribed by the applicable provisions of section sixty-two hundred thirty-one of the education law, shall contribute to the affected retirement system an installment amount representing the state's share of such charge for such fiscal year, as prescribed by such provisions; and

(2) the city, with respect to each such fiscal year, and at the time and in the manner prescribed by the applicable provisions of such section of the education law, shall contribute an installment amount representing the city's share of such charge for such fiscal year, as prescribed by such provisions.

s. If the New York city employees' retirement system nineteen hundred eighty-eight unfunded accrued liability adjustment attributable to employees of the senior colleges of the city university of New York, as determined pursuant to subdivisions j, k and m of this section, or the New York city teachers' retirement system nineteen hundred eighty-eight unfunded accrued liability adjustment attributable to employees of such senior colleges, as determined pursuant to subdivisions n, o and q of this section, is a credit:

(1) then with respect to each fiscal year of the city occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-eight, there shall be credited in favor of the state, in relation to its obligations to contribute to the affected retirement system on account of employees of such senior colleges, and at the time and in the manner prescribed by the applicable provisions of section sixty-two hundred thirty-one of the education law, an installment amount representing the state's share of such credit for such fiscal year, as prescribed by such provisions; and

(2) with respect to each such fiscal year occurring during such period, there shall be credited in favor of the city, in relation to the city's obligations to contribute to the affected retirement system on account of employees of such senior colleges, and at the time and in the manner prescribed by the applicable provisions of such section sixty-two hundred thirty-one, an installment amount representing the city's share of such credit for such fiscal year, as prescribed by such provisions.

t. Any amount required to be contributed to a retirement system by a responsible obligor with respect to any fiscal year under the provisions of this section shall be payable with interest on such amount at the valuation rate of

interest for such retirement system for such fiscal year.

u. In the same manner and to the same extent as the provisions of sections 13-130 (relating to obligations of certain participating employers of the New York city employees' retirement system to contribute to such retirement system), 13-132 (relating to contributions by the state in relation to certain members of such retirement system who are officers and employees in the courts) and 13-529 (relating to similar contributions by the state in relation to certain like court personnel who are members of the teachers' retirement system) apply to such participating employers and the state with respect to their obligations to make contributions to such retirement systems under other employer contribution laws, the provisions of such sections 13-130, 13-132 and 13-529 shall apply to the contributions required to be made to such retirement systems under the provisions of this section.

v. In the determination of the normal contribution payable to any retirement system with respect to each fiscal year of the city occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-eight, the present value, as of June thirtieth next preceding such fiscal year, of all future installments of the nineteen hundred eighty-eight unfunded accrued liability adjustment with respect to such retirement system then remaining unpaid or unapplied, as the case may be:

(1) shall be treated as an asset, if such adjustment with respect to such retirement system is a charge; and

(2) shall be subtracted from assets, if such adjustment with respect to such retirement system is a credit.

**HISTORICAL NOTE**

Section added chap 580/1989 § 1

**FOOTNOTES**

2

[Footnote 2]: * There are two almost identical Sections 13-638.1.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-638.1*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-638.1 Nineteen hundred3 eighty-eight unfunded accrued liability adjustment.

a. As used in this section, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

1. "Retirement system." Any of the following: the New York city employees' retirement system; the teachers' retirement system; the police pension fund provided for by subchapter two of chapter two of this title; the fire department pension fund provided for by subchapter two of chapter three of this title; and the board of education retirement system of the city.

2. "Teachers' retirement system." The retirement system of the teachers' retirement association provided for by chapter four of this title.

3. "Contingent reserve fund." The contingent reserve fund of a retirement system.

4. "Governmental entity." The city, the state or a public authority, corporation or body corporate or other agency of government.

5. "Normal contribution." Where used in relation to the following retirement systems, such terms shall have the following meanings:

(a) New York city employees' retirement system-the employer contribution determined pursuant to paragraph two of subdivision b of section 13-127 of the code;

(b) New York city teachers' retirement system-the employer contribution determined pursuant to subdivision b of section 13-527 of the code;

(c) New York city police pension fund, subchapter two-the employer contribution determined pursuant to paragraph two of subdivision b of section 13-228 of the code;

(d) New York city fire department pension fund, subchapter two-the employer contribution determined pursuant to paragraph two of subdivision b of section 13-331 of the code; and

(e) Board of education retirement system of the city-the employer contribution determined pursuant to subparagraph four of paragraph (c) of subdivision sixteen of section twenty-five hundred seventy-five of the education law.

6. "Responsible obligor." Any governmental entity required by any provision of law to pay contributions to a retirement system on behalf of any members thereof, whether or not such entity is the employer of such members.

7. "Valuation rate of interest." Where used herein with respect to a retirement system in relation to any fiscal year of the city, the term "valuation rate of interest" shall mean the rate per centum per annum of interest required by law to be used for the purpose of any actuarial valuation, determination or appraisal made to determine the amount of the normal contribution payable to the contingent reserve fund of such retirement system in such fiscal year.

b. In relation to each responsible obligor, the nineteen hundred eighty-eight unfunded accrued liability adjustment shall be an amount determined pursuant to the applicable provisions of subdivision c to s, inclusive, of this section.

c. Upon the basis of the actuarial tbles and actuarial methods in effect for valuation purposes with respect to determination of the normal contribution payable to the contingent reserve fund of each retirement system in the city's nineteen hundred eighty-seven-nineteen hundred eighty-eight fiscal year and the valuation rate of interest for such retirement system for such fiscal year, there shall be determined, as of June thirtieth, nineteen hundred eighty-eight, the amount of the actuarial accrued liability of each retirement system, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

d. Upon the basis of the actuarial tables and actuarial methods in effect for valuation purposes with respect to determination of the normal contribution payable to the contingent reserve fund of such retirmement system in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year and the valuation rate of interest for such retirement system for such fiscal year, there shall be determined, as of June thirtieth, nineteen hundred eighty-eight, the amount of the actuarial accrued liability of each retirement system, computed pursuant to the entry age normal cost method of ascertaining such actuarial accrued liability.

e. In any case where no more than one responsible obligor is required by law to make contributions to the contingent reserve fund of a retirement system on account of its members:

(1) if the amount computed with respect to such retirement system pursuant to subdivision d of this section is greater than the amount computed in relation to such system pursuant to subdivision c of this section, the nineteen hundred eighty-eight unfunded accrued liability adjustment with respect to such obligor shall be a charge in an amount which, when paid by such obligor to the contingent reserve fund of such retirement system in ten equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of the valuation rate of interest for such retirement system for such nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, of the excess of the

amount computed pursuant to such subdivision d over the amount computed pursuant to such subdivision c.

(2) if the amount computed with respect to such retirement system pursuant to subdivision c of this section is greater than the amount computed in relation to such system pursuant to subdivision d of this section, the nineteen hundred eighty-eight unfunded accrued liability adjustment with respect to such obligor shall be a credit in an amount which, when credited in ten equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the contributions which such obligor would otherwise be required to pay to the contingent reserve fund pursuant to law, shall be the actuarial equivalent, on the basis of the valuation rate of interest for such retirement system for such nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, of the excess of the amount computed pursuant to such subdivision c over the amount computed pursuant to such subdivision d.

f. In any case where more than one responsible obligor is required by law to make contributions to the contingent reserve fund of a retirement system on account of any of its members:

(1) The actuary shall determine the portion of the liability (other than any liability on account of employees of the senior colleges of the city university) computed for such retirement system pursuant to subdivision c of this section, which portion is attributable to each such obligor on the basis of the members with respect to whom such obligor is required by law to make contributions to such retirement system.

(2) The actuary shall determine the portion of the liability (other than any liability on account of employees of such senior colleges) computed pursuant to subdivision d of this section, which portion is attributable to each such obligor on such basis.

g. If the portion computed pursuant to paragraph two of subdivision f of this section with respect to any such obligor is greater than the portion computed pursuant to paragraph one of such subdivision with respect to such obligor, the nineteen hundred eighty-eight unfunded accrued liability adjustment with respect to such obligor shall be a charge in an amount which, when paid by such obligor to the contingent reserve fund of such retirement system in ten equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of the valuation rate of interest for such retirement system for such nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, of the excess of the amount of such portion computed pursuant to such paragraph two over the amount of such portion computed pursuant to such paragraph one.

h. If the portion computed pursuant to paragraph one of subdivision f of this section with respect to any such obligor is greater than the portion computed pursuant to paragraph two of such subdivision with respect to such obligor, the nineteen hundred eighty-eight unfunded accrued liability adjustment with respect to such obligor shall be a credit in an amount which, when credited in ten equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the amounts which such obligor would otherwise be required to pay to the contingent reserve fund pursuant to law, shall be the actuarial equivalent, on the basis of the valuation rate of interest for such retirement system for such nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, of the excess of the amount of such portion computed pursuant to such paragraph one over the amount of such portion computed pursuant to such paragraph two.

i. (1) If the nineteen hundred eighty-eight unfunded accrued liability adjustment determined with respect to any responsible obligor in relation to a retirement system pursuant to the preceding subdivisions of this section is a charge, the total of the amounts otherwise required to be contributed by such obligor to the contingent reserve fund of such retirement system in each fiscal year commencing with the nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year and ending with the nineteen hundred ninety-seven-nineteen hundred ninety-eight fiscal year pursuant to law shall be increased by the amount of one annual installment of such nineteen hundred eighty-eight unfunded accrued liability adjustment determined with respect to such obligor.

(2) If the nineteen hundred eighty-eight unfunded accrued liability adjustment determined with respect to any responsible obligor in relation to a retirement system pursuant to the preceding subdivisions of this section is a credit, the total of the amounts otherwise required to be contributed by such obligor to the contingent fund of such retirement system in each city fiscal year commencing with the nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year and ending with the nineteen hundred ninety-seven-nineteen hundred ninety-eight fiscal year pursuant to law shall be reduced by the amount of one annual installment of such nineteen hundred eighty-eight unfunded accrued liability adjustment with respect to such obligor.

j. The actuary shall determine the portion of the liability computed in relation to the New York city employees' retirement system pursuant to subdivision c of this section, which portion is attributable to employees of the senior colleges of the city university of New York.

k. The actuary shall determine the portion of the liability computed in relation to such retirement system pursuant to subdivision d of this section, which portion is attributable to employees of such senior colleges.

l. If the portion computed pursuant to subdivision k of this section is greater than the portion computed pursuant to subdivision j of this section, the NYCERS nineteen hundred eighty-eight unfunded accrued liability adjustment attributable to the senior colleges of the city university of New York shall be a charge in an amount which, when paid by the state and the city to the contingent reserve fund of such retirement system pursuant to section sixty-two hundred thirty-one of the education law in ten equal annual installments, commencing with payment of a first installment in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of the valuation rate of interest for such nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, of the excess of the amount of such portion computed pursuant to such subdivision k over the amount of such portion computed pursuant to such subdivision i.

m. If the portion computed pursuant to subdivision i of this section is greater than the portion computed pursuant to subdivision k of this section, the NYCERS nineteen hundred eighty-eight unfunded accrued liability adjustment attributable to such senior colleges shall be a credit in an amount which, when credited (pursuant to section sixty-two hundred thirty-one of the education law) in ten equal annual installments (the first of which installments is to be credited in the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the amounts which the state and the city would otherwise be required to pay to the contingent reserve fund of such employees' retirement system pursuant to law, shall be the actuarial equivalent, on the basis of the valuation rate of interest for such retirement system for such nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, of the excess of the amount of such portion computed pursuant to such subdivision i over the amount of such portion computed pursuant to such subdivision k.

n. The actuary shall determine the portion of the liability computed in relation to the teachers' retirement system pursuant to subdivision c of this section, which portion is attributable to employees of the senior colleges of the city university of New York.

o. The actuary shall determine the portion of the liability computed in relation to the teachers' rerirement system pursuant to subdivision d of this section, which portion is attributable to employees of such senior colleges.

p. If the portion computed pursuant to subdivision o of this section is greater than the portion computed pursuant to subdivision n of this section, the NYCTRS nineteen hundred eighty-eight unfunded accrued liability adjustment attributable to employees of the senior colleges of the city university of New York shall be a charge in an amount which, when paid by the state and the city to the contingent reserve fund of the teachers' retirement system pursuant to section sixty-two hundred thirty-one of the education law in ten equal installments, commencing with payment of a first installment for the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, shall be the actuarial equivalent, on the basis of the valuation rate of interest for such retirement system for such nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, of the excess of the amount of such portion computed pursuant to

such subdivision n.

g. If the portion computed pursuant to subdivision n of this section is greater than the portion computed pursuant to subdivision o of this section, the NYCTRS nineteen hundred eighty-eight unfunded accrued liability adjustment attributable to employees of such senior colleges shall be a credit in an amount which, when credited pursuant to section sixty-two hundred thirty-one of the education law in ten equal annual installments (the first of which installments is to be credited for the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year) in reduction of the amounts which the state and the city would otherwise be required to pay to the contingent reserve fund of the teachers' retirement system pursuant to law, shall be the actuarial equivalent, on the basis of the valuation rate of interest for such retirement system for such nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year, of the excess of the amount of such portion computed pursuant to such subdivision n over the amount of such portion computed pursuant to such subdivision o.

r. If the NYCERS nineteen hundred eighty-eight unfunded accrued liability adjustment attributable to employees of the senior colleges of the city university of New York, as determined pursuant to subdivisions j, k and l of this section, or the New York city teachers' retirement system nineteen hundred eighty-eight unfunded accrued liability adjustment attribuatable to employees of such senior colleges, as determined pursuant to subdivisions n, o and p of this section is a charge:

(1) the state, with respect to each fiscal year of the city occurring during the period commencing on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-eight, and at the time and in the manner prescribed by the applicable provisions of section sixty-two hundred thirty-one of the education law, shall contribute to the affected retirement system an installment amount representing the state's share of such charge for such fiscal year, as prescribed by such provisions; and

(2) the city, with respect to each such fiscal year, and at the time and in the manner prescribed by the applicable provisions of such section of the education law, shall contribute an installment amount representing the city's share of such charge for such fiscal year, as prescribed by such provisions.

s. If the NYCERS nineteen hundred eighty-eight unfunded accrued liability adjustment attributable to employees of the senior colleges of the city university of New York, as determined pursuant to subdivisions j, k and m of this section, or the NYCTRS nineteen hundred eighty-eight unfunded accrued liability adjustment attributable to employees of such senior colleges, as determined pursuant to subdivisions n, o and q of this subdivision, is a credit:

(1) then with respect to each fiscal year of the city occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-eight, there shall be credited in favor of the state, in relation to its obligations to contribute to the affected retirement system on account of employees of such senior colleges, and at the time and in the manner prescribed by the applicable provisions of section sixty-two hundred thirty-one of the education law, an installment amount representing the state's share of such credit for such fiscal year, as prescribed by such provisions; and

(2) with respect to each such fiscal year occurring during such period, there shall be credited in favor of the city, in relation to the city's obligations to contribute to the affected retirement system on account of employees of such senior colleges, and at the time and in the manner prescribed by the applicable provisions of such section sixty-two hundred thirty-one, an installment amount representing the city's share of such credit for such fiscal year, as prescribed by such provisions.

t. Any amount required to be contributed to a retirement system by a responsible obligor with respect to any fiscal year under the provisions of this section shall be payable with interest on such amount at the valuation rate of interest for such retirement system for such fiscal year.

u. In the same manner and to the same extent as the provisions of sections 13-130 (relating to obligations of

certain participating employers of the New York city employees' retirement system to contribute to such retirement system), 13-132 (relating to contributions by the state in relation to certain members of such retirement system who are officers and employees in the courts) and 13-529 (relating to similar contributions by the state in relation to certain like court personnel who are members of the teachers' retirement system) apply to such participating employers and the state with respect to their obligations to make contributions to such retirement systems under other employer contribution laws, the provision of such sections 13-130, 13-132 and 13-529 shall apply to the contributions required to be made to such retirement systems under the provisions of this section.

v. In the determination of the normal contribution payable to any retirement system with respect to each fiscal year of the city occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-eight, the present value, as of June thirtieth next preceding such fiscal year, of all future installments of the nineteen hundred eighty-eight unfunded accrued liability adjustment with respect to such retirement system then remaining unpaid or unapplied, as the case may be:

(1) shall be treated as an asset, if such adjustment with respect to such retirement system is a charge; and

(2) shall be subtracted from assets, if such adjustment with respect to such retirement system is a credit.

**HISTORICAL NOTE**

Section added chap 581/1989 § 76

**FOOTNOTES**

3

[Footnote 3]: * There are two almost identical Sections 13-638.1.



Administrative Code of the City of New York



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

*NYC Administrative Code 13-638.2*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-638.2 Supplementary provisions regarding employer contributions to retirement systems for fiscal years beginning on or after July first, nineteen hundred eighty-nine, for amortization of consolidated unfunded accrued liabilities and balance sheet liabilities for the nineteen hundred ninety-nineteen hundred ninety-one, nineteen hundred ninety-one-nineteen hundred ninety-two and nineteen hundred ninety-two-nineteen hundred ninety-three fiscal years, and for amortization of such liabilities and certain other unfunded accrued liabilities pursuant to the level percentage of payroll method in certain fiscal years thereafter; rates of interest.

a. As used in this section, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

1. "Retirement system". Any of the following: the New York city employees' retirement system; the teachers' retirement system; the police pension fund provided for by subchapter two of chapter two of this title; the fire department pension fund provided for by subchapter two of chapter three of this title; and the board of education retirement system of the city.

2. "Teachers' retirement system". The retirement system of the teachers' retirement association provided for by chapter four of this title.

3. "NYCERS". The New York city employees' retirement system.

4. "NYCTRS". The teachers' retirement system.

5. "PPF". The police pension fund provided for in subchapter two of chapter two of this title.

6. "FPF". The fire department pension fund provided for by subchapter two of chapter three of this title.

7. "BERS". The board of education retirement system of the city.

8. "Contingent reserve fund". The contingent reserve fund of a retirement system.

9. "Governmental entity". The city, the state or a public authority, corporation or body corporate or other agency of government.

9-a. "Fiscal year". A fiscal year of the city as defined in section two hundred twenty-six of the New York city charter.

9-b. "Senior colleges". The senior colleges of the city university of New York.

9-c. "UAL". Unfunded accrued liability.

9-d. "BSL". Balance sheet liability.

10. "Responsible obligor". Any governmental entity required by any provision of law to pay contributions to a retirement system on behalf of any members thereof, whether or not such entity is the employer of such members.

10-a. "General UAL and BSL responsible obligor". Any responsible obligor (as defined in paragraph ten of this subdivision) other than the state of New York and the city of New York in their capacity as senior college UAL and BSL responsible obligors (as defined in paragraph ten-b of this subdivision).

10-b. "Senior college UAL and BSL responsible obligors". The city and the state of New York, as contributors to NYCERS and NYCTRS pursuant to their respective shares, obligations and rights as provided for in section sixty-two hundred thirty-one of the education law.

11. "Valuation rate of interest". Where used herein with respect to a retirement system in relation to any fiscal year of the city, the term "valuation rate of interest" shall mean the rate per centum per annum of interest required by law to be used for the purpose of any actuarial valuation, determination or appraisal made to determine the amount of the normal contribution payable to the contingent reserve fund of such retirement system in such fiscal year.

12. "Special interest". (i) Such term, where used in relation to any retirement system, other than BERS, shall mean special interest as defined for such retirement system as follows: NYCERS-subdivision twenty-nine of section 13-101 of this title; PPF-subdivision twenty of section 13-214 of this title; FPF-subdivision twenty-four of section 13-313 of this title; and NYCTRS-subdivision thirty-five of section 13-501 of this title.

(ii) Such term, where used in relation to BERS, shall mean a distribution to the annuity savings fund, in addition to regular interest, which distribution (A) for each of the periods as to which the applicable provisions of this section grant special interest, consists of the amount prescribed by such provisions for such period and (B) for each such period, is credited in such applicable amount in the annuity savings fund accounts of members who are eligible under such provisions for crediting of such amount for such period.

13. "Additional interest". (i) Such term, where used in relation to any retirement system, other than BERS, shall mean additional interest as defined for such retirement system as follows: NYCERS-subdivision thirty of section 13-101 of this title; PPF-subdivision twenty-one of section 13-214 of this title; FPF-subdivision twenty-five of section 13-313 of this title; and NYCTRS-subdivision thirty-six of section 13-501 of this title.

(ii) Such term, where used in relation to BERS, shall mean a distribution to the reserve-for-increased-take-home-pay, in addition to regular interest, which distribution (A) for each of the periods as to which the applicable provisions of this section grant additional interest, consists of the amount prescribed by such provisions for such period and (B) for each such period, is included in such applicable amount in the reserve-for-increased-take-home-pay of each member who is eligible under such provisions for inclusion of such amount for such period.

14. "Supplementary interest". (i) Such term, where used in relation to a retirement system, other than BERS, shall mean supplementary interest as defined for such retirement system as follows: NYCERS-subdivision sixty-eight of section 13-101 of this title; PPF-subdivision twenty-four of section 13-214 of this title; FPF-subdivision twenty-six of section 13-313 of this title; and NYCTRS-subdivision forty-nine of section 13-501 of this title.

(ii) Such term, where used in relation to BERS, shall mean an annual allowance, in addition to regular interest, of interest on the mean amount for the preceding year in each of the funds creditable with supplementary interest (as defined in paragraph fifteen of this subdivision) of BERS, which allowance, (A) for each of the periods as to which the applicable provisions of this section grant supplementary interest, consists of the amount prescribed by such provisions for such period and (B) for each such period, is credited in such applicable amount to such funds at the time, in the manner, to the extent and subject to the exclusions prescribed by such provisions.

15. "Fund creditable with supplementary interest". (a) In the case of NYCERS, PPF, FPF and BERS, such term shall mean each constituent fund mentioned in the applicable provisions of sections 13-124, 13-224 and 13-324 of this title and in section eight of the rules and regulations of BERS, other than the annuity savings fund. In the case of NYCTRS, such term shall mean each constituent fund mentioned in section 13-520 of this title, other than the annuity savings fund, pension reserve fund number two and the expense fund.

(b) Nothing contained in this subdivision shall be construed as providing for supplementary interest with respect to any reserve-for-increased-take-home-pay of any member of a retirement system entitled to such a reserve or with respect to any accumulation-for-increased-take-home-pay (as defined in subdivision fifteen of section 13-313 of this title).

16. "Significant change in an actuarial valuation method". (i) Subject to the provisions of subparagraphs (ii) and (iii) of this paragraph, the term "significant change in an actuarial valuation method" shall mean any change in any actuarial premise, device or calculation system (other than the valuation rate of interest and actuarial tables) used by the actuary in valuing the assets and liabilities of a retirement system, which change causes the actuarial accrued liability (computed pursuant to the entry age normal cost method of determining such liability) of such retirement system, as determined for the first fiscal year of the city for which such change is effective, to increase or decrease by more than ten per centum above or below the amount of the actuarial accrued liability, as determined for the fiscal year next preceding such first fiscal year on the basis of the valuation rate of interest, actuarial tables and actuarial methods in effect for valuation purposes with respect to determination of the normal contribution payable to such retirement system in such next preceding fiscal year.

(ii) For the purposes of this paragraph, all changes in actuarial premises, devices or calculation systems (other that the valuation rate of interest and actuarial tables) used in valuing assets and liabilities, which changes take effect simultaneously, shall be aggregated in determining the amount of increase or decrease in the actuarial accrued liability pursuant to subparagraph (i) of this paragraph, regardless of whether any such individual simultaneous change so aggregated is a significant change in an actuarial method within the meaning of such subparagraph (i). In any case where the aggregate of such simultaneous changes causes an increase or decrease by more than ten per centum in the actuarial accrued liability of a retirement system for the first fiscal year of effectiveness of such changes as described in subparagraph (i) of this paragraph, such aggregate shall be deemed to be a significant change in an actuarial valuation method for the purposes of this section.

(iii) The provisions of this subdivision shall not apply to any changes in an actuarial computation made to correct a mathematical or factual error.

17. "Post-June thirtieth, nineteen hundred ninety-nine unfunded accrued liability adjustment". Any unfunded accrued liability adjustment calculated pursuant to subdivision k of this section.

18. "Phase-in period". The period beginning on July first, nineteen hundred ninety and ending on June thirtieth, nineteen hundred ninety-five.

19. "Regular installment period". The period beginning on July first, nineteen hundred ninety-five and ending on June thirtieth, two thousand ten.

20. "Retirement system undergoing consolidated UAL funding". Any of the following: NYCTRS, NYCERS or BERS.

21. "Charge". An amount which is required to be paid to a retirement system as an employer contribution.

22. "Credit". An amount which is required to be applied in reduction of employer contributions otherwise payable to a retirement system.

23. "Individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety". Any of the following, as applicable to NYCERS, NYCTRS or BERS as of June thirtieth, nineteen hundred ninety (including any portion thereof attributable to the senior colleges): the revised unfunded accrued liability contribution, the nineteen hundred eighty unfunded accrued liability adjustment, the nineteen hundred eighty-two unfunded accrued liability adjustment, the nineteen hundred eighty-five unfunded accrued liability adjustment, the nineteen hundred eighty-six unfunded accrued liability adjustment, the nineteen hundred eighty-eight unfunded accrued liability adjustment, the post-June thirtieth, nineteen hundred eighty-nine unfunded accrued liability adjustment established for BERS pursuant to subdivision k of this section and all installments of amortization of bond sale gains and losses and all installments of funding of supplemental retirement allowances.

24. "Recomputed annual installment of individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety". (i) With respect to each retirement system undergoing consolidated UAL funding (as defined in paragraph twenty of this subdivision), an installment amount computed in accordance with the succeeding subparagraphs of this paragraph in relation to each individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety (as defined in paragraph twenty-three of this subdivision) for such retirement system.

(ii) For each such retirement system, its actuary shall determine, as of June thirtieth, nineteen hundred ninety and on the basis of eight and one-quarter per centum interest per annum, the present value of all those annual installments of such individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety in relation to such retirement system, which installments, in the absence of the enactment of chapter nine hundred forty-eight of the laws of nineteen hundred ninety and the act which added this paragraph, would have remained, as of such June thirtieth, due and unpaid (if a charge) or uncredited (if a credit) with respect to fiscal years succeeding such June thirtieth.

(iii) The actuary of such retirement system shall determine an amount which, if paid to its contingent reserve fund, or applied as a credit, as the case may be, commencing with a first payment or credit in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, in a number of equal annual installments equal to the number of such annual installments remaining due and unpaid or uncredited with respect to such retirement system as of June thirtieth, nineteen hundred ninety as described in subparagraph (ii) of this paragraph, would be the actuarial equivalent, as of such June thirtieth, on the basis of nine per centum interest per annum, of the present value determined pursuant to such subparagraph (ii).

(iv) With respect to each individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety for

a retirement system undergoing consolidated UAL funding, the recomputed annual installment of individual UAL amortization in affect*4 as of June thirtieth, nineteen hundred ninety shall be one equal annual installment determined with respect to such individual UAL amortization for such retirement system pursuant to subparagraph (iii) of this paragraph.

25. "Single-year aggregate of recomputed annual installments of individual UAL amortizations in effect as of June thirtieth, nineteen hundred ninety". With respect to any retirement system undergoing consolidated UAL funding (as defined in paragraph twenty of this subdivision), such aggregate shall be the total amount obtained, in relation to any fiscal year occurring during the phase-in period (as defined in paragraph eighteen of this subdivision) by adding together all recomputed annual installments of individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety (as defined in paragraph twenty-four of this subdivision), as applicable to such fiscal year for such retirement system. For the purpose of such addition, any such recomputed installments which constitute a credit shall be treated as a negative quantity.

26. "General nineteen hundred ninety BSL contribution". Any of the following: the NYCERS general nineteen hundred ninety BSL contribution determined pursuant to subdivision v of this section, the NYCTRS general nineteen hundred ninety BSL contribution determined pursuant to subdivision x of this section or the BERS general nineteen hundred ninety BSL contribution determined pursuant to subdivision z of this section.

27. "Nineteen hundred ninety UAL credit". (i) An amount determined for each retirement system undergoing consolidated UAL funding (as defined in paragraph twenty of this subdivision) which shall be determined as hereinafter provided in this paragraph.

(ii) Upon the basis of the actuarial tables and actuarial methods in effect for valuation purposes with respect to determination of the normal contribution payable to the contingent reserve fund of such retirement system in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year and an interest rate of nine per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred ninety, the amount of the unfunded accrued liability of such retirement system, computed pursuant to the entry age normal cost method of ascertaining such unfunded accrued liability.

(iii) There shall be determined with respect to such retirement system, as of June thirtieth, nineteen hundred ninety, on the basis of an interest rate of eight and one-quarter per centum per annum, the amount obtained by adding together (A) the present values of all those annual installments of individual UAL amortizations in effect as of June thirtieth, nineteen hundred ninety (as defined in paragraph twenty-three of this subdivision), including any portion thereof attributable to the senior colleges, which installments, in the absence of the enactment of chapter nine hundred forty-eight of the laws of nineteen hundred ninety and the act which added this paragraph, would have remained, as of such June thirtieth, due and unpaid (if a charge) or uncredited (if a credit) with respect to fiscal years succeeding such June thirtieth, and (B) the present value, as of such June thirtieth, of all installments of balance sheet liability (including any portion thereof attributable to the senior colleges), which installments, in the absence of the enactment of such chapter nine hundred forty-eight and the act which added this paragraph, would have remained due and unpaid with respect to fiscal years succeeding such June thirtieth.

(iv) The nineteen hundred ninety UAL credit with respect to such retirement system shall be the remainder obtained by subtracting from the total amount of present values determined pursuant to subparagraph (iii) of this paragraph, the amount of unfunded accrued liability determined pursuant to subparagraph (ii) of this paragraph.

28. "Annual installment of the nineteen hundred ninety UAL credit". Any of twenty equal annual installments of credit with respect to each retirement system undergoing consolidated UAL funding (as defined in paragraph twenty of this subdivision), which installments, if applied over a period of twenty fiscal years, commencing with the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, would be the actuarial equivalent, as of June thirtieth, nineteen hundred ninety and on the basis of interest at the rate of nine per centum per annum, of the nineteen hundred ninety

UAL credit (as defined in paragraph twenty-seven of this subdivision), as applicable to such retirement system.

29. "NYCERS phase-in installment of general nineteen hundred ninety consolidated UAL contribution". (i) With respect to any fiscal year included in the phase-in period (as defined in paragraph eighteen of this subdivision), such phase-in installment shall consist of an installment amount determined in relation to NYCERS in the manner hereinafter provided for in this paragraph.

(ii) The single-year aggregate of recomputed annual installments of UAL amortizations in effect as of June thirtieth, nineteen hundred ninety (as defined in paragraph twenty-five of this subdivision), as applicable to NYCERS for such fiscal year, and one NYCERS computation installment of nineteen hundred ninety BSL (as defined in paragraph thirty-seven of this subdivision) shall be added together.

(iii) From the amount resulting from such addition, there shall be subtracted the amount obtained by adding together (A) one annual installment of the nineteen hundred ninety UAL credit (as defined in paragraph twenty-eight of this subdivision), as applicable to NYCERS and (B) the amount of one NYCERS comprehensive installment of nineteen hundred ninety BSL contribution (as defined in paragraph thirty-eight of this subdivision) applicable to such fiscal year.

(iv) From the remainder resulting from such subtraction, there shall be subtracted the portion of such remainder which is attributable to the senior colleges.

(v) The remainder resulting from the subtraction prescribed by subparagraph (iv) of this paragraph shall be the NYCERS phase-in installment of general nineteen hundred ninety consolidated UAL contribution for such fiscal year.

30. "NYCERS phase-in installment of nineteen hundred ninety consolidated UAL contribution attributable to the senior colleges". With respect to each fiscal year included in the phase-in period (as defined in paragraph eighteen of this subdivision), such phase-in installment shall consist of an installment amount for such fiscal year which shall equal the portion of the remainder computed for the same fiscal year pursuant to subparagraph (iii) of paragraph twenty-nine of this subdivision, which portion is attributable to the senior colleges.

31. "NYCTRS phase-in installment of general nineteen hundred ninety consolidated UAL contribution". (i) With respect to any fiscal year included in the phase-in period (as defined in paragraph eighteen of this subdivision), such phase-in installment shall consist of an installment amount determined in relation to NYCTRS in the manner hereinafter provided for in this paragraph.

(ii) The single-year aggregate of recomputed annual installments of UAL amortizations in effect as of June thirtieth, nineteen hundred ninety (as defined in paragraph twenty-five of this subdivision), as applicable to NYCTRS for such fiscal year, and one NYCTRS computation installment of nineteen hundred ninety BSL (as defined in paragraph thirty-seven of this subdivision) shall be added together.

(iii) From the amount resulting from such addition, there shall be subtracted the amount obtained by adding together (A) one annual installment of the nineteen hundred ninety UAL credit (as defined in paragraph twenty-eight of this subdivision), as applicable to NYCTRS and (B) the amount of one NYCTRS comprehensive installment of nineteen hundred ninety BSL contribution (as defined in paragraph thirty-eight of this subdivision) applicable to such fiscal year.

(iv) From the remainder resulting from such subtraction, there shall be subtracted the portion of such remainder which is attributable to the senior colleges.

(v) The remainder resulting from the subtraction prescribed by subparagraph (iv) of this paragraph shall be the NYCTRS phase-in installment of general nineteen hundred ninety consolidated UAL contribution for such fiscal year.

32. "NYCTRS phase-in installment of nineteen hundred ninety consolidated UAL contribution attributable to the senior colleges". With respect to each fiscal year included in the phase-in period (as defined in paragraph eighteen of this subdivision), such phase-in installment shall consist of an installment amount for such fiscal year which shall equal the portion of the remainder computed for the same fiscal year pursuant to subparagraph (iv) of paragraph thirty-one of this subdivision, which portion is attributable to the senior colleges.

33. "BERS phase-in installment of general nineteen hundred ninety consolidated UAL contribution". (i) With respect to any fiscal year included in the phase-in period (as defined in paragraph eighteen of this subdivision), such phase-in installment shall consist of an installment amount determined in relation to BERS in the manner hereinafter provided for in this paragraph.

(ii) The single-year aggregate of recomputed annual installments of UAL amortizations in effect as of June thirtieth, nineteen hundred ninety (as defined in paragraph twenty-five of this subdivision), as applicable to BERS for such fiscal year, and one BERS computation installment of nineteen hundred ninety BSL (as defined in paragraph thirty-seven of this subdivision) shall be added together.

(iii) From the amount resulting from such addition, there shall be subtracted the amount obtained by adding together (A) one annual installment of the nineteen hundred ninety UAL credit (as defined in paragraph twenty-eight of this subdivision), as applicable to BERS and (B) the amount of one BERS comprehensive installment of nineteen hundred ninety BSL contribution (as defined in paragraph thirty-eight of this subdivision) applicable to such fiscal year.

(iv) The reminder*5 resulting from the subtraction prescribed by subparagraph (iii) of this paragraph shall be the BERS phase-in installment of general nineteen hundred ninety consolidated UAL contribution for such fiscal year.

34. "Unfunded accrued liability as of June thirtieth, nineteen hundred ninety". With respect to any retirement system undergoing consolidated UAL funding (as defined in paragraph twenty of this subdivision), the unfunded accrued liability of such retirement system as determined pursuant to subparagraph (ii) of paragraph twenty-seven of this subdivision.

35. "Nineteen hundred ninety balance sheet liability". With respect to any retirement system undergoing consolidated UAL funding (as defined in paragraph twenty of this subdivision), the total present value, determined as of June thirtieth, nineteen hundred ninety on the basis of an interest rate of nine per centum per annum, of all installments of general nineteen hundred ninety BSL contribution (as defined in paragraph twenty-six of this subdivision) and all installments of nineteen hundred ninety BSL contribution attributable to the senior colleges, if any, payable to such retirement system pursuant to the applicable provisions of subdivisions w and y of this section.

36. "Prior BSL contribution". Any of the following as in effect on June thirtieth, nineteen hundred ninety (including any portion thereof attributable to the senior colleges): (i) the BSL contribution of NYCERS determined pursuant to item (iii) of subparagraph (k) of paragraph four of subdivision b of section 13-127 of this title; (ii) the BSL contribution of NYCTRS determined pursuant to subparagraph (c) of paragraph eleven of subdivision f of section 13-527 of this title; and (iii) the BSL contribution of BERS determined pursuant to subparagraph sixteen-b of paragraph (c) of subdivision sixteen of section twenty-five hundred seventy-five of the education law.

37. "Computation installment of nineteen hundred ninety BSL". (i) Any installment amount determined as hereinafter provided in this paragraph.

(ii) The actuary of NYCERS, NYCTRS and BERS shall determine with respect to each such retirement system, as of June thirtieth, nineteen hundred ninety on the basis of eight and one-quarter per centum interest per annum, the present value of the thirty-one equal annual installments of the prior BSL contribution (as defined in paragraph thirty-six of this subdivision) of such retirement system (including any portion thereof attributable to the senior colleges), which installments, in the absence of the enactment of chapter nine hundred forty-eight of the laws of nineteen hundred ninety and the act which added this subdivision, would have remained due and unpaid to such

retirement system as of such June thirtieth.

(iii) The actuary shall determine an amount which, if paid to the contingent reserve fund of such retirement system in thirty-one equal annual installments, commencing with a first payment in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, would be the actuarial equivalent, on the basis of an interest rate of nine per centum per annum, of such present value.

(iv) Each of the first five of such installments determined pursuant to subparagraph (iii) of this paragraph with respect to such retirement system shall be a computation installment of nineteen hundred ninety BSL.

38. "Comprehensive installment of nineteen hundred ninety BSL contribution". (i) An installment amount determined by the actuary of NYCERS, NYCTRS and BERS with respect to each such retirement system in the manner hereinafter provided in this paragraph.

(ii) The actuary shall determine an amount which, if paid to the contingent reserve fund of such retirement system in twenty equal annual installments, commencing with a first payment in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, would be the actuarial equivalent, on the basis of an interest rate of nine per centum per annum, of the present value determined pursuant to subparagraph (ii) of paragraph thirty-seven of this subdivision.

(iii) Each of the first five of such installments determined pursuant to subparagraph (ii) of this paragraph with respect to such retirement system shall be a comprehensive installment of nineteen hundred ninety BSL contribution.

39. "NYCERS regular installment of general nineteen hundred ninety consolidated UAL contribution". Any installment payable pursuant to subdivision o of this section.

40. "NYCERS regular installment of nineteen hundred ninety consolidated UAL contribution attributable to the senior colleges". Any installment payable pursuant to subdivision p of this section.

41. "NYCTRS regular installment of general nineteen hundred ninety consolidated UAL contribution". Any installment payable pursuant to subdivision q of this section.

42. "NYCTRS regular installment of nineteen hundred ninety consolidated UAL contribution attributable to the senior colleges". Any installment payable pursuant to subdivision r of this section.

43. "BERS regular installment of general nineteen hundred ninety consolidated UAL contribution". Any installment payable pursuant to subdivision s of this section.

44. "General nineteen hundred ninety consolidated UAL contribution". Any of the following: the general nineteen hundred ninety consolidated UAL contributions for which phase-in installments are determined pursuant to paragraphs twenty-nine, thirty-one and thirty-three of this subdivision, the NYCERS general nineteen hundred ninety consolidated UAL contribution for which regular installments are determined pursuant to subdivision o of this section, the NYCTRS general nineteen hundred ninety consolidated unfunded accrued liability contribution for which regular installments are determined pursuant to subdivision q of this section or the BERS general nineteen hundred ninety consolidated unfunded accrued liability contribution for which regular installments are determined pursuant to subdivision s of this section.

45. "NYCERS installment of general nineteen hundred ninety BSL contribution". Any installment payable pursuant to subdivision v of this section.

46. "NYCERS installment of nineteen hundred ninety BSL contribution attributable to the senior colleges". Any installment payable pursuant to subdivision w of this section.

47. "NYCTRS installment of general nineteen hundred ninety BSL contribution". Any installment payable

pursuant to subdivision x of this section.

48. "NYCTRS installment of nineteen hundred ninety BSL contribution attributable to the senior colleges". Any installment payable pursuant to subdivision y of this section.

49. "BERS installment of general nineteen hundred ninety BSL contribution". Any installment payable pursuant to subdivision z of this section.

50. "UAL subject to consolidated amortization". The amount of the unfunded accrued liability of each of NYCERS, NYCTRS and BERS (including, in the case of NYCERS and NYCTRS any such liability attributable to the senior colleges), which liability, prior to July first, nineteen hundred ninety-three, was required to be amortized by phase-in and other consolidated UAL contributions designated in subdivision bb of this section.

51. "BSL subject to consolidated amortization". The amount of the balance sheet liability of each of NYCERS, NYCTRS and BERS (including in the case of NYCERS and NYCTRS, any such liability attributable to the senior colleges), which liability, prior to July first, nineteen hundred ninety-three, was required to be amortized by phase-in and other BSL contributions designated in subdivision bb of this section.

52. "Balance of unfunded UAL subject to consolidated amortization". An amount, separately determined for each of NYCERS, NYCTRS and BERS by its actuary, equal to the present value (based on an interest rate of nine per centum per annum), as of June thirtieth, nineteen hundred ninety-three, of the remaining unpaid installments, as of such June thirtieth, of the amortization (as prescribed by subdivisions aa and bb of this section) of the UAL subject to the consolidated amortization of such retirement system.

53. "Balance of unfunded BSL subject to consolidated amortization". An amount, separately determined for each of NYCERS, NYCTRS and BERS by its actuary, equal to the present value (based on an interest rate of nine per centum per annum), as of June thirtieth, nineteen hundred ninety-three, of the remaining unpaid installments, as of such June thirtieth, of the amortization (as prescribed by subdivisions aa and bb of this section) of the BSL subject to the consolidated amortization of such retirement system.

54. "Revised amortization period". The period beginning on July first, nineteen hundred ninety-three and ending on June thirtieth, two thousand ten.

55. "Special provisions for funding and financing senior college UAL and BSL amortization". The provisions of the education law and any other law which apply to (i) the time and manner of payment, (ii) payment financing, pre-financing and reimbursement, (iii) determination of city and state shares of payments, (iv) exclusion of UAL and BSL payment obligations from senior college operating expenses and from senior college "approved programs and services", or (v) any other funding of financing method or responsibility, with respect to contribution installments required to be paid by senior college UAL and BSL responsible obligors of each of NYCERS and NYCTRS for the fiscal years included in the period beginning on July first, nineteen hundred ninety and ending on June thirtieth, nineteen hundred ninety-three, as designated in subdivision bb of this section.

56. "NYCERS post-June thirtieth, nineteen hundred ninety UAL established pursuant to retirement incentive and part-time employee legislation". The sum obtained by adding together:

(i) The actuarial present value, as required to be computed by section twenty-six of chapter two hundred ten of the laws of nineteen hundred ninety, of the additional benefits payable to NYCERS beneficiaries pursuant to such chapter;

(ii) The actuarial present value, as required to be computed pursuant to section eleven of chapter one hundred seventy-eight of the laws of nineteen hundred ninety-one, of the additional benefits payable to NYCERS beneficiaries pursuant to such chapter;

(iii) The actuarial present value, as computed pursuant to section eleven of chapter six hundred forty-three of the laws of nineteen hundred ninety-two, of the additional benefits payable to NYCERS beneficiaries pursuant to such chapter; and

(iv) The additional accrued employer cost, as computed pursuant to subdivision gg of this section, of providing the rights, benefits and privileges conferred by chapter seven hundred forty-nine of the laws of nineteen hundred ninety-two upon members of NYCERS.

57. "NYCERS balance of retirement incentive and part-time employee UAL". The amount, determined for NYCERS by its actuary, obtained by adding together the present values (based on an interest rate of nine per centum per annum), as of June thirtieth, nineteen hundred ninety-three, of the remaining unpaid annual installments, as of such June thirtieth, of the amortizations (as prescribed by the provisions of law referred to in subparagraphs (i), (ii), (iii) and (iv) of paragraph fifty-six of this subdivision) of the NYCERS post-June thirtieth, nineteen hundred ninety UAL established pursuant to retirement incentive and part-time employee legislation.

58. "NYCTRS post-June thirtieth, nineteen hundred ninety UAL established pursuant to retirement incentive legislation". The sum obtained by adding together:

(i) The actuarial present value, as required to be computed by section twenty-six of chapter two hundred ten of the laws of nineteen hundred ninety, of the additional benefits payable to NYCTRS beneficiaries pursuant to such chapter;

(ii) The actuarial present value, as required to be computed pursuant to section eleven of chapter one hundred seventy-eight of the laws of nineteen hundred ninety-one, of the additional benefits payable to NYCTRS beneficiaries pursuant to such chapter; and

(iii) The actuarial present value, as required to be computed pursuant to section ten of chapter four hundred ninety-four of the laws of nineteen hundred ninety-two, as amended by chapter eight hundred thirty-seven of the laws of nineteen hundred ninety-two, of the additional benefits payable to NYCTRS beneficiaries pursuant to such chapters.

59. "NYCTRS balance of retirement incentive UAL". The amount, determined for NYCTRS by its actuary, obtained by adding together the present values (based on an interest rate of nine per centum per annum), as of June thirtieth, nineteen hundred ninety-three, of the remaining unpaid annual installments, as of such June thirtieth, of the amortizations (as prescribed by the provisions of law referred to in subparagraphs (i), (ii) and (iii) of paragraph fifty-eight of this subdivision) of the NYCTRS post-June thirty*,10 nineteen hundred ninety UAL established pursuant to retirement incentive legislation.

60. "BERS post-June thirtieth, nineteen hundred ninety UAL established pursuant to retirement incentive and part-time employee legislation". The sum obtained by adding together:

(i) the actuarial present value, as required to be computed by section twenty-six of chapter two hundred ten of the laws of nineteen hundred ninety, of the additional benefits payable to BERS beneficiaries pursuant to such chapter; and

(ii) the additional accrued employer cost, as computed pursuant to subdivision gg of this section, of providing the rights, benefits and privileges conferred by chapter seven hundred forty-nine of the laws of nineteen hundred ninety-two upon members of BERS.

61. "BERS balance of retirement incentive and part-time employee UAL". The amount, determined for BERS by its actuary, obtained by adding together the present values (based on an interest rate of nine per centum per annum), as of June thirtieth, nineteen hundred ninety-three, of the remaining unpaid annual installments, as of such June thirtieth, of the amortizations (as prescribed by the provisions of law referred to in subparagraphs (i) and (ii) of paragraph sixty of this subdivision) of the BERS post-June thirtieth, nineteen hundred ninety UAL established pursuant to retirement

incentive and part-time employee legislation.

62. "Retirement incentive act". Any of the following: chapter two hundred ten of the laws of nineteen hundred ninety, chapter one hundred seventy-eight of the laws of nineteen hundred ninety-one, chapter four hundred ninety-four of the laws of nineteen hundred ninety-two, chapter six hundred forty-three of the laws of nineteen hundred ninety-two and chapter eight hundred thirty-seven of the laws of nineteen hundred ninety-two.

63. "Retirement incentive responsible obligor". Subject to the provisions of paragraph seven of subdivision ii of this section, the term "retirement incentive responsible obligor" shall mean a responsible obligor which, under the provisions of a retirement incentive act, or any other law applicable to contributions required by a retirement incentive act to fund additional retirement incentive benefits thereunder, was required, prior to July first, nineteen hundred ninety-three, to make contributions to fund additional retirement benefits payable to beneficiaries of a retirement system under such retirement incentive act.

64. "Part-time employee responsible obligor". (i) With respect to NYCERS, the term "part-time employee responsible obligor" shall mean any responsible obligor to which paragraph two of subdivision gg of this section applied prior to July first, nineteen hundred ninety-three.

(ii) With respect to BERS, such term shall mean any responsible obligor to which paragraph three of such subdivision applied prior to July first, nineteen hundred ninety-three.

65. "Beneficiary." A person in receipt of a pension, an annuity, a retirement allowance, a death benefit or any other benefit provided by a retirement system.

66. "NYCERS 1995 UAL". The unfunded accrued liability of NYCERS as of June thirtieth, nineteen hundred ninety-five (excluding the NYCERS 1995 balance of BSL, as defined in paragraph sixty-nine of this subdivision), as determined by the actuary pursuant to the entry age normal cost method of ascertaining such unfunded accrued liability, on the basis of an interest rate of eight and three-quarters per centum per annum and the actuarial tables applicable for the purpose of determining the normal contribution to NYCERS for the nineteen hundred ninety-five-nineteen hundred ninety-six fiscal year.

67. "NYCTRS 1995 UAL". The unfunded accrued liability of NYCTRS as of June thirtieth, nineteen hundred ninety-five (excluding the NYCTRS 1995 balance of BSL, as defined in paragraph seventy of this subdivision), as determined by the actuary pursuant to the entry age normal cost method of ascertaining such unfunded accrued liability, on the basis of an interest rate of eight and three-quarters per centum per annum and the actuarial tables applicable for the purpose of determining the normal contribution to NYCTRS for the nineteen hundred ninety-five-nineteen hundred ninety-six fiscal year.

68. "BERS 1995 UAL". The unfunded accrued liability of BERS as of June thirtieth, nineteen hundred ninety-five (excluding the BERS 1995 balance of BSL, as defined in paragraph seventy-one of this subdivision), as determined by the actuary pursuant to the entry age normal cost method of ascertaining such unfunded accrued liability, on the basis of an interest rate of eight and three-quarters per centum per annum and the actuarial tables applicable for the purpose of determining the normal contribution to BERS for the nineteen hundred ninety-five-nineteen hundred ninety-six fiscal year.

69. "NYCERS 1995 balance of BSL". The present value, as determined by the actuary as of June thirtieth, nineteen hundred ninety-five on the basis of an interest rate of eight and three-quarters per centum per annum, of the total of all contribution installments which, in the absence of the enactment of the act which added this paragraph, would be payable to NYCERS for fiscal years beginning on or after July first, nineteen hundred ninety-five pursuant to subparagraphs (ii) and (iv) of paragraph two of subdivision hh of this section and paragraphs four, five, six and seven of such subdivision.

70. "NYCTRS 1995 balance of BSL". The present value, as determined by the actuary as of June thirtieth, nineteen hundred ninety-five on the basis of an interest rate of eight and three-quarters per centum per annum, of the total of all contribution installments which, in the absence of the enactment of the act which added this paragraph, would be payable to NYCTRS for fiscal years beginning on or after July first nineteen hundred ninety-five pursuant to subparagraphs (ii) and (iv) of paragraph two of subdivision hh of this section and paragraphs four, five, six and seven of such subdivision.

71. "BERS 1995 balance of BSL". The present value, as determined by the actuary as of June thirtieth, nineteen hundred ninety-five on the basis of an interest rate of eight and three-quarters per centum per annum, of the total of all contribution installments which, in the absence of the enactment of the act which added this paragraph, would be payable to BERS for fiscal years beginning on or after July first, nineteen hundred ninety-five pursuant to subparagraph (ii) of paragraph three of subdivision hh of this section and paragraphs four, five and seven of such subdivision.

72. "Fifteen-year amortization period". The period beginning on July first, nineteen hundred ninety-five and ending on June thirtieth, two thousand ten.

73. "NYCERS 1999 UAL". The unfunded accrued liability of NYCERS as of June thirtieth, nineteen hundred ninety-nine attributable as of that date to the obligations set forth in item (ii) of subparagraph (a) of paragraph two of subdivision b of section 13-127 of this title, as determined by the actuary pursuant to the entry age normal cost method of ascertaining such unfunded accrued liability, on the basis of an interest rate of eight per centum per annum and the actuarial tables applicable for the purpose of determining the normal contribution to NYCERS for the nineteen hundred ninety-nine-two thousand fiscal year, provided, however, that in the event such calculation of unfunded accrued liability produces a negative amount, the NYCERS 1999 UAL shall be zero.

74. "NYCTRS 1999 UAL". The unfunded accrued liability of NYCTRS as of June thirtieth, nineteen hundred ninety-nine attributable as of that date to the obligations set forth in paragraph (1) of subdivision b of section 13-527 of this title, as determined by the actuary pursuant to the entry age normal cost method of ascertaining such unfunded accrued liability, on the basis of an interest rate of eight per centum per annum and the actuarial tables applicable for the purpose of determining the normal contribution to NYCTRS for the nineteen hundred ninety-nine-two thousand fiscal year, provided, however, that in the event such calculation of unfunded accrued liability produces a negative amount, the NYCTRS 1999 UAL shall be zero.

75. "BERS 1999 UAL". The unfunded accrued liability of BERS as of June thirtieth, nineteen hundred ninty-nine attributable as of that date to the obligations set forth in item (i) of subparagraph four of paragraph (c) of subdivision sixteen of section twenty-five hundred seventy-five of the education law, as determined by the actuary pursuant to the entry age normal cost method of ascertaining such unfunded accrued liability, on the basis of an interest rate of eight per centum per annum and the actuarial tables applicable for the purpose of determining the normal contribution to BERS for the nineteen hundred ninety-nine-two thousand fiscal year, provided, however, that in the event such calculation of unfunded accrued liability produces a negative amount, the NYCBERS 1999 UAL shall be zero.

76. "Eleven-year amortization period". The period beginning on July first, nineteen hundred ninety-nine and ending on June thirtieth, two thousand ten.

b. (1) For the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this title and which is used to determine the amount of any contribution required to be paid by the city and other responsible obligors into the contingent reserve fund of any retirement system (and into pension reserve fund number two in the case of NYCTRS) in any fiscal year of the city mentioned in the succeeding provisions of this subdivision, "regular interest" shall mean interest at the rate per centum per annum, compounded annually, prescribed for such retirement system with respect to such fiscal year by the applicable provisions of this subdivision.

(2) With respect to each retirement system, such rate of interest shall be as hereinafter set forth in this paragraph:

| Retirement System | Rate of interest per centum per annum, compounded annually | First day and last day of fiscal year or series of fiscal years for which rate is effective |
|---|---|---|
| NYCERS | 8% | July 1, 2004 to June 30, 2009 |
| NYCTRS | 8% | July 1, 2004 to June 30, 2009 |
| PPF | 8% | July 1, 2004 to June 30, 2009 |
| FPF | 8% | July 1, 2004 to June 30, 2009 |
| BERS | 8% | July 1, 2004 to June 30, 2009 |

c. Nothing contained in subdivision b of this section shall be construed as prescribing in relation to any retirement system, for the purpose of crediting interest to individual accounts in the annuity savings fund or to reserve-for-increased-take-home-pay or for any other purpose besides that specified in such subdivision, a rate of regular interest other than as prescribed by the application provisions of the definition of regular interest set forth in the retirement act of such retirement system and in any other laws applicable to purposes other than that set forth in subdivision b of this section.

d. For the purpose of any actuarial valuation, determination or appraisal which is made pursuant to this title and which is used to determine the amount of any contribution required to be paid by the city or other responsible obligors into the contingent reserve fund (including pension reserve fund number two in the case of NYCTRS) of any retirement system in any fiscal year of the city succeeding the last fiscal year for which subdivision b of this section prescribes a valuation rate of interest with respect to such retirement system, "regular interest" shall mean interest at such rate per annum, compounded annually, as shall be prescribed with respect to such retirement system in subdivision b of this section by an amendment thereto enacted by the legislature.

e. On or after September first of the last city fiscal year for which a valuation rate of interest is prescribed by sudivision b of this section with respect to a retirement system, and no later than December thirty-first next succeeding such September first, the board of trustees of such retirement system shall submit to the governor, the temporary president and minority leader of the senate, the speaker of the assembly, the majority and minority leaders of the assembly, the state superintendent of insurance, the chairman of the permanent commission on public employee pension and retirement systems, the mayor of the city, and the council of the city (by transmittal to the city clerk), the written recommendations of such board as to the rate of interest and effective period thereof which should be established by law as the valuation rate of interest to be used for such retirement system after such last fiscal year.

f. (1) Subject to the provisions of subdivision h of this section, during the applicable period specified in paragraph two of this subdivision, special interest at the rate prescribed by the applicable provisions of such paragraph two shall be allowed with respect to the individual account of each member in the annuity savings fund of each retirement system with respect to which such interest is allowed.

(2) Such special interest shall be allowed at the rates and for the periods set forth below in this paragraph:

| Retirement System | Rate of interest per centum per annum, compounded annually | First day and last day of fiscal year or series of fiscal years for which rate is effective |
|---|---|---|
| NYCERS | 1 1/4% | July 1, 2004 to June 30, 2009 |
| NYCTRS | 1 1/4% | July 1, 2004 to June 30, 2009 |
| PPF | 1 1/4% | July 1, 2004 to June 30, 2009 |
| FPF | 1 1/4% | July 1, 2004 to June 30, 2009 |
| BERS | 1 1/4% | July 1, 2004 to June 30, 2009 |

(3) Such special interest provided for by paragraphs one and two of this subdivision shall be credited to such individual account of each member entitled thereto in the same manner and at the same time as regular interest is required to be credited to such account with respect to the same period of time. Such special interest shall not be considered in determining rates of contributions of members. Nothing contained in this subdivision f shall be construed as applicable to any member of a retirement system who is subject to the provisions of article fourteen of the retirement and social security law or article fifteen of such law.

g. (1) Subject to the provisions of subdivision h of this section, during the applicable period specified in paragraph two of this subdivision, in the determination the reserve-for-increased-take-home-pay of each member of a retirement system entitled to such a reserve, additional interest at the rate prescribed by the applicable provisions of such paragraph two shall be included.

(2) Such additional interest shall be included at the rates and for the periods set forth below in this paragraph:

| Retirement System | Rate of interest per centum per annum, compounded annually | First day and last day of fiscal year or series of fiscal years for which rate is effective |
|---|---|---|
| NYCERS | 1 1/4% | July 1, 2004 to June 30, 2009 |
| NYCTRS | 1 1/4% | July 1, 2004 to June 30, 2009 |
| PPF | 1 1/4% | July 1, 2004 to June 30, 2009 |
| FPF | 1 1/4% | July 1, 2004 to June 30, 2009 |
| BERS | 1 1/4% | July 1, 2004 to June 30, 2009 |

(3) Additional interest shall not be considered in determining rates of contribution of members. Nothing contained in this subdivision shall be construed as applicable to any member of a retirement system who is subject to the provisions of article fourteen of the retirement and social security law or article fifteen of such law.

h. (1) In any case where:

(A) the provisions of paragraph two of subdivision f or paragraph two of subdivision g of this section are amended so as to prescribe for any retirement system with respect to any fiscal year of the city a rate of special interest or additional interest different from that applicable to such retirement system for the next preceding fiscal year; and

(B) the date of enactment (as such date is certified pursuant to section forty-one of the legislative law) of such amendment is later than the first day of the fiscal year in which such changed rate takes effect; and

(C) during the period beginning on such first day and ending on the day next preceding such date of enactment, a member of such retirement system dies or the retirement allowance or vested rights deferred retirement allowance of such member becomes payable; the applicable rate of special interest or additional interest, as the case may be, for such next proceding fiscal year shall apply to the crediting of special interest or additional interest in favor or such member for the portion of such period preceding such death or the commencement of payability of such retirement allowance.

(2) (i) Nothing contained in subdivisions f and g of this section shall be construed as granting special or additional interest, as the case may be, to any person with respect to any period wherein (A) such person was not a member entitled to be credited with regular interest for the same period in the annuity savings fund or with respect to his or her reserve-for-increased-take-home-pay or (B) was not a discontinued member entitled to be credited as a discontinued member with regular interest for the same period.

(ii) Nothing contained in such subdivisions f and g shall be construed (A) as granting special interest with respect to the total accumulated contributions (as defined in subdivision seven of section 13-313 of this title) of an original plan member (as defined in subdivision four-b of such section 13-313) of FPF while he or she is such a member

or (B) as granting additional interest with respect to an accumulation-for-increased-take-home-pay (as defined in subdivision fifteen of such section 13-313) of an original plan member while he or she is such a member.

i. (1) Subject to the provisions of paragraph three of this subdivision, in addition to regular interest annually allowed for the applicable period specified in paragragh two of this subdivision on the mean amount for the preceding year in each fund creditable with supplementary interest (as defined in paragraph fifteen of subdivision a of this section) of each retirement system, there shall be annually allowed with respect to such period supplementary interest at the rate specified in such paragraph two on such mean amount for the preceding year in such fund. Such supplementary interest shall be annually credited to such funds at the same time and in the same manner as regular interest is credited to such funds with respect to such period.

(2) Such supplementary interest shall be allowed at the rates and for the periods set forth below in this paragraph:

| Retirement System | Rate of interest per centum per annum, compounded annually | First day and last day of fiscal year or series of fiscal years for which rate is effective |
|---|---|---|
| NYCERS | 1% | July 1, 1999 to June 30, 2006 |
| NYCTRS | 1% | July 1, 1999 to June 30, 2006 |
| PPF | 1% | July 1, 1999 to June 30, 2006 |
| FPF | 1% | July 1, 1999 to June 30, 2006 |
| BERS | 1% | July 1, 1999 to June 30, 2006 |

(3) The provisions of paragraphs one and two of this subdivision shall not apply to or affect (i) the allowance of interest or the crediting of interest to accounts of members or discontinued members in the annuity savings fund or (ii) the allowance of interest on or the crediting of interest to reserve-for-increased-take-home-pay of members or discontinued members or (iii) the determination of the amount of any benefit payable to any member or beneficiary of a retirement system.

j. On or after September first of the last city fiscal year for which special, additional and supplementary interest are allowed with respect to a retirement system pursuant to the provisions of subdivisions f, g and i of this section, and no later than December thirty-first next succeeding such September first, the board of trustees of such retirement system shall submit to the public officers and body referred to in subdivision e of this section the written recommendations of such board:

(1) as to whether legislation should be enacted providing for the crediting of special interest to members of such retirement system after such last fiscal year and if so, the recommended rate thereof and duration of such crediting; and

(2) as to whether legislation should be enacted providing that in the determination of reserves-for-increased-take-home-pay of members of such retirement system entitled to such a reserve, additional interest shall be included for any period after such last fiscal year, and if so, the recommended rate thereof and the period as to which such interest should be included; and

(3) as to whether legislation should be enacted providing for the crediting of supplementary interest after such last fiscal year to funds creditable with supplementary interest of such retirement system and if so, the recommended rate thereof and duration of such crediting.

k. (1)(i) Subject to the provisions of subparagraphs (iii) and (iv) of this paragraph, in any case where the valuation rate of interest for a retirement system is changed by law for any period beginning on or after July first, two thousand four, or where the board of trustees of a retirement system, for any period beginning on or after July first, nineteen hundred ninety-nine, adopts changed actuarial tables used in valuing the liabilities of such retirement system,

or where a significant change in an actuarial valuation method (as defined in paragraph sixteen of subdivision a of this section) is made for any period beginning on or after July first, nineteen hundred ninety-nine in relation to a retirement system, the actuary thereof shall calculate, as of June thirtieth next preceding the first day of the fiscal year for which such changed rate or changed tables or significant change in an actuarial valuation method first becomes or became effective, an unfunded accrued liability adjustment applicable to each responsible obligor in relation to such retirement system.

(ii) Any such adjustment (or adjustments in the aggregate) shall be designed to amortize in installments over a period and by such method as shall be established by the board of trustees or retirement board of such retirement system on the recommendation of its actuary, and commencing on such first day, the increase or decrease in the actuarial accrued liability of such retirement system or pension fund resulting from any such change or changes. Such period of amortization shall be not less than ten city fiscal years nor more than twenty such years.

(iii) No unfunded accrued liability adjustment shall be established under this subdivision for any retirement system with respect to any change in actuarial tables or significant change in an actuarial valuation method, where such changed tables or changed method apply or applies to such retirement system with respect to determination of any of the NYCERS 1999 UAL, the NYCTRS 1999 UAL, the BERS 1999 UAL, the PPF 1999 UAL (as defined in paragraph thirty-two of subdivision a of section 13-638.3 of the code, as added by chapter six hundred eight of the laws of nineteen hundred ninety-one) or the FPF 1999 UAL (as defined in paragraph thirty-two of subdivision a of section 13-683.3*6 of the code, as added by chapter six hundred ten of the laws of nineteen hundred ninety-one), whether such change is adopted before or after July first, nineteen hundred ninety-nine. Nothing contained in this subdivision shall be construed as requiring the continuation after June thirtieth, nineteen hundred ninety-nine of the amortization of any unfunded accrued liability adjustment established under this subdivision prior to such June thirtieth.

(iv) No unfunded accrued liability adjustment shall be established under this subdivision for any retirement system with respect to any change in the valuation rate of interest, change in actuarial tables or significant change in an actuarial valuation method if (A) such unfunded accrued liabilities, when added to any existing unfunded accrued liability, would result in the total of all unfunded accrued liabilities for that retirement system equaling less than zero, or if (B) the change in unfunded actuarial liability for that retirement system would cause an increase or decrease of less than ten percent in the actuarial accrued liability (computed pursuant to the entry age normal cost method of determining such liability) and the actuary concludes that such an unfunded accrued liability need not be established.

(2) Subject to the provisions of the succeeding paragraphs of this subdivision and subdivision 1 of this section, each such unfunded accrued liability adjustment shall be calculated with respect to the affected responsible obligor, and shall be paid by or credited to such obligor, as the case may be, in accordance with the appropriate methods set forth in subdivisions b to v, inclusive, of section 13-638.1 of this subchapter.

(3) (i) Each such unfunded accrued liability adjustment (other than any such adjustment attributable to employees of the senior colleges of the city university) shall be known by a title consisting of the numerical designation of the calendar year in which the first fiscal year of the applicable amortization period begins, followed by the words "unfunded accrued liability adjustment attributable to," followed by the name of the responsible obligor with respect to which such adjustment was calculated.

(ii) Each such unfunded accrued liability adjustment attributable to employees of such senior colleges which is calculated for NYCERS shall be known by a title consisting of the numerical designation of the calendar year in which the first fiscal year of the applicable amortization period begins, followed by the words "NYCERS unfunded accrued liability adjustment attributable to the senior colleges."

(iii) Each such unfunded accrued liability adjustment attributable to employees of such senior colleges which is calculated for NYCTRS shall be known by a title consisting of the numerical designation of the calendar year in which the first fiscal year of the applicable amortization period begins, followed by the words "NYCTRS unfunded accrued

liability adjustment attributable to the senior colleges."

(4) For the purpose of applying the provisions of subdivisions b to v, inclusive, of section 13-638.1 as prescribed by paragraph two of this subdivision:

(i) the term "valuation rate of interest" appearing in such provisions shall mean the applicable valuation rate of interest, as defined in paragraph eleven of subdivision a of this section; and

(ii) wherever the words "nineteen hundred eighty-seven-nineteen hundred eighty-eight fiscal year" appear in such subdivisions, there shall be deemed to be substituted therefor the numerical designation of the city fiscal year next preceding the first fiscal year of the amortization period applicable pursuant to paragraph one of this subdivision; and

(iii) wherever the words, "nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year" appear in such subdivisions, there shall be deemed to be substituted therefor the numerical designation of the first city fiscal year of such amortization period; and

(iv) wherever the words "June thirtieth, nineteen hundred eighty-eight" appear in such subdivisions, there shall be deemed to be substituted therefor the numerical designation of the month, day and year of the June thirtieth next preceding the first day of such amortization period; and

(v) wherever the words "nineteen hundred eighty-eight unfunded accrued liability adjustment" appear in such subdivisions, there shall be deemed to be substituted therefor the numerical designation of the calendar year in which such amortization period begins, followed by the words "unfunded accrued liability adjustment"; and

(vi) wherever the words "nineteen hundred ninety-seven-nineteen hundred ninety-eight" appear in such subdivisions, there shall be deemed to be substituted therefor the numerical designation of the last city fiscal year of the applicable amortization period.

l. (1) In any case where the valuation rate of interest for a retirement system is changed by law for any period beginning on or after July first, two thousand four, and as of June thirtieth next preceding the fiscal year for which such change first becomes effective, there remain unpaid or uncredited, as the case may be, with respect to such retirement system, any installments of (i) the NYCERS 1999 UAL, (ii) the NYCTRS 1999 UAL, (iii) the BERS 1999 UAL, (iv) any post-June thirtieth, nineteen hundred ninety-nine unfunded accrued liability adjustment (as defined in paragraph seventeen of subdivision a of this section), (v) any contribution to PPF referred to in subdivision p of section 13-638.3 of this subchapter (as added by chapter six hundred eight of the laws of nineteen hundred ninety-one), (vi) any contribution to FPF referred to in subdivision p of section 13-638.3 of this subchapter (as added by chapter six hundred ten of the laws of nineteen hundred ninety-one) or (vii) any other contribution by a responsible obligor to a retirement system (other than the normal contribution) which may be required by law for the purpose of funding any unfunded liability or funding deficiency of such retirement system, such remaining installments shall be recomputed by the actuary so that the present value of such recomputed installments, calculated as of such June thirtieth on the basis of such changed valuation rate, shall equal the present value of such remaining installments, calculated as of such June thirtieth on the basis of the valuation rate in effect immediately prior to such change.

(2) In each fiscal year succeeding such June thirtieth, one of such recomputed installments shall be paid by or credited to, as the case may be, the responsible obligor or responsible obligors with respect to such retirement system in the same manner as the corresponding prior installments were paid or credited, until all such remaining installments are paid or credited in full; provided, however, that until all such installments are so disposed of, they shall be recomputed and paid or credited in recomputed form pursuant to this subdivision for each subsequent change in such valuation rate.

m. Notwithstanding any other provision of law to the contrary, all NYCERS, NYCTRS and BERS installments of the revised unfunded accrued liability contribution, the nineteen hundred eighty unfunded accrued liability adjustment, the nineteen hundred eighty-two unfunded accrued liability adjustment, the nineteen hundred eighty-five

unfunded accrued liability adjustment, the nineteen hundred eighty-six unfunded accrued liability adjustment and the nineteen hundred eighty-eight unfunded accrued liability adjustment and all installments of the post June thirtieth, nineteen hundred eighty-nine unfunded accrued liability adjustment established with respect to BERS pursuant to subdivision k of this section and all NYCERS, NYCTRS and BERS installments of amortization of bond sale gains and losses and all NYCERS, NYCTRS and BERS installments of funding of supplemental retirement allowances, which installments, in the absence of the enactment of chapter nine hundred forty-eight of the laws of nineteen hundred ninety and the act which first amended this subdivision, would otherwise be due from and payable by any responsible obligor to NYCERS, NYCTRS or BERS (or be creditable to such obligor) with respect to any fiscal year or period beginning on or after July first, nineteen hundred ninety (including all such NYCERS or NYCTRS installments attributable to the senior colleges as defined or referred to in subdivisions seven, eight, eight-a, eight-b, eight-c, eight-d, eight-e and eight-f of section sixty-two hundred two of the education law and subdivision one of section sixty-two hundred thirty-one of such law) are hereby cancelled as of such July first and shall not be due and payable (or creditable) on or after such July first.

n. The actuary of each retirement system undergoing consolidated UAL funding (as defined in paragraph twenty of subdivision a of this section) shall determine the amount of the difference obtained by subtracting (A) the outstanding balance, as of June thirtieth, nineteen hundred ninety-five, of the nineteen hundred ninety balance sheet liability (as defined in paragraph thirty-five of subdivision a of this section) of such retirement system for (B) the outstanding balance, as of such June thirtieth, of the unfunded accrued liability as of June thirtieth, nineteen hundred ninety (as defined in paragraph thirty-four of subdivision a of this section) of such retirement system.

o. (1) From the amount of the difference determined pursuant to subdivision n of this section in relation to NYCERS, there shall be subtracted the portion thereof which is attributable to the senior colleges.

(2) The actuary of NYCERS shall determine an amount which, when paid into the contingent reserve fund of NYCERS in fifteen equal annual installments, commencing with payment of a first installment in the nineteen hundred ninety-five-nineteen hundred ninety-six fiscal year, shall be the actuarial equivalent, on the basis of nine per centum interest per annum, of the remainder computed pursuant to paragraph one of this subdivision.

(3) Such amount determined in relation to such installments shall be payable in regular installments as provided for in subdivision bb of this section.

p. (1) The actuary of NYCERS shall determine an amount which, when paid by the state and the city into the contingent reserve fund of NYCERS pursuant to section sixty-two hundred thirty-one of the education law in fifteen equal annual installments, commencing with payment of a first installment in the nineteen hundred ninety-five-nineteen hundred ninety-six fiscal year, shall be the actuarial equivalent, on the basis of nine per centum interest per annum, of the amount of difference attributable to the senior colleges, as determined pursuant to the provisions of subdivision n of this section in relation to NYCERS.

(2) Such amount determined in relation to such installments shall be payable in regular installments as provided for in subdivision bb of this section.

q. (1) From the amount of the difference determined pursuant to subdivision n of this section in relation to NYCTRS there shall be subtracted the amount thereof which is attributable to the senior colleges.

(2) The actuary shall determine an amount which, when paid into the contingent reserve fund of NYCTRS in fifteen equal annual installments, commencing with payment of a first installment in the nineteen hundred ninety-five-nineteen hundred ninety-six fiscal year, shall be the actuarial equivalent, on the basis of nine per centum interest per annum, of the remainder computed pursuant to paragraph one of this subdivision.

(3) Such amount determined in relation to such installments shall be payable in regular installments as provided for in subdivision bb of this section.

r. (1) The actuary of NYCTRS shall determine an amount which, when paid by the state and the city into the contingent reserve fund of NYCTRS pursuant to section sixty-two hundred thirty-one of the education law in fifteen equal annual installments, commencing with payment of a first installment in the nineteen hundred ninety-five-nineteen hundred ninety-six fiscal year, shall be the actuarial equivalent, on the basis of nine per centum interest per annum, of the amount of difference attributable to the senior colleges, as determined pursuant to the provisions of paragraph one of subdivision q of this section in relation to NYCTRS.

(2) Such amount determined in relation to such installments shall be payable in installments as provided for in subdivision bb of this section.

s. (1) The actuary shall determine an amount which, when paid into the contingent reserve fund of BERS in fifteen equal annual installments, commencing with payment of a first installment in the nineteen hundred ninety-five-nineteen hundred ninety-six fiscal year, shall be the actuarial equivalent, on the basis of nine per centum interest per annum, of the amount of difference computed pursuant to subdivision n of this section in relation to BERS.

(2) Such amount determined in relation to such installments shall be payable in installments as provided for in subdivision bb of this section.

t. Notwithstanding any other provision of law to the contrary, no installments of prior balance sheet liability contribution (as defined in paragraph thirty-six of subdivision a of this section) shall be due from or payable by any responsible obligor to NYCERS, NYCTRS or BERS with respect to any fiscal year of the city beginning on or after July first, nineteen hundred ninety.

u. The actuary of NYCERS, NYCTRS and BERS shall determine with respect to each such retirement system, as of June thirtieth, nineteen hundred ninety on the basis of eight and one-quarter per centum interest per annum, the present value of the thirty-one equal annual installments of the prior BSL contribution (as defined in paragraph thirty-six of subdivision a of this section) of such retirement system (including any portion thereof attributable to the senior colleges), which installments, in the absence of the enactment of chapter nine hundred forty-eight of the laws of nineteen hundred ninety and the act which added this subdivision, would have remained due and unpaid to such retirement system as of such June thirtieth.

v. (1) From the amount of present value determined pursuant to subdivision u of this section in relation to NYCERS, there shall be subtracted the portion thereof which is attributable to the senior colleges.

(2) The actuary of NYCERS shall determine an amount which, when paid to the contingent reserve fund of such retirement system in twenty equal annual installments, commencing with a first payment in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, shall be the actuarial equivalent, on the basis of an interest rate of nine per centum per annum, of the remainder computed pursuant to paragraph one of this subdivision.

(3) Such amount determined in relation to such installments, which amount shall be payable in installments as provided for in subdivision bb of this section, shall constitute the NYCERS general nineteen hundred ninety BSL contribution.

w. (1) The actuary of NYCERS shall determine an amount which, when paid by the state and the city into the contingent reserve fund of NYCERS pursuant to section sixty-two hundred thirty-one of the education law in twenty equal annual installments, commencing with payment of a first installment in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, shall be the actuarial equivalent, on the basis of nine per centum interest per annum, of the amount of present value attributable to the senior colleges, as determined pursuant to the provisions of subdivision v of this section in relation to NYCERS.

(2) Such amount determined in relation to such installments, which amount shall be payable in installments as provided for in subdivision bb of this section, shall constitute the NYCERS nineteen hundred ninety BSL contribution

attributable to the senior colleges.

x. (1) From the amount of present value determined pursuant to subdivision u of this section in relation to NYCTRS, there shall be subtracted the portion thereof which is attributable to the senior colleges.

(2) The actuary of NYCTRS shall determine an amount which, when paid to the contingent reserve fund of such retirement system in twenty equal annual installments, commencing with a first payment in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, shall be the actuarial equivalent, on the basis of nine per centum interest per annum, of the remainder computed pursuant to paragraph one of this subdivision.

(3) Such amount determined in relation to such installments, which amount shall be payable in installments as provided for in subdivision bb of this section, shall constitute the NYCTRS general nineteen hundred ninety BSL contribution.

y. (1) The actuary of NYCTRS shall determine an amount which, when paid by the state and the city into the contingent reserve fund of NYCTRS pursuant to section sixty-two hundred thirty-one of the education law in twenty equal annual installments, commencing with payment of a first installment in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, shall be the actuarial equivalent, on the basis of nine per centum interest per annum, of the amount of present value attributable to the senior colleges, as determined pursuant to the provisions of subdivision x of this section in relation to NYCTRS.

(2) Such amount determined in relation to such installments, which amount shall be payable in installments as provided for in subdivision bb of this section, shall constitute the NYCTRS nineteen hundred ninety BSL contribution attributable to the senior colleges.

z. (1) The actuary of BERS shall determine an amount which, when paid to the contingent reserve fund of such retirement system in twenty equal annual installments, commencing with a first payment in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, shall be the actuarial equivalent, on the basis of nine per centum interest per annum, of the amount of present value determined pursuant to subdivision u of this section in relation to BERS.

(2) Such amount determined in relation to such installments, which amount shall be payable in installments as provided for in subdivision bb of this section, shall constitute the BERS general nineteen hundred ninety BSL contribution.

aa. (1) Subject to the provisions of paragraph three of this subdivision and subject to the provisions of sections 13-130 and 13-132 of this title in the case of NYCERS, and subject to the provisions of section 13-529 thereof in the case of NYCTRS, and subject to the provisions of paragraph (j) of subdivision sixteen of section twenty-five hundred seventy-five of the education law in the case of BERS, in each fiscal year included in the period beginning on July first, nineteen hundred ninety and ending on June thirtieth, two thousand ten, the general UAL and BSL responsible obligors (as defined in paragraph ten-a of subdivision a of this section) in relation to each retirement system undergoing consolidated UAL funding (as defined in paragraph twenty of subdivision a of this section) shall pay into its contingent reserve fund:

(i) their respective shares of the installment amount allocated to such fiscal year for payment on account of general nineteen hundred ninety consolidated UAL contribution (as defined in paragraph forty-four of subdivision a of this section) of such retirement system; and

(ii) their respective shares of the installment amount allocated to such fiscal year for payment on account of the general nineteen hundred ninety BSL contribution (as defined in paragraph twenty-six of subdivision a of this section) of such retirement system.

(2) With respect to each fiscal year included in the period beginning on July first, nineteen hundred ninety and

ending on June thirtieth, two thousand ten:

(i) the state, at the time and in the manner prescribed by the applicable provisions of section sixty-two hundred thirty-one of the education law, shall contribute to NYCERS or NYCTRS, as the case may be, the state's share of:

(A) the NYCERS phase-in installment of nineteen hundred ninety consolidated UAL contribution attributable to the senior colleges (as defined in paragraph thirty of subdivision a of this section) or the NYCERS regular installment of nineteen hundred ninety consolidated UAL contribution attributable to the senior colleges (as defined in paragraph forty of subdivision a of this section) applicable to such fiscal year, as the case may be; and

(B) the NYCTRS phase-in installment of nineteen hundred ninety consolidated UAL contribution attributable to the senior colleges (as defined in paragraph thirty-two of subdivision a of this section) or the NYCTRS regular installment of nineteen hundred ninety consolidated UAL contribution attributable to the senior colleges (as defined in paragraph forty-two of subdivision a of this section) applicable to such fiscal year, as the case may be; and

(C) the NYCERS installment of nineteen hundred ninety BSL contribution attributable to the senior colleges (as defined in paragraph forty-six of subdivision a of this section) applicable to such fiscal year; and

(D) the NYCTRS installment of nineteen hundred ninety BSL contribution attributable to the senior colleges (as defined in paragraph forty-eight of subdivision a of this section); and

(ii) the city, at the time and in the manner prescribed by the applicable provisions of such section of the education law, shall contribute to each affected retirement system, the city's share, as prescribed by such provisions, of the applicable installment amount or amounts allocated to such fiscal year for payment on account of the UAL contribution and BSL contribution referred to in subparagraph (i) of this paragraph.

(3) Each installment amount payable as provided for in paragraphs one and two of this subdivision shall be in the applicable sum prescribed in the schedule of twenty-year amortization set forth in subdivision bb of this section.

(4) Notwithstanding any provision of the preceding paragraphs of this subdivision or any other law to the contrary, the provisions of subdivisions n through z, inclusive, of this section, and the affected provisions of subdivision bb thereof, and the preceding paragraphs of this subdivision shall be superseded in the manner prescribed by the provisions of subdivision hh of this section with respect to contributions on account of UAL and BSL payable for each fiscal year included in the revised amortization period.

bb. Subject to the provisions of subdivisions k and l of this section, installments of the contributions to NYCERS, NYCTRS and BERS provided for by subdivisions n to aa, inclusive, of this section shall be paid by general UAL and BSL responsible obligors (as defined in paragraph ten-a of subdivision a of this section) and senior college responsible obligors (as defined in paragraph ten-b of subdivision a of this section) in accordance with the schedule of twenty-year amortization set forth below in this subdivision.

SCHEDULE FOR TWENTY-YEAR AMORTIZATION

OF NYCERS, NYCTRS AND BERS 1990

CONSOLIDATED UAL AND 1990 REMAINDER OF BSL

(numerical references in parentheses are to

paragraph numbers of definitions in

subdivision a of this section)

| Col. 1 | Col. 2 | Col. 3 | Col. 4 |
|---|---|---|---|

| Retirement System | Fiscal year or years in which annual amortization payments are required to be made | Obligor or obligors required to make payments | Amount payable in each fiscal year |
|---|---|---|---|
| Col. A NYCERS | Each fiscal year (9-a) in the phase-in period (18) | Each general UAL and BSL responsible obligor (10-a) of NYCERS | The sum obtained by adding together such obligor's shares of (a) the NYCERS phase-in installment of general nineteen hundred ninety consolidated UAL contribution (29) applicable to such fiscal year and (b) the NYCERS installment of general nineteen hundred ninety BSL contribution (45) applicable to such fiscal year. |
| Col. B NYCERS | Each fiscal year (9-a) in the phase-in period (18) | Each of the senior college UAL and BSL responsible obligors (10-b) | The sum obtained by adding together such obligor's shares of (a) the NYCERS phase-in installment of nineteen hundred ninety consolidated UAL contribution attributable to the senior colleges (30) applicable to such fiscal year and (b) the NYCERS installment of nineteen hundred ninety BSL contribution attributable to the senior colleges (46) applicable to such fiscal year. |
| Col. C NYCTRS | Each fiscal year (9-a) in the phase-in period (18) | Each general UAL and BSL responsible obligor (10-a) of NYCTRS | The sum obtained by adding together such obligor's shares of (a) the NYCTRS phase-in installment of general nineteen hundred ninety consolidated UAL contribution (31) applicable to such fiscal year and (b) the NYCTRS installment of general nineteen hundred ninety BSL contribution (47) applicable to such fiscal year. |
| Col. D NYCTRS | Each fiscal year (9-a) in the phase-in period (18) | Each of the senior college UAL and BSL responsible obligors (10-b) | The sum obtained by adding together such obligor's shares of (a) the NYCTRS phase-in installment of nineteen hundred ninety consolidated UAL contribution attributable to the senior colleges (32) applicable to such fiscal year and (b) the NYCTRS installment of nineteen hundred ninety BSL contribution attributable to the senior colleges (48) applicable to such fiscal year. |
| Col. E BERS | Each fiscal year (9-a) in the phase-in period (18) | Each general UAL and BSL responsible obligor (10-a) of BERS | The sum obtained by adding together such obligor's shares of (a) the BERS phase-in installment of general nineteen hundred ninety consolidated UAL contribution (33) applicable to such fiscal year and (b) the BERS phase-in installment of general nineteen hundred ninety BSL contribution (49) applicable to such fiscal year. |
| Col. F NYCERS | Each fiscal year (9-a) in the regular installment period (19) | Each general UAL and BSL responsible obligor (10-a) of NYCERS | The sum obtained by adding together (a) such obligor's share of the NYCERS regular installment of general nineteen hundred ninety consolidated UAL contribution (39) applicable to such fiscal year and (b) such obligor's share of the NYCERS installment of general nineteen hundred ninety BSL contribution (45) applicable to such fiscal year. |
| Col. G NYCERS | Each fiscal year (9-a) in the regular installment period (19) | Each of the senior college UAL and BSL responsible obligors (10-b) | The sum obtained by adding together such obligor's shares of (a) the NYCERS regular installment of nineteen hundred ninety consolidated UAL contribution attributable to the senior colleges (40) applicable to such fiscal year and (b) the NYCERS installment of nineteen hundred ninety BSL contribution attributable to the senior colleges (46) applicable to |

| | | | |
|---|---|---|---|
| | | | such fiscal year. |
| Col. H NYCTRS | Each fiscal year (9-a) in the regular installment period (19) | Each general UAL and BSL responsible obligor (10-a) of NYCTRS | The sum obtained by adding together (a) such obligor's share of the NYCTRS regular installment of general nineteen hundred ninety consolidated UAL contribution (41) applicable to such fiscal year and (b) such obligor's share of the NYCTRS installment of general nineteen hundred ninety BSL contribution (47) applicable to such fiscal year. |
| Col. I NYCTRS | Each fiscal year (9-a) in the regular installment period (19) | Each of the senior college UAL and BSL responsible obligors (10-b) | The sum obtained by adding together such obligor's shares of (a) the NYCTRS regular installment of nineteen hundred ninety consolidated UAL contribution attributable to the senior colleges (42) applicable to such fiscal year and (b) the NYCTRS installment of nineteen hundred ninety BSL contribution attributable to the senior colleges (46) applicable to such fiscal year. |
| Col. J BERS | Each fiscal year (9-a) in the regular installment period (19) | Each general UAL and BSL responsible obligor (10-a) of BERS | The sum obtained by adding together (a) such obligor's share of the BERS regular installment of general nineteen hundred ninety consolidated UAL contribution (43) applicable to such fiscal year and (b) such obligor's share of the BERS installment of general nineteen hundred ninety BSL contribution (49) applicable to such fiscal year. |

cc. Subject to the provisions of section sixty-two hundred thirty-one of the education law in relation to contributions on account of the senior colleges, the applicable provisions of subdivision c of section 13-133 of this title and subdivision c of section 13-533 thereof and paragraph (j) of subdivision sixteen of section twenty-five hundred seventy-five of the education law shall govern the time and manner of payment, within each fiscal year, of contributions payable with respect to such fiscal year to NYCERS, NYCTRS or BERS pursuant to the provisions of subdivisions n to bb, inclusive, of this section. Nothing contained in this section shall be construed as amending, modifying or changing such provisions of this title or the provisions of any other law relating to the time of payment, within a fiscal year, of contributions payable to such retirement systems with respect to such fiscal year.

dd. For the purpose of determining the amount of any installment of the contributions payable to NYCERS, NYCTRS or BERS pursuant to the provisions of subdivisions n to bb, inclusive, of this section, the actuary of such retirement system may use methods of calculation other than those set forth in such provisions, so long as such other methods produce in relation to such installment an amount equal to that produced by the methods of calculation set forth in such provisions.

ee. Any amount required to be contributed to NYCERS, NYCTRS or BERS by a responsible obligor with respect to any fiscal year under the provisions of subdivisions n to bb, inclusive, of this section shall be payable with interest on such amount at the valuation rate of interest for such retirement system for such fiscal year.

ff. In the determination of the normal contribution payable to NYCERS, NYCTRS or BERS with respect to each fiscal year of the city occurring during the period beginning on July first, nineteen hundred ninety and ending on June thirtieth, two thousand ten, the present value, as of June thirtieth next preceding such fiscal year, of all future installments of the contributions payable to such retirement system pursuant to subdivisions n to bb, inclusive, of this section shall be treated as an asset of such retirement system.

gg. (1) On the basis of the valuation rate of interest and the actuarial tables in effect as of June thirtieth, nineteen hundred ninety-three, the actuary of each retirement system shall, as of such June thirtieth, determine:

(i) the additional accrued employer cost of providing the rights, benefits and privileges conferred by the provisions of the act which added this subdivision upon members of NYCERS; and

(ii) the additional accrued employer cost of providing the rights, benefits and privileges conferred by such provisions upon members of BERS.

(2) Subject to the provisions of section 13-130 and 13-131 of the code, the city shall pay to the contingent reserve fund of NYCERS in seventeen equal annual installments, commencing with payment of a first installment in the city's nineteen hundred ninety-three-nineteen hundred ninety-four fiscal year, an amount which, when paid in such installments, is the actuarial equivalent of the amount determined pursuant to subparagraph (i) of paragraph one of this subdivision.

(3) Subject to the provisions of subparagraphs one and two of paragraph (J) of subdivision sixteen of section twenty-five hundred seventy-five of the education law, the board of education of the city shall pay to the contingent reserve fund of BERS in seventeen equal annual installments, commencing with payment of a first installment in the city's nineteen hundred ninety-three-nineteen hundred ninety-four fiscal year, an amount which, when paid in such installments, is the actuarial equivalent of the amount determined pursuant to subparagraph (ii) of paragraph one of this subdivision.

(4) The additional employer cost of providing the rights, benefits and privileges conferred by the provisions of the act which added this subdivision upon members of NYCERS and BERS, other than the additional accrued employer cost of providing such rights, benefits and privileges to be funded in accordance with paragraphs two and three of this subdivision, shall be funded through the normal contributions to NYCERS and BERS, commencing with the normal contributions for the city's nineteen hundred ninety-three-nineteen hundred ninety-four fiscal year.

hh. (1) All NYCERS, NYCTRS and BERS installments of UAL and BSL contribution designated in subdivision bb of this section as payable by any general UAL and BSL responsible obligor or senior college UAL and BSL responsible obligor for fiscal years occurring during the period beginning on July first, nineteen hundred ninety-three and ending on June thirtieth, two thousand ten are hereby canceled and shall not be due and payable on or after such July first.

(2) Subject to the provisions of paragraph four of this subdivision, the actuary of NYCERS and NYCTRS shall separately determine for each such retirement system:

(i) a schedule of contribution installments, one of which is payable in each fiscal year included in the revised amortization period, which installments will amortize the portion of the balance of unfunded UAL subject to consolidated amortization of NYCERS or NYCTRS, as the case may be, which portion is non*11 attributable to the senior colleges, together with interest on such portion;

(ii) a schedule of contribution installments, one of which is payable in each fiscal year included in the revised amortization period, which installments will amortize the portion of the balance of unfunded BSL subject to consolidated amortization of NYCERS or NYCTRS, as the case may be, which portion is not attributable to the senior colleges, together with interest on such portion;

(iii) a schedule of contribution installments, one of which is payable in each fiscal year included in the revised amortization period, which installments will amortize the portion of the balance of unfunded UAL subject to consolidated amortization of NYCERS or NYCTRS, as the case may be, which portion is attributable to the senior colleges, together with interest on such portion; and

(iv) a schedule of contribution installments, one of which is payable in each fiscal year included in the revised amortization period, which installments will amortize the portion of the balance of unfunded BSL subject to consolidated amortization of NYCERS or NYCTRS, as the case may be, which portion is attributable to the senior colleges, together with interest on such portion.

(3) Subject to the provisions of paragraph four of this subdivision, the actuary of BERS shall determine for such

retirement system:

(i) a schedule of contribution installments one of which is payable in each fiscal year included in the revised amortization period, which installments will amortize the BERS balance of unfunded UAL subject to consolidated amortization, together with interest on such balance; and

(ii) a schedule of contribution installments, one of which is payable in each fiscal year included in the revised amortization period, which installments will amortize the BERS balance of unfunded BSL subject to consolidated amortization, together with interest on such balance.

(4) (i) The actuary shall determine each schedule of contribution installments referred to in paragraphs two and three of this subdivision so that each installment after the first shall equal one hundred three per centum of the next preceding installment.

(ii) In determining each such schedule, the actuary shall employ an interest rate of nine per centum per annum, compounded annually; provided that if a valuation rate of interest (as defined in paragraph eleven of subdivision a of this section) other than nine per centum per annum is prescribed by law for NYCERS, NYCTRS or BERS for any fiscal year included in the revised amortization period, the schedule contribution installments which are required to be paid, for such fiscal year in which such changed valuation rate of interest is in effect, to the retirement system to which such changed rate of interest applies, shall be redetermined by the actuary thereof on the basis of a rate of interest equal to such changed rate, compounded annually, so as to reflect such changed rate appropriately in such redetermined installments.

(5) (i) Subject to the provisions of subparagraph (ii) of this paragraph, and subject to the provisions of sections 13-130 and 13-132 of this title in the case of NYCERS, and subject to the provisions of section 13-529 thereof in the case of NYCTRS, and subject to the provisions of paragraph (j) of subdivision sixteen of section twenty-five hundred seventy-five of the education law in the case of BERS, in each fiscal year of the revised amortization period the general UAL and BSL responsible obligors of each of NYCERS, NYCTRS and BERS shall pay into its contingent reserve fund their respective shares of the contribution installments applicable to such retirement system for such fiscal year under the schedules established pursuant to subparagraphs (i) and (ii) of paragraph two of this subdivision and paragraph three thereof.

(ii) The provisions of law which apply to the time and manner of payment and payment financing of contribution installments required to be paid by general UAL and BSL responsible obligors for the fiscal years included in the period beginning on July first, nineteen hundred ninety and ending on June thirtieth, nineteen hundred ninety-three, as designated in subdivision bb of this section, shall be deemed to apply to the time and manner of payment and payment financing of the contribution installments referred to in subparagraph (i) of this paragraph.

(6) (i) Subject to the provisions of subparagraph (ii) of this paragraph, for each fiscal year of the revised amortization period, the senior college UAL and BSL responsible obligors of each of NYCERS and NYCTRS shall contribute to such retirement system their respective shares of the contribution installments applicable to such retirement system for such fiscal year under the schedules established pursuant to subparagraphs (iii) and (iv) of paragraph two of this subdivision.

(ii) The special provisions for funding and financing senior college UAL and BSL amortization (A) shall be deemed to apply to the contribution installments referred to in subparagraph (i) of this paragraph with respect to all matters to which such special provisions pertain, as described in subparagraphs (i) to (v), inclusive, of paragraph fifty-five of subdivision a of this section, and (B) shall be deemed to include such installments as if such installments were mentioned in the appropriate terms of such provisions.

(7) Any amount required to be contributed to NYCERS, NYCTRS or BERS with respect to any fiscal year under the preceding paragraphs of this subdivision shall be payable with interest on such amount at the valuation rate of

interest (as defined in paragraph eleven of subdivision a of this section) for such retirement system for such fiscal year.

(8) In determination of the normal contribution payable to each of NYCERS, NYCTRS or BERS with respect to each fiscal year occurring during the revised amortization period, the present value, as of June thirtieth next preceding such fiscal year, of all future installments of the contributions payable to such retirement system pursuant to the preceding paragraphs of this subdivision be treated as an asset of such pension fund.

(9) (i) As used in this paragraph, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

(A) "Authority". The New York city housing authority.

(B) "Actuary". The chief actuary of NYCERS.

(C) "Authority BSL". The portion of the balance of unfunded BSL subject to consolidated amortization (as defined in paragraph fifty-three of subdivision a of this section), which portion, as determined by the actuary, is attributable to the authority.

(D) "Amortization of authority BSL". The schedule of payments of principal and interest, to be made in each of the fiscal years of the applicable amortization period as now or hereafter prescribed by law, which is required, as now or hereafter prescribed by law, to pay off and extinguish the authority BSL.

(ii) Notwithstanding any other provision of law to the contrary, the city, acting by the mayor of the city or his delegee for such purpose, and the authority are authorized to enter into an agreement, upon such terms and conditions as the city and the authority deem proper, whereby the city, for such amount and form of consideration (including but not limited to direct payment to or credit in favor of the city) as the city deems proper, assumes in whole or in part as such parties may agree, the obligation which the authority would otherwise have pursuant to law to pay the amortization of authority BSL.

(iii) Immediately following the execution and delivery of such an agreement, which contains due and appropriate attestation that its execution has been duly authorized by the city and the authority, a copy of such agreement, duly certified as a correct copy by the city clerk and the secretary of the authority, shall be filed by the city with the executive director of NYCERS and the city comptroller.

(iv) Immediately after the authority has provided to the city the consideration which such agreement requires the authority to furnish to the city for the assumption by the city of such obligation in relation to payment of amortization of authority BSL, the city shall file with the executive director of NYCERS and the city comptroller, a statement executed by the officer of the city who executed such agreement in its behalf, certifying that such consideration has been received by the city from the authority in compliance with the terms of such agreement.

(v) Upon the completion of such filings as required by subparagraphs (iii) and (iv) of this paragraph, (A) the authority, to the extent provided for in such agreement, shall be released and discharged from the obligation which it would otherwise have pursuant to law with respect to payment of amortization of authority BSL and (B) the city, to the extent provided for in such agreement, shall be obligated to pay such amortization to NYCERS and shall be deemed to be substituted in the place of the authority, to such extent, as the responsible obligor required by law to pay such amortization.

(10) Notwithstanding any provision of the preceding paragraphs of this subdivision or any other law to the contrary, the provisions of such preceding paragraphs shall be superseded in the manner prescribed by the provisions of subdivision jj of this section with respect to contributions on account of UAL and BSL payable for each fiscal year included in the fifteen-year amortization period.

ii. (1) All installments of contribution prescribed by any retirement incentive act as payable, for any fiscal year of the city beginning on or after July first, nineteen hundred ninety-three, to fund additional benefits under such act payable to beneficiaries of NYCERS, NYCTRS and BERS and all installments of contributions prescribed by subdivision gg of this section as payable, for any fiscal year of the city beginning on or after such July first, to fund the additional accrued employer cost referred to in such subdivision are hereby canceled and shall not be due and payable on or after such July first.

(2) Subject to the provisions of paragraph three of this subdivision, the actuary of NYCERS, NYCTRS and BERS shall separately determine for each such retirement system a schedule of contribution installments, one of which is payable in each fiscal year included in the revised amortization period, which installments will amortize the NYCERS balance of retirement incentive and part-time employee UAL, the NYCTRS balance of retirement incentive UAL and the BERS balance of retirement incentive and part-time employee UAL, together with interest on such balances.

(3) (i) The actuary shall determine each schedule of contribution installments referred to in paragraph two of this subdivision so that each installment after the first shall equal one hundred three per centum of the next preceding installment.

(ii) In determining each such schedule, the actuary shall employ an interest rate of nine per centum per annum, compounded annually; provided that if a valuation rate of interest (as defined in paragraph eleven of subdivision a of this section) other than nine per centum per annum is prescribed by law for NYCERS, NYCTRS or BERS for any fiscal year included in the revised amortization period, the schedule contribution installments which are required to be paid, for such fiscal year in which such changed valuation rate of interest is in effect, to the retirement system to which such changed rate of interest applies, shall be redetermined by the actuary thereof on the basis of a rate of interest equal to such changed rate, compounded annually, so as to reflect such changed rate appropriately in such redetermined installments.

(4) (i) Subject to the provisions of subparagraph (ii) of this paragraph, and subject to the provisions of sections 13-130, 13-131 and 13-132 of this title in the case of NYCERS, and subject to the provisions of section 13-528 and 13-529 thereof in the case of NYCTRS, and subject to the provisions of paragraph (j) of subdivision sixteen of section twenty-five hundred seventy-five of the education law in the case of BERS, in each fiscal year of the revised amortization period the respective retirement incentive responsible obligors and part-time employee responsible obligors of each of NYCERS and BERS, and the retirement incentive responsible obligors, in the case of NYCTRS, shall pay into the contingent reserve fund of such retirement system their respective shares of the contribution installments applicable to such retirement system for such fiscal year under the schedules established pursuant to paragraph two of this subdivision and paragraph three thereof.

(ii) The provisions of law which apply to the time and manner of payment and payment financing of contribution installments required to be paid, prior to July first, nineteen hundred ninety-three, by such responsible obligors under the applicable retirement incentive acts and subdivision gg of this section shall be deemed to apply to the time and manner of payment and payment financing of the contribution installments referred to in subparagraph (i) of this paragraph.

(5) Any amount required to be contributed to NYCERS, NYCTRS or BERS with respect to any fiscal year under the preceding paragraphs of this subdivision shall be payable with interest on such amount at the valuation rate of interest (as defined in paragraph eleven of subdivision a of this section) for such retirement system for such fiscal year.

(6) In determining of the normal contribution payable to each of NYCERS, NYCTRS or BERS with respect to each fiscal year occurring during the revised amortization period, the present value, as of June thirtieth next preceding such fiscal year, of all future installments of the contributions payable to such retirement system pursuant to the preceding paragraphs of this subdivision be treated as an asset of such pension fund.

(7) No provision of this subdivision shall be construed as amending, modifying, superseding or repealing:

(i) the amendment to section ten of chapter four hundred ninety-four of the laws of nineteen hundred ninety-two made by chapter eight hundred thirty-seven of the laws of nineteen hundred ninety-two; or

(ii) any contract, agreement, commitment or understanding between the city and any other governmental entity whereby such other entity agreed to pay or assume all or a part of the cost of contributions required by any retirement incentive act to fund additional benefits thereunder.

(8) Notwithstanding any provision of the preceding paragraphs of this subdivision or any other law to the contrary, the provisions of paragraphs one to six, inclusive, of this subdivision shall be superseded in the manner prescribed by the provisions of subdivision jj of this section with respect to contributions on account of UAL payable for each fiscal year included in the fifteen-year amortization period.

jj. (1) All NYCERS, NYCTRS and BERS installments of contribution designated in paragraphs two, three, four, five and six of subdivision hh of this section as payable in any fiscal year succeeding June thirtieth, nineteen hundred ninety-five by any general UAL and BSL responsible obligor or senior college UAL and BSL responsible obligor and all installments of contribution designated in paragraphs two, three and four of subdivision ii of this section as payable by any retirement incentive responsible obligor of NYCERS, NYCTRS or BERS or part-time employee responsible obligor of NYCERS or BERS are hereby canceled and shall not be due and payable on or after such July first.

(2) Subject to the provisions of paragraph four of this subdivision, the actuary of NYCERS and NYCTRS shall separately determine for each such retirement system:

(i) a schedule of contribution installments, one of which is payable in each fiscal year included in the fifteen-year amortization period, which installments will amortize the portion of the NYCERS 1995 UAL or NYCTRS 1995 UAL, as the case may be, which portion is not attributable to the senior colleges, together with interest on such portion;

(ii) a schedule of contribution installments, one of which is payable in each fiscal year included in the fifteen-year amortization period, which installments will amortize the portion of the NYCERS 1995 balance of BSL or NYCTRS 1995 balance of BSL, as the case may be, which portion is not attributable to the senior colleges, together with interest on such portion;

(iii) a schedule of contribution installments, one of which is payable in each fiscal year included in the fifteen-year amortization period, which installments will amortize the portion of the NYCERS 1995 UAL or NYCTRS 1995 UAL, as the case may be, which portion is attributable to the senior colleges, together with interest on such portion; and

(iv) a schedule of contribution installments, one of which is payable in each fiscal year included in the fifteen-year amortization period, which installments will amortize the portion of the NYCERS 1995 balance of BSL or NYCTRS 1995 balance of BSL, as the case may be, which portion is attributable to the senior colleges, together with interest on such portion.

(3) Subject to the provisions of paragraph four of this subdivision, the actuary of BERS shall determine for such retirement system:

(i) a schedule of contribution installments, one of which is payable in each fiscal year included in the fifteen-year amortization period, which installments will amortize the BERS 1995 UAL, together with interest on such UAL; and

(ii) a schedule of contribution installments, one of which is payable in each fiscal year included in the fifteen-year amortization period, which installments will amortize the BERS 1995 balance of BSL, together with interest on such balance.

(4) (i) The actuary shall determine each schedule of contribution installments referred to in paragraphs two and three of this subdivision so that each installment after the first shall equal one hundred three per centum of the next preceding installment.

(ii) In determining each such schedule, the actuary shall employ an interest rate of eight and three-quarters per centum per annum, compounded annually; provided that if a valuation rate of interest (as defined in paragraph eleven of subdivision a of this section) other than eight and three-quarters per centum per annum is prescribed by law for NYCERS, NYCTRS or BERS for any fiscal year included in the fifteen-year amortization period, the schedule contribution installments which are required to be paid, for such fiscal year in which such changed valuation rate of interest is in effect, to the retirement system to which such changed rate of interest applies, shall be redetermined by the actuary thereof on the basis of a rate of interest equal to such changed rate, compounded annually, so as to reflect such changed rate appropriately in such redetermined installments.

(5) (i) Subject to the provisions of subparagraph (ii) of this paragraph, and subject to the provisions of sections 13-130 and 13-132 of this title in the case of NYCERS, and subject to the provisions of section 13-529 thereof in the case of NYCTRS, and subject to the provisions of paragraph (j) of subdivision sixteen of section twenty-five hundred seventy-five of the education law in the case of BERS, in each fiscal year of the fifteen-year amortization period, the general UAL and BSL responsible obligors of each of NYCERS, NYCTRS and BERS shall pay into its contingent reserve fund their respective shares of the contribution installments applicable to such retirement system for such fiscal year under the schedules established pursuant to subparagraphs (i) and (ii) of paragraph two of this subdivision and paragraph three thereof.

(ii) The provisions of law which apply to the time and manner of payment of contribution installments required to be paid by general UAL and BSL responsible obligors for the fiscal years included in the period beginning on July first, nineteen hundred ninety and ending on June thirtieth, nineteen hundred ninety-three, as designated in subdivision cc of this section, shall be deemed to apply to the time and manner of payment of the contribution installments referred to in subparagraph (i) of this paragraph.

(6) (i) Subject to the provisions of subparagraph (ii) of this paragraph, in each fiscal year of the fifteen-year amortization period, the senior college UAL and BSL responsible obligors of each of NYCERS and NYCTRS shall contribute to such retirement system their respective shares of the contribution installments applicable to such retirement system for such fiscal year under the schedules established pursuant to subparagraphs (iii) and (iv) of paragraph two of this subdivision.

(ii) The special provisions for funding and financing senior college UAL and BSL amortization (A) shall be deemed to apply to the contribution installments referred to in subparagraph (i) of this paragraph with respect to all matters to which such special provisions pertain, as described in subparagraphs (i) to (v), inclusive, of paragraph fifty-five of subdivision a of this section, and (B) shall be deemed to include such installments as if such installments were mentioned in the appropriate terms of such provisions.

(7) Any amount required to be contributed to NYCERS, NYCTRS or BERS with respect to any fiscal year under the preceding paragraphs of this subdivision shall be payable with interest on such amount at the valuation rate of interest (as defined in paragraph eleven of subdivision a of this section) for such retirement system for such fiscal year.

(8) In determination of the normal contribution payable to each of NYCERS, NYCTRS or BERS with respect to each fiscal year occurring during the fifteen-year amortization period, the present value, as of June thirtieth next preceding such fiscal year, of all future installments of the contributions payable to such retirement system pursuant to

the preceding paragraphs of this subdivision shall be treated as an asset of the retirement system.

(9) (i) No provisions of this subdivision shall be construed as amending, modifying, superseding or repealing:

(A) the amendment to section ten of chapter four hundred ninety-four of the laws of nineteen hundred ninety-two made by chapter eight hundred thirty-seven of the laws of nineteen hundred ninety-two; or

(B) any contract, agreement, commitment or understanding between the city and any other governmental entity whereby such other entity agreed to pay or assume all or a part of the cost of contributions required by any retirement incentive act to fund additional benefits thereunder.

(ii) Any contribution required to be made by this subdivision, to the extent that such contribution amortizes any liability of a retirement system for additional benefits under a retirement incentive act, shall be deemed to be a cost of contributions required by such act to fund such additional benefits.

(10) Notwithstanding any provision of the preceding paragraphs of this subdivision or any other law to the contrary, the provisions of such preceding paragraphs shall be superseded in the manner prescribed by the provisions of subdivision kk of this section with respect to contributions on account of UAL and BSL payable for each fiscal year included in the eleven-year amortization period.

kk. (1) All NYCERS, NYCTRS and BERS installments of contribution designated in paragraphs two, three, four, five and six of subdivision jj of this section as payable in any fiscal year succeeding June thirtieth, nineteen hundred ninety-nine by any general UAL and BSL responsible obligor or senior college UAL and BSL responsible obligor and all other installments of contribution resulting from any unfunded accrued liability established on or before June thirtieth, nineteen hundred ninety-nine which are payable in any fiscal year succeeding such June thirtieth by an such obligor of NYCERS, NYCTRS or BERS are hereby canceled and shall not be due and payable on or after such July first.

(2) Subject to the provisions of paragraph three of this subdivision, the actuary of NYCERS, NYCTRS and BERS shall separately determine for each such retirement system a schedule of contribution installments, one of which is payable in each fiscal year included in the eleven-year amortization period, which installments will amortize the NYCERS 1999 UAL, NYCTRS 1999 UAL or BERS 1999 UAL, as the case may be, together with interest on such amounts.

(3)(i) The actuary shall determine each schedule of contribution installments referred to in paragraph two of this subdivision so that each installment after the first shall equal one hundred three per centum of the next preceding installment.

(ii) In determining each such schedule, the actuary shall employ an interest rate of eight per centum per annum, compounded annually; provided that if a valuation rate of interest (as defined in paragraph eleven of subdivision a of this section) other than eight per centum per annum is prescribed by law for NYCERS, NYCTRS or BERS for any fiscal year included in the eleven-year amortization period, the schedule contribution installments which are required to be paid, for such fiscal year in which such changed valuation rate of interest is in effect, to the retirement system to which such changed rate of interest applies, shall be redetermined by the actuary thereof on the basis of a rate of interest equal to such changed rate, compounded annually, so as to reflect such changed rate appropriately in such redetermined installments.

(4)(i) Subject to the provisions of subparagraph (ii) of this paragraph, and subject to the provisions of sections 13-130 and 13-132 of this title in the case of NYCERS, and subject to the provisions of section 13-529 thereof in the case of NYCTRS, and subject to the provisions of paragraph (j) of subdivision sixteen of section twenty-five hundred seventy-five of the education law in the case of BERS, in each fiscal year of the eleven-year amortization period, the responsible obligors of each of NYCERS, NYCTRS and BERS shall pay into its contingent reserve fund their

respective shares of the contribution installments applicable to such retirement system for such fiscal year under the schedules established pursuant to paragraph two of this subdivision.

(ii) The applicable provisions of subdivision c of section 13-133 of this title and subdivision (c) of section 13-533 thereof and paragraph (j) of subdivision sixteen of section twenty-five hundred seventy-five of the education law shall govern the time and manner of payment, within each fiscal year, of contributions payable with respect to such fiscal year to NYCERS, NYCTRS or BERS pursuant to subparagraph (i) of this paragraph. Nothing contained in this subdivision shall be construed as amending, modifying or changing such provisions of this title or the provisions of any other law relating to the time of payment, within a fiscal year, of contributions payable to such retirement systems with respect to such fiscal year.

(5) Any amount required to be contributed to NYCERS, NYCTRS or BERS with respect to any fiscal year under the preceding paragraphs of this subdivision shall be payable with interest on such amount at the valuation rate of interest (as defined in paragraph eleven of subdivision a of this section) for such retirement system for such fiscal year.

**HISTORICAL NOTE**

Section heading amended chap 633/1994 § 1, eff. July 28, 1994

and deemed to have been in force on and after July 1, 1993

Section added chap 878/1990 §25 retro. to 7/1/1989

Subd. a pars 9-a, 9-b, 9-c, 9-d added chap 607/1991 § 1 retro.

to 7/1/1990

Subd. a pars 10-a, 10-b added chap 607/1991 § 1 retro. to

7/1/1990

Subd. a par 17 amended chap 85/2000 § 7, eff. June 23, 2000 and deemed

in effect on and after July 1, 1999.

Subd. a par 17 amended chap 249/1996 § 19, eff. June 30, 1996 and

deemed in effect on and after July 1, 1995

Subd. a par 17 amended chap 948/1990 § 1 retro. to 7/1/1990

Subd. a pars 18-21 repealed and added chap 607/1991 § 2 retro.

to 7/1/1990

Subd. a pars 18=n21 added chap 948/1990 § 2 retro. to 7/1/1990

Subd. a pars 22-49 added chap 607/1991 § 3 retro. to 7/1/1990

Subd. a pars 50-65 added chap 633/1994 § 2, eff. July 28, 1994

and deemed to have been in force on and after July 1, 1993

Subd. a pars 66-72 added chap 249/1996 § 20, eff. June 30, 1996 and

deemed in effect on and after July 1, 1995

Subd. a pars 73, 74, 75, 76 added chap 85/2000 § 8, eff. June 23, 2000 and deemed in effect on and after July 1, 1999.

Subd. b amended chap 948/1990 § 3 retro. to 7/1/1990

Subd. b par (2) amended chap 152/2006 § 12, eff. July 7, 2006 and deemed to have been in full force and effect on and after July 1, 2005. [See § 13-103 Note 1]

Subd. b par (2) amended chap 133/2005 § 1, eff. July 1, 2005.

Subd. b par (2) amended chap 133/2004 § 1, eff. July 1, 2004.

Subd. b par (2) amended chap 85/2000 § 9, eff. June 23, 2000 and deemed in effect on and after July 1, 1999.

Subd. b par (2) amended chap 157/1997 § 1, eff. June 30, 1997 and deemed in effect on and after July 1, 1996.

Subd. b par (2) amended chap 598/1996 § 7, eff. Aug. 8, 1996 and deemed in effect on and after July 1, 1995

Subd. b par (2) amended chap 249/1996 § 21, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. b par (2) amended chap 642/1995 § 1, eff. Aug. 8, 1995 and retroactive to July 1, 1995

Subd. b par (2) separately amended chap 610/1991 § 1 retro. to 7/1/1990, chap 608/1991 § 1 retro. to 7/1/1990, chap 607/1991 § 4 retro. to 7/1/1990

Subds. d, e amended chap 948/1990 § 4 retro. to 7/1/1990

Subd. f par (1) amended chap 948/1990 § 5 retro. to 7/1/1990

Subd. f par (2) amended chap 152/2006 § 13, eff. July 7, 2006 and deemed to have been in full force and effect on and after July 1, 2005. [See § 13-103 Note 1]

Subd. f par (2) amended chap 133/2005 § 2, eff. July 1, 2005.

Subd. f par (2) amended chap 133/2004 § 2, eff. July 1, 2004.

Subd. f par (2) amended chap 85/2000 § 10, eff. June 23, 2000 and deemed in effect on and after July 1, 1999.

Subd. f par (2) amended chap 598/1996 § 8, eff. Aug. 8, 1996 and deemed in effect on and after July 1, 1995

Subd. f par (2) amended chap 249/1996 § 22, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. f par (2) amended chap 642/1995 § 2, eff. Aug. 8, 1995 and retroactive to July 1, 1995.

Subd. f par (2) separately amended chap 610/1991 § 2 retro. to 7/1/1990, chap 608/1991 § 2 retro. to 7/1/1990, chap 607/1991 § 5 retro. to 7/1/1990

Subd. f par (2) amended chap 948/1990 § 5 retro. to 7/1/1990

Subd. g par (2) amended chap 152/2006 § 14, eff. July 7, 2006 and deemed to have been in full force and effect on and after July 1, 2005. [See § 13-103 Note 1]

Subd. g par (2) amended chap 133/2005 § 3, eff. July 1, 2005.

Subd. g par (2) amended chap 133/2004 § 3, eff. July 1, 2004.

Subd. g par (2) amended chap 85/2000 § 11, eff. June 23, 2000 and deemed in effect on and after July 1, 1999.

Subd. g par (2) amended chap 598/1996 § 9, eff. Aug. 8, 1996 and deemed in effect on and after July 1, 1995

Subd. g par (2) amended chap 249/1996 § 23, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. g par (2) amended chap 642/1995 § 3, eff. Aug. 8, 1995 and retroactive to July 1, 1995.

Subd. g par (2) separately amended chap 610/1991 § 3 retro. to 7/1/1990, chap 608/1991 § 3 retro. to 7/1/1990, chap

607/1991 § 6 retro. to 7/1/1990

Subd. g par (2) amended chap 948/1990 § 6 retro. to 7/1/1990

Subd. h par (1) amended chap 948/1990 § 7 retro. to 7/1/1990

Subd. i par (2) amended chap 152/2006 § 15, eff. July 7, 2006 and deemed to have been in full force and effect on and after July 1, 2005. [See § 13-103 Note 1]

Subd. i par (2) amended chap 133/2005 § 4, eff. July 1, 2005.

Subd. i par (2) amended chap 133/2004 § 4, eff. July 1, 2004.

Subd. i par (2) amended chap 85/2000 § 12, eff. June 23, 2000 and deemed in effect on and after July 1, 1999.

Subd. i par (2) amended chap 157/1997 § 2, eff. June 30, 1997 and deemed in effect on and after July 1, 1996.

Subd. i par (2) amended chap 598/1996 § 10, eff. Aug. 8, 1996 and deemed in effect on and after July 1, 1995

Subd. i par (2) amended chap 249/1996 § 24, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. i par (2) amended chap 642/1995 § 4, eff. Aug. 8, 1995 and retroactive to July 1, 1995.

Subd. i par (2) separately amended chap 610/1991 § 4 retro. to 7/1/1990, chap 608/1991 § 4 retro. to 7/1/1990, chap 607/1991 § 7 retro. to 7/1/1990

Subd. i par (2) amended chap 948/1990 § 8 retro. to 7/1/1990

Subd. j amended chap 948/1990 § 9 retro. to 7/1/1990

Subd. k amended chap 948/1990 § 10 retro. to 7/1/1990

Subd. k par (1) repealed and added chap 85/2000 § 13, eff. June 23, 2000 and deemed in effect on and after July 1, 1999.

Subd. k par (1) repealed & added chap 249/1996 § 25, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. k par (1) subpar (i) amended chap 157/1997 § 3, eff. June 30, 1997 and deemed in effect on and after July 1, 1996.

Subd. k par (1) separately amended chap 610/1991 § 5 retro. to 7/1/1990, chap 608/1991 § 5 retro. to 7/1/1990, chap 607/1991 § 8 retro. to 7/1/1990

Subd. k par (1) subpar (ii) amended chap 949/1990 § 1 retro. to 7/1/1990

Subd. k par (1) subpar (iii) amended chap 598/1996 § 11, eff. Aug. 8, 1996 and deemed in effect on and after July 1, 1995

Subd. l repealed and added chap 85/2000 § 14, eff. June 23, 2000 and deemed in effect on and after July 1, 1999.

Subd. l amended chap 598/1996 § 12, eff. Aug. 8, 1996 and deemed in effect on and after July 1, 1996

Subd. l repealed & added chap 249/1996 § 26, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. l separately amended chap 610/1991 § 6, retro. to 7/1/1990, chap 608/1991 § 6 retro. to 7/1/1990, chap 607/1991 § 9 retro. to 7/1/1990

Subd. l amended chap 948/1990 § 10 retro. to 7/1/1990

Subd. l par (1) amended chap 157/1997 § 4, eff. June 30, 1997 and deemed in effect on and after July 1, 1996.

Subds. m, n amended chap 607/1991 § 10 retro. to 7/1/1990

Subds. m, n added chap 948/1990 § 11 retro. to 7/1/1990

Subds. o, p, q repealed & added chap 607/1991 § 11 retro. to 7/1/1990

Subds. o, p, q added chap 948/1990 § 11 retro. to 7/1/1990

Subds. r-z added chap 607/1991 § 13 retro. to 7/1/1990

Subd. aa par (4) added chap 633/1994 § 10, eff. July 28, 1994 and

deemed to have been in force on and after July 1, 1993.

Subd. aa added chap 607/1991 § 13 retro. to 7/1/1990

Subd. bb added chap 607/1991 § 13 retro. to 7/1/1990

Subd. cc added chap 607/1991 § 13 retro. to 7/1/1990

Subd. dd added chap 607/1991 § 13 retro. to 7/1/1990

Subd. ee relettered and amended chap 607/1991 § 12 retro. to 7/1/1990 (formerly subd. r added chap 948/1990 § 11)

Subd. ff relettered and amended chap 607/1991 § 12 retro. to 7/1/1990 (formerly subd. s added chap 948/1990 § 11)

Subd. gg added chap 749/1992 § 14 eff. July 31, 1992

Subd. hh added chap 633/1994 § 3, eff. July 28, 1994 and deemed to have been in force on and after July 1, 1993.

Subd. hh par (9) added chap 641/1995 § 1, eff. Aug. 8, 1995 and retroactive to June 1, 1995

Subd. hh par (10) added chap 249/1996 § 27, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. ii added chap 633/1994 § 3, eff. July 28, 1994 and deemed to have been in force on and after July 1, 1993.

Subd. ii par (8) added chap 249/1996 § 28, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. jj added chap 249/1996 § 29, eff. June 30, 1996 and deemed in effect on and after July 1, 1995

Subd. jj par (10) added chap 85/2000 § 15, eff. June 23, 2000 and deemed in effect on and after July 1, 1999.

Subd. kk added chap 85/2000 § 16, eff. June 23, 2000 and deemed in effect on and after July 1, 1999.

**FOOTNOTES**

4

[Footnote 4]: * So in original. "affect" s.b. "effect".

5

[Footnote 5]: * So in original. "reminder" probably s.b. "remainder".

10

[Footnote 10]: * So in original. ("thirty" s.b. "thirtieth")

6

[Footnote 6]: * So in original. ("13-683.3" should be "13-638.3".)

11

[Footnote 11]: * So in original. ("non" s.b. "not")



Administrative Code of the City of New York



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

*NYC Administrative Code 13-638.3*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-638.3 12 Funding of consolidated unfunded accrued liabilities and remainder of balance sheet liability of the police pension fund, subchapter two; amortization of such liabilities and certain liabilities for transfers to variable supplements funds pursuant to the level percentage of payroll method in certain fiscal years.

a. The following words and phrases, as used in this section, shall have the following meanings, unless a different meaning is plainly required by the context: (1) "PPF". The police pension fund, subchapter two.

(2) "Fiscal year". A fiscal year of the city as defined in section two hundred twenty-six of the New York city charter.

(3) "UAL". Unfunded accrued liability.

(4) "BSL". Balance sheet liability.

(5) "Phase-in period". The period beginning on July first, nineteen hundred ninety and ending on June thirtieth, nineteen hundred ninety-five.

(6) "Regular installment period". The period beginning on July first, nineteen hundred ninety-five and ending on June thirtieth, two thousand ten.

(7) "Charge". An amount which is required to be paid to PPF as an employer contribution.

(8) "Credit". An amount which is required to be applied in reduction of employer contributions otherwise payable to PPF.

(9) "Individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety". Any of the following, as applicable to PPF as of June thirtieth, nineteen hundred ninety: the revised unfunded accrued liability contribution, the nineteen hundred eighty unfunded accrued liability adjustment, the nineteen hundred eighty-two unfunded accrued liability adjustment, the nineteen hundred eighty-five unfunded accrued liability adjustment, the nineteen hundred eighty-eight unfunded accrued liability adjustment, all in- stallments of amortization of bond sale gains and losses and all installments of funding of supplemental retirement allowances.

(10) "Recomputed annual installment of individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety". (i) An installment amount computed in accordance with the succeeding subparagraphs of this paragraph in relation to each PPF individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety (as defined in paragraph nine of this subdivision) for such pension fund.

(ii) The actuary of PPF shall determine, as of June thirtieth, nineteen hundred ninety and on the basis of eight and one-quarter per centum interest per annum, the present value of all those annual installments of such PPF individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety, which installments, in the absence of the enactment of the act which added this paragraph, would have remained, as of such June thirtieth, due and unpaid (if a charge) or uncredited (if a credit) with respect to fiscal years succeeding such June thirtieth.

(iii) The actuary of PPF shall determine an amount which, if paid to its contingent reserve fund, or applied as a credit, as the case may be, commencing with a first payment or credit in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, in a number of equal annual installments equal to the number of such annual installments remaining due and unpaid or uncredited with respect to PPF as of June thirtieth, nineteen hundred ninety as described in subparagraph (ii) of this paragraph, would be the actuarial equivalent, as of such June thirtieth, on the basis of eight and one-half per centum interest per annum, of the present value determined pursuant to such subparagraph (ii).

(iv) With respect to each PPF individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety, the recomputed annual installment of individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety shall be one equal annual installment determined with respect to such individual UAL amortization pursuant to subparagraph (iii) of this paragraph.

(11) "Single-year aggregate of recomputed annual installments of individual UAL amortizations in effect as of June thirtieth, nineteen hundred ninety". Such aggregate shall be the total amount obtained, in relation to any fiscal year occurring during the phase-in period (as defined in paragraph five of this subdivision) by adding together all recomputed annual installments of individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety (as defined in paragraph ten of this subdivision), as applicable to such fiscal year. For the purpose of such addition, any such recomputed installments which constitute a credit shall be treated as a negative quantity.

(12) "Nineteen hundred ninety BSL contribution". The nineteen hundred ninety BSL contribution determined pursuant to subdivision q of this section.

(13) "Nineteen hundred ninety UAL credit". (i) An amount which shall be determined for PPF as hereinafter provided in this paragraph.

(ii) Upon the basis of the actuarial tables and actuarial methods in effect for valuation purposes with respect to determination of the normal contribution payable to the contingent reserve fund of PPF in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year and an interest rate of eight and one-half per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred ninety, the amount of the unfunded accrued liability of PPF, computed pursuant to the entry age normal cost method of ascertaining such unfunded accrued liability.

(iii) There shall be determined with respect to PPF, as of June thirtieth, nineteen hundred ninety, on the basis of an interest rate of eight and one-quarter per centum per annum, the amount obtained by adding together (A) the present values of all those annual installments of individual UAL amortizations in effect as of June thirtieth, nineteen hundred ninety (as defined in paragraph nine of this subdivision), which installments, in the absence of the enactment of the act which added this paragraph, would have remained, as of such June thirtieth, due and unpaid (if a charge) or uncredited (if a credit) with respect to fiscal years succeeding such June thirtieth, and (B) the present value, as of such June thirtieth, of all installments of balance sheet liability, which installments, in the absence of the enactment of the act which added this paragraph, would have remained due and unpaid with respect to fiscal years succeeding such June thirtieth.

(iv) Such amount of unfunded accrued liability determined pursuant to subparagraph (ii) of this paragraph shall be subtracted from such total amount of present values determined pursuant to subparagraph (iii) thereof. The resulting remainder shall be the nineteen hundred ninety UAL credit applicable to PPF.

(14) "Annual installment of the nineteen hundred ninety UAL credit". Any of twenty equal annual installments of credit with respect to PPF, which installments, if applied over a period of twenty fiscal years, commencing with the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, would be the actuarial equivalent, as of June thirtieth, nineteen hundred ninety and on the basis of interest at the rate of eight and one-half per centum per annum, of the nineteen hundred ninety UAL credit (as defined in paragraph thirteen of this subdivision).

(15) "Phase-in installment of nineteen hundred ninety consolidated UAL contribution". (i) With respect to any fiscal year included in the phase-in period (as defined in paragraph five of this subdivision), such phase-in installment shall consist of an installment amount determined in relation to PPF in the manner hereinafter provided for in this subparagraph.

(ii) The single-year aggregate of recomputed annual installments of UAL amortizations in effect as of June thirtieth, nineteen hundred ninety (as defined in paragraph eleven of this subdivision), as applicable for such fiscal year, and one computation installment of nineteen hundred ninety BSL (as defined in paragraph nineteen of this subdivision) shall be added together.

(iii) From the amount resulting from such addition, there shall be subtracted the amount obtained by adding together (A) one annual installment of the nineteen hundred ninety UAL credit (as defined in paragraph fourteen of this subdivision) and (B) the amount of one installment of nineteen hundred ninety BSL contribution (as defined in paragraph twelve of this subdivision).

(iv) The remainder resulting from the subtraction prescribed by subparagraph (III) of this paragraph shall be the phase-in installment of nineteen hundred ninety consolidated UAL contribution for such fiscal year.

(16) "Unfunded accrued liability as of June thirtieth, nineteen hundred ninety". The unfunded accrued liability of PPF as determined pursuant to subparagraph (ii) of paragraph thirteen of this subdivision.

(17) "Nineteen hundred ninety balance sheet liability". The total present value, determined as of June thirtieth, nineteen hundred ninety on the basis of an interest rate of eight and one-half per centum per annum, of all installments of nineteen hundred ninety BSL contribution (as defined in paragraph twelve of this subdivision) payable to PPF pursuant to the provisions of subdivision q of this section.

(18) "Prior BSL contribution". The BSL contribution of PPF determined pursuant to paragraph four of subdivision b of section 13-228 of this title, as such contribution was in effect on June thirtieth, nineteen hundred ninety.

(19) "Computation installment of nineteen hundred ninety BSL". (i) Any installment amount determined as hereinafter provided in this paragraph.

(ii) The actuary of PPF shall determine with respect to such pension fund, as of June thirtieth, nineteen hundred ninety on the basis of eight and one-quarter per centum interest per annum, the present value of the thirty-one equal annual installments of the prior BSL contribution (as defined in paragraph eighteen of this subdivision) of such pension fund, which installments, in the absence of the enactment of the act which added this subdivision, would have remained due and unpaid to such pension fund as of such June thirtieth.

(iii) The actuary shall determine an amount which, if paid to the contingent reserve fund of such pension fund in thirty-one equal annual installments, commencing with a first payment in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, would be the actuarial equivalent, on the basis of an interest rate of eight and one-half per centum per annum, of such present value.

(iv) Each of the first five of such installments determined pursuant to subparagraph (iii) of this paragraph with respect to such pension fund shall be a computation installment of nineteen hundred ninety BSL.

(20) "Regular installment of nineteen hundred ninety consolidated UAL contribution". Any installment payable pursuant to subdivision d of this section.

(21) "Nineteen hundred ninety consolidated UAL contribution". The nineteen hundred ninety consolidated UAL contribution for which phase-in installments are determined pursuant to paragraph fifteen of this subdivision and for which regular installments are determined pursuant to subdivision d of this section.

(22) "Installment of nineteen hundred ninety BSL contribution". Any installment payable pursuant to subdivision g of this section.

(23) "UAL subject to consolidated amortization". The amount of the unfunded accrued liability of PPF which, prior to July first, nineteen hundred ninety-three, was required to be amortized by phase-in and regular consolidated UAL contributions designated in subdivision i of this section.

(24) "BSL subject to consolidated amortization". The amount of the balance sheet liability of PPF which, prior to July first, nineteen hundred ninety-three, was required to be amortized by phase-in and other BSL contributions designated in subdivision i of this section.

(25) "Balance of unfunded UAL subject to consolidated amortization". An amount, determined by the actuary of PPF, which is equal to the present value (based on an interest rate of eight and one-half per centum per annum), as of June thirtieth, nineteen hundred ninety-three, of the remaining unpaid installments, as of such June thirtieth, of the amortization (as prescribed by subdivisions h and i of this section) of the PPF UAL subject to consolidated amortization.

(26) "Balance of unfunded BSL subject to consolidated amortization". An amount, determined by the actuary of PPF, which is equal to the present value (based on an interest rate of eight and one-half per centum per annum), as of June thirtieth, nineteen hundred ninety-three, of the remaining unpaid installments, as of such June thirtieth, of the amortization (as prescribed by subdivisions h and i of this section) of the PPF BSL subject to consolidated amortization.

(27) "Revised amortization period". The period beginning on July first, nineteen hundred ninety-three and ending on June thirtieth, two thousand ten.

(28) "PPF 1995 UAL". The unfunded accrued liability of PPF as of June thirtieth, nineteen hundred ninety-five for benefits payable by PPF (excluding the PPF 1995 balance of BSL, as defined in paragraph thirty of this subdivision), as determined by the actuary pursuant to the entry age normal cost method of ascertaining such unfunded accrued liability, on the basis of an interest rate of eight and one-half per centum per annum and the actuarial tables applicable for the purpose of determining the normal contribution to PPF for the nineteen hundred ninety-five-nineteen hundred ninety-six fiscal year.

(29) "PPF 1995 accrued liability on account of required transfers to variable supplements funds". The actuarial present value as of June thirtieth, nineteen hundred ninety-five, as estimated by the actuary, of the accrued liability of the pension fund on account of payments which the pension fund may be required to make for base fiscal years (as defined by the applicable provisions of paragraph one of subdivision b of section 13-232.1 of this title and paragraph one of subdivision b of section 13-232.3 of this title) beginning on or after July first, nineteen hundred ninety-four to the police officer's variable supplements fund, pursuant to subdivisions d, e and f of such section 13-232.1 and to the police superior officers' variable supplements fund pursuant to subdivisions d, e and f of such section 13-232.3.

(30) "PPF 1995 balance of BSL". The present value, as determined by the actuary as of June thirtieth, nineteen hundred ninety-five on the basis of an interest rate of eight and one-half per centum per annum, of the total of all contribution installments which, in the absence of the enactment of the act which added this paragraph, would be payable to PPF for fiscal years beginning on or after July first, nineteen hundred ninety-five pursuant to subparagraph (ii) of paragraph two of subdivision n of this section and paragraphs three and four of such subdivision.

(31) "Fifteen-year amortization period". The period beginning on July first, nineteen hundred ninety-five and ending on June thirtieth, two thousand ten.

(32) "PPF 1999 UAL". The unfunded accrued liability of PPF as of June thirtieth, nineteen hundred ninety-nine attributable as of that date to the obligations set forth in item (ii) of subparagraph (a) of paragraph two of subdivision b of section 13-228 of this title, as determined by the actuary pursuant to the entry age normal cost method of ascertaining such unfunded accrued liability, on the basis of an interest rate of eight per centum per annum and the actuarial tables applicable for the purpose of determining the normal contribution to PPF for the nineteen hundred ninety-nine-two thousand fiscal year, provided, however, that in the event such calculation of unfunded accrued liability produces a negative amount, the PPF 1999 UAL shall be zero.

(33) "Eleven-year amortization period". The period beginning on July first, nineteen hundred ninety-nine and ending on June thirtieth, two thousand ten.

b. Notwithstanding any other provision of law to the contrary, all PPF installments of the revised unfunded accrued liability contribution, the nineteen hundred eighty unfunded accrued liability adjustment, the nineteen hundred eighty-two unfunded accrued liability adjustment, the nineteen hundred eighty-five unfunded accrued liability adjustment and the nineteen hundred eighty-eight unfunded accrued liability adjustment and all PPF installments of amortization of bond sale gains and losses and all PPF installments of funding of supplemental retirement allowances, which installments, in the absence of the enactment of the act which added this section, would otherwise be due from and payable by the city to PPF (or be creditable to the city) with respect to any fiscal year or period beginning on or after July first, nineteen hundred ninety are hereby cancelled as of such July first and shall not be due and payable (or creditable) on or after such July first.

c. The actuary of PPF shall determine the amount of the difference obtained by subtracting (1) the outstanding balance, as of June thirtieth, nineteen hundred ninety-five, of the nineteen hundred ninety balance sheet liability (as defined in paragraph seventeen of subdivision a of this section) of such pension fund from (2) the outstanding balance, as of such June thirtieth, of the unfunded accrued liability as of June thirtieth, nineteen hundred ninety (as defined in paragraph sixteen of such subdivision) of such pension fund.

d. (1) The actuary of PPF shall determine an amount which, when paid into the contingent reserve fund of PPF in fifteen equal annual installments, commencing with payment of a first installment in the nineteen hundred ninety-five-nineteen hundred ninety-six fiscal year, shall be the actuarial equivalent, on the basis of eight and one-half per centum interest per annum, of the amount of difference determined pursuant to subdivision c of this section.

(2) Such amount determined in relation to such installments shall be payable in regular installments as provided for in subdivision i of this section.

e. Notwithstanding any other provision of law to the contrary, no installments of prior BSL contribution (as defined in paragraph eighteen of subdivision a of this section) shall be due from or payable by the city to PPF with respect to any fiscal year of the city beginning on or after July first, nineteen hundred ninety.

f. The actuary of PPF shall determine with respect to such pension fund, as of June thirtieth, nineteen hundred ninety on the basis of eight and one-quarter per centum interest per annum, the present value of the thirty-one equal annual installments of the prior BSL contribution (as defined in paragraph eighteen of subdivision a of this section) of such pension fund, which installments, in the absence of the enactment of the act which added this subdivision, would have remained due and unpaid to such pension fund as of such June thirtieth.

g. (1) The actuary of PPF shall determine an amount which, when paid to the contingent reserve fund of such pension fund in twenty equal annual installments, commencing with a first payment in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, shall be the actuarial equivalent, on the basis of an interest rate of eight and one-half per centum per annum, of the present value determined pursuant to subdivision f of this section.

(2) Such amount determined in relation to such installments, which amount shall be payable in installments as provided for in subdivision i of this section, shall constitute the nineteen hundred ninety BSL contribution.

h. (1) Subject to the provisions of paragraph two of this subdivision, in each fiscal year included in the period beginning on July first, nineteen hundred ninety and ending on June thirtieth, two thousand ten, the city shall pay into the contingent reserve fund of PPF:

(i) the installment amount allocated to such fiscal year for payment on account of nineteen hundred ninety consolidated UAL contribution (as defined in paragraph twenty-one of subdivision a of this section); and

(ii) the installment amount allocated to such fiscal year for payment on account of the nineteen hundred ninety BSL contribution (as defined in paragraph twelve of such subdivision).

(2) Each installment amount payable as provided for in paragraph one of this subdivision shall be in the applicable sum prescribed in the schedule of twenty-year amortization set forth in subdivision i of this section.

(3) Notwithstanding any provision of the preceding paragraphs of this subdivision or any other law to the contrary, the provisions of subdivisions c through g, inclusive, of this section, and the affected portions of subdivision i thereof, and the preceding paragraphs of this subdivision shall be superseded in the manner prescribed by subdivision n of this section with respect to contributions on account of UAL and BSL payable for each fiscal year included in the revised amortization period.

i. Subject to the provisions of subdivisions k and l of section 13-638.2 of this subchapter, installments of the contributions to PPF provided for by subdivisions b to h, inclusive, of this section shall be paid by the city in accordance with the schedule of twenty-year amortization set forth below in this subdivision.

SCHEDULE FOR TWENTY-YEAR AMORTIZATION

OF PPF 1990 CONSOLIDATED

UAL AND 1990 REMAINDER OF BSL

(numerical references in parentheses are to paragraph

numbers of definitions in subdivision a of this section)

| Col. 1 Fiscal year or years in which annual amortization payments | Col. 2 Amount payable in each fiscal year |
|---|---|

| | | |
|---|---|---|
| | are required to be made | |
| Col. A | Each fiscal year (2) in the phase-in period (5) | The sum obtained by adding together (a) the phase-in installment of nineteen hundred ninety consolidated UAL contribution (15) applicable to such fiscal year and (b) the installment of nineteen hundred ninety BSL contribution (22) applicable to such fiscal year. |
| Col. B | Each fiscal year (2) in the regular installment period (6) | The sum obtained by adding together (a) the regular installment of nineteen hundred ninety consolidated UAL contribution (20) applicable to such fiscal year and (b) the installment of nineteen hundred ninety BSL contribution (22) applicable to such fiscal year. |

j. The provisions of subdivision c of section 13-231 of this title shall govern the time and manner of payment, within each fiscal year, of contributions payable with respect to such fiscal year to PPF pursuant to the provisions of subdivisions b to i, inclusive, of this section. Nothing contained in this section shall be construed as amending, modifying or changing such provisions of this title or the provisions of any other law relating to the time of payment, within a fiscal year of contributions payable to such pension fund with respect to such fiscal year.

k. For the purpose of determining the amount of any installment of the contributions payable to PPF pursuant to the provisions of subdivisions b to i, inclusive, of this section, the actuary of such

pension fund may use methods of calculation other than those set forth in such provisions, so long as such other methods produce in relation to such installment an amount equal to that produced by the methods of calculation set forth in such provisions.

l. Any amount required to be contributed to PPF with respect to any fiscal year under the provisions of subdivisions b to i, inclusive, of this section shall be payable with interest on such amount at the valuation rate of interest (as defined in paragraph eleven of subdivision a of section 13-638.2 of this subchapter) for such pension fund for such fiscal year.

m. In determination of the normal contribution payable to PPF with respect to each fiscal year occurring during the period beginning on July first, nineteen hundred ninety and ending on June thirtieth, two thousand ten, the present value, as of June thirtieth next preceding such fiscal year, of all future installments of the contributions payable to such pension fund pursuant to subdivisions b to i, inclusive, of this section shall be treated as an asset of such pension fund.

n. (1) All installments of UAL and BSL contribution designated in subdivision i of this section as payable by the city for fiscal years occurring during the period beginning on July first, nineteen hundred ninety-three and ending on June thirtieth, two thousand ten are hereby canceled and shall not be due and payable on or after such July first.

(2) Subject to the provisions of paragraph three of this subdivision, the actuary of PPF shall determine for such pension fund:

(i) a schedule of contribution installments, one of which is payable in each fiscal year included in the revised amortization period, which installments will amortize the PPF balance of unfunded UAL subject to consolidated amortization, together with interest on such balance; and

(ii) a schedule of contribution installments, one of which is payable in each fiscal year included in the revised amortization period, which installments will amortize the PPF balance of unfunded BSL subject*14 consolidated amortization, together with interest on such balance.

(3) (i) The actuary shall determine each schedule of contribution installments referred to in paragraph two of this subdivision so that each installment after the first shall equal one hundred three per centum of the next preceding installment.

(ii) In determining each such schedule, the actuary shall employ an interest rate of eight and one-half per centum per annum, compounded annually; provided that if a valuation rate of interest (as defined in paragraph eleven of subdivision a of section 13-638.2 of this subchapter) other than eight and one-half per centum per annum is prescribed by law for PPF for any fiscal year included in the revised amortization period, the schedule contribution installments which are required to be paid, for such fiscal year in which such changed valuation rate of interest is in effect, to PPF shall be redetermined by the actuary thereof on the basis of a rate of interest equal to such changed rate, compounded annually, so as to reflect such changed rate appropriately in such redetermined installments.

(4) Any amount required to be contributed to PPF with respect to any fiscal year under the provisions of this subdivision shall be payable with interest on such amount at the valuation rate of interest (as defined in paragraph eleven of subdivision a of section 13-638.2 of this subchapter) for such pension fund for such fiscal year.

(5) In the determination of the normal contribution payable to PPF with respect to each fiscal year occurring during the revised amortization period, the present value, as of June thirtieth next preceding such fiscal year, of all future installments of the contributions payable to such pension fund pursuant to this subdivision shall be treated as an asset of such pension fund.

(6) Notwithstanding any provision of the preceding paragraphs of this subdivision or any other law to the contrary, the provisions of such preceding paragraphs shall be superseded in the manner prescribed by subdivision o of this section with respect to contributions on account of UAL and BSL payable for each fiscal year included in the fifteen-year amortization period.

o. (1) (i) All installments of UAL and BSL contribution designated in subdivision n of this section as payable by the city for fiscal years occurring during the period beginning on July first, nineteen hundred ninety-five and ending on June thirtieth, two thousand ten are hereby canceled and shall not be due and payable on or after such July first.

(ii) All installments of contribution prescribed by paragraph six of subdivision b of section 13-228 of this title as payable, for any fiscal year beginning on or after July first, nineteen hundred ninety-five, to fund the benefits referred to in such paragraph are hereby canceled and shall not be due and payable on and after such July first.

(2) Subject to the provisions of paragraph three of this subdivision, the actuary of PPF shall determine for such pension fund:

(i) a schedule of contribution installments, one of which is payable in each fiscal year included in the fifteen-year amortization period, which installments will amortize the PPF 1995 UAL, together with interest on such UAL; and

(ii) a schedule of contribution installments, one of which is payable in each fiscal year included in the fifteen-year amortization period, which installments will amortize the PPF 1995 accrued liability on account of required transfers to variable supplements funds, together with interest on such liability; and

(iii) a schedule of contribution installments, one of which is payable in each fiscal year included in the fifteen-year amortization period, which installments will amortize the PPF 1995 balance of BSL, together with interest on such balance.

(3) (i) The actuary shall determine each schedule of contribution installments referred to in paragraph two of this subdivision so that each installment after the first shall equal one hundred three per centum of the next preceding installment.

(ii) In determining each such schedule, the actuary shall employ an interest rate of eight and one-half per centum per annum, compounded annually; provided that if a valuation rate of interest (as defined in paragraph eleven of subdivision a of section 13-638.2 of this subchapter) other than eight and one-half per centum per annum is prescribed

by law for PPF for any fiscal year included in the fifteen-year amortization period, the schedule contribution installments which are required to be paid, for such fiscal year in which such changed valuation rate of interest is in effect, to PPF shall be redetermined by the actuary thereof on the basis of a rate of interest equal to such changed rate, compounded annually, so as to reflect such changed rate appropriately in such redetermined installments.

(4) Any amount required to be contributed to PPF with respect to any fiscal year under the provisions of this subdivision shall be payable with interest on such amount at the valuation rate of interest (as defined in paragraph eleven of subdivision a of section 13-638.2 of this subchapter) for such pension fund for such fiscal year.

(5) In each fiscal year of the fifteen-year amortization period, the city shall pay into the contingent reserve fund of PPF the contribution installments applicable to such fiscal year under the schedules established pursuant to paragraph two of this subdivision.

(6) In the determination of the normal contribution payable to PPF with respect to each fiscal year occurring during the fifteen-year amortization period, the present value, as of June thirtieth next preceding such fiscal year, of all future installments of the contributions payable to such pension fund pursuant to this subdivision shall be treated as an asset of such pension fund.

(7) Notwithstanding any provision of the preceding paragraphs of this subdivision or any other law to the contrary, the provisions of such preceding paragraphs shall be superseded in the manner prescribed by subdivision p of this section with respect to contributions on account of UAL and BSL payable for each fiscal year included in the eleven-year amortization period.

p. (1) All installments of UAL and BSL contribution designated in subdivision o of this section as payable by the city for fiscal years occurring during the period beginning on July first, nineteen hundred ninety-nine and ending on June thirtieth, two thousand ten and all other installments of contribution resulting from any unfunded accrued liability established on or before June thirtieth, nineteen hundred ninety-nine which are payable to PPF in any fiscal year succeeding such June thirtieth by the city are hereby canceled and shall not be due and payable on or after such July first.

(2) Subject to the provisions of paragraph three of this subdivision, the actuary of PPF shall determine for such pension fund a schedule of contribution installments, one of which is payable in each fiscal year included in the eleven-year amortization period, which installments will amortize the PPF 1999 UAL, together with interest on such UAL.

(3)(i) The actuary shall determine the schedule of contribution installments referred to in paragraph two of this subdivision so that each installment after the first shall equal one hundred three per centum of the next preceding installment.

(ii) In determining such schedule, the actuary shall employ an interest rate of eight per centum per annum, compounded annually; provided that if a valuation rate of interest (as defined in paragraph eleven of subdivision a of section 13-638.2 of this subchapter) other than eight per centum per annum is prescribed by law for PPF for any fiscal year included in the eleven-year amortization period, the schedule contribution installments which are required to be paid, for such fiscal year in which such changed valuation rate of interest is in effect, to PPF shall be redetermined by the actuary thereof on the basis of a rate of interest equal to such changed rate, compounded annually, so as to reflect such changed rate appropriately in such redetermined installments.

(4) Any amount required to be contributed to PPF with respect to any fiscal year under the provisions of this subdivision shall be payable with interest on such amount at the valuation rate of interest (as defined in paragraph eleven of subdivision a of section 13-638.2 of this subchapter) for such pension fund for such fiscal year.

(5) In each fiscal year of the eleven-year amortization period, the city shall pay into the contingent reserve fund

of PPF the contribution installments applicable to such fiscal year under the schedule established pursuant to paragraph two of this subdivision.

**HISTORICAL NOTE**

Section heading amended chap 598/1996 § 13, eff. Aug. 8, 1996 and deemed in effect on and after July 1, 1996

Section heading amended Chap 633/1994 § 4, eff. July 28, 1994 and deemed to have been in force on and after July 1, 1993.

Section added chap 608/1991 § 7 retro. to 7/1/1990

Subd. a pars (23)-(27) added Chap 633/1994 § 5, eff. July 28, 1994 and deemed to have been in force on and after July 1, 1993

Subd. a pars (28)-(31) added chap 598/1996 § 14, eff. Aug. 8, 1996 and deemed in effect on and after July 1, 1996

Subd. a pars (32), (33) added chap 85/2000 § 17, eff. June 23, 2000 and deemed to have been in effect on and after July 1, 1999.

Subd. h par (3) added Chap 633/1994 § 11, eff. July 28, 1994 and deemed to have been in force on and after July 1, 1993.

Subd. n added Chap 633/1994 § 6, eff. July 28, 1994 and deemed to have been in force on and after July 1, 1993.

Subd. n par (6) added chap 598/1996 § 15, eff. Aug. 8, 1996 and deemed in effect on and after July 1, 1996

Subd. o added chap 598/1996 § 16, eff. Aug. 8, 1996 and deemed in effect on and after July 1, 1996

Subd. o par (7) added chap 85/2000 § 18, eff. June 23, 2000 and deemed to have been in effect on and after July 1, 1999.

Subd. p added chap 85/2000 § 19, eff. June 23, 2000 and deemed to have been in effect on and after July 1, 1999.

**FOOTNOTES**

12

[Footnote 12]: * There are 2 §§ 13-638.3.

14

[Footnote 14]: * So in original. (word "to" inadvertently omitted)

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-638.3*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-638.3 15 Funding of consolidated unfunded accrued liabilities and remainder of balance sheet liability of the fire department pension fund, subchapter two; amortization of such liabilities and certain liabilities for transfers to variable supplements funds pursuant to the level percentage of payroll method in certain fiscal years.

a. The following words and phrases, as used in this section, shall have the following meanings, unless a different meaning is plainly required by the context:

(1) "FPF". The fire department pension fund, subchapter two.

(2) "Fiscal year". A fiscal year of the city as defined in section two hundred twenty-six of the New York city charter.

(3) "UAL". Unfunded accrued liability.

(4) "BSL". Balance sheet liability.

(5) "Phase-in period". The period beginning on July first, nineteen hundred ninety and ending on June thirtieth, nineteen hundred ninety-five.

(6) "Regular installment period". The period beginning on July first, nineteen hundred ninety-five and ending on June thirtieth, two thousand ten.

(7) "Charge". An amount which is required to be paid to FPF as an employer contribution.

(8) "Credit". An amount which is required to be applied in reduction of employer contributions otherwise payable to FPF.

(9) "Individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety". Any of the following, as applicable to FPF as of June thirtieth, nineteen hundred ninety: the unfunded accrued liability contribution, the revised unfunded accrued liability contribution, the nineteen hundred eighty unfunded accrued liability adjustment, the nineteen hundred eighty-two unfunded accrued liability adjustment, the nineteen hundred eighty-five unfunded accrued liability adjustment, the nineteen hundred eighty-eight unfunded accrued liability adjustment, all installments of amortization of bond sale gains and losses and all installments of funding of supplemental retirement allowances.

(10) "Recomputed annual installment of individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety". (i) An installment amount computed in accordance with the succeeding subparagraphs of this paragraph in relation to each FPF individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety (as defined in paragraph nine of this subdivision) for such pension fund.

(ii) The actuary of FPF shall determine, as of June thirtieth, nineteen hundred ninety and on the basis of eight and one-quarter per centum interest per annum, the present value of all those annual installments of such FPF individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety, which installments, in the absence of the enactment of the act which added this paragraph, would have remained, as of such June thirtieth, due and unpaid (if a charge) or uncredited (if a credit) with respect to fiscal years succeeding such June thirtieth.

(iii) The actuary of FPF shall determine an amount which, if paid to its contingent reserve fund, or applied as a credit, as the case may be, commencing with a first payment or credit in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, in a number of equal annual installments equal to the number of such annual installments remaining due and unpaid or uncredited with respect to FPF as of June thirtieth, nineteen hundred ninety as described in subparagraph (ii) of this paragraph, would be the actuarial equivalent, as of such June thirtieth, on the basis of eight and one-half per centum interest per annum, of the present value determined pursuant to such subparagraph (ii).

(iv) With respect to each FPF individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety, the recomputed annual installment of individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety shall be one equal annual installment determined with respect to such individual UAL amortization pursuant to subparagraph (iii) of this paragraph.

(11) "Single-year aggregate of recomputed annual installments of individual UAL amortizations in effect as of June thirtieth, nineteen hundred ninety". Such aggregate shall be the total amount obtained, in relation to any fiscal year occurring during the phase-in period (as defined in paragraph five of this subdivision) by adding together all recomputed annual installments of individual UAL amortization in effect as of June thirtieth, nineteen hundred ninety (as defined in paragraph ten of this subdivision), as applicable to such fiscal year. For the purpose of such addition, any such recomputed installments which constitute a credit shall be treated as a negative quantity.

(12) "Nineteen hundred ninety BSL contribution". The nineteen hundred ninety BSL contribution determined pursuant to subdivision g of this section.

(13) "Nineteen hundred ninety UAL credit". (i) An amount which shall be determined for FPF as hereinafter provided in this paragraph.

(ii) Upon the basis of the actuarial tables and actuarial methods in effect for valuation purposes with respect to determination of the normal contribution payable to the contingent reserve fund of FPF in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year and an interest rate of eight and one-half per centum per annum, there shall be determined, as of June thirtieth, nineteen hundred ninety, the amount of the unfunded accrued liability of FPF,

computed pursuant to the entry age normal cost method of ascertaining such unfunded accrued liability.

(iii) There shall be determined with respect to FPF, as of June thirtieth, nineeteen hundred ninety, on the basis of an interest rate of eight and one-quarter per centum per annum, the amount obtained by adding together (A) the present values of all those annual installments of individual UAL amortizations in effect as of June thirtieth, nineteen hundred ninety (as defined in paragraph nine of this subdivision), which installments, in the absence of the enactment of the act which added this paragraph, would have remained, as of such June thirtieth, due and unpaid (if a charge) or uncredited (if a credit) with respect to fiscal years succeeding such June thirtieth, and (B) the present value, as of such June thirtieth, of all installments of balance sheet liability, which installments, in the absence of the enactment of the act which added this paragraph, would have remained due and unpaid with respect to fiscal years succeeding such June thirtieth.

(iv) Such total amount of present values determined pursuant to subparagraph (iii) of this paragraph shall be subtracted from such amount of unfunded accrued liability determined pursuant to subparagraph (ii) thereof. The resulting remainder shall be the nineteen hundred ninety UAL credit applicable to FPF.

(14) "Annual installment of the nineteen hundred ninety UAL credit". Any of twenty equal annual installments of charge with respect to FPF, which installments, if paid, over a period of twenty fiscal years, commencing with the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, would be the actuarial equivalent, as of June thirtieth, nineteen hundred ninety and on the basis of interest at the rate of eight and one-half per centum per annum, of the nineteen hundred ninety UAL charge (as defined in paragraph thirteen of this subdivision).

(15) "Phase-in installment of nineteen hundred ninety consolidated UAL contribution". (i) With respect to any fiscal year included in the phase-in period (as defined in paragraph five of this subdivision), such phase-in installment shall consist of an installment amount determined in relation to FPF in the manner hereinafter provided for in this paragraph.

(ii) The single-year aggregate of recomputed annual installments of UAL amortizations in effect as of June thirtieth, nineteen hundred ninety (as defined in paragraph eleven of this subdivision), as applicable for such fiscal year, and one installment of the nineteen hundred ninety UAL charge (as defined in paragraph fourteen of this subdivision) and one computation installment of nineteen hundred ninety BSL (as defined in paragraph nineteen of this subdivision) shall be added together.

(iii) From the amount resulting from such addition, there shall be subtracted the amount of one installment of nineteen hundred ninety BSL contribution (as defined in paragraph twelve of this subdivision).

(iv) The remainder resulting from the subtraction prescribed by subparagraph (iii) of this paragraph shall be the phase-in installment of nineteen hundred ninety consolidated UAL contribution for such fiscal year.

(16) "Unfunded accrued liability as of June thirtieth, nineteen hundred ninety". The unfunded accrued liability of FPF as determined pursuant ot*11 subparagraph (ii) of paragraph thirteen of this subdivision.

(17) "Nineteen hundred ninety balance sheet liability". The total present value, determined as of June thirtieth, nineteen hundred ninety on the basis of an interest rate of eight and one-half per centum per annum, of all installments of nineteen hundred ninety BSL contribution (as defined in paragraph twelve of this subdivision) payable to such pension fund pursuant to the provisions of subdivision g of this section.

(18) "Prior BSL contribution". The BSL contribution of FPF determined pursuant to paragraph four of subdivision b of section 13-331 of this title, as such contribution was in effect on June thirtieth, nineteen hundred ninety.

(19) "Computation installment of nineteen hundred ninety BSL". (i) Any installment amount determined as

hereinafter provided in this paragraph.

(ii) The actuary of FPF shall determine with respect to such pension fund, as of June thirtieth, nineteen**12 ninety on the basis of eight and one-quarter per centum interest per annum, the present value of the thirty-one equal annual installments of the prior BSL contribution (as defined in paragraph eighteen of this subdivision) of such pension fund, which installments, in the absence of the enactment of the act which added this subdivision, would have remained due and unpaid to such pension fund as of such June thirtieth.

(iii) The actuary shall determine an amount which, if paid to the contingent reserve fund of such pension fund in thirty-one equal annual installments, commencing with a first payment in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, would be the actuarial equivalent, on the basis of an interest rate of eight and one-half per centum per annum, of such present value.

(iv) Each of the first five of such installments determined pursuant to subparagraph (iii) of this paragraph with respect to such pension fund shall be a computation installment of nineteen hundred ninety BSL.

(20) "Regular installment of nineteen hundred ninety consolidated UAL contribution". Any installment payable pursuant to subdivision d of this section.

(21) "Nineteen hundred ninety consolidated UAL contribution". The nineteen hundred ninety consolidated UAL contribution for which phase-in installments are determined pursuant to paragraph fifteen of this subdivision and for which regular installments are determined pursuant to subdivision d of this section.

(22) "Installment of nineteen hundred ninety BSL contribution". Any installment payable pursuant to subdivision g of this section.

(23) "UAL subject to consolidated amortization". The amount of the unfunded accrued liability of FPF which prior to July first, nineteen hundred ninety-three, was required to be amortized by phase-in and regular consolidated UAL contributions designated in subdivision i of this section.

(24) "BSL subject to consolidated amortization". The amount of the balance sheet liability of FPF which, prior to July first, nineteen hundred ninety-three, was required to be amortized by phase-in and other BSL contributions designated in subdivision i of this section.

(25) "Balance of unfunded UAL subject to consolidated amortization". An amount, determined by the actuary of FPF, equal to the present value (based on an interest rate of eight and one-half per centum per annum), as of June thirtieth, nineteen hundred ninety-three, of the remaining unpaid installments, as of such June thirtieth, of the amortization (as prescribed by subdivisions h and i of this section) of the FPF UAL subject to consolidated amortization.

(26) "Balance of unfunded BSL subject to consolidated amortization". An amount, determined by the actuary of FPF, which is equal to the present value (based on an interest rate of eight and one-half per centum per annum), as of June thirtieth, nineteen hundred ninety-three, of the remaining unpaid installments, as of such June thirtieth, of the amortization (as prescribed by subdivisions h and i of this section) of the FPF BSL subject to consolidated amortization.

(27) "Revised amortization period". The period beginning on July first, nineteen hundred ninety-three and ending on June thirtieth, two thousand ten.

(28) "FPF 1995 UAL". The unfunded accrued liability of FPF as of June thirtieth, nineteen hundred ninety-five for benefits payable by FPF (excluding the FPF 1995 balance of BSL, as defined in paragraph thirty of this subdivision), as determined by the actuary pursuant to the entry age normal cost method of ascertaining such unfunded accrued liability, on the basis of an interest rate of eight and three-quarters per centum per annum and the actuarial

tables applicable for the purpose of determining the normal contribution to FPF for the nineteen hundred ninety-five-nineteen hundred ninety-six fiscal year.

(29) "FPF 1995 accrued liability on account of required transfers to variable supplements funds". The actuarial present value as of June thirtieth, nineteen hundred ninety-five, as estimated by the actuary, of the accrued liability of the pension fund on account of payments which the pension fund may be required to make for base fiscal years (as defined by the applicable provisions of paragraph one of subdivision b of section 13-335.1 of this title and paragraph one of subdivision b of section 13-335.3 of this title) beginning on or after July first, nineteen hundred ninety-four to the firefighters' variable supplements fund, pursuant to subdivisions d, e and f of such section 13-335.1 and to the fire officers' variable supplements fund pursuant to subdivisions d, e and f of such section 13-335.3.

(30) "FPF 1995 balance of BSL". The present value, as determined by the actuary as of June thirtieth, nineteen hundred ninety-five on the basis of an interest rate of eight and three-quarters per centum per annum, of the total of all contribution installments which, in the absence of the enactment of the act which added this paragraph, would be payable to FPF for fiscal years beginning on or after July first, nineteen hundred ninety-five pursuant to subparagraph (ii) of paragraph two of subdivision n of this section and paragraphs three and four of such subdivision.

(31) "Fifteen-year amortization period". The period beginning on July first, nineteen hundred ninety-five and ending on June thirtieth, two thousand ten.

(32) "FPF 1999 UAL". The unfunded accrued liability of FPF as of June thirtieth, nineteen hundred ninety-nine attributable as of that date to the obligations set forth in item (ii) of subparagraph (a) of paragraph two of subdivision b of section 13-331 of this title, as determined by the actuary pursuant to the entry age normal cost method of ascertaining such unfunded accrued liability, on the basis of an interest rate of eight per centum per annum and the actuarial tables applicable for the purpose of determining the normal contribution to FPF for the nineteen hundred ninety-nine-two thousand fiscal year, provided, however, that in the event such calculation of unfunded accrued liability produces a negative amount, the FPF 1999 UAL shall be zero.

(33) "Eleven-year amortization period". The period beginning on July first, nineteen hundred ninety-nine and ending on June thirtieth, two thousand ten.

b. Notwithstanding any other provision of law to the contrary, all FPF installments of the unfunded accrued liability contribution, the revised unfunded accrued liability contribution, the nineteen hundred eighty unfunded accrued liability adjustment, the nineteen hundred eighty-two unfunded accrued liability adjustment, the nineteen hundred eighty-five unfunded accrued liability adjustment and the nineteen hundred eighty-eight unfunded accrued liability adjustment and all FPF installments of amortization of bond sale gains and losses and all FPF installments of funding of supplemental retirement allowances, which installments, in the absence of the enactment of the act which added this section, would otherwise be due from and payable by the city to FPF (or be creditable to the city) with respect to any fiscal year or period beginning on or after July first, nineteen hundred ninety are hereby cancelled as of such July first and shall not be due and payable (or creditable) on or after such July first.

c. The actuary of FPF shall determine the amount of the difference obtained by subtracting (1) the outstanding balance, as of June thirtieth, nineteen hundred ninety-five, of the nineteen hundred ninety balance sheet liability (as defined in paragraph seventeen of subdivision a of this section) of such pension fund from (2) the outstanding balance, as of such June thirtieth, of the unfunded accrued liability as of June thirtieth, nineteen hundred ninety (as defined in paragraph sixteen of such subdivision) of such pension fund.

d. (1) The actuary of FPF shall determine an amount which, when paid into the contingent reserve fund of FPF in fifteen equal annual installments, commencing with payment of a first installment in the nineteen hundred ninety-five-nineteen hundred ninety-six fiscal year, shall be the actuarial equivalent, on the basis of eight and one-half per centum interest per annum, of the amount of difference determined pursuant to subdivision c of this section.

(2) Such amount determined in relation to such installments shall be payable in regular installments as provided for in subdivision i of this section.

e. Notwithstanding any other provision of law to the contrary, no installments of prior BSL contribution (as defined in paragraph eighteen of subdivision a of this section) shall be due from or payable by the city to FPF with respect to any fiscal year of the city beginning on or after July first, nineteen hundred ninety.

f. The actuary of FPF shall determine with respect to such pension fund, as of June thirtieth, nineteen hundred ninety on the basis of eight and one-quarter per centum interest per annum, the present value of the thirty-one equal annual installments of the prior BSL contribution (as defined in paragraph eighteen of subdivision a of this section) of such pension fund, which installments, in the absence of the enactment of the act which added this subdivision, would have remained due and unpaid to such pension fund as of such June thirtieth.

g. (1) The actuary of FPF shall determine an amount which, when paid to the contingent reserve fund of such pension fund in twenty equal annual installments, commencing with a first payment in the nineteen hundred ninety-nineteen hundred ninety-one fiscal year, shall be the actuarial equivalent, on the basis of eight and one-half per centum interest per annum, of the present value determined pursuant to subdivision f of this section.

(2) Such amount determined in relation to such installments, which amount shall be payable in installments as provided for in subdivision i of this section, shall constitute the nineteen hundred ninety BSL contribution.

h. (1) Subject to the provisions of paragraph two of this subdivision, in each fiscal year included in the period beginning on July first, nineteen hundred ninety and ending on June thirtieth, two thousand ten, the city shall pay into the contingent reserve fund of FPF:

(i) the installment amount allocated to such fiscal year for payment on account of nineteen hundred ninety consolidated UAL contribution (as defined in paragraph twenty-one of subdivision a of this section); and

(ii) the installment amount allocated to such fiscal year for payment on account of the nineteen hundred ninety BSL contribution (as defined in paragraph twelve of such subdivision).

(2) Each installment amount payable as provided for in paragraph one of this subdivision shall be in the applicable sum prescribed in the schedule of twenty-year amortization set forth in subdivision i of this section.

(3) Notwithstanding any provision of the preceding paragraphs of this subdivision or any other law to the contrary, the provisions of subdivisions c through g, inclusive, of this section, and the affected portions of subdivision i thereof, and the preceding paragraphs of this subdivision shall be superseded in the manner prescribed by subdivision n of this section with respect to contributions on account of UAL and BSL payable for each fiscal year included in the revised amortization period.

i. Subject to the provisions of subdivisions k and l of section 13-638.2 of this subchapter, installments of the contributions to FPF provided for by subdivisions b to h, inclusive, of this section shall be paid by the city in accordance with the schedule of twenty-year amortization set forth below in this subdivision.

SCHEDULE FOR TWENTY-YEAR AMORTIZATION

OF FPF 1990 CONSOLIDATED

UAL AND 1990 REMAINDER OF BSL

(numerical references in parentheses are to paragraph

numbers of definitions in subdivision a of this section)

| | Col. 1 Fiscal year or years in which annual amortization payments are required to be made | Col. 2 Amount payable in each fiscal year |
|---|---|---|
| Col. A | Each fiscal year (2) in the phase-in period (5) | The sum obtained by adding together (a) the phase-in installment of nineteen hundred ninety consolidated UAL contribution (15) applicable to such fiscal year and (b) the installment of nineteen hundred ninety BSL contribution (22) applicable to such fiscal year. |
| Col. B | Each fiscal year (2) in the regular installment period (6) | The sum obtained by adding together (a) the regular installment of nineteen hundred ninety consolidated UAL contribution (20) applicable to such fiscal year and (b) the installment of nineteen hundred ninety BSL contribution (22) applicable to such fiscal year. |

j. The provisions of subdivision c of section 13-334 of this title shall govern the time and manner of payment, within each fiscal year, of contributions payable with respect to such fiscal year to FPF pursuant to the provisions of subdivisions b to i, inclusive, of this section. Nothing contained in this section shall be construed as amending, modifying or changing such provisions of this title or the provisions of any other law relating to the time of payment, within a fiscal year, of contributions payable to such pension fund with respect to such fiscal year.

k. For the purpose of determining the amount of any installment of the contributions payable to FPF pursuant to the provisions of subdivisions b to i, inclusive, of this section, the actuary of such pension fund may use methods of calculation other than those set forth in such provisions, so long as such other methods produce in relation to such installment an amount equal to that produced by the methods of calculation set forth in such provisions.

l. Any amount required to be contributed to FPF with respect to any fiscal year under the provisions of subdivisions b to i, inclusive, of this section shall be payable with interest on such amount at the valuation rate of interest (as defined in paragraph eleven of subdivision a of section 13-638.2 of this subchapter) for such pension fund for such fiscal year.

m. In the determination of the normal contribution payable to FPF with respect to each fiscal year occurring during the period beginning on July first, nineteen hundred ninety and ending on June thirtieth, two thousand ten, the present value, as of June thirtieth next preceding such fiscal year, of all future installments of the contributions payable to such pension fund pursuant to subdivisions b to i, inclusive, of this section shall be treated as an asset of such pension fund.

n. (1) All installments of UAL and BSL contribution designated in subdivision i of this section as payable by the city for fiscal years occurring during the period beginning on July first, nineteen hundred ninety-three and ending on June thirtieth, two thousand ten are hereby canceled and shall not be due and payable on or after such July first.

(2) Subject to the provisions of paragraph three of this subdivision, the actuary of FPF shall determine for such pension fund:

(i) a schedule of contribution installments, one of which is payable in each fiscal year included in the revised amortization period, which installments will amortize the FPF balance of unfunded UAL subject to consolidated amortization, together with interest on such balance; and

(ii) a schedule of contribution installments, one of which is payable in each fiscal year included in the revised amortization period, which installments will amortize the FPF balance of unfunded BSL subject consolidated amortization, together with interest on such balance.

(3) (i) the actuary shall determine each schedule of contribution installments referred to in paragraph two of this subdivision so that each installment after the first shall equal one hundred three per centum of the next preceding

installment.

(ii) in determining each such schedule, the actuary shall employ an interest rate of eight and one-half per centum per annum, compounded annually; provided that if a valuation rate of interest (as defined in paragraph eleven of subdivision a of section 13-638.2 of this subchapter) other than eight and one-half per centum per annum is prescribed by law for FPF for any fiscal year included in the revised amortization period, the schedule contribution installments which are required to be paid, for such fiscal year in which such changed valuation rate of interest is in effect to FPF shall be redetermined by the actuary thereof on the basis of a rate of interest equal to such changed rate, compounded annually, so as to reflect such changed rate appropriately in such redetermined installments.

(4) Any amount required to be contributed to FPF with respect to any fiscal year under the provisions of this subdivision shall be payable with interest on such amount at the valuation rate of interest (as defined in paragraph eleven of subdivision a of section 13-638.2 of this subchapter) for such pension fund for such fiscal year.

(5) In the determination of the normal contribution payable to FPF with respect to each fiscal year occurring during the revised amortization period, the present value, as of June thirtieth next preceding such fiscal year, of all future installments of the contributions payable to such pension fund pursuant to this subdivision shall be treated as an asset of such pension fund.

(6) Notwithstanding any provision of the preceding paragraphs of this subdivision or any other law to the contrary, the provisions of such preceding paragraphs shall be superseded in the manner prescribed by subdivision o of this section with respect to contributions on account of UAL and BSL payable for each fiscal year included in the fifteen-year amortization period.

o. (1) (i) All installments of UAL and BSL contribution designated in subdivision n of this section as payable by the city for fiscal years occurring during the period beginning on July first, nineteen hundred ninety-five and ending on June thirtieth, two thousand ten are hereby canceled and shall not be due and payable on or after such July first.

(ii) All installments of contribution prescribed by paragraph six of subdivision b of section 13-331 of this title as payable, for any fiscal year beginning on or after July first, nineteen hundred ninety-five, to fund the benefits referred to in such paragraph are hereby canceled and shall not be due and payable on and after such July first.

(2) Subject to the provisions of paragraph three of this subdivision, the actuary of FPF shall determine for such pension fund:

(i) a schedule of contribution installments, one of which is payable in each fiscal year included in the fifteen-year amortization period, which installments will amortize the FPF 1995 UAL, together with interest on such UAL; and

(ii) a schedule of contribution installments, one of which is payable in each fiscal year included in the fifteen-year amortization period, which installments will amortize the FPF 1995 accrued liability on account of required transfers to variable supplements funds, together with interest on such liability; and

(iii) a schedule of contribution installments, one of which is payable in each fiscal year included in the fifteen-year amortization period, which installments will amortize the FPF 1995 balance of BSL, together with interest on such balance.

(3) (i) The actuary shall determine each schedule of contribution installments referred to in paragraph two of this subdivision so that each installment after the first shall equal one hundred three per centum of the next preceding installment.

(ii) In determining each such schedule, the actuary shall employ an interest rate of eight and three-quarters per

centum per annum, compounded annually; provided that if a valuation rate of interest (as defined in paragraph eleven of subdivision a of section 13-638.2 of this subchapter) other than eight and three-quarters per centum per annum is prescribed by law for FPF for any fiscal year included in the fifteen-year amortization period, the schedule contribution installments which are required to be paid, for such fiscal year in which such changed valuation rate of interest is in effect, to FPF shall be redetermined by the actuary thereof on the basis of a rate of interest equal to such changed rate, compounded annually, so as to reflect such changed rate appropriately in such redetermined installments.

(4) Any amount required to be contributed to FPF with respect to any fiscal year under the provisions of this subdivision shall be payable with interest on such amount at the valuation rate of interest (as defined in paragraph eleven of subdivision a of section 13-638.2 of this subchapter) for such pension fund for such fiscal year.

(5) In each fiscal year of the fifteen-year amortization period, the city shall pay into the contingent reserve fund of FPF the contribution installments applicable to such fiscal year under the schedules established pursuant to paragraph two of this subdivision.

(6) In the determination of the normal contribution payable to FPF with respect to each fiscal year occurring during the fifteen-year amortization period, the present value, as of June thirtieth next preceding such fiscal year, of all future installments of the contributions payable to such pension fund pursuant to this subdivision shall be treated as an asset of such pension fund.

(7) Notwithstanding any provision of the preceding paragraphs of this subdivision or any other law to the contrary, the provisions of such preceding paragraphs shall be superseded in the manner prescribed by subdivision p of this section with respect to contributions on account of UAL and BSL payable for each fiscal year included in the eleven-year amortization period.

p. (1) All installments of UAL and BSL contribution designated in subdivision o of this section as payable by the city for fiscal years occurring during the period beginning on July first, nineteen hundred ninety-nine and ending on June thirtieth, two thousand ten and all other installments of contribution resulting from any unfunded accrued liability established on or before June thirtieth, nineteen hundred ninety-nine which are payable to FPF in any fiscal year succeeding such June thirtieth by the city are hereby canceled and shall not be due and payable on or after such July first.

(2) Subject to the provisions of paragraph three of this subdivision, the actuary of FPF shall determine for such pension fund a schedule of contribution installments, one of which is payable in each fiscal year included in the eleven-year amortization period, which installments will amortize the FPF 1999 UAL, together with interest on such UAL.

(3)(i) The actuary shall determine the schedule of contribution installments referred to in paragraph two of this subdivision so that each installment after the first shall equal one hundred three per centum of the next preceding installment.

(ii) In determining such schedule, the actuary shall employ an interest rate of eight per centum per annum, compounded annually; provided that if a valuation rate of interest (as defined in paragraph eleven of subdivision a of section 13-638.2 of this subchapter) other than eight per centum per annum is prescribed by law for FPF for any fiscal year included in the eleven-year amortization period, the schedule contribution installments which are required to be paid, for such fiscal year in which such changed valuation rate of interest is in effect, to FPF shall be redetermined by the actuary thereof on the basis of a rate of interest equal to such changed rate, compounded annually, so as to reflect such changed rate appropriately in such redetermined installments.

(4) Any amount required to be contributed to FPF with respect to any fiscal year under the provisions of this subdivision shall be payable with interest on such amount at the valuation rate of interest (as defined in paragraph eleven of subdivision a of section 13-638.2 of this subchapter) for such pension fund for such fiscal year.

(5) In each fiscal year of the eleven-year amortization period, the city shall pay into the contingent reserve fund of FPF the contribution installments applicable to such fiscal year under the schedule established pursuant to paragraph two of this subdivision.

**HISTORICAL NOTE**

Section heading amended chap 249/1996 § 30, eff. June 30, 1996 and deemed to have been in effect on and after July 1, 1995

Section heading amended chap 633/1994 § 7, eff. July 28, 1994 and deemed to have been in force on and after July 1, 1993

Section added chap 610/1991 § 7 retro. to July 1, 1990

Subd. a pars. (23)-(27) added chap 633/1994 § 8, eff. July 28, 1994 and deemed to have been in force on and after July 1, 1993

Subd. a pars (28)-(31) added chap 249/1996 § 31, eff. June 30, 1996 and deemed to have been in effect on and after July 1, 1995

Subd. a pars (32), (33) added chap 85/2000 § 20, eff. June 23, 2000 and deemed to have been in effect on and after July 1, 1999.

Subd. h par (3) added chap 633/1994 § 12, eff. July 28, 1994 and deemed to have been in force on and after July 1, 1993

Subd. n added chap 633/1994 § 9, eff. July 28, 1994 and deemed to have been in force on and after July 1, 1993

Subd. n par (6) added chap 249/1996 § 32, eff. June 30, 1996 and deemed to have been in effect on and after July 1, 1995

Subd. o added chap 249/1996 § 33, eff. June 30, 1996 and deemed to have been in effect on and after July 1, 1995

Subd. o par (7) added chap 85/2000 § 21, eff. June 23, 2000 and deemed to have been in effect on and after July 1, 1999.

Subd. p added chap 85/2000 § 22, eff. June 23, 2000 and deemed to have been in effect on and after July 1, 1999.

**FOOTNOTES**

15

[Footnote 15]: * There are 2 §§ 13-638.3.

11

[Footnote 11]: * So in original, "ot" s.b. "to".

12

[Footnote 12]: ** So in original. "hundred" was inadvertently omitted.

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-638.4*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-638.4 Membership rights in NYCERS and BERS for part-time service; credit for service; dual employment provisions; membership rights of school crossing guards.

a. Definitions. The following terms, as used in this section, shall have the following meanings, unless a different meaning is plainly required by the context:

(1) "RSSL". The New York state retirement and social security law.

(2) "City-service". City-service as defined in subdivision three of section 13-101 of the code.

(3) "Education service". Service as a paid official or employee of the board of education of the city of New York or the New York city school construction authority, and allowable as provided in section four of the rules and regulations of the board of education retirement system of the city of New York or, in the case of a tier II, tier III or tier IV member of such system, allowable pursuant to the provisions which respectively govern the service credit of such a member of such retirement system.

(4) "NYCERS". The New York city employees' retirement system.

(5) "BERS". The board of education retirement system of the city of New York.

(6) "Retirement system". NYCERS or BERS.

(7) "Tier I member". A member of NYCERS or BERS whose benefits (other than a supplemental retirement allowance) are prescribed by chapter one of title thirteen of the code or the BERS rules and regulations, respectively, and who is not subject to the provisions of article eleven, article fourteen or article fifteen of the RSSL.

(8) "Tier II member". A member of NYCERS or BERS who is subject to the provisions of article eleven of the RSSL.

(9) "Tier III member". A member of NYCERS or BERS who is subject to the provisions of article fourteen of the RSSL.

(10) "Tier IV member". A member of NYCERS or BERS who is subject to the provisions of article fifteen of the RSSL.

(11) "Full-time city-service". City-service rendered in a title in which a person is regularly scheduled to work at least eighteen hundred twenty-seven hours per year, provided that no service rendered prior to the expiration of the window period (as defined in paragraph twenty-two of this subdivision) in such a title shall be deemed to be full-time city-service for the limited purposes only of subdivisions b and d of this section where NYCERS, prior to May thirty-first, nineteen hundred eighty-eight, would have deemed the person rendering such service to be ineligible for membership in NYCERS because such person was regularly scheduled to work less than a sufficient number of hours per year for NYCERS to consider such service to be full-time city-service, or because such service was being rendered not on a per annum basis, but rather on a per hour basis, a per diem basis or some other basis. The employeer of any member of NYCERS or BERS, at such retirement system's request, shall certify the regularly scheduled hours of employment of any position held by such member.

(12) "Part-time city-service". City-service which is not full-time city-service.

(13) (i) "Full-time education service". Except as provided in subparagraph (ii) of this paragraph, (A) education service rendered in a title in which a person is regularly scheduled to work at least eighteen hundred twenty-seven hours per year; or (B) education service rendered in a title (a) in which duties are regularly scheduled to be performed only during the school year (as defined in paragraph twenty-four of this subdivision), (b) in which a person is regularly scheduled to work at least fourteen hundred seventy hours per school year, and (c) in which such person, as a member of BERS, is entitled to earn credit for such service, pursuant to paragraph two of subdivision c of this section, on the basis of one year of service credit for fourteen hundred seventy hours of such service rendered in a calendar year.

(ii) No such service rendered prior to the expiration of the window period (as defined in paragraph twenty-two of this subdivision), which meets the requirements of subparagraph (i) of this paragraph, shall be deemed to be full-time education service for the limited purposes only of subdivisions b and d of this section where BERS, prior to May thirty-first, nineteen hundred eighty-eight, would have deemed the person rendering such service to be ineligible for membership in BERS because such person was regularly scheduled to work less than a sufficient number of hours per year for BERS to consider such service to be full-time education service, or because such service was being rendered not on a per annum basis, but rather on a per hour basis, a per diem basis or some other basis.

(iii) The employeer of any member of BERS or NYCERS, at such retirement system's request, shall certify the regularly scheduled hours of employment of any position held by such member.

(14) "Part-time education service". Education service which is not full-time education service.

(15) "Part-time service". Part-time city-service or part-time education service.

(16) "Active service". Full-time city-service, full-time education service, part-time city-service or part-time education service.

(17) "Qualified period of continuous active service". A part of a person's active service consisting of a period:

(i) which began prior to May thirty-first, nineteen hundred eighty-eight; and

(ii) during which the person rendered one or more periods of part-time service prior to May thirty-first, nineteen hundred eighty-eight; and

(iii) which ends no later than the end of the window period, as defined in paragraph twenty-two of this subdivision; and

(iv) which was not interrupted by a subsequent disqualifying break in service, as defined in paragraph eighteen of this subdivision; and

(v) which was not interrupted by a subsequent disqualifying period of non-membership full-time service, as defined in paragraph twenty-one of this subdivision.

(18) "Disqualifying break in service". A break in a period of city-service or education service which occurs when the total length of a period of two or more consecutive one-year breaks in service, as defined in paragraph nineteen of this subdivision, exceeds the total length of a period of one or more consecutive one-year periods of active service, as defined in paragraph twenty of this subdivision, which immediately precedes such period of consecutive one-year breaks in service, provided that for the purpose of measuring the length of such immediately preceding period of consecutive one-year periods of active service, such immediately preceding period shall not include any such one-year period of active service which was part of a disqualifying period of non-membership full-time service, as defined in paragraph twenty-one of this subdivision.

(19) "One-year break in service". A calendar year during which a person was not paid on the payroll for a total of at least two hundred fifty hours of city-service, education service or a combination of city-service and education service, provided that where any person was terminated in nineteen hundred seventy-five from employment in the title of school crossing guard with the New York city police department as a result of the dissolution of the school crossing guard program in such year, and who was reappointed to employment in such title with such department on or before June thirtieth, nineteen hundred seventy-nine, such person shall not be charged with a one-year break in service for any calendar year during the period commencing with the calendar year of such termination and ending with the calendar year of such reappointment, and provided further that such person shall not be credited with a one-year period of active service (as defined in paragraph twenty of this subdivision) for any calendar year during such period unless such person actually was paid on the payroll during such calendar year for a total of at least two hundred fifty hours of city-service, education service or a combination of city-service and education service.

(20) "One-year period of active service". A calendar year during which a person was paid on the payroll for a total of at least two hundred fifty hours of city-service, education service or a combination of city-service and education service.

(21) "Disqualifying period of non-membership full-time service". A one-year period commencing on the date a person became eligible to become a member of NYCERS or BERS by reason of being employed in full-time city-service or full-time education service, during which one-year period such person was eligible to become such a member and did not do so, provided that such period of full-time service shall not be a disqualifying period of non-membership full-time service where such period was immediately preceded or followed by a period of part-time service rendered by such person which exceeded the length of such period of full-time service, provided further that for the purpose of measuring the length of such immediately preceding or following period of part-time service, such period shall not include any calendar year which is not a one-year period of active service, as defined in paragraph twenty of this subdivision.

(22) "Window period". A one-year period commencing the day immediately following July thirty-first, nineteen

hundred ninety-two or a six month period commencing the day immediately following the date of enactment of the chapter of the laws of nineteen hundred ninety-six which added this provision.

(23) "Previous part-time service". Part-time service rendered prior to last becoming a member of NYCERS or BERS or, if a person last became a member of NYCERS or BERS prior to May thirty-first, nineteen hundred eighty-eight, part-time service rendered prior to such date.

(24) "School year". The regular academic year of the New York city public schools, which generally begins with the first day of classes in September of one year and ends with the last day of classes in June of the following year, but which also may be deemed to include a brief period of time immediately prior to such academic year and/or a brief period of time immediately subsequent to such academic year where the duties of a particular job title which are performed almost exclusively during such academic year extend to such brief period or periods immediately prior and/or subsequent to such academic year.

b. Retroactive membership in NYCERS or BERS; accelerated purchase of credit for previous part-time service. (1) For purposes of paragraphs three, six, seven, eight, ten and eleven of this subdivision, a person who meets the requirements of this paragraph one shall be a person who was employed in part-time service prior to May thirty-first, nineteen hundred eighty-eight, and who:

(i) was actually paid on the payroll in active service on May thirty-first, nineteen hundred eighty-eight; or

(ii) was separated from active service prior to May thirty-first, nineteen hundred eighty-eight and returned to active service after such date, but within four years after last being separated from active service prior to such date; or

(iii) was paid on the payroll for work performed in the title of college assistant with the city university of New York in all or a portion of the academic year which shall be deemed to have commenced on September first, nineteen hundred eighty-seven, and was separated from employment in such title prior to May thirty-first, nineteen hundred eighty-eight, and did not return to active service.

(2) For purposes of pargraphs three, six, seven, eight, ten and eleven of this subdivision, a period of part-time service which meets the requirements of this paragraph shall be any period of part-time city-service or part-time education service which is part of a qualified period of continuous active service, as defined in paragraph seventeen of subdivision a of this section.

(3) (i) Notwithstanding any other provision of law to the contrary, a member of NYCERS or BERS who meets the requirements of paragraph one of this subdivision, and who has one or more periods of part-time service which meets the requirements of paragraph two of this subdivision, may elect to be deemed to have become a member of such retirement system on a date selected by such member which is part of a period of part-time service which meets such requirements, by filing with such retirement system, during the window period, a written request for such retroactive membership date, provided that the retroactive membership date selected by such member shall be a date which is earlier than his or her last date of commencement of membership in such retirement system.

(ii) The election by a member of NYCERS or BERS of a retroactive date of commencement of membership in such retirement system pursuant to subparagraph (i) of this paragraph shall be irrevocable, and the obligations, rights and privileges of such member from and after such retroactive membership date shall be the same as if such member originally had become a member of the retirement system on such retroactive membership date. Such member, however, shall not receive service credit for any previous part-time service for which he or she did not purchase service credit while a member of such system. The purchase of previous part-time service by such member shall be in compliance with all requirements of the code, the BERS rules and regulations or the RSSL which would be applicable to him or her if he or she originally had become a member of the retirement system on such retroactive membership date, or in compliance with such applicable requirements, as modified by any provision of paragraph six, seven, eight, nine or eleven of this subdivision, where such member is or may become eligible for the benefits of any such paragraph.

(4) Notwithstanding any other provision of law to the contrary, if the designated beneficiary or the estate of a deceased member of NYCERS or BERS, who died while a member of such retirement system on or after May thirty-first, nineteen hundred eighty-eight, but prior to the expiration of the window period, purchases credit for previous part-time service on behalf of such deceased member pursuant to paragraph ten of this subdivision, then such deceased member shall be deemed to have become a member of such retirement system on the commencement date of such part-time service.

(5) Notwithstanding any other provision of law to the contrary, any service retiree of NYCERS or BERS whose retirement became effective on or after May thirty-first, nineteen hundred eighty-eight, but prior to the expiration of the window period, who purchases credit for previous part-time service pursuant to paragraph eight of this subdivision, may elect to be deemed to have become a member of such retirement system on the earliest date of such part-time service for which credit was purchased pursuant to such paragraph eight by filing with such retirement system, during the window period, a written request for such retroactive membership date.

(6) Notwithstanding any provision of section 13-108 of the code which requires a tier I member of NYCERS to pay for the purchase of credit for previous service through deductions from compensation, or any provision of subdivision b of section four hundred forty-six of the RSSL (with respect to a tier II member), subdivision b of section five hundred thirteen of the RSSL (with respect to a tier III member) or subdivision b of section six hundred nine of the RSSL (with respect to a tier IV member) which requires such tier II, tier III or tier IV member to have rendered at least five years of credit service after last joining a public retirement system in order to be eligible to obtain credit for previous service, and notwithstanding any other provision of law to the contrary, a member of NYCERS in city-service, or a member of BERS in education service, who:

(i) meets the requirements of paragraph one of this subdivision; and

(ii) has one or more periods of part-time service which meets the requirements of paragraph two of this subdivision; and

(iii) otherwise is eligible to retire for service during the window period, or otherwise would be eligible to retire for service during the window period if he or she were permitted to purchase during the window period credit for such period or periods of previous part-time service; and

(iv) retires for service so that the effective date of his or her retirement occurs during the window period and at the time of such retirement is at least sixty-two years of age may purchase during the window period credit for such period or periods of previous part-time service by paying during the window period a lump sum amount computed in accordance with the applicable provisions governing the purchase of credit for previous service, or such a lump sum as reduced in accordance with the provisions of paragraph nine of this subdivision.

(7) Notwithstanding any provision of section 13-108 of the code which requires a tier I member of NYCERS to pay for the purchase of credit for previous service through deductions from compensation, or any provision of subdivision b of section four hundred forty-six of the RSSL (with respect to a tier II member), subdivision b of section five hundred thirteen of the RSSL (with respect to a tier III member) or subdivision b of section six hundred nine of the RSSL (with respect to a tier IV member) which requires a tier II, tier III or tier IV member to have rendered at least five years of credited service after last joining a public retirement system in order to be eligible to obtain credit for previous service, and notwithstanding any other provision which requires a member of NYCERS or BERS to be in city-service or education service, respectively, in order to be retired for service, and notwithstanding any other provision of law to the contrary, a member of NYCERS or BERS who: (i) meets the requirements of paragraph one of this subdivision; and

(ii) has one or more periods of part-time service which meets the requirements of paragraph two of this subdivision; and

(iii) separated from active service (other than as a result of dismissal on charges or forfeiture of office) on or after May thirty-first, nineteen hundred eighty-eight; and

(iv) was at least sixty-two years of age at the time he or she separated from active service; and

(v) otherwise would have been eligible to retire for service at the time he or she separated from service if he or she at that time had been permitted to purchase and had purchased credit for such period of periods of previous part-time service may purchase during the window period credit for such period or periods of previous part-time service by paying during the window period a lump sum amount computed in accordance with the applicable provisions governing the purchase of credit for previous service, or such a lump sum as reduced in accordance with the provisions of paragraph nine of this subdivision, and may retire for service, provided that such member shall actually retire for service during the window period (with an effective date of retirement occurring during such period) and shall purchase such service credit during such period, and provided further that such retirement shall be permitted only in accordance with the provisions of this paragraph.

(8) Notwithstanding any other provision of law to the contrary, a service retiree of NYCERS or BERS:

(i) whose retirement became effective on or after May thirty-first, nineteen hundred eighty-eight, but prior to the expiration of the window period; and

(ii) who was at least sixty-two years of age at the time of such retirement for service; and

(iii) who meets the requirements of paragraph one of this subdivision; and

(iv) who has one or more periods of part-time service which meets the requirements of paragraph two of this subdivision may purchase during the window period credit for all or a portion of the previous part-time service which meets such requirements by paying during the window period a lump sum amount computed in accordance with the applicable provisions set forth below in this paragraph, provided that where such retiree purchases credit for less than the entire amount of such part-time service, he or she shall purchase credit for such service in the inverse order of which such service was rendered, with credit for the most recent service being purchased first, and credit for the earliest service being purchased last, and provided further that such a retiree who purchases such credit pursuant to this item shall have his or her service retirement allowance recomputed to reflect the purchase of such credit, but such retiree shall not be entitled to change the mode of payment of such retirement allowance from an option to the maximum retirement allowance, from the maximum retirement allowance to an option or from one option to another option. If such service retiree elects, pursuant to paragraph five of this subdivision, a retroactive date of commencement of membership, the obligations, rights and privileges of such retiree's membership from such new date of commencement of membership up to his or her service retirement, including, but not limited to, the computation of his or her retirement allowance and the obligation to make member contributions, shall be the same as if such person originally had become a member of the retirement system on such retroactive membership date, and the lump sum for the purchase of credit for such previous part-time service shall be computed in accordance with the provisions governing the purchase of pre-membership service credit which would be applicable to him or her if he or she originally had become a member of the retirement system on such retroactive membership date, subject, however, to any applicable reduction of such lump sum in accordance with the provisions of paragraph nine of this subdivision. If such service retiree does not make such an election pursuant to such paragraph five, such lump sum amount, subject to any applicable reduction pursuant to such paragraph nine, shall be computed in accordance with the applicable provisions governing the purchase of pre-membership service credit on the basis of the date of last commencement of membership of such service retiree.

(9) A member of NYCERS or BERS, who purchases credit for previous part-time service for a lump sum amount pursuant to paragraph six, seven or eight of this subdivision, may elect to have that lump sum amount reduced by an amount up to the maximum amount which such member would have been entitled to borrow from the total amount that would have been credited to such member in his or her annuity savings account (in the case of a tier I or tier

II member) or member contributions accumulation fund (in the case of a tier III or tier IV member) if, during the window period, he or she had paid the full amount required to purchase such credit, provided that such person's retirement allowance shall be actuarially reduced (in accordance with the provisions of law governing loans which would be applicable to such person) by the amount by which the full lump sum purchase price was reduced pursuant to this paragraph.

(10) (i) Notwithstanding any other provision of law to the contrary, where a deceased member of NYCERS or BERS, who died while a member of such system on or after May thirty-first, nineteen hundred eighty-eight, but prior to the expiration of the window period, met the requirements of paragraph one of this subdivision and, at the time of his or her death, had one or more periods of previous part-time service which meets the requirements of paragraph two of this subdivision, then his or her designated beneficiary (or estate if there is no designated beneficiary) may, during the window period (or if such member died within one hundred eighty days prior to the expiration of the window period, within one hundred eighty days after the expiration of the window period), file an election purchasing, on behalf of such deceased member, credit for all, but not less than all, of the previous part-time service which meets such requirements. The purchase price of such credit shall be deemed to have been paid by and refunded to the designated beneficiary or estate which files such election.

(ii) Notwithstanding any other provision of law to the contrary, where the designated beneficiary or the estate of a deceased member of NYCERS or BERS purchases credit for one or more periods of previous part-time service on behalf of such deceased member pursuant to subparagraph (i) of this paragraph, and such deceased member did not die in active city-service or active education service for purposes of the applicable ordinary death benefit provision, then such deceased member shall be deemed to have died in active city-service or active education service for purposes of the applicable ordinary death benefit provision, but not for the purposes of any accidental death benefit provision or any presumptive retirement provision or provision for payment of a death benefit equal to a pension reserve.

(iii) Under no circumstances shall the purchase of credit by a beneficiary or estate pursuant to subparagraph (i) of this paragraph result in any benefit or any increase in benefit becoming payable pursuant to a presumptive retirement provision, or provision for payment of a death benefit equal to a pension reserve.

(11) (i) A member of NYCERS in city-service or a member of BERS in education service who:

(A) meets the requirements of paragraph one of this subdivision; and

(B) has one or more periods of part-time service which meets the requirements of paragraph two of this subdivision; and

(C) otherwise is eligible to retire for service or otherwise would be eligible to retire for service if he or she were permitted to purchase credit for such part-time service; and

(D) submits to the appropriate retirement system a written request to purchase credit for a lump sum amount for any such period or periods of previous part-time service, in which request it is alleged that he or she is physically or mentally incapacitated for the performance of duty shall be entitled to a medical examination which shall be performed by the medical board of such retirement system.

(ii) Notwithstanding any other provision of law to the contrary, if such medical examination shows that any such member who meets the requirements of subparagraph (i) of this paragraph eleven is physically or mentally incapacitated for the performance of duty, the medical board shall so report to the executive director of such retirement system, and such member in city-service or education service shall be permitted to purchase credit for such period or periods of previous part-time service by paying a lump sum amount computed in accordance with the applicable provisions governing the purchase of credit for previous service, provided that such member shall both (A) actually retire for service effective not later than sixty days after being notified by the retirement system that he or she is eligible to purchase credit for such service pursuant to this paragraph, and (B) complete payment for such purchase within such

sixty-day period.

(12) Notwithstanding any other provision which requires a person to be in city-service in order to become a member of NYCERS, or in education service in order to become a member of BERS, and notwithstanding any other provision of law to the contrary, a person who:

(i) was paid on the payroll in active part-time service on May thirty-first, nineteen hundred eighty-eight; and

(ii) separated from part-time service (other than as a result of dismissal on charges or forfeiture of office) subsequent to May thirty-first, nineteen hundred eighty-eight and prior to August first, nineteen hundred ninety-two, and has not returned to active service; and

(iii) was otherwise eligible to become a member of NYCERS or BERS based upon such part-time service; and

(iv) did not file an application to become a member of such retirement system prior to such separation from service shall be permitted to become a member of such retirement system by filing an application for membership with such system during the window period, provided that such person shall otherwise be eligible pursuant to paragraph seven of this subdivision to retire for service and shall actually retire for service pursuant to such paragraph seven during the window period with an effective date of retirement during the window period.

c. Credit for service. (1) Notwithstanding any other provision of law to the contrary, and except as provided in paragraph two of this subdivision, and subject to the provisions of subdivision f of this section a member of NYCERS or BERS, who otherwise is entitled to credit for city-service or education service, shall have such credit prorated on the basis of one year of service credit for eighteen hundred twenty-seven hours of such service rendered in a calendar year, provided, however, that no such member shall earn more than one year of service credit during any calendar year, and no such member shall earn, for any fraction of a calendar year, a fraction of a year of service credit, which fraction is greater than such fraction of a calendar year. However, this paragraph shall not apply to teachers, including those who work as regular substitutes and per diem teachers.

(2) Notwithstanding the provisions of paragraph one of this subdivision, or any other provision of law to the contrary, and subject to the provisions of subdivision f of this section, a member of BERS, who otherwise is entitled to credit for education service in a job title in which duties are regularly scheduled to be performed only during the school year, or who otherwise is entitled to credit for service in the title of school crossing guard with the New York city police department, where the duties of such title are regularly scheduled to be performed only during the school year, shall have such credit prorated on the basis of one year of service credit for fourteen hundred seventy hours of such service rendered in a calendar year, provided that no such member shall earn more than one year of service credit during any calendar year, and no such member shall earn for any fraction of a calendar year, a fraction of a year of service credit, which fraction is greater than such fraction of a calendar year. However, this paragraph shall not apply to teachers, including those who work as regular substitutes and per diem teachers.

(3) The board of trustees of NYCERS and the retirement board of BERS shall have the authority to adopt reasonable rules for prorating the credit for part-time city-service or part-time education service rendered in part-time per annum job titles for which it is difficult to determine the number of hours actually worked, including, but not limited to, such titles as New York city tax commissioner, New York city planning commissioner and New York city councilmanic aide. Such rules shall, to the extent possible, grant service credit based on the number of hours actually worked in such titles.

d. Purchase of credit for previous part-time service. (1) Except as provided in paragraphs two and three of this subdivision, and subject to the provisions of paragraphs six through eleven of subdivision b of this section, where those provisions are applicable, the purchase of credit for previous part-time service by a member of NYCERS or BERS shall be governed by all of the applicable provisions which otherwise would govern the purchase of credit for pre-membership service by such member.

(2) (i) Notwithstanding any other provision of law to the contrary, a member of NYCERS may purchase credit for previous part-time education service which was rendered prior to the expiration of the window period (as defined in paragraph twenty-two of subdivision a of this section), except that such member may not purchase credit for any such part-time education service rendered prior to the expiration of the window period which was rendered during a payroll period in which such member also rendered city-wide for which he or she has earned or is eligible to earn service credit.

(ii) Notwithstanding any other provision of law to the contrary, a member of BERS may purchase credit for previous part-time city-service which was rendered prior to the expiration of the window period, except that such member may not purchase credit for any such part-time city-service rendered prior to the expiration of the window period which was rendered during a pay period in which such member also rendered education service for which he or she has earned or is eligible to earn service credit.

(3) Notwithstanding any other provision of law to the contrary, where a tier I or tier II member of NYCERS or BERS has purchased credit for previous part-time service which meets the requirements of paragraph two of subdivision b of this section, or a tier I or tier II service retiree of NYCERS or BERS has purchased such credit pursuant to paragraph eight of subdivision b of this section, or a beneficiary or estate has purchased such credit on behalf of such member pursuant to paragraph ten of subdivision b of this section, such credit, whether or not purchased pursuant to any of the provisions of paragraphs six through eleven of subdivision b of this section, shall be counted toward such member's eligibility for a retirement benefit as well as the amount of the benefit; provided that where service in a specified title or in specified titles is required for eligibility for a benefit, or is required with respect to the method of determining the amount of a benefit, nothing contained in this paragraph shall be construed as directing that part-time service in a title which is different from such specified title or titles shall be creditable toward satisfying such eligibility requirement or such requirement as to the method of determining the amount of a benefit.

(4) No provision of the code or the rules and regulations of BERS which provides for the payment of a pension-providing-for-increased-take-home-pay for a member of NYCERS or BERS, or the funding of such a benefit, or the accumulation of a reserve-for-increased-take-home-pay, shall be applicable to the purchase of credit by such member for previous part-time service.

(5) The provisions of section one hundred thirty-eight-b of the RSSL shall not be applicable to the purchase of credit for previous part-time service by a member of NYCERS or BERS.

(6) Nothing contained in paragraph four or paragraph five of this subdivision shall be construed as adding to, diminishing or changing any rights or obligations pertaining to the purchase of credit for previous service which is not part-time service.

e. Salary base for part-time service. (1) Definitions. The following terms, as used in this subdivision, shall have the following meanings, unless a different meaning is plainly required by the context:

(i) "Full-time position in city-service". A position in city-service in which a person is regularly scheduled to work at least eighteen hundred twenty-seven hours per year.

(ii) "Full-time position in education service". (A) A position in education service in which a person is regularly scheduled to work at least eighteen hundred twenty-seven hours per year; or

(B) a position in education service (a) in which duties are regularly scheduled to be performed only during the school year; (b) in which a person is regularly scheduled to work at least fourteen hundred seventy hours per school year; and (c) in which such person, as a member of BERS, is entitled to earn credit for such service, pursuant to paragraph two of subdivision c of this section, on the basis of one year of service credit for fourteen hundred seventy hours of such service rendered in a calendar year.

(2) Subject to the provisions of subdivision f of this section, where those provisions are applicable, for a tier I

member of NYCERS who did not hold a full-time position in city-service at all times during the entire one-year period immediately prior to retirement the term "salary or compensation earnable by him or her for city-service in the year prior to his or her retirement", as used in subparagraph (a) of paragraph three of subdivision e of section 13-162 of the code, subparagraph (a) of paragraph three of subdivision g of such section, subparagraph (a) of paragraph four of such subdivision g, subparagraph (e) of paragraph eight of subdivision a of section 13-172 of the code, subparagraph (a) of paragraph three of subdivision c of section 13-174 of the code or subparagraph (a) of paragraph four of such subdivision c, or the term "annual salary or compensation earnable by him or her for city-service in the year prior to his or her retirement", as used in subparagraph (b) of paragraph seven of subdivision a of section 13-172 of the code, shall be deemed to mean the salary or compensation paid on the payroll to such member for city-service rendered during the period for which such member was credited with his or her final one year of service credit immediately prior to retirement.

(3) Subject to the provisions of subdivision f of this section, where those provisions are applicable, for a tier I member of NYCERS who did not hold a full-time position in city-service at all times during the entire one-year period immediately prior to his or her discontinuance of city-service, the term "annual salary or compensation earnable by him or her for city-service in the year prior to his or her discontinuance of city-service", as used in paragraph two of subdivision c of section 13-173 of the code, shall be deemed to mean the salary or compensation paid on the payroll to such member for city-service rendered during the period for which such member was credited with his or her final one year of service credit immediately prior to his or her discontinuance of city-service.

(4) (i) Subject to the provisions of subdivision f of this section, where those provisions are applicable, for a tier I member of NYCERS who did not hold a full-time position in city-service at all times while a member during the entire six-month period immediately preceding his or her death, the term "an amount equal to the compensation earnable by such member while a member, during the six months immediately preceding his or her death", as used in item (i) of subparagraph (a) of paragraph two of subdivision a of section 13-148 of the code, shall be deemed to mean an amount equal to the compensation paid on the payroll to such member for city-service rendered during the period for which such member, while a member, was credited with his or her final six months of service credit immediately preceding his or her death.

(ii) Subject to the provisions of subdivision f of this section, where those provisions are applicable, for a tier I member of NYCERS who did not hold a full-time position in city-service at all times while a member during the entire twelve-month period immediately preceding his or her death, the term "an amount equal to the compensation earnable by such member in city-service while a member during the twelve months immediately preceding his or her death", as used in item (ii) of subparagraph (a) of paragraph two of subdivision a of section 13-148 of the code, shall be deemed to mean an amount equal to the compensation paid on the payroll to such member for city-service rendered during the period for which such member, while a member, was credited with his or her final twelve months of service credit immediately preceding his or her death.

(iii) Subject to the provisions of subdivision f of this section, where those provisions are applicable, for a tier I member of NYCERS who did not hold a full-time position in city-service at all times during the entire twelve-month period immediately preceding his or her death, the term "an amount equal to twice the compensation earnable by him or her in city-service while a member during the twelve months immediately preceding his or her death", as used in item (iii) of subparagraph (a) of paragraph two of subdivision a of section 13-148 of the code, shall be deemed to mean an amount equal to twice the compensation paid on the payroll to such member for city-service rendered during the period for which such member, while a member, was credited with his or her final twelve months of service credit immediately preceding his or her death.

(5) Subject to the provisions of subdivision f of this section, where those provisions are applicable, for a tier I member of NYCERS who did not hold a full-time position in city-service at all times during his or her entire last five years of city-service, or during any other fiive consecutive years of member or restored member service which such member shall designate pursuant to subdivision nine of section 13-101 of the code, the term "final compensation", as

defined in such subdivision nine, shall be deemed to mean one-fifth of the highest total compensation paid on the payroll to such member for any continuous period of city-service for which the member was credited with five years of service credit.

(6) Subject to the provisions of subdivision f of this section, where those provisions are applicable, for a tier I member of NYCERS who has made a valid election of "three-year-average compensation" pursuant to subdivision fifty-eight of section 13-101 of the code, and who did not hold a full-time position in city-service at all times during the entire three-year period of city-service designated by such member, the term "three-year period of city-service designated by such member, the term "three-year-average compensation", as defined in such subdivision fifty-eight, shall be deemed to mean one-third of the highest total compensation paid on the payroll to such member during any continuous period of city-service for which the member was credited with three years of service credit.

(7) Subject to the provisions of subdivision f of this section, where those provisions are applicable, for a tier I member of BERS who did not hold a full-time position in education service at all times during the entire one-year period immediately prior to retirement, the term "salary or compensation earnable by him for education-service in the year prior to his retirement", as used in subparagraph (a) of paragraph three of subdivision e of section thirty of the BERS rules and regulations, subparagraph (a) of paragraph three of subdivision g of such section, subparagraph (a) of paragraph four of such subdivision g, paragraph (e) of subdivision eight of section twelve of the BERS rules and regulations, subparagraph (i) of paragraph c of subdivision three of section sixteen of the BERS rules and regulations or subparagraph (i) of paragraph d of such subdivision three, or the term "annual salary or compensation earnable by him for education-service in the year prior to his retirement", as used in paragraph (b) of subdivision seven of section twelve of the BERS rules and regulations, shall be deemed to mean the salary or compensation paid on the payroll to such member for education service rendered during the period for which such member was credited with his or her final one year of service credit immediately prior to retirement.

(8) Subject to the provisions of subdivision f of this section, where the provisions are applicable, for a tier I member of BERS who did not hold a full-time position in education service at all times during the entire one-year period immediately prior to his or her discontinuance of city-service, the term "annual salary or compensation earnable by him for education-service in the year prior to his discontinuance of education-service", as used in paragraph two of subdivision c of section thirty-two of the BERS rules and regulations, shall be deemed to mean the salary or compensation paid on the payroll to such member for education service rendered during the period for which such member was credited with his or her final one year of service credit immediately prior to his or her discontinuance of education service.

(9) (i) Subject to the provisions of subdivision f of this section, where those provisions are applicable, for a tier I member of BERS who did not hold a full-time position in education service at all times during the entire six-month period immediately preceding his or her death, the term "an amount equal to the compensation earnable by him during the six months immediately preceding his death", as used in subdivision one of section twenty of the BERS rules and regulations or paragraph (b) of subdivision two of such section, shall be deemed to mean an amount equal to the compensation paid on the payroll to such member for education service rendered during the period for which such member was credited with his or her final six months of service credit immediately preceding his or her death.

(ii) Subject to the provisions of subdivision f of this section, where those provisions are applicable, for a tier I member of BERS who did not hold a full-time position in education service at all times during the entire twelve-month period immediately preceding his or her death, "an amount equal to the compensation earnable by him during the twelve months immediately preceding his death", as used in subdivision one of section twenty of the BERS rules and regulations or paragraph (b) of subdivision two of such section, shall be deemed to mean an amount equal to the compensation paid on the payroll to such member for education service rendered during the period which such member was credited with his or her final twelve months of service credit immediately preceding his or her death.

(iii) Subject to the provisions of subdivision f of this section, where those provisions are applicable, for a tier I

member of BERS who did not hold a full-time position in education service at all times during the entire twelve-month period immediately preceding his or her death, the term "an amount equal to twice the compensation earnable by him in education-service while a member during the twelve months immediately preceding his death", as used in subdivision three of section twenty of the BERS rules and regulations, shall be deemed to mean an amount equal to twice the compensation paid on the payroll to such member for education service rendered during the period for which such member, while a member, was credited with his or her final twelve months of service credit immediately preceding his or her death.

(10) Subject to the provisions of subdivision f of this section, where those provisions are applicable, for a tier I member of BERS who did not hold a full-time position in education service at all times during his or her entire last five years of education service, or during any other five consecutive years of education service which such member shall designate pursuant to subdivision thirteen of section two of the BERS rules and regulations, the term "final compensation", as defined in such subdivision thirteen, shall be deemed to mean one-fifth of the highest total personal compensation in any form paid on the payroll to such member for regular day service during any continuous period of education service for which the member was credited with five years of service credit, provided that such amount shall be exclusive of any extra compensation for special services, either during the day or night.

(11) Subject to the provisions of subdivision f of this section, where those provisions are applicable, for a tier I member of BERS who has made a valid election of "three-year-average compensation" pursuant to subdivision thirty-six of section two of the BERS rules and regulations and who did not hold a full-time position in education service at all times during the entire three-year period of education service designated by such member, the term "three-year-average compensation", as defined in such subdivision thirty-six, shall be deemed to mean one-third of the highest total compensation paid on the payroll to such member during any continuous period of education service for which the member was credited with three years of service credit.

(12) (i) Subject to the provisions of subdivision f of this section and the provisions of subdivision d of section four hundred forty-three of the RSSL, where those provisions are applicable, and notwithstanding the provisions of subdivision a of section four hundred forty-three of the RSSL, for a tier II member of NYCERS or BERS, the term "final average salary", as used in article eleven of the RSSL, shall be equal to the greater of:

(A) one-third of the highest total salary earned during any continuous period of employment for which the member was credited with three years of service credit; provided that such salary shall be subject to the provisions of subparagraph (ii) of this paragraph; and provided further that if the salary earned during any year of credited service included in the period used to determine final average salary exceeds the average of the salaries of the previous two years of credited service by more than twenty per centum, the amount in excess of twenty per centum shall be excluded from the computation of final average salary; or

(B) the total amount of salary earned during any six consecutive years from service for which the member received service credit divided by the amount of such service credit earned during that six-year period; provided that such total amount of salary shall be subject to the provisions of subparagraph (ii) of this paragraph.

(ii) The total earned salary used to determine the amount computed pursuant to item (A) or item (B) of subparagraph (i) of this paragraph shall be exclusive of any form of termination pay (which shall include any compensation in anticipation of retirement), any lump sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked (other than compensation received while on sick leave or authorized leave of absence).

(13) Subject to the provisions of subdivision f of this section and the provisions of subdivision c of section five hundred twelve of the RSSL, where those provisions are applicable, and notwithstanding the provisions of subdivision a of section five hundred twelve of the RSSL, for a tier III member of NYCERS or BERS, the term "final average salary", as used in article fourteen of the RSSL, shall be equal to the greater of:

(i) one-third of the highest total wages earned during any continuous period of employment for which the member was credited with three years of service credit; provided that if the wages earned during any year of credited service included in the period used to determine final average salary exceeds the average of the wages of the previous two years of credited service by more than ten percent, the amount in excess of ten percent shall be excluded from the computation of final average salary; or

(ii) the total wages earned during any six consecutive years from service for which the member received service credit divided by the amount of such service credit earned during that six-year period.

(14) Subject to the provisions of subdivision f of this section and the provisions of subdivision c of section six hundred eight of the RSSL, where those provisions are applicable, and notwithstanding the provisions of subdivision a of section six hundred eight of the RSSL, for a tier IV member of NYCERS or BERS, the term "final average salary", as used in article fifteen of the RSSL, shall be equal to the greater of:

(i) one-third of the highest total wages earned by such member during any continuous period of employment for which the member was credited with three years of service credit; provided that if the wages earned during any year of credited service included in the period used to determine final average salary exceeds the average of the wages of the previous two years of credited service by more than ten percent, the amount in excess of ten percent shall be excluded from the computation of final average salary; or

(ii) the total wages earned during any six consecutive years from service for which the member received service credit divided by the amount of such service credit earned during that six-year period.

(15) Nothing contained in this subdivision shall be construed as modifying the provisions of paragraph (a) of subdivision thirty-seven of section two of the BERS rules and regulations, or as affecting in any way the manner in which such paragraph is interpreted and applied by BERS to the computation of benefits.

f. Dual employment. (1) Definitions. The following terms as used in this subdivision, shall have the following meanings, unless a different meaning is plainly required by the context:

(i) "Full-time position". As relating to a particular period of time during which a member of NYCERS concurrently held two or more positions in city-service, or a member of BERS concurrently held two or more positions in education service, a position in such service held by such a member for which he or she was paid on the payroll during that period for a sufficient number of hours such that he or she either was eligible to earn or would have been eligible to earn from such position during such period the maximum amount of credit which could be earned for such period pursuant to subparagraph (i) of paragraph three of this subdivision if that position were the only position in such service held by such member during such period.

(ii) "Part-time position". As relating to a particular period of time during which a member of NYCERS concurrently held two or more positions in city-service, or a member of BERS concurrently held two or more positions in education service, a position in such service held by such a member for which he or she was paid on the payroll during that period for less than the minimum number of hours which would have been required for such member to earn from such position during such period the maximum amount of credit which could be earned for such period pursuant to subparagraph (i) of paragraph three of this subdivision if that position were the only position in such service held by such member during such period.

(iii) "Earnings". The compensation, salary or wages of a position in city-service or education service.

(iv) "Salary base". The earnings for a particular period of time from city-service for a member of NYCERS, or from education service for a member of BERS, which are required by law to be applied in calculating the benefit payable by such retirement system to such member or the beneficiary of such member pursuant to the applicable provisions of the code, the RSSL or the BERS rules and regulations.

(v) "Salary base period". That period of time for which all or a portion of the earnings from city-service for a NYCERS member, or all or a portion of the earnings from education service for a BERS member, are required to be applied in calculating the salary base pursuant to the applicable provisions of the code, the RSSL or the BERS rules and regulations.

(vi) "Rate of pay". The amount which a position in city-service or education service is scheduled to pay per hour, per day or per year.

(2) (i) Except as provided in subparagraph (iv) of paragraph eight of this subdivision, the provisions of this subdivision shall apply only to two or more positions in city-service held concurrently by a member of NYCERS or to two or more positions in education service held concurrently by a member of BERS.

(ii) Where a member of NYCERS concurrently holds or held two or more positions in city-service, or a member of BERS concurrently holds or held two or more positions in education service, such member shall make all required member contributions to such retirement system, as calculated pursuant to applicable provisions of law, for all service rendered in such positions concurrently held.

(iii) No member of NYCERS or BERS shall be entitled to any of the benefits of this subdivision for any service for which he or she has not paid all member contributions required by applicable provisions of law.

(3) (i) No member of NYCERS or BERS shall earn more than one year of service credit during any calendar year, and no such member shall earn, for any fraction of a calendar year, a fraction of a year of service credit, which fraction is greater than such fraction of a calendar year.

(ii) For any period in which a member of NYCERS concurrently held two or more positions in city-service, or a member of BERS concurrently held two or more positions in education service, such member may earn service credit from such two or more positions, and such credit shall be aggregated, but in no event shall such member earn a greater total amount of service credit from such positions during such period than he or she would have been eligible to earn pursuant to subparagraph (i) of this paragraph if such member had held only one full-time position during such period.

(4) (i) Except as provided in subparagraph (ii) of this paragraph, for all or any portion of a salary base period during which a member of NYCERS concurrently held two full-time positions in city-service, or a member of BERS concurrently held two full-time positions in education service, the earnings of such a member from only one of such two positions shall be applied in calculating the salary base, and the earnings from the position producing the higher salary base shall be used for this purpose.

(ii) Where a member of NYCERS has held two full-time positions in city-service concurrently for a total of at least nine months in each of ten consecutive years, and has made all required member contributions for such service, or a member of BERS has held two such full-time positions in education service concurrently for a total of at least nine months in each of ten consecutive years, and has made all required member contributions for such service, and such a member concurrently held two such positions during all or a portion of the salary base period, then the earnings from two such positions for that portion of the salary base period during which such positions were held concurrently shall be aggregated and applied in calculating the salary base.

(5) (i) Except as provided in subparagraph (ii) of this paragraph, for all or any portion of a salary base period during which a member of NYCERS concurrently held a full-time position in city-service and one or more part-time positions in city-service, or a member of BERS concurrently held a full-time position in education service and one or more part-time positions in education service, only the earnings from the full-time position shall be applied in calculating the salary base.

(ii) (A) Where a member of NYCERS has held a full-time position in city-service and one or more part-time positions in city-service concurrently for a total of at least nine months in each of ten consecutive years, and has made

all required member contributions for such service, or a member of BERS has held a full-time position in education service and one or more part-time positions in education service concurrently for a total of at least nine months in each of ten consecutive years, and has made all required member contributions for such service, and such a member concurrently held such a full-time position and one or more such part-time positions during all or a portion of the salary base period, then the following earnings from such positions for that portion of the salary base period during which such positions were held concurrently shall be aggregated and applied in calculating the salary base: (a) the earnings from the full-time position during such portion of such salary base period; plus

(b) the earnings from those part-time positions held during such portion of such salary base period, which part-time positions are equal in number to the part-time positions which such member held concurrently with a full-time position for a total of at least nine months in each of ten consecutive years.

(B) For the limited purpose only of determining, pursuant to item (A) of this subparagraph, whether such member has held such a full-time position and one or more such part-time positions concurrently for a total of at least nine months in each of ten consecutive years, a full-time position held by such member at any time during such ten-year period may be deemed to be a part-time position.

(6) (i) Except as provided in subparagraph (ii) of this paragraph, for all or any portion of a salary base period in which a member of NYCERS did not hold a full-time position and concurrently held two or more part-time positions in city-service, or a member of BERS did not hold a full-time position and concurrently held two or more part-time positions in education service, the portions of the earnings from such part-time positions during that portion of the salary base period during which such part-time positions were held concurrently, which earnings portions may be aggregated and applied in calculating the salary base, shall be determined as follows: (A) rank each such part-time position held concurrently during such portion of the salary base period in order according to the rate of pay which is applicable to such member for each such position during such portion of the salary base period, from the highest rate of pay to the lowest rate of pay;

(B) determine for each such part-time position the hypothetical amount of service credit which such member would have been eligible to earn from such position for that portion of the salary base period during which such two or more part-time positions were held concurrently if such member had held no other position concurrently with such position;

(C) determine for such portion of the salary base period the hypothetical amount of service credit which such member would have been eligible to earn from one full-time position held during a period of time equal in length to such portion of the salary base period;

(D) add together all of the hypothetical amounts of service credit determined for each position in accordance with item (B) of this subparagraph;

(E) of the hypothetical service credit sum determined in accordance with item (D) of this subparagraph is less than or equal to the amount of hypothetical full-time service credit determined in accordance with item (C) of this subparagraph, then the earnings from all of such two or more part-time positions from such portion of the salary base period shall be aggregated and applied in calculating the salary base;

(F) if the hypothetical service credit sum determined in accordance with item (D) of this subparagraph is greater than amount of hypothetical full-time service credit determined in accordance with item (C) of this subparagraph, then add together the hypothetical amounts of service credit determined for such positions in accordance with item (B) of this subparagraph in the order determined in accordance with item (A) of this subparagraph which are attributable to the maximum number of such positions which yield the maximum total amount of hypothetical service credit which is less than or equal to the amount of hypothetical full-time service credit determined in accordance with item (C) of this subparagraph;

(G) if the hypothetical service credit sum determined in accordance with item (F) of this subparagraph is equal to the amount of hypothetical full-time service credit determined in accordance with item (C) of this subparagraph, then the total earnings from service rendered during such portion of the salary base period from such maximum number of positions in such item (F) which yielded such maximum amount of hypothetical service credit in such item (F) shall be aggregated and applied in calculating the salary base;

(H) if the hypothetical service credit sum determined in accordance with item (F) of this subparagraph is less than the amount of hypothetical full-time service credit determined in accordance with item (C) of this subparagraph, then determine the amount of hypothetical service credit from the next position on the list which, when added together with the hypothetical service credit sum determined in accordance with item (F) of this subparagraph, shall equal the hypothetical full-time service credit determined in accordance with item (C) of this subparagraph;

(I) set forth the total hypothetical service credit from the next position on the list after such maximum number of positions referred to in item (F) of this subparagraph;

(J) divide the amount of hypothetical service credit determined in accordance with item (H) of this subparagraph by the total hypothetical service credit of such next position determined in accordance with item (I) of this subparagraph;

(K) add together all of the earnings from the service rendered during such portion of the salary base period from such maximum number of positions referred to in item (F) of this subparagraph;

(L) multiply the fraction determined in accordance with item (J) of this subparagraph by the amount of earnings from the service rendered during such portion of the salary base period from such next position on the list, as referred to in item (I) of this subparagraph; and

(M) add together the earnings determined in accordance with item (K) of this subparagraph and item (L) of this subparagraph, and the sum of such earnings shall be applied in calculating the salary base in accordance with the applicable provisions of subdivision e of this section.

(ii) (A) Where a member of NYCERS has held two or more part-time positions in city-service concurrently for a total of at least nine months in each of ten consecutive years, and has made all required member contributions for such service, or a member of BERS has held two or more part-time positions in education service concurrently for a total of at least nine months in each of ten consecutive years, and has made all required member contributions for such service, and such member concurrently held two or more part-time positions during all or any portion of the salary base period, then the earnings from such positions for that portion of the salary base period during which such positions were held concurrently which shall be aggregated and applied in calculating the salary base shall be the earnings from those part-time positions held during such portion of such salary base period, which part-time positions are equal in number to the part-time positions which such member held concurrently for a total of at least nine months in each of ten consecutive years.

(B) For the limited purpose only of determining, pursuant to item (A) of this subparagraph, whether such member has held two or more such part-time positions concurrently for a total of at least nine months in each of ten consecutive years, a full-time position held by such member at any time during such ten-year period may be deemed to be a part-time position.

(7) (i) Notwithstanding any other provision of law to the contrary, for any period of time in which a member of NYCERS held concurrently two or more positions in city-service for which he or whe made member contributions to NYCERS, or for any period of time in which a member of BERS held concurrently two or more positions in education service for which he or she made member contributions to BERS, such member, on or after the effective date of retirement (or the commencement date of payability of a deferred vested retirement allowance), may withdraw that portion of his or her accumulated member contributions (including interest to be credited pursuant to subparagraph (ii)

of this paragraph) which is attributable to the earnings from service rendered during such period in any number of such positions up to the number of positions equal to one less than the total number of such positions concurrently held in such period for which he or she made member contributions, provided that such a withdrawal of member contributions shall be permitted only for service rendered during such period in a position which, prior to any such withdrawal, such member:

(A) is not entitled to service credit for service rendered in such position; and

(B) is not eligible to have earnings from service rendered in such position applied in calculating his or her salary base; and

(C) is not entitled to have earnings from two or more positions which such member held concurrently during the salary base period aggregated and applied in calculating the salary base, pursuant to subparagraph (ii) of paragraph four of this subdivision, subparagraph (ii) of paragraph five of this subdivision or subparagraph (ii) of paragraph six of this subdivision, where such entitlement is based in whole or in part upon service in such position during such period being applied to meet the requirement that two or more positions be held concurrently for a total of at least nine months in each of ten consecutive years.

(ii) Interest shall be credited on accumulated member contributions withdrawn pursuant to subparagraph (i) of this paragraph at the same rate and in the same manner as interest is required to be credited on a refund of member contributions pursuant to the provisions of law applicable to such member.

(iii) No member shall be entitled to service credit or any of the benefits of this subdivision for any service for which member contributions have been withdrawn pursuant to this paragraph.

(8) (i) (A) Any member of the New York city teachers' retirement system who concurrently holds a position as a teacher (as defined in subdivision seven of section 13-501 of the code) and a position in city-service in which he or she has worked an average of at least thirty hours per week for a*13 least five consecutive years may elect to become a member of NYCERS and to transfer his or her membership in the New York city teachers' retirement system to NYCERS by filing simultaneously with NYCERS, during the window period (as defined in paragraph twenty-two of subdivision a of this section), a duly executed and acknowledged application for membership and a duly executed and acknowledged request that his or her membership and service credit in the New York city teachers' retirement system be transferred to NYCERS.

(B) Any election of membership in NYCERS made pursuant to item (A) of this subparagraph shall be irrevocable.

(ii) (A) Upon the filing with NYCERS of a request for a transfer as provided in item (A) of subparagraph (i) of this paragraph, NYCERS shall file such request for a transfer with the New York city teachers' retirement system. Upon the filing of such request for a transfer with the New York city teachers' retirement system, such retirement system shall make a transfer of reserves and accumulated member contributions to NYCERS in the manner required by section forty-three of the RSSL.

(B) Nothing contained in the preceding provisions of this paragraph or of any other law shall be construed (a) as imposing any restriction under the third sentence of subdivision d of such section forty-three on the determination of the salary base for benefit computation purposes with respect to any person whose membership and service credit are transferred to NYCERS pursuant to the applicable preceding provisions of this paragraph, or (b) as making the last sentence of such subdivision d applicable to any such transferee.

(iii) Any member of the New York city teachers' retirement system who did not meet the requirements of subparagraph (i) of this paragraph to transfer his or her membership to NYCERS because he or she, during the window period, did not concurrently hold a position as a teacher (as defined in subdivision seven of section 13-501 of the code)

and a position in city-service in which he or she had worked an average of at least thirty hours per week for at least five consecutive years, and who shall meet all of such requirements for such a transfer on December thirty-first, nineteen hundred ninety-five, may elect to become a member of NYCERS and to transfer his or her membership in the New York city teachers' retirement system to NYCERS by filing simultaneously with NYCERS, during the six-month period which commences on the day immediately following the date of enactment of the chapter of the laws of nineteen hundred ninety-six which added this provision, a duly executed and acknowledged application for membership and a duly executed and acknowledged request that his or her membership and service credit in the New York city teachers' retirement system be transferred to NYCERS, provided he or she meets all of such requirements on such date of filing. The provisions of item (B) of subparagraph (i) of this paragraph and of subparagraph (ii) of this paragraph shall be applicable to any such transfer pursuant to this subparagraph.

(iv) Notwithstanding the provisions of subparagraph (i) of paragraph two of this subdivision, or any other provision of law to the contrary, where a person transferred his or her membership in the New York city teachers' retirement system to NYCERS pursuant to the provisions of this paragraph, the service rendered by such member in a position as a teacher (as defined in subdivision seven of section 13-501 of the code) prior to such transfer for which credit was transferred to NYCERS, and the service rendered by such member in such position as a teacher while a member of NYCERS after such transfer to NYCERS, shall be deemed to be city-service for all purposes including, but not limited to, the determination of such member's rights pursuant to the provisions of paragraphs one through seven of this subdivision, provided that the obligations of such member to make member contributions based on such service shall be the same as if such service were city-service.

g. Retirement system membership of school crossing guards. (1) Any person employed by the New York city police department in the title of school crossing guard (A) who is not a member of any public retirement system of the state of New York or any political subdivision thereof at the time he or she files an application for membership in BERS, or (B) who is a member of another public retirement system of such state or political subdivision thereof, and who meets all of the requirements for a transfer of membership from such retirement system to BERS pursuant to section forty-three of the RSSL, may elect to become a member of BERS by filing with BERS a duly executed and acknowledged application for membership.

(2) Subject to the provisions of paragraph three of this subdivision, any person who, on the effective date of the act which added this paragraph, is employed by the New York city police department in the title of school crossing guard and who, immediately prior to such effective date, is a member of NYCERS shall, on such effective date, become a member of BERS and shall have his or her membership in NYCERS transferred to BERS.

(3) Any person who, on the effective date of the act which added this paragraph, is employed in such title of school crossing guard and who, immediately prior to such effective date, is a member of NYCERS may elect to remain a member of NYCERS and to void such transfer to BERS pursuant to paragraph two of this subdivision by filing, within ninety days after such effective date, written notice of such election with the executive director of NYCERS and the executive director of BERS.

(4) For all persons who are transferred from NYCERS to BERS pursuant to paragraph two of this subdivision, NYCERS shall make a transfer of reserves, accumulated member contributions and service credit to BERS using a method which is calculated, as certified by the actuary, to produce results which are reasonably equivalent to the results which would be produced by using the method required by section forty-three of the RSSL. For all persons who elect to remain a member of NYCERS and to void a transfer from NYCERS to BERS pursuant to paragraph three of this subdivision, BERS shall make a transfer of reserves, accumulated member contributions and service credit to NYCERS using a method which is calculated, as certified by the actuary, to produce results which are reasonably equivalent to the results which would be produced by using the method required by section forty-three of the RSSL.

(5) Notwithstanding the provisions of subparagraph (i) of paragraph two of subdivision f of this section, or any other provision of law to the contrary, where a person's membership in NYCERS was transferred to BERS pursuant to

paragraph two of this subdivision, the service rendered by such member in the title of school crossing guard prior to such transfer for which credit was transferred to BERS, as well as the service rendered by such member in such position while a member of BERS after such transfer to BERS, shall be deemed to be education service for all purposes including, but not limited to, the determination of such member's rights pursuant to the provisions of paragraphs one through seven of subdivision f of this section.

(6) Notwithstanding any other provision of law to the contrary, where a person's credit for service in the title of school crossing guard was transferred from NYCERS to BERS pursuant to paragraph four of this subdivision, and the transferred credit for such service was prorated by NYCERS pursuant to paragraph one of subdivision c of this section on the basis of one year of service credit for eighteen hundred twenty-seven hours of such service rendered in a calendar year, the transferred credit for such service in such position shall be recomputed by BERS and prorated pursuant to paragraph two of subdivision c of this section on the basis of one year of service credit four fourteen hundred seventy hours of such service rendered in a calendar year, provided that such service meets all of the requirements of such paragraph two for prorating on such basis.

**HISTORICAL NOTE**

Section added chap 749/1992 § 13 eff. July 31, 1992

Subd. a par (21) amended chap 671/1996 § 4, eff. Sept. 25, 1996.

Subd. a par (22) amended chap 671/1996 § 2, eff. Sept. 25, 1996.

Subd. b par (12) added chap. 671/1996 § 3, eff. Sept. 25, 1996.

Subd. f par (8) subpar (iii) amended chap 671/1996 § 5, eff. Sept. 25,

1996.

**FOOTNOTES**

13

[Footnote 13]: * So in original, "a" s.b. "at".

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*NYC Administrative Code 13-638.5*

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Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-638.5 Compliance of New York city retirement systems and pension funds with section 401(a)(2) of the Internal Revenue Code.

Notwithstanding any other provision of law to the contrary, the New York city employees' retirement system, the New York city police pension fund, subchapter two, the New York city fire department pension fund, subchapter two, the New York city teachers' retirement system and the New York city board of education retirement system shall at all times comply with the requirements of section 401(a)(2) of the Internal Revenue Code, as amended from time to time, and at no time, prior to the satisfaction of liabilities with respect to employees and beneficiaries under the trust, shall any part of the corpus or income of any such retirement system or pension fund be used for, or diverted to, any purpose other than the exclusive benefit of the members, retirees and beneficiaries of each of such retirement systems and pension funds, respectively, except to the extent permitted by the Internal Revenue Code as it may be amended from time to time.

**HISTORICAL NOTE**

Section added chap 507/2005 § 1, eff. Aug. 16, 2005.

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*NYC Administrative Code 13-638.6*

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Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 4 MISCELLANEOUS PROVISIONS

§ 13-638.6 Compliance of New York city retirement systems and pension funds with section 401(a)(9) of the Internal Revenue Code.

Notwithstanding any other provision of law to the contrary, the New York city employees' retirement system, the New York city police pension fund, subchapter two, the New York city fire department pension fund, subchapter two, the New York city teachers' retirement system and the New York city board of education retirement system shall at all times comply with the requirements of section 401(a)(9) of the Internal Revenue Code, as amended from time to time, and, unless the Internal Revenue Code as hereafter amended provides otherwise,

(1) all distributions of retirement allowance benefits from any such retirement system or pension fund shall commence on or before the April first following the later of the calendar year in which the participant attains age seventy and one-half or retires; and

(2) where the distribution of the participant's entire interest is not made in a lump sum by any such retirement system or pension fund, the distribution shall be made in one or more of the following ways: over the life of the participant; over the life of the participant and a designated beneficiary; over a period certain not extending beyond the life expectancy of the participant; or over a period certain not extending beyond the joint life and last survivor expectancy of the participant and a designated beneficiary; and

(3) if distribution of benefits has commenced prior to the participant's death, the remaining interest shall be

distributed by any such retirement system or pension fund at least as rapidly as under the method of distribution being used as of the date of the participant's death; and

(4) where the participant dies before distribution commences, the method of distribution of benefits from any such retirement system or pension fund shall satisfy the following requirements: (a) any remaining portion of the participant's interest that is not payable to a beneficiary designated by the participant shall be distributed within five years after the participant's death; and (b) any portion of the participant's interest that is payable to a beneficiary designated by the participant shall be distributed either (i) within five years after the participant's death, or (ii) over the life of the beneficiary or over a period certain not extending beyond the life expectancy of the beneficiary, commencing not later than the end of the calendar year following the calendar year in which the participant dies (or, if the designated beneficiary is the participant's surviving spouse, commencing not later than the end of the calendar year following the calendar year in which the participant would have attained age seventy and one-half).

**HISTORICAL NOTE**

Section added chap 507/2005 § 1, eff. Aug. 16, 2005.



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

*NYC Administrative Code 13-639*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 5 RETIREMENT BY BOARD OF ESTIMATE

§ 13-639 Board of estimate; authority to recommend retirement.

Any officer, whether appointed or elected, clerk or employee of any agency in the employ of the city or of any of the municipalities, counties or parts thereof which have been incorporated into the city and any officer, clerk or employee whose salary or compensation is a county charge who shall have been employed for a period of thirty years and upwards and who shall have become physically or mentally incapacitated for the further performance of the duties of his or her position, may be recommended for retirement from active service to the board of estimate by any member thereof whenever, in his or her judgment, it shall be to the interest of the public service. The term of service, however, shall not be affected by any change in title, duty or salary or by any promotion or by a vacation or leave of absence or by any temporary disability by reason of sickness or accident or by any transfer from one agency to another during the period of service, or by any change of any of the agencies in which service shall have been performed from an office paid by fees to a salaried office.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C3-1.0 added chap 929/1937 § 1



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

*NYC Administrative Code 13-640*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 5 RETIREMENT BY BOARD OF ESTIMATE

§ 13-640 Authority to retire.

The board of estimate is authorized and empowered to retire from active service any person recommended for retirement as provided by section 13-639 of this chapter. Reasonable notice of its proposed action shall be given by such board to any person intended to be retired and an opportunity of making an explanation shall be given to such person. The board shall state its reasons for retiring any such person and that the interests of the public service require such retirement.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C3-2.0 added chap 929/1937 § 1



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

*NYC Administrative Code 13-641*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 5 RETIREMENT BY BOARD OF ESTIMATE

§ 13-641 Annuities; annuities to retired employees.

Any person retired from active service pursuant to sections 13-639 and 13-640 of this chapter, shall be awarded and granted by the board of estimate an annual sum or annuity to be fixed by such board not exceeding, however, one-half of the amount which his or her annual salary or compensation averages for the period of three years immediately prior to the time of his or her retirement. The comptroller shall pay the annuities granted in monthly installments. Such payments are to continue during the lifetime of the person or persons so retired. There shall be included annually in the budget such sums as may be required for such payments.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C3-3.0 added chap 929/1937 § 1

Amended chap 100/1963 § 42



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*NYC Administrative Code 13-642*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 5 RETIREMENT BY BOARD OF ESTIMATE

§ 13-642 When annuities forfeited.

Any person who, subsequent to his or her retirement under the provisions of sections 13-639, 13-640 and 13-641 of this chapter, shall accept any office, position or employment to which any salary or emolument is attached in the civil service in the state of New York, or of any county, or any municipal corporation therein, except the office of inspector or clerk of election and registry or other temporary office provided for in the election and registry laws of this state, and except the office of notary public and commissioner of deeds during such service or employment and while receiving any salary or emolument therefor, shall relinquish and forfeit the annuity allotted to him or her upon his or her retirement.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C3-4.0 added chap 929/1937 § 1



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

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Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 5 RETIREMENT BY BOARD OF ESTIMATE

§ 13-643 Application of subchapter.

This subchapter shall not apply to any person who is, or may be, entitled to share in any pension fund supported in whole or in part by the city.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C3-5.0 added chap 929/1937 § 1



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

*NYC Administrative Code 13-644*

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Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 1 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES]

§ 13-644 Definitions.

As used in this subchapter:

1. The term "city retired employee" shall mean a person who was retired prior to July first, nineteen hundred sixty and who receives, as a result of such retirement, a retirement allowance or pension from any retirement or pension system or plan of the city of New York, which retirement allowance or pension, computed without optional modification, is or would be twelve hundred dollars per annum or less, and who, unless retired for disability:

(a) is sixty years of age or over and

(b) has not had less than fifteen years of allowable and credited service on which his or her retirement allowance or pension is based,

(c) provided, however, that

(1) in the case of such a person meeting such requirements who attained age sixty-five before April first, nineteen hundred fifty-six, or who attains such age on or after such date, the maximum retirement allowance or pension,

computed without optional modification, shall for the purposes hereof be thirteen hundred two dollars per annum beginning April first, nineteen hundred fifty-six or the first of the month following the date such person attains the age of sixty-five years;

(2) in the case of a female person meeting such requirements who attained age sixty-two before April first, nineteen hundred fifty-seven, or who attains such age on or after such date, the maximum retirement allowance or pension, computed without optional modification, shall for the purposes hereof be thirteen hundred two dollars per annum beginning April first, nineteen hundred fifty-seven or the first of the month following the date such person attains the age of sixty-two years;

(3) in the case of a person retired for disability, either before or after attaining age fifty, who attained such age before April first, nineteen hundred fifty-seven, or who attains such age on or after such date, the maximum retirement allowance or pension, computed without optional modification, shall for the purposes hereof be thirteen hundred two dollars per annum beginning April first, nineteen hundred fifty-seven or the first of the month following the date such person attains the age of fifty years.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-1.0 added LL 147/1952 § 1

Amended LL 79/1953 § 1

Amended LL 41/1954 § 1

Amended LL 31/1955 § 1

Amended LL 46/1956 § 1

Amended LL 52/1957 § 1

Open par, sub 1 open par amended LL 20/1961 § 2

Renumbered chap 100/1963 § 645

(formerly § D40-1.0)



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

*NYC Administrative Code 13-645*

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Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 1 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES]

§ 13-645 Retired employees eligible for supplemental pensions.

City retired employees of the city of New York or any of its agencies shall be entitled to receive, one month after such retirement, monthly supplemental pension payment as provided in this article.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-2.0 added LL 147/1952 § 1

Amended LL 79/1953 § 1

Amended LL 31/1955 § 2

Amended LL 46/1956 § 1

Amended LL 52/1957 § 1

Amended LL 20/1961 § 3

Renumbered chap 100/1963 § 646

(formerly § D40-2.0)



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Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 1 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES]

§ 13-646 Computation of supplemental pensions.

1. Subject to the filing of verified applications for such payments by person entitled thereto, the monthly supplemental pension to be paid to a city retired employee shall be computed by

(a) Multiplying by forty (or forty-three and two-fifths in a case where a retired employee may receive a maximum retirement allowance or pension, computed without optional modification, of thirteen hundred two dollars) the number of years not exceeding thirty, of allowable and credited service on which his or her retirement allowance or pension is based,

(b) subtracting therefrom the amount of his or her annual retirement allowance or pension, computed without optional modification, and

(c) dividing the result so obtained by twelve.

2. In no event shall the monthly supplemental pension paid to a city retired employee exceed

(a) twenty-five dollars, or thirty-three dollars and fifty cents in any case where the maximum under paragraph

(b) of this subdivision is one hundred eight dollars and fifty cents, or

(b) an amount which when added to an amount equal to one-twelfth of his or her annual retirement allowance or pension, computed without optional modification, exceeds the sum of one hundred dollars, or one hundred eight dollars and fifty cents.

(1) in the case of a retired employee who attained age sixty-five before April first, nineteen hundred fifty-six or who attains such age on or after such date, beginning with April first, nineteen hundred fifty-six or with the first of the month following the date such retired employee attains the age of sixty-five years;

(2) in the case of a retired female person who attained age sixty-two before April first, nineteen hundred fifty-seven or who attains such age on or after such date, beginning with April first, nineteen hundred fifty-seven or with the first of the month following the date such retired employee attains the age of sixty-two years; and

(3) in the case of a person retired for disability, either before or after attaining age fifty, who attained such age before April first, nineteen hundred fifty-seven, or who attains such age on or after such date, beginning with April first, nineteen hundred fifty-seven, or with the first of the month following the date such retired employee attains the age of fifty years.

3. For the purposes of this section, in determining the number of years of allowable and credited service, a major fraction or decimal of a year shall be counted as a full year.

4. If any salary or time adjustment is pending then the supplemental pension payments to be received by a city retired employee shall be regarded as payments on account of any increase in pension or retirement allowance to which such city retired employee may become entitled by reason of such salary or time adjustment, and may be offset from any increased pension payment or retired allowance which may become payable to such city retired employee by reason of such adjustment.

5. Notwithstanding any other provision of this article.

(a) any person who was retired prior to July first, nineteen hundred sixty and who as a result of such retirement receives a retirement allowance or pension from the New York city teachers' retirement system, who attained age sixty-five before April first, nineteen hundred fifty-six, or who attains such age on or after such date and who is receiving or is entitled to receive a supplemental pension pursuant to this article on or after such date shall, beginning with the month of April, nineteen hundred fifty-six, if he or she is then sixty-five years of age or beginning with the month thereafter during which he or she attains age sixty-five, receive a monthly supplemental pension in an amount which when added to his or her monthly retirement allowance or pension, computed without optional modification, shall be equal to one hundred eight dollars fifty cents;

(b) in the case of any female person meeting such requirements, who was retired prior to July first, nineteen hundred sixty and who, as a result of such retirement receives a retirement allowance or pension from the New York city teachers' retirement system, who attained age sixty-two before April first, nineteen hundred fifty-seven, or who attains such age on or after such date and who is receiving or is entitled to receive a supplemental pension pursuant to this article on or after such date shall, beginning with the month of April, nineteen hundred fifty-seven, if she is then sixty-two years of age or beginning with the month thereafter during which she attains age sixty-two, receive a monthly retirement allowance or pension in an amount which, when added to her monthly retirement allowance or pension, computed without optional modification, shall be equal to one hundred eight dollars and fifty cents;

(c) in the case of any person retired for disability before July first nineteen hundred sixty who receives a disability retirement allowance or pension from the New York city teachers' retirement system, effective either before or after attaining age fifty, who attained such age before April first, nineteen hundred fifty-seven, or who attains such age on or after such date and who is receiving or is entitled to receive a supplemental pension pursuant to this article on or

after such date shall, beginning with the month of April, nineteen hundred fifty-seven, if he or she is then fifty years of age or beginning with the month thereafter during which he or she attains age fifty, receive a monthly retirement allowance or pension in an amount which when added to his or her monthly retirement allowance or pension, computed without optional modification, shall be equal to one hundred eight dollars and fifty cents.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-3.0 added LL 147/1952 § 1

Amended LL 79/1953 § 1

Amended LL 46/1956 § 1

Amended LL 52/1957 § 1

Sub 5 amended LL 20/1961 § 4

Renumbered chap 100/1963 § 647

(formerly § D40-3.0)

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SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 1 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES]

§ 13-647 Payment of supplemental pensions.

On or before the last day of each month, there shall be paid to each city retired employee, from the supplemental pension fund, the monthly supplemental pension payment to which he or she may be entitled under the provisions of this article.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-4.0 added LL 147/1952 § 1

Amended LL 79/1953 § 1

Amended LL 31/1955 § 2

Amended LL 46/1956 § 1

Amended LL 52/1957 § 1

Amended LL 20/1961 § 5

Renumbered chap 100/1963 § 648

(formerly § D40-4.0)



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CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 1 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES]

§ 13-648 Rules and regulations.

The board of estimate on recommendation of the comptroller shall prescribe such rules and regulations as may be required for the effective administration of the provisions of this article relating to supplemental pension payments to city retired employees.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-5.0 added LL 147/1952 § 1

Amended LL 46/1956 § 1

Amended LL 52/1957 § 1

Amended LL 20/1961 § 5

Renumbered chap 100/1963 § 649

(formerly § D40-5.0)



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*NYC Administrative Code 13-649*

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SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 1 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES]

§ 13-649 Information to be furnished to comptroller.

The comptroller may require any agency of the city to furnish him or her with such records, information and data as he or she may need to carry out the provisions of this article.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-6.0 added LL 147/1952 § 1

Amended LL 46/1956 § 1

Amended LL 52/1957 § 1

Amended LL 20/1961 § 5

Renumbered chap 100/1963 § 650

(formerly § D40-6.0)



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CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 1 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES]

§ 13-650 City supplemental pension fund.

1. There is hereby established a special fund to be known as the city supplemental pension fund. Such fund shall consist of such monies as may be appropriated thereto by the city and all other monies received for such fund from any other source pursuant to law.

2. The city supplemental pension fund shall be under the jurisdiction and control of the comptroller, who shall be the custodian thereof. He or she shall submit annually reports to the board of estimate or more often, if requested by the board. The fund shall be held separate and apart from any other funds or monies of the city and shall be used exclusively for the purpose of making city supplemental pension or supplemental retirement allowance payments as provided in this subchapter. The comptroller shall have power to invest and keep invested monies in the fund within the limits prescribed for investment under the state insurance law. Monies of the fund shall be paid out only after audit by and on warrant of the comptroller.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-7.0 added LL 147/1952 § 1

Amended LL 46/1956 § 1

Amended LL 52/1957 § 1

Amended LL 20/1961 § 5

Renumbered chap 100/1963 § 651

(formerly § D40-7.0)

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SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 1 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES]

§ 13-651 Restriction on use of retirement and pension funds.

No monies belonging to any retirement or pension system or plan shall be appropriated or used for any purpose, or for any payment authorized or required by this article.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-8.0 added LL 147/1952 § 1

Amended LL 46/1956 § 1

Amended LL 52/1957 § 1

Amended LL 20/1961 § 5

Renumbered chap 100/1963 § 652

(formerly § D40-8.0)



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ARTICLE 2 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES, POLICE OR FIRE RETIREES, SURVIVING SPOUSES OR DEPENDENTS, POLICE OR FIRE LINE-OF-DUTY SURVIVING SPOUSES OR DEPENDENTS, AND STREET CLEANING SURVIVING SPOUSES OR DEPENDENTS]

§ 13-652 Definitions.

As used in this article:

a. The term "city retired employee" shall mean a male who is sixty-five years of age or older or a female person who is sixty-two years of age or older, who was retired prior to January first, nineteen hundred fifty-seven and receives, as a result of such retirement, a retirement allowance or pension system or plan of the city, other than a pension or retirement system for members of the uniformed force of the police department or the fire department.

b. The term "police or fire retired employee" shall mean any person who was retired before January first, nineteen hundred fifty-five and receives, on or after the effective date of this subdivision as hereby amended, as a result of such retirement, a retirement allowance or pension from a retirement or pension system or plan of the city for members of the uniformed force of the police department or fire department.

c. The term "police or fire surviving spouse or dependent" shall mean any person, other than a police or fire

line-of-duty surviving spouse or dependent, who is a surviving spouse or dependent or a minor child of a deceased member or deceased retired member of a retirement or pension system or plan of the city for members of the uniformed force of the police department or fire department other than the pension fund provided in subchapter two of chapter two of this title or in subchapter two of chapter three of this title, and who is receiving a pension from such system or plan on or after the effective date of this subdivision as hereby amended as a result of being a surviving spouse, dependent or a minor child of such deceased member or deceased retired member. If more than one person are receiving pensions from such system or plan on or after such date as a result of being surviving spouses, dependents or minor children of the same deceased member or deceased retired member, they shall collectively be deemed to be one "police or fire surviving spouse or dependent" within the meaning of this article and any supplemental retirement allowance granted to a "police or fire surviving spouse or dependent" under this article shall be divided among such persons in the same proportion as the pensions received by them and shall be subject to termination upon the same terms and conditions as govern the termination of such pensions.

d. The term "police or fire line-of-duty surviving spouse or dependent" shall mean any person who (1) is a surviving spouse, a dependent, or a minor child of a member of a retirement system or plan of the city for members of the uniformed force of the police or fire department who died prior to January first, nineteen hundred fifty-five, and (2) on or after the effective date of this subdivision as hereby amended, is receiving a pension from such system or plan pursuant to the provisions of section 13-209, 13-244, 13-309 or 13-347 of this title. If more than one such person are or shall be receiving pensions from such system or plan on or after such date pursuant to any such section as a result of being a surviving spouse or dependents or minor children of the same deceased member, they shall collectively be deemed to be one police or fire line-of-duty surviving spouse or dependent within the meaning of this article and any supplemental retirement allowance granted to a police or fire line-of-duty surviving spouse or dependent under this article shall be divided among such persons in the same proportion as the pensions received by them and shall be subject to termination upon the same terms and conditions as govern the termination of such pensions.

e. The term "street cleaning surviving spouse or dependent" shall mean any person (1) who is a surviving spouse, a minor child or a dependent parent of a deceased member or deceased retired member of the relief and pension fund of the department of street cleaning of the city of New York, and (2) who is receiving a pension on or after January first, nineteen hundred sixty-six from such relief and pension fund as a result of being a surviving spouse, a minor child or a dependent parent of such deceased member or deceased retired member. If more than one person are receiving pensions from such fund on or after such date as a result of being surviving spouses, minor children or dependent parents of the same deceased member or deceased retired member they shall collectively be deemed to be one "street cleaning surviving spouse or dependent" within the meaning of this article and a supplemental retirement allowance granted to such a "street cleaning surviving spouse or dependent" under this article shall be divided among such persons in the same proportion as the pensions received by them and shall be subject to termination upon the same terms and conditions as govern the termination of such pensions.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-9.0 added LL 20/1961 § 6

Sub c amended chap 946/1962 § 1

Sub d added chap 946/1962 § 2

Renumbered chap 100/1963 § 653

(formerly § D40-9.0)

Subs b, c, d amended LL 66/1963 §§ 1-3

Sub e added LL 99/1965 § 1

Sub a amended LL 2/1967 § 1

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ARTICLE 2 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES, POLICE OR FIRE RETIREES, SURVIVING SPOUSES OR DEPENDENTS, POLICE OR FIRE LINE-OF-DUTY SURVIVING SPOUSES OR DEPENDENTS, AND STREET CLEANING SURVIVING SPOUSES OR DEPENDENTS]

§ 13-653 Supplemental retirement allowances.

a. City retired employees. Notwithstanding any other provision of law, any city retired employee, who unless retired for disability had at least five years of credited service at the time of his or her retirement, shall be entitled to a supplemental pension payment to be known as a supplemental retirement allowance payable annually in monthly installments in accordance with the following provisions of this section:

1. The supplemental retirement allowance provided herein for city retired employees shall be sixteen dollars and sixty-six cents per month plus a percentage of the retirement allowance computed without optional modification, based on the year of retirement, in accordance with the schedule hereinafter set forth, provided, however, that no supplemental retirement allowance shall:

(a) Exceed sixty-six dollars and sixty-six cents per month, or

(b) together with the retirement allowance received from IRT and BMT pension and together with any

retirement allowance received from IRT and BMT pension plans, exceed one hundred eighty-three dollars and thirtythree cents per month.

2. The supplemental retirement allowance for city retired employees shall be computed in accordance with the following schedule:

**[See tabular material in printed version]**

b. Police or fire retired employees. Notwithstanding any other provision of law, any police or fire retired employee shall be entitled to a supplemental pension payment to be known as a supplemental retirement allowance payable annually, in monthly installments in an amount which, together with pension or retirement allowance (exclusive of extra service increments granted pursuant to section 13-208 or 13-307 of this title or any other similar provision of law), computed without optional modification, if any, received by such police or fire retired employee, shall equal but not exceed two hundred twenty-five dollars per month; provided, however, that the amount of such supplemental retirement allowance shall not exceed eighty-three dollars and thirty-three cents per month; and further provided however, that no such supplemental retirement allowance shall be increased, to conform with the provisions of this subdivision, by more than sixteen dollars and sixty-six cents per month above the amount of such allowance as of December thirty-first, nineteen hundred sixty-five.

c. Police or fire surviving spouse or dependent. Notwithstanding any other provision of law, a police or fire surviving spouse or dependent, shall be entitled to a supplemental pension payment to be known as a supplemental retirement allowance payable annually in monthy installments in an amount which, together with the pension received by such police or fire surviving spouse or dependent shall equal but not exceed one hundred six dollars and sixty-six cents per month, provided, however that the amount of such supplemental retirement allowance shall not exceed fifty-six dollars and sixty-six cents per month.

d. Police or fire line-of-duty surviving spouse or dependent. Notwithstanding any other provision of law, a police or fire line-of-duty surviving spouse or dependent shall be entitled to receive on and after October first, nineteen hundred sixty-three a supplemental pension payment, to be known as a supplementary retirement allowance, payable annually in monthly installments in an amount which, together with pension received by such police or fire line-of-duty surviving spouse or dependent pursuant to section 13-209, 13-244, 13-309, or 13-347 of this title, shall equal but not exceed two hundred eight dollars and thirty-three cents per month, provided however that the amount of such supplemental retirement allowance shall not exceed sixty-six dollars and sixty-six cents per month; and further provided however, that no such supplemental retirement allowance shall be increased by more than sixteen dollars and sixty-six cents per month pursuant to the provisions of this subdivision, as hereby amended.

e. Notwithstanding any other provision of law, a street cleaning surviving spouse or dependent shall be entitled to receive on and after January first, nineteen hundred sixty-six, a supplemental pension payment, to be known as a supplemental retirement allowance, payable annually in monthly installments in an amount which together with the pension received by such street cleaning surviving spouse or dependent pursuant to section 13-610 of this title, shall equal but not exceed ninety-eight dollars and thirty-three cents per month, provided, however, that the amount of such supplemental retirement allowance shall not at any time exceed forty-eight dollars and thirty-three cents per month.

f. The supplemental retirement allowances provided for in this article shall not be paid to any city retired employee or police or fire retired employee or any police or fire surviving spouse or dependent or police or fire line-of-duty surviving spouse or dependent or any street cleaning surviving spouse or dependent for any period during which the pension or retirement allowance of such city retired employee police or fire retired employee, or police or fire surviving spouse or dependent, or police or fire line-of-duty surviving spouse or dependent, or street cleaning surviving spouse or dependent, or any part thereof is forfeited or suspended pursuant to laws.

g. Any such city retired employee or police or fire retired employee already receiving a supplemental pension

under article one of this subchapter shall continue to receive such supplemental pension or shall receive the supplemental retirement allowance provided under this article, whichever shall be greater.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-10.0 added LL 20/1961 § 6

Subs e, f relettered chap 946/1962 § 3

(formerly subs d, e)

Sub e (as relettered) amended chap 946/1962 § 3

Sub d added chap 946/1962 § 4

Renumbered chap 100/1963 § 654

(formerly § D40-10.0)

Subs b, c, d amended LL 66/1963 §§ 4, 5

Subs f, g relettered LL 99/1965 § 2

(formerly subs e, f)

Sub f (as relettered) amended LL 99/1965 § 2

Sub e added LL 99/1965 § 3

Sub a par 1 amended LL 2/1967 § 2

Subs b, c amended LL 2/1967 §§ 3, 4



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ARTICLE 2 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES, POLICE OR FIRE RETIREES, SURVIVING SPOUSES OR DEPENDENTS, POLICE OR FIRE LINE-OF-DUTY SURVIVING SPOUSES OR DEPENDENTS, AND STREET CLEANING SURVIVING SPOUSES OR DEPENDENTS]

§ 13-654 Payment of supplemental retirement allowances.

On or before the last day of each month, there shall be paid to each city retired employee, police or fire retired employee, police or fire surviving spouse or dependent, police or fire line-of-duty surviving spouse or dependent and street cleaning surviving spouse or dependent, from the supplemental pension fund, the monthly supplemental retirement allowance payment to which he or she may be entitled under the provisions of this article provided, however, that any supplemental retirement allowance of less than fifty cents monthly shall be paid in a lump sum at the end of the fiscal year.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-11.0 added LL 20/1961 § 6

Amended chap 946/1962 § 5

Renumbered chap 100/1963 § 655

(formerly § D40-11.0)

(Time and manner of payment prescribed LL 66/1963 § 6)

Amended LL 99/1965 § 4



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ARTICLE 2 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES, POLICE OR FIRE RETIREES, SURVIVING SPOUSES OR DEPENDENTS, POLICE OR FIRE LINE-OF-DUTY SURVIVING SPOUSES OR DEPENDENTS, AND STREET CLEANING SURVIVING SPOUSES OR DEPENDENTS]

§ 13-655 Rules and regulations.

The board of estimate on recommendation of the comptroller shall prescribe such rules and regulations as may be required for the effective administration of the provisions of this article relating to supplemental retirement allowance payments to city retired employees or police or fire retired employees or police or fire surviving spouses or dependents or police or fire line-of-duty surviving spouses or dependents or street cleaning surviving spouses or dependents.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-12.0 added LL 20/1961 § 6

Amended chap 946/1962 § 5

Renumbered chap 100/1963 § 656

(formerly § D40-12.0)

Amended LL 99/1965 § 4



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ARTICLE 2 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES, POLICE OR FIRE RETIREES, SURVIVING SPOUSES OR DEPENDENTS, POLICE OR FIRE LINE-OF-DUTY SURVIVING SPOUSES OR DEPENDENTS, AND STREET CLEANING SURVIVING SPOUSES OR DEPENDENTS]

§ 13-656 Information to be furnished to comptroller.

The comptroller shall have authority to require any department or agency of the city to furnish him or her with such records, information and data as he may need to carry out the provisions of this article.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-13.0 added LL 20/1961 § 6

Renumbered chap 100/1963 § 657

(formerly § D40-13.0)



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§ 13-657 Supplemental pension fund.

As used in this article, the supplemental pension fund is the special fund as provided by section 13-650 of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-14.0 added LL 20/1961 § 6

Renumbered and amended chap 100/1963 § 658

(formerly § D40-14.0)

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ARTICLE 2 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES, POLICE OR FIRE RETIREES, SURVIVING SPOUSES OR DEPENDENTS, POLICE OR FIRE LINE-OF-DUTY SURVIVING SPOUSES OR DEPENDENTS, AND STREET CLEANING SURVIVING SPOUSES OR DEPENDENTS]

§ 13-658 Reimbursement by participating employers for payments for certain city retired employees.

a. The granting of supplemental retirement allowances to city retired employees who retired from service in the New York city housing authority, the New York city transit authority or the triborough bridge and tunnel authority or any of the public authorities consolidated with the triborough bridge and tunnel authority, is conditioned upon the contribution by such employing authority, or if the employing authority was a public authority consolidated with the triborough bridge and tunnel authority, by the triborough bridge and tunnel authority, to the cost of providing supplemental retirement allowances to such city retired employees in the manner provided in this section.

b. As soon as practicable after the close of each fiscal year of the city, the comptroller shall determine the pro-rata cost of providing such supplemental retirement allowance payments during such fiscal year to be contributed by each such authority. Such pro-rata cost shall be determined on the basis of a formula approved by the board of estimate.

c. The comptroller shall thereupon submit to the fiscal officer of each such authority a statement of the amount

to be contributed by it pursuant to this article. Payment of the amount specified in the comptroller's statement shall be made by such authority within sixty days after the receipt thereof. If payment of the full amount of such obligation is not made within sixty days after the receipt of such statement, interest at the rate of four percentum per annum shall commence to run against the unpaid balance thereof on the first day after such sixtieth day.

d. All amounts received by the comptroller from such authorities pursuant to this article shall be deposited in and credited to the supplemental pension fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-15.0 added LL 20/1961 § 6

Renumbered chap 100/1963 § 659

(formerly § D40-15.0)



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ARTICLE 2 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES, POLICE OR FIRE RETIREES, SURVIVING SPOUSES OR DEPENDENTS, POLICE OR FIRE LINE-OF-DUTY SURVIVING SPOUSES OR DEPENDENTS, AND STREET CLEANING SURVIVING SPOUSES OR DEPENDENTS]

§ 13-659 Reimbursement of supplemental pension fund by the city.

The comptroller shall include with his or her budget estimate for each fiscal year amounts estimated by him or her to be sufficient to reimburse the supplemental pension fund for the cost of providing supplemental retirement allowance payments during the current fiscal year to all city retired employees (less the amount contributed by public authorities with respect to those city retired employees who retired from service with such public authorities as provided in section 13-658), to police or fire retired employees, police or fire surviving spouses or dependents, police or fire line-of-duty surviving spouses or dependents and street cleaning surviving spouses or dependents. If the city shall fail to provide such funds all supplemental retirement allowances authorized by this article shall be discontinued. If any public authority specified in section 13-658 shall fail to provide the contribution therein required only the supplementary retirement allowance paid pursuant to this article to city retired employees retired from the service of such authority and from the service of any public authority consolidated with such authority shall be discontinued.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-16.0 added LL 20/1961 § 6

Amended chap 946/1962 § 5

Renumbered and amended chap 100/1963 § 660

(formerly § D40-16.0)

Amended LL 99/1965 § 4



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CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 2 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES, POLICE OR FIRE RETIREES, SURVIVING SPOUSES OR DEPENDENTS, POLICE OR FIRE LINE-OF-DUTY SURVIVING SPOUSES OR DEPENDENTS, AND STREET CLEANING SURVIVING SPOUSES OR DEPENDENTS]

§ 13-660 Restriction on use of retirement or pension funds.

No moneys belonging to any publicly administered and operated retirement or pension system or plan shall be appropriated or used for any purpose or for any payment authorized or required by this article.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-17.0 added LL 20/1961 § 6

Renumbered chap 100/1963 § 661

(formerly § D40-17.0)



Administrative Code of the City of New York



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

*NYC Administrative Code 13-661*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 2 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN CITY RETIREES, POLICE OR FIRE RETIREES, SURVIVING SPOUSES OR DEPENDENTS, POLICE OR FIRE LINE-OF-DUTY SURVIVING SPOUSES OR DEPENDENTS, AND STREET CLEANING SURVIVING SPOUSES OR DEPENDENTS]

§ 13-661 Limitations on obligations.

The supplemental retirement allowances provided pursuant to this article shall not constitute membership in a pension or retirement system nor shall the granting of such allowances create a contractual relationship between the city or a public authority and any city retired employee or between the city and any police or fire retired employee or between the city and any police or fire surviving spouse or dependent or between the city and any police or fire line-of-duty surviving spouse or dependent or between the city and any street cleaning surviving spouse or dependent.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-18.0 added LL 20/1961 § 6

Amended chap 946/1962 § 5

Renumbered chap 100/1963 § 662

(formerly § D40-18.0)

Amended LL 99/1965 § 4



Administrative Code of the City of New York



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

*NYC Administrative Code 13-662*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 3 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN POLICE RETIREES]

§ 13-662 Definitions.

As used in this article: The term "police retired employee" shall mean any person who was retired for service on or after June fifth, nineteen hundred sixty and prior to May first, nineteen hundred sixty-three and receives, as a result of such retirement, a retirement allowance or pension from a retirement or pension system or plan of the city for members of the uniformed force of the police department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-19.0 added LL 3/1964 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-663*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 3 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN POLICE RETIREES]

§ 13-663 Supplemental retirement allowances.

a. Police retired employees. Notwithstanding any other provision of law, any police retired employee shall be entitled to a supplemental pension payment to be known as a supplemental retirement allowance payable annually, in monthly installments in an amount which, together with pension or retirement allowance (exclusive of extra service increments granted pursuant to section 13-208 of this title or any other similar provision of law), received by such police retired employee, shall be equal to onehalf of his or her annual compensation earned at the date of his or her retirement.

b. For the purpose only of determining the amount of additional pension contribution by the city that may be required to provide said person with a retirement allowance equal to one-half of his or her annual compensation earned on the date of his or her retirement, the person's annuity shall be computed as it would have been,

(A) If it were not reduced by the actuarial equivalent of any outstanding loan.

(B) If it were not increased by the actuarial equivalent of any additional contributions.

(C) If it were not reduced by reason of the member's election to decrease his or her annuity contributions in order to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage.

(D) As it would be without any optional modification.

c. The supplemental retirement allowances provided for in this article shall not be paid to any police retired employee for any period during which the pension or retirement allowances of such police retired employee, or any part thereof is forfeited or suspended pursuant to law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-20.0 added LL 3/1964 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-664*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 3 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN POLICE RETIREES]

§ 13-664 Payment of supplemental retirement allowances.

On or before the last day of each month, there shall be paid to each police retired employee, from the supplemental pension fund, the monthly supplemental retirement allowance payment to which he or she may be entitled under the provisions of this article provided.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-21.0 added LL 3/1964 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-665*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 3 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN POLICE RETIREES]

§ 13-665 Rules and regulations.

The board of estimate on recommendation of the comptroller shall prescribe such rules and regulations as may be required for the effective administration of the provisions of this article relating to supplemental retirement allowance payments to police retired employees.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-22.0 added LL 3/1964 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-666*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 3 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN POLICE RETIREES]

§ 13-666 Information to be furnished to the comptroller.

The comptroller shall have authority to require any department or agency of the city to furnish such records, information and data as he or she may need to carry out the provisions of this article.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-23.0 added LL 3/1964 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-667*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 3 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN POLICE RETIREES]

§ 13-667 Supplemental pension fund.

As used in this article, the supplemental pension fund is the special fund as provided by section 13-650 of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-24.0 added LL 3/1964 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-668*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 3 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN POLICE RETIREES]

§ 13-668 Reimbursement of supplemental pension fund by the city.

The comptroller shall include with his or her budget estimate for each fiscal year amounts estimated by him or her to be sufficient to reimburse the supplemental pension fund for the cost of providing supplemental retirement allowance payments during the current fiscal year to all police retired employees.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-25.0 added LL 3/1964 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-669*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 3 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN POLICE RETIREES]

§ 13-669 Restrictions on use of retirement or pension funds.

No monies belonging to any retirement or pension system or plan shall be appropriated or used for any purpose, or for any payment authorized or required by this article.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-26.0 added LL 3/1964 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-670*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 3 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN POLICE RETIREES]

§ 13-670 Limitations on obligations.

The supplemental retirement allowances provided pursuant to this article shall not constitute membership in a pension or retirement system, nor shall the granting of such allowances create a contractual relationship between the city and any police retired employee. The payments authorized under this article shall not be retroactive.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-27.0 added LL 3/1964 § 1

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

*NYC Administrative Code 13-671*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 4 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN FIRE RETIREES]

§ 13-671 Definitions.

As used in this article: The term "fire retired employee" shall mean any person who was retired for service on or after April eighth, nineteen hundred sixty and prior to May first, nineteen hundred and sixty-three, or retired for disability on or after April eighth, nineteen hundred sixty and prior to May first, nineteen hundred sixty-four and receives, as a result of such retirement, a retirement allowance or pension from a retirement or pension system or plan of the city for members of the uniformed force of the fire department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-30.0 added LL 99/1964 § 1

Amended LL 98/1965 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-672*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 4 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN FIRE RETIREES]

§ 13-672 Supplemental retirement allowances.

a. Fire retired employees. Notwithstanding any other provision of law, any fire retired employee shall be entitled to a supplemental pension payment to be known as a supplemental retirement allowance payable annually, in monthly installments in an amount which, together with pension or retirement allowance (exclusive of extra service increments granted pursuant to section 13-358 of this title or any other similar provision of law), received by such fire retired employee, shall be equal to one-half of his or her annual compensation earned at the date of his or her retirement if retired for service, and provided, however, if disabled fire retired employee, the retirement allowance or pension shall be computed on the basis of annual compensation earnable on the date of retirement for disability of such employee pursuant to the provisions of section 13-362 or 13-364 of subchapter two of chapter three of this title.

b. For the purpose only of determining the amount of additional pension contribution by the city that may be required to provide said person with a retirement allowance equal to the one-half of his or her annual compensation earned on the date of his or her retirement for service retirement or to provide a disabled fire retired employee with a retirement allowance computed on the basis of annual compensation earnable on the date of the retirement for disability of such employee pursuant to the provisions of sections 13-362 and 13-364 of subchapter two of chapter three of this title, the person's annuity shall be computed as it would have been.

(A) If it were not reduced by the actuarial equivalent of any outstanding loan,

(B) If it were not increased by the actuarial equivalent of any additional contributions,

(C) If it were not reduced by reason of the member's election to decrease his or her or her annuity contributions in order to apply the amount of such reduction in payment of his or her contributions for old age and survivors insurance coverage,

(D) As it would be without any optional modification.

c. The supplemental retirement allowances provided for in this article shall not be paid to any fire retired employee for any period during which the pension or retirement allowances of such fire retired employee, or any part thereof is forfeited or suspended pursuant to law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-31.0 added LL 99/1964 § 1

Amended LL 98/1965 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-673*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 4 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN FIRE RETIREES]

§ 13-673 Payment of supplemental retirement allowances.

On or before the last day of each month, there shall be paid to each fire retired employee, from the supplemental pension fund, the monthly supplemental retirement allowance payment to which he or she may be entitled under the provisions of this article provided.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-32.0 added LL 99/1964 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-674*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 4 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN FIRE RETIREES]

§ 13-674 Rules and regulations.

The board of estimate on recommendation of the comptroller shall prescribe such rules and regulations as may be required for the effective administration of the provisions of this article relating to supplemental retirement allowance payments to fire retired employees.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-33.0 added LL 99/1964 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-675*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 4 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN FIRE RETIREES]

§ 13-675 Information to be furnished to comptroller.

The comptroller shall have authority to require any department or agency of the city to furnish him or her with such records, information and data as he or she may need to carry out the provisions of this article.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-34.0 added LL 99/1964 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-676*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 4 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN FIRE RETIREES]

§ 13-676 Supplemental pension fund.

As used in this article, the supplemental pension fund is the special fund as provided by section 13-650 of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-35.0 added LL 99/1964 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-677*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 4 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN FIRE RETIREES]

§ 13-677 Reimbursement of supplemental pension fund by the city.

The comptroller shall include with his or her budget estimate for each fiscal year amounts estimated by him or her to be sufficient to reimburse the supplemental pension fund for the cost of providing supplemental retirement allowance payments during the current fiscal year to all fire retired employees.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-36.0 added LL 99/1964 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-678*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 4 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN FIRE RETIREES]

§ 13-678 Restrictions on use of retirement or pension funds.

No monies belonging to any retirement or pension system or plan shall be appropriated or used for any purposes, or for any payment authorized or required by this article.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-37.0 added LL 99/1964 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-679*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 4 [SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN FIRE RETIREES]

§ 13-679 Limitations on obligations.

The supplemental retirement allowances provided pursuant to this article shall not constitute membership in a pension or retirement system, nor shall the granting of such allowances create a contractual relationship between the city and any fire retired employee. The payments authorized under this article shall not be retroactive.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-38.0 added LL 99/1964 § 1

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

*NYC Administrative Code 13-680*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 5 SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN RETIREES OF THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM AND OF THE TEACHERS' AND BOARD OF EDUCATION RETIREMENT SYSTEMS

§ 13-680 Supplemental retirement allowances based on consumer price index.

a. As used in this article, the following terms shall mean and include:

1. "Other-than-disability retiree". A person who retired prior to January first, nineteen hundred eighty as a member of the New York city employees' retirement system, the New York city teachers' retirement system or the board of education retirement system of the city, other than for disability, and who is receiving a retirement allowance by reason of such retirement.

2. "Disability retiree". A person who retired prior to January first, nineteen hundred eighty as a member of any retirement system mentioned in paragraph one of this subdivision a, for disability, and who is receiving a retirement allowance by reason of such retirement.

3. "Supplemental pension fund". The supplemental pension fund provided for by section 13-650 of this chapter.

4. "Comptroller". The comptroller of the city.

5. "Qualified retiree". A disability retiree or other-than-disability retiree who is entitled to receive a supplemental retirement allowance under the provisions of this article.

6. "Qualified authority retiree". A qualified retiree who retired from service:

(a) with the New York city housing authority; or

(b) with the New York city transit authority or any predecessor board or body having powers or duties to which the New York city transit authority succeeded; or

(c) with the triborough bridge and tunnel authority or any authority consolidated with the triborough bridge and tunnel authority.

7. "Authority responsible for supplementation".

(a) Where used in relation to a qualified authority retiree who retired from service with the New York city housing authority, such term shall mean the New York city housing authority.

(b) Where used in relation to a qualified authority retiree who retired from service with the New York city transit authority or any predecessor board or body having powers or duties to which the New York city transit authority succeeded, such term shall mean the New York city transit authority.

(c) Where used in relation to a qualified authority retiree who retired from service with the triborough bridge and tunnel authority or any authority consolidated with the triborough bridge and tunnel authority, such term shall mean the triborough bridge and tunnel authority.

8. "Fixed portion of the annual retirement allowance". That part of the total annual retirement allowance, which part does not include a variable annuity or a variable pension as provided for in the variable annuity program, if any, of a retirement system mentioned in paragraph one of subdivision a of this section.

9. "Base amount". That part of the fixed portion of the annual retirement allowance, when such allowance is computed without optional modification, which part does not exceed ten thousand five hundred dollars.

10. "Surviving spouse who is a designated annuitant." A person (a) who is the spouse of a retiree of any retirement system mentioned in paragraph one of this subdivision, and (b) who, by reason of the death, occurring prior to calendar year nineteen hundred eighty, of such retiree, receives an annuity or pension pursuant to any of the following provisions of the code: (A) subdivision four of section 13-151 of the code; (B) option 1 or option 4 of section 13-177 of the code; (C) subdivision two of section 13-545 of the code or option I or option IV under subdivision four of section 13-545 of the code; or (D) option I (including option Ia and option Ib) or option IV of section 13-558 of the code.

b. A supplemental retirement allowance determined pursuant to this section shall be payable:

(1) to disability retirees who retired prior to April first, nineteen hundred seventy under a retirement plan in effect prior to December twenty-ninth, nineteen hundred sixty-seven, commencing with a payment for the month of July, nineteen hundred eighty-one, and continuing thereafter; and

(2) to the other-than-disability retirees who retired prior to April first, nineteen hundred seventy under a retirement plan in effect prior to December twenty-ninth, nineteen hundred sixty-seven, commencing with a payment for the later of the month of July, nineteen hundred eighty-one or the month of July next following the twelve-month period ending June thirtieth in which such retiree shall have attained age sixty-two and continuing thereafter.

c. Such supplemental retirement allowance for those qualified retirees who retired prior to January first, nineteen hundred sixty-eight under a retirement plan in effect prior to December twenty-ninth, nineteen hundred sixty-seven shall include an amount computed by multiplying the base amount by a percentage determined on the basis of the consumer price index (all items United States city average) published by the United States Bureau of Labor Statistics.

d. (1) The percentage referred to in subdivision c of this section shall be determined as the ratio of two indexes, in the manner prescribed by this subdivision d.

(2) The average of the twelve monthly consumer price indexes of the calendar year nineteen hundred sixty-nine, divided by the average of the twelve monthly consumer price indexes of the calendar year of retirement, shall be the ratio of the indexes.

(3) Such ratio, minus one, shall be expressed as a percentage and shall be adjusted to the lower one-tenth of one percentum. Such adjusted percentage shall be the percentage of the base amount which is payable as a supplement included in a supplemental retirement allowance as provided for in subdivision c of this section. However, no such supplement shall be paid where such percentage is less than three percentum. Such percentage for a person who retired prior to October first, nineteen hundred fifty-seven shall be increased by one hundred percentum thereof and the adjusted percentage shall be further adjusted to the lower one-tenth of one percentum. Such percentage shall be computed by the actuary and certified to the comptroller who shall, by directive, promulgate a schedule of percentages by year of retirement to be used for this purpose.

e. (1) commencing with a payment for the month of July, nineteen hundred eighty-one and continuing thereafter, there shall be payable to each qualified retiree who retired prior to January first, nineteen hundred sixty-eight under a retirement plan in effect prior to December twenty-ninth, nineteen hundred sixty-seven, a supplemental retirement allowance which shall consist of the sum obtained by adding together:

(a) the amount determined for such retiree pursuant to the provisions of subdivisions c and d of this section; and

(b) the product obtained by multiplying the base amount for such retiree by the percentage thereof applicable to such retiree, as determined by the year of retirement in accordance with the schedule set forth in paragraph two of this subdivision e.

(2) The schedule referred to in paragraph one of this subdivision e is as follows:

**[See tabular material in printed version]**

(3) Commencing with a payment for the month of July, nineteen hundred eighty-one and continuing thereafter, there shall be payable to each qualified retiree who retired on or after January first, nineteen hundred sixty-eight and before April first, nineteen hundred seventy under a retirement plan in effect prior to December twenty-ninth, nineteen hundred sixty-seven, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by the percentage thereof applicable to such retiree, as determined by the date of retirement in accordance with the schedule set forth in paragraph four of this subdivision e.

(4) The schedule referred to in paragraph three of this subdivision e is as follows:

**[See tabular material in printed version]**

(5) Commencing with a payment for the month of July, nineteen hundred eighty-one and continuing thereafter, there shall be payable to each disability retiree who retired on or after July first, nineteen hundred sixty-eight and before April first, nineteen hundred seventy, under a retirement plan other than a retirement plan in effect prior to December twenty-ninth, nineteen hundred sixty-seven, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by the percentage thereof applicable to such retiree, as determined by the

date of retirement in accordance with the schedule set forth in paragraph seven of this subdivision e.

(6) (a) Each other-than-disability retiree who retired on or after December twenty-ninth, nineteen hundred sixty-seven and prior to April first, nineteen hundred seventy under a retirement plan other than a retirement plan in effect prior to December twenty-ninth, nineteen hundred sixty-seven shall be entitled to receive, for the period provided for by subparagraph (b) of this paragraph six, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by the percentage thereof applicable to such retiree, as determined by the date of retirement in accordance with the schedule set forth in paragraph seven of this subdivision e.

(b) Such supplemental retirement allowance referred to in subparagraph (a) of this paragraph six shall commence with a payment for the later of the month of July, nineteen hundred eighty-one or the month of July next following the twelve-month period ending June thirtieth in which such retiree shall have attained age sixty-two and shall continue thereafter.

(7) The schedule referred to in paragraphs five and six of this subdivision e is as follows:

**[See tabular material in printed version]**

f. (1) Commencing with a payment for the month of July, nineteen hundred eighty-one and continuing thereafter, there shall be payable to each disability retiree who retired on or after April first, nineteen hundred seventy and before January first, nineteen hundred seventy-three, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by the percentage thereof applicable to such retiree, as determined by the date of retirement in accordance with the schedule set forth in paragraph three of this subdivision f.

(2) (a) Each other-than-disability retiree who retired on or after April first, nineteen hundred seventy and prior to January first, nineteen hundred seventy-three shall be entitled to receive, for the period provided for by subparagraph (b) of this paragraph two, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by the percentage thereof applicable to such retiree, as determined by the date of retirement in accordance with the schedule set forth in paragraph three of this subdivision f.

(b) Such supplemental retirement allowance referred to in subparagraph (a) of this paragraph two shall commence with a payment for the later of the month of July, nineteen hundred eighty-one or the month of July next following the twelve-month period ending June thirtieth in which such retiree shall have attained age sixty-two and shall continue thereafter.

(3) The schedule referred to in paragraph one and two of this subdivision f is as follows:

**[See tabular material in printed version]**

g. (1) Commencing with a payment for the month of July, nineteen hundred eighty-two and continuing thereafter, there shall be payable to each disability retiree who retired during the calendar year nineteen hundred seventy-three, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by six per centum.

(2) (a) Each other-than-disability retiree who retired during the calendar year nineteen hundred seventy-three shall be entitled to receive, for the period provided for by subparagraph (b) of this paragraph two, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by six per centum.

(b) Such supplemental retirement allowance referred to in subparagraph (a) of this paragraph two shall commence with a payment for the later of the month of July, nineteen hundred eighty-two or the month of July next following the twelve-month period ending June thirtieth in which such retiree shall have attained age sixty-two and shall continue thereafter.

h. (1) Commencing with a payment for the month of July, nineteen hundred eighty-three and continuing thereafter, there shall be payable to each disability retiree who retired on or after January first, nineteen hundred seventy-four and before January first, nineteen hundred seventy-seven, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by the percentage thereof applicable to such retiree, as determined by the date of retirement in accordance with the schedule set forth in paragraph three of this subdivision h.

(2) (a) Each other-than-disability retiree who retired on or after January first, nineteen hundred seventy-four and prior to January first, nineteen hundred seventy-seven shall be entitled to receive, for the period provided for by subparagraph (b) of this paragraph two, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by the percentage thereof applicable to such retiree, as determined by the date of retirement in accordance with the schedule set forth in paragraph three of this subdivision h.

(b) Such supplemental retirement allowance referred to in subparagraph (a) of this paragraph two shall commence with a payment for the later of the month of July, nineteen hundred eighty-three or the month of July next following the twelve month period ending June thirtieth in which such retiree shall have attained age sixty-two and shall continue thereafter.

(3) The schedule referred to in paragraphs one and two of this subdivision h is as follows:

**[See tabular material in printed version]**

i. (1) Commencing with a payment for the month of July, nineteen hundred eighty-four and continuing thereafter, there shall be payable to each disability retiree who retired on or after January first, nineteen hundred seventy-seven and before January first, nineteen hundred seventy-nine, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by three per centum.

(2) (a) Each other-than-disability retiree who retired on or after January first, nineteen hundred seventy-seven and prior to January first, nineteen hundred seventy-nine shall be entitled to receive, for the period provided for by subparagraph (b) of this paragraph two, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by three per centum.

(b) Such supplemental retirement allowance referred to in subparagraph (a) of this paragraph two shall commence with a payment for the later of the month of July, nineteen hundred eighty-four or the month of July next following the twelve-month period ending June thirtieth in which such retiree shall have attained age sixty-two and shall continue thereafter.

j. (1) Commencing with a payment for the month of July, nineteen hundred eighty-five and continuing thereafter, there shall be payable to each disability retiree who retired during the calendar year nineteen hundred seventy-nine, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by three per centum.

(2) (a) Each other-than-disability retiree who retired during the calendar year nineteen hundred seventy-nine shall be entitled to receive, for the period provided for by subparagraph (b) of this paragraph two, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by three per centum.

(b) Such supplemental retirement allowance referred to in subparagraph (a) of this paragraph two shall commence with a payment for the later of the month of July, nineteen hundred eighty-five or the month of July next following the twelve-month period ending June thirtieth in which such retiree shall have attained age sixty-two and shall continue thereafter.

k. Notwithstanding any other provision of law to the contrary, the spouse of a deceased retiree, who had elected, pursuant to the applicable provisions of the code or of the rules and regulations of the board of education retirement

system of the city, one of the options which provides that benefits are to be continued for the life of such spouse after the death of the retiree, shall be entitled to receive a monthly supplemental retirement allowance pursuant to this subdivision. Such monthly supplemental retirement allowance shall be equal in amount to one-half of the monthly supplemental retirement allowance which the retiree would be receiving if living, and shall commence with a payment for the later of (1) the month of July, nineteen hundred eighty-three, or (2) the month following the month in which the death of the retiree occurred or occurs, or (3) the first month for which such retiree, if living, would be entitled to receive a monthly supplemental retirement allowance, and such spouse's monthly supplemental retirement allowance shall continue thereafter during the lifetime of such spouse.

l. (1) Notwithstanding any other provision of law to the contrary, each surviving spouse who is a designated annuitant (as defined in paragraph ten of subdivision a of this section) shall be entitled to a monthly supplemental retirement allowance of two hundred dollars pursuant to this subdivision. Such monthly supplemental retirement allowance shall commence with a payment for the later of (a) the month of July, two thousand or (b) the month following the month in which the death of the member or retiree occurred, and such surviving spouse's monthly supplemental retirement allowance shall continue for the life of the surviving spouse. Commencing September first, two thousand one, the monthly benefit payable pursuant to this section shall be increased in an amount determined pursuant to subdivision d of section 13-696 of this title.

(2) No spouse who is or may become eligible to receive a supplemental retirement allowance under subdivision k of this section, whether or not such spouse is receiving such allowance under such subdivision, shall be entitled to receive a supplemental retirement allowance under this subdivision.

m. The supplemental retirement allowance shall be rounded off to the nearest dollar.

n. The supplemental retirement allowance hereinabove provided for any such disability retiree or other-than-disability retiree shall be in lieu of any supplemental retirement allowance for such retiree provided by articles one and two of subchapter six of this chapter or any other law, unless such other supplemental retirement allowance is in excess of that provided for by this article, in which latter case such other supplemental retirement allowance shall be paid and no supplemental retirement allowance shall be paid under this article.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par 9 amended chap 658/1984 § 14

Subd. a par 10 added chap 454/1988 § 1. [See Note.]

Subd. l added chap 454/1988 §2

Subd. l par (1) amended chap 125/2000 § 14, eff. July 11, 2000.

Subds. m, n relettered chap 454/1988 § 2 (formerly subds. l, m)

**DERIVATION**

Formerly § D49-40.0 added chap 959/1970 § 1

Sub 9 par b amended chap 454/1971 § 7

(Special provision chap 454/1971 § 8)

Sub 9 par b amended chap 494/1972 § 1

(Legislative intent, additional year, chap 494/1972 § 2)

Sub d par 3 amended chap 1046/1973 § 64

(Special provision extending benefits chap 1046/1973 § 70)

Sub a pars 1, 2 amended chap 422/1981 § 9

Sub b amended chap 422/1981 § 10

Sub c amended chap 422/1981 § 11

Sub d amended chap 422/1981 § 12

Subs k, l relettered chap 422/1981 § 13

(formerly subs e, f)

Subs e-j added chap 422/1981 § 14

Subs l, m relettered chap 371/1984 § 1

(formerly subs k, l)

Sub k added chap 371/1984 § 2

Sub a par 9 amended chap 658/1984 § 14

(Special provisions chap 658/1984 §§ 30, 31)

**NOTE**

Provision of chap 8/1988 § 10.

§ 10. Notwithstanding any other provision of law, commencing with a payment for the month of May, nineteen hundred eighty-eight and continuing thereafter, there shall be payable to retirees of any retirement system or pension fund providing benefits pursuant to sections 13-680 and 13-691 of the administrative code of the city of New York and section two hundred seven-i of the general municipal law who retired prior to calendar year nineteen hundred eighty-three a supplemental retirement allowance which shall be a percentage of the retirement allowance otherwise payable, computed without optional modification. Said percentage, for each calendar year of retirement, shall be as set forth in section two of this act. Said supplemental retirement allowance shall be computed on the basis of the base amount as defined in sections 13-680 and 13-690 of the administrative code of the city of New York or the amount specified in section two hundred seven-i of the general municipal law and shall be payable to all disability pensioners and to other pensioners who have attained age sixty-two. Notwithstanding any law to the contrary, said supplemental retirement allowance shall be in lieu of the supplemental retirement allowances provided pursuant to sections 13-680 and 13-691 of the administrative code of the city of New York or section two hundred seven-i of the general municipal law or sections thirty and thirty-one of chapter six hundred fifty-eight of the laws of nineteen hundred eighty-four, unless such other supplemental retirement allowances payable to a pensioner are in excess of that provided by this section, in which latter case such other supplemental retirement allowances shall be paid and no supplemental retirement allowance shall be paid under this section. The supplemental retirement allowances payable by an actuarially funded retirement system pursuant to this section (in lieu of other supplemental retirement allowances), to the extent that they represent an increase over the level of the next preceding supplemental retirement allowances, shall be actuarially funded by obligors responsible for supplementation (as defined in subdivision b of section 13-694 of such

code) over a ten-year period commencing on May first, nineteen hundred eighty-eight, on the basis of the applicable valuation rate of interest used to determine employer contributions to the retirement system during such ten-year period and in accordance with the appropriate provisions of sections 13-694 and 13-695 of such code. The portions of such supplemental retirement allowances payable by such retirement systems under this section, which portions constitute a continuation of the level of such next preceding supplemental retirement allowances, shall be funded as a continuation of the existing funding of such portions pursuant to the appropriate provisions of sections 13-694 and 13-695 of such code. [§ 10 amended ch. 581/1989 § 69.]



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ARTICLE 5 SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN RETIREES OF THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM AND OF THE TEACHERS' AND BOARD OF EDUCATION RETIREMENT SYSTEMS

§ 13-681 Supplemental pension for a surviving spouse, dependent or child in certain cases.

a. (1) In addition to any other payment authorized or required by any other provision of law, there shall be paid a monthly amount, as herein provided for in this subdivision a, to a surviving spouse, dependent or minor child of a deceased member of the department of street cleaning, where, by reason of the death of such member, such spouse, dependent or minor child was or shall be receiving a pension from such system or plan pursuant to the provisions of this code.

(2) (i) In any case where such death occurred prior to June first, nineteen hundred eighty-one, payment of such additional amount shall be made as provided for in subparagraph (ii) of this paragraph two.

(ii) Such payment shall commence with a payment for the later of the month of September, nineteen hundred eighty or the month next following the month in which such death occurred. The additional amount payable for each payment month shall be twenty-five dollars to and including the month of June, nineteen hundred eighty-one. An amount of fifty dollars shall be paid for the month of July, nineteen hundred eighty-one and for each month thereafter to

and including the month of June, nineteen hundred eighty-five. An amount of one hundred dollars shall be paid for the month of July, nineteen hundred eighty-five and for each month thereafter to and including the month of June, two thousand. An amount of two hundred dollars shall be paid for the month of July, two thousand and for each month thereafter. Commencing September first, two thousand one, the monthly benefit payable pursuant to this section shall be increased in an amount determined pursuant to subdivision d of section 13-696 of this title.

(3) In any case where such death occurred or shall occur on or after June first, nineteen hundred eighty-one, an amount of fifty dollars per month shall be paid, commencing with a payment for the later of the month of July, nineteen hundred eighty-one or the month next following the month in which such death occurred or shall occur and continuing with a payment of fifty dollars for each month thereafter to and including the month of June, nineteen hundred eighty-five. An amount of one hundred dollars shall be paid for the month of July, nineteen hundred eighty-five and for each month thereafter to and including the month of June, two thousand. An amount of two hundred dollars shall be paid for the month of July, two thousand and for each month thereafter. Commencing September first, two thousand one, the monthly benefit payable pursuant to this section shall be increased in an amount determined pursuant to subdivision d of section 13-696 of this title.

b. If more than one such person are or shall be receiving from such system or plan pursuant to any such section as a result of being a surviving spouse, dependent or minor child of the same deceased member, they shall collectively be deemed to be one such person and any supplemental pension granted to a surviving spouse, dependent or child shall be divided among such persons in the same proportion as the pensions received by them.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a pars (2), (3) amended chap 125/2000 § 15, eff. July 11, 2000.

**DERIVATION**

Formerly § D49-40.5 added chap 857/1980 § 1

Amended chap 422/1981 § 15

Amended chap 889/1982 § 1

(Special provision, additional payment, chap 889/1982 § 3)

Sub a pars 2, 3 amended chap 279/1985 § 1



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§ 13-682 Payment of supplemental retirement allowances.

a. On or before the last day of each month during the payment period mentioned in subdivisions b, e, f, g, h, i and j of section 13-680 of this chapter, there shall be paid to each qualified retiree from the pension reserve fund of the retirement system of which such retiree was a member when he or she retired, the applicable supplemental retirement allowance prescribed by such section 13-680 except that in the case of qualified retirees who retired as members of the teachers' retirement system, such allowance shall be paid from pension reserve fund number one of such system. With respect to payments of such supplemental retirement allowances which were made for the month of July, nineteen hundred eighty or any subsequent month preceding the month of July, nineteen hundred eighty-one, the actuary of each retirement system of which recipients of such allowances were members when they retired shall determine the adjustments, if any, which, by reason of such payments, the preceding provisions of this section require to be made between the funds of the pension reserve fund or pension reserve fund number one, as the case may be, of such retirement system and the funds of the supplemental pension fund, and any such adjustments so determined shall be carried out by resolution of the board of trustees or retirement board of such retirement system and executive order of the mayor.

b. There also shall be paid on or before the last day of each month from the supplemental pension fund to each qualified widow, dependent or minor child, the applicable supplemental pension prescribed by section 13-681 of this chapter.

c. In any case where the spouse of a deceased retiree is entitled to receive a supplemental retirement allowance pursuant to the provisions of subdivision k of section 13-680 of this chapter, then from the retirement system pension reserve fund from which the supplemental retirement allowance of such retiree would be paid if such retiree were living, there shall be paid on or before the last day of each month with respect to which such spouse is entitled to receive such supplemental retirement allowance, the applicable amount of such spouse's supplemental retirement allowance; provided, however, that in the case of the spouse of any such deceased retiree who retired as a contributor of the New York city teachers' retirement system, such allowance shall be paid to such spouse from pension reserve fund number one of such retirement system.

d. On or before the last day of each month with respect to which a surviving spouse who is a designated annuitant (as defined in paragraph ten of subdivision a of section 13-680 of the code) is entitled to receive a supplemental retirement allowance pursuant to the provisions of subdivision 1 of such section 13-680, such supplemental retirement allowance shall be paid from the fund or funds of the retirement system from which is payable such surviving spouse's annuity or pension supplemented by such supplemental retirement allowance.

e. On or before the last day of each month with respect to which an additional supplemental retirement allowance is payable pursuant to section thirty or section thirty-one of chapter six hundred fifty-eight of the laws of nineteen hundred eighty-four to a pensioner receiving benefits under this section 13-682, such additional supplemental retirement allowance shall be paid from the pension reserve fund of the retirement system of which such pensioner was a member when he retired, except that in the case of such pensioners who retired as members of the New York city teachers' retirement system, such additional supplemental retirement allowance shall be paid from pension reserve fund number one of such system.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. d added chap 454/1988 § 3

Subd. e added chap 580/1989 § 12

**DERIVATION**

Formerly § D49-41.0 added chap 959/1970 § 1

Amended chap 857/1980 § 2

Amended chap 422/1981 § 16

Amended chap 371/1984 § 3



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§ 13-683 Information to be furnished to comptroller.

The comptroller shall have authority to require any department or agency of the city to furnish him or her with such records, information and data as he may need to carry out the provisions of this article.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-42.0 added chap 959/1970 § 1



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§ 13-684 Reimbursement by authority responsible for supplementation.

a. The cost of providing a supplemental retirement allowance pursuant to section 13-680 of this chapter to each qualified authority retiree shall be paid to the city, in the manner provided for by this section, by the authority responsible for supplementation with respect to such retiree.

b. As soon as practicable after December thirty-first, nineteen hundred seventy-one, the comptroller shall determine the pro-rata portion of the cost of providing supplemental retirement allowances to qualified authority retirees, pursuant to sections 13-680 and 13-682 of this chapter, which is required to be paid by each authority responsible for supplementation. Such pro-rata cost shall be determined on the basis of a formula approved by the board of estimate.

c. The comptroller shall thereupon submit to the fiscal officer of each such authority a statement of the amount which such authority is required to pay to the city pursuant to this article. Payment of the amount specified in the comptroller's statement shall be made by such authority within sixty days after the receipt thereof. If payment of the full

amount of such obligation is not made within sixty days after the receipt of such statement, interest at the rate of four percentum per annum shall commence to run against the unpaid balance thereof on the first day after such sixtieth day.

d. All amounts received by the comptroller from such authorities pursuant to this article shall be deposited in and credited to the supplemental pension fund.

e. The provisions of this section shall apply to supplemental retirement allowances payable pursuant to the provisions of this article for periods prior to July first, nineteen hundred eighty and shall not apply to any such supplemental retirement allowances payable for any period thereafter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-43.0 added chap 959/1970 § 1

Sub e added chap 422/1981 § 17



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ARTICLE 6 SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN POLICE OR FIRE LINE-OF-DUTY WIDOWS OR DEPENDENTS, BASED ON THE COST-OF-LIVING INDEX

§ 13-685 Definitions.

As used in this article, the following terms shall mean and include:

a. (1) "Police or fire line-of-duty surviving spouse or dependent". Any person (i) who is a surviving spouse, a dependent parent or a child (under the age of eighteen years) of a member of a retirement system or plan of the city for the uniformed force of the police or fire department who died prior to January first, nineteen hundred seventy and (ii) to whom a pension was or is awarded pursuant to the applicable provisions of subdivision b of section 13-209 of this title, section 13-244 of this title, subdivision b of section 13-309 of this title or section 13-347 of this title or any predecessor provision and (iii) on or after July first, nineteen hundred seventy-three is receiving such a pension or an annual increased allowance (as defined in subdivision e of this section) from such retirement system or plan.

(2) If two or more persons are or shall be receiving such a pension or such an increased annual allowance from such system or plan on or after July first, nineteen hundred seventy-three as a result of being dependent parents or children (under the age of eighteen years) of the same deceased member, they shall collectively be deemed to be one police or fire line-of-duty surving spouse or dependent within the meaning of this article and any supplemental pension

granted pursuant to the provisions of this article in any case where two or more such persons collectively constitute one police or fire line-of-duty widow or dependent shall be divided among such persons in the same proportions as apply with respect to distribution of such pension or increased annual allowance among such persons.

b. "Supplemental pension fund". The supplemental pension fund provided for by section 13-650 of this chapter.

c. "Comptroller". The comptroller of the city.

d. "Basic annual pension". The annual pension awarded to a police or fire line-of-duty surving spouse or dependent pursuant to the applicable provisions of subdivision b of section 13-209 of this title, section 13-244 of this title, subdivision b of section 13-309 of this title or section 13-347 of this title or any predecessor provision.

e. "Annual increased allowance". In the case of a police or fire line-of-duty surving spouse or dependent who is entitled, under the applicable provisions of subdivision d of section 13-209 of this title or section 13-245 of this title or subdivision c of section 13-309 of this title or section 13-348 of this title, to receive a supplement to his or her basic annual pension, the term "annual increased allowance" shall mean the aggregate annual amount payable to such police or fire line-of-duty widow or dependent, consisting of his or her basic annual pension, together with the supplement payable pursuant to the applicable provisions of such subdivision d of section 13-209, section 13-245, subdivision c of section 13-309 or section 13-348.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-50.0 added chap 994/1973 § 1

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§ 13-686 Supplemental pension.

a. A supplemental pension shall be paid to police or fire line-of-duty surviving spouses or dependents. Such supplemental pension shall be payable on the basis provided for herein, commencing with a payment for the month of July, nineteen hundred seventy-three and continuing through the month of September, nineteen hundred seventy-four. In the case of a police or fire line-of-duty surviving spouse or dependent who is entitled to receive an annual increased allowance (as defined in subdivision e of section 13-685 of this chapter) said supplemental pension shall be a percentage of such annual increased allowance and in the case of a police or fire line-of-duty surviving spouse or dependent who is not entitled to receive an annual increased allowance, such supplemental pension shall be a percentage of the basic annual pension (as defined in subdivision d of such section 13-685), and in either case such percentage shall be determined on the basis of the consumer price index (all items-United States city average), published by the United States Bureau of Labor Statistics. Said percentage shall be determined in the manner provided in this section. Said supplemental pension shall be computed on the basis of the first eight thousand dollars of the annual increased allowance, in the case of a police or fire line-of-duty surviving spouse or dependent entitled to receive such an allowance and on the basis of the first eight thousand dollars of the basic annual pension, in the case of a police or fire line-of-duty surviving spouse or dependent who is not entitled to receive an annual increased allowance.

b. The percentage referred to in this section shall be determined as the ratio of two indexes, in the following manner. The ratio of the indexes shall be the average of the twelve monthly consumer price indexes of the calendar year nineteen hundred sixty-nine divided by the average of the twelve monthly consumer price indexes (i) of the calendar year nineteen hundred sixty-five, in any case where the death of such member occurred before July first, nineteen hundred sixty-five or (ii) of the calender year in which the death of such member occurred, in any case where the death of such member occurred on or after July first, nineteen hundred sixty-five. Said ratio, minus one, shall be expressed as a percentage and shall be adjusted to the lower one-tenth of one percentum. Such applicable adjusted percentage shall be the percentage of the applicable portion of the annual increased allowance or basic annual pension, as the case may be, which is payable as a supplement. However, no such supplement shall be paid where such percentage is less than three percentum. Such percentage shall be computed by the actuary and certified to the comptroller who shall, by directive, promulgate a schedule of percentages by applicable calendar year to be used for this purpose.

c. The supplemental pension shall be rounded off to the nearest dollar.

d. Such supplemental pension shall be payable to the same persons and shall be subject to the same terms and conditions, including provisions as to termination, as the basic pension awarded to the police or fire line-of-duty surviving spouse or dependent.

e. (1) In any case where a police or fire line-of-duty spouse or dependent is entitled to receive an annual increased allowance, such police or fire line-of-duty surviving spouse or dependent, if entitled to receive a supplemental pension under the provisions of this article six, shall be entitled to receive such supplemental pension under this article in addition to such annual increased allowance.

(2) Except as otherwise provided in paragraph one of this subdivision e, the supplemental pension provided for by this article for any police or fire line-of-duty surviving spouse or dependent shall be in lieu of any supplemental pension or supplemental retirement allowance for such police or fire line-of-duty surviving spouse or dependent provided by any other law heretofore or hereafter enacted, unless such other supplemental pension or supplemental retirement allowance is in excess of that provided for by this article, in which latter case such other supplemental pension or supplemental retirement allowance shall be paid and no supplemental pension shall be paid under this article; provided however, that nothing contained in this subdivision e shall be construed as entitling any police or fire line-of-duty surviving spouse or dependent to a supplemental retirement allowance under article two of subchapter six of chapter five of this title in any case where, if this article six had not been enacted, such police or fire line-of-duty surviving spouse or dependent would not be entitled to a supplemental retirement allowance under such article two.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-51.0 added chap 994/1973 § 1



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ARTICLE 6 SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN POLICE OR FIRE LINE-OF-DUTY WIDOWS OR DEPENDENTS, BASED ON THE COST-OF-LIVING INDEX

§ 13-687 Supplemental pension for a surviving spouse, dependent or child of a deceased member of the uniformed force of the police or fire department.

a. (1) In addition to any other payment authorized or required by any other provisions of law, excepting a police or fire line-of-duty surviving spouse or dependent entitled thereto under section 13-686 of this chapter, there shall be paid a monthly amount, as hereinafter provided for in this subdivision a, to a surviving spouse, dependent or minor child of a deceased member of the police pension fund, subchapter one, and the fire department pension fund, subchapter one, where, by reason of the death of such member, such spouse, dependent or minor child was or shall be receiving a pension from such system or plan pursuant to the provisions of this code.

(2) (i) In any case where such death occurred prior to June first, nineteen hundred eighty-one, payment of such additional amount shall be made as provided for in subparagraph (ii) of this paragraph two.

(ii) Such payment shall commence with a payment for the later of the month of September, nineteen hundred eighty or the month next following the month in which such death occurred. The additional amount payable for each payment month shall be twenty-five dollars to and including the month of June, nineteen hundred eighty-one. An

amount of fifty dollars shall be paid for the month of July, nineteen hundred eighty-one and for each month thereafter to and including the month of June, nineteen hundred eighty-five. An amount of one hundred dollars shall be paid for the month of July, nineteen hundred eighty-five and for each month thereafter.

(3) In any case where such death occurred or shall occur on or after June first, nineteen hundred eighty-one, an amount of fifty dollars per month shall be paid, commencing with a payment for the later of the month of July, nineteen hundred eighty-one or the month next following the month in which such death occurred or shall occur and continuing with a payment of fifty dollars for each month thereafter to and including the month of June, nineteen hundred eighty-five. An amount of one hundred dollars shall be paid for the month of July, nineteen hundred eighty-five and for each month thereafter.

(4) Notwithstanding any other provision of law to the contrary, for payments made for the month of July, nineteen hundred ninety-four and for each month thereafter pursuant to and in accordance with the requirements of paragraph two or three of this subdivision to a surviving spouse of a member of the police pension fund, subchapter one, such paragraph two or three shall be deemed to provide for the following amounts of such payments:

(i) for each such monthly payment made to such person for the month of July, nineteen hundred ninety-four and for each month thereafter to and including the month of June, nineteen hundred ninety-five, the words "one hundred fifty dollars" shall be substituted for the words "one hundred dollars" in such paragraph two or three;

(ii) for each such monthly payment made to such person for the month of July, nineteen hundred ninety-five and for each month thereafter, the words "one hundred sixty dollars" shall be substituted for the words "one hundred dollars" in such paragraph two or three; and

(iii) for each such monthly payment made to such person for the month of July, two thousand and for each month thereafter, the words "two hundred dollars" shall be substituted for the words "one hundred dollars" in such paragraph two or three. Commencing September first, two thousand one, the monthly benefit payable pursuant to this section shall be increased in an amount determined pursuant to subdivision d of section 13-696 of this title.

(5) Notwithstanding any other provision of law to the contrary, for payments made for the month of July, nineteen hundred ninety-four and for each month thereafter pursuant to and in accordance with the requirements of paragraph two or three of this subdivision to a surviving spouse of a member of the fire department pension fund, subchapter one, such paragraph two or three shall be deemed to provide for the following amounts of such payments:

(i) for each such monthly payment made to such person for the month of July, nineteen hundred ninety-four and for each month thereafter to and including the month of June, nineteen hundred ninety-five, the words "one hundred fifty dollars" shall be substituted for the words "one hundred dollars" in such paragraph two or three;

(ii) for each such monthly payment made to such person for the month of July, nineteen hundred ninety-five and for each month thereafter, the words "one hundred sixty dollars" shall be substituted for the words "one hundred dollars" in such paragraph two or three; and

(iii) for each such monthly payment made to such person for the month of July, two thousand and for each month thereafter, the words "two hundred dollars" shall be substituted for the words "one hundred dollars" in such paragraph two or three. Commencing September first, two thousand one, the monthly benefit payable pursuant to this section shall be increased in an amount determined pursuant to subdivision d of section 13-696 of this title.

b. If more than one such person are or shall be receiving from such system or plan pursuant to any such section as a result of being a surviving spouse, dependent or minor child of the same deceased member, they shall collectively be deemed to be one such person and any supplemental pension granted to a surviving spouse, dependent or child shall be divided among such persons in the same proportions as the pensions received by them.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par (4) amended chap 125/2000 § 17, eff. July 11, 2000.

Subd. a par (4) added chap 503/1995 § 12, eff. Aug. 2, 1995 and retroactive to July 1, 1994.

Subd. a par (5) renumbered and amended chap 125/2000 § 16, eff. July 11, 2000. Formerly subd. a par (4) added chap 500/1995 § 13, eff. Aug. 2, 1995 and retroactive to July 1, 1994.

**DERIVATION**

Formerly § D49-51.5 added chap 857/1980 § 3

Amended chap 422/1981 § 22

Amended chap 889/1982 § 2

(Special provision, additional payment, chap 889/1982 § 3)

Sub a pars 2, 3 amended chap 279/1985 § 2



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CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 6 SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN POLICE OR FIRE LINE-OF-DUTY WIDOWS OR DEPENDENTS, BASED ON THE COST-OF-LIVING INDEX

§ 13-688 Payment of supplemental pensions.

a. Subject to the provisions of subdivision b of this section, on or before the last day of each month during the payment period mentioned in subdivision a of section 13-686 of this chapter, there shall be paid from the supplemental pension fund to each police or fire line-of-duty surviving spouse or dependent entitled thereto under section 13-686 of this chapter, the applicable supplemental pension prescribed by such section 13-686; and there shall be paid on or before the last day of each month from the supplemental pension fund to each qualified widow, dependent or minor child the applicable supplemental pension prescribed by section 13-687 of this chapter.

b.*8 Notwithstanding any other provision of law to the contrary, on and after July first, nineteen hundred ninety-five, where supplemental pension payments are required to be made pursuant to subdivision a of this section to fire subchapter one beneficiaries (as defined in paragraph three of subdivision a of section 13-312.1 of this title) who are otherwise eligible pursuant to section 13-686 or 13-687 of this chapter to receive such payments under laws in effect immediately prior to such July first, such payments shall be made on and after such July first to such persons by the fire department pension fund provided for in subchapter two of this title, as required by the provisions of subdivision e of section 13-312.1 of this title, rather than from the supplemental pension fund.

b.**9 Notwithstanding any other provision of law to the contrary, on and after July first, nineteen hundred ninety-five, where supplemental pension payments are required to be made pursuant to subdivision a of this section to police subchapter one beneficiaries (as defined in paragraph three of subdivision a of section 13-213.1 of this title) who are otherwise eligible pursuant to section 13-686 or 13-687 of this chapter to receive such payments under laws in effect immediately prior to such July first, such payments shall be made on and after such July first to such person by the police pension fund provided for in subchapter two of this title, as required by the provisions of subdivision c of section 13-213.1 of this title, rather than from the supplemental pension fund.

**HISTORICAL NOTE**

Section separately amended chap 503/1995 § 7, eff. Aug. 2, 1995 and

chap 500/1995 § 7, eff. Aug. 2, 1995.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-52.0 added chap 994/1973 § 1

Amended chap 857/1980 § 4

**FOOTNOTES**

8

[Footnote 8]: * There are two subds. b. This subd. b reflects amendments made by Chap 500/1995 § 7.

9

[Footnote 9]: ** There are two subds. b. This subd. b reflects amendments made by Chap 503/1995 § 7.



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SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 6 SUPPLEMENTAL RETIREMENT ALLOWANCES FOR CERTAIN POLICE OR FIRE LINE-OF-DUTY WIDOWS OR DEPENDENTS, BASED ON THE COST-OF-LIVING INDEX

§ 13-689 Information to be furnished to comptroller.

The comptroller shall have authority to require any department or agency of the city to furnish him or her with such records, information and data as he or she may need to carry out the provisions of this article.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-53.0 added chap 994/1973 § 1

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CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 7 SUPPLEMENTAL RETIREMENT ALLOWANCES FOR RETIREES OF CLOSED PENSION FUNDS OR PLANS, BASED ON THE COST-OF-LIVING INDEX

§ 13-690 Definitions.

As used in this article, the following terms shall mean and include:

a. "Closed pension fund other-than-disability retiree". (1) A person who retired, prior to January first, nineteen hundred eighty, other than for disability, as a member of a pension fund or retirement system supported or maintained by the city, other than an excepted pension fund or retirement system mentioned in paragraph two of this subdivision a, and who is receiving a pension or retirement allowance by reason of such retirement.

(2) The excepted pension funds or retirement systems referred to in paragraph one of this subdivision a are the New York city employees' retirement system, the New York city teachers' retirement system, the board of education retirement system of the city, the police pension funds maintained pursuant to subchapter one and subchapter two of chapter two of this title and the fire department pension funds maintained pursuant to subchapter one and subchapter two of chapter three of this title.

b. "Closed pension fund disability retiree". A person: (1) Who retired for disability prior to January first,

nineteen hundred eighty as a member of a pension fund or retirement system supported or maintained by the city, other than an excepted pension fund or retirement system referred to in paragraph two of subdivision a of this section, and who is receiving a pension or retirement allowance by reason of such retirement; or

(2) Who was retired prior to January first, nineteen hundred eighty pursuant to subchapter five of chapter five of this title and who is receiving an annuity by reason of such retirement.

c. "Supplemental pension fund". The supplemental pension fund provided for by section 13-650 of this chapter.

d. "Comptroller". The comptroller of the city.

e. "Base amount". That part of the total annual retirement benefit (whether consisting of a pension, retirement allowance or annuity), when such total annual retirement benefit is computed without optional modification, which part does not exceed ten thousand five hundred dollars.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. e amended chap 658/1984 § 15

**DERIVATION**

Formerly § D49-60.0 added LL 69/1973 § 1

Sub b amended chap 422/1981 § 18

Sub a par 1 amended chap 422/1981 § 18

Sub b par 1 amended chap 1049/1981 § 1

Sub e amended chap 658/1984 § 15

(Special provisions chap 658/1984 §§ 30, 31)

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SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 7 SUPPLEMENTAL RETIREMENT ALLOWANCES FOR RETIREES OF CLOSED PENSION FUNDS OR PLANS, BASED ON THE COST-OF-LIVING INDEX

§ 13-691 Supplemental retirement allowances for certain closed pension funds retirees and other retirees.

a. A supplemental retirement allowance determined pursuant to this section shall be payable:

(1) to closed pension fund disability retirees who retired prior to April first, nineteen hundred seventy, commencing with a payment for the month of July, nineteen hundred eighty-one, and continuing thereafter; and

(2) to closed pension fund other-than-disability retirees who retire prior to April first, nineteen hundred seventy, commencing with a payment for the later of the month of July, nineteen hundred eighty-one or the month of July next following the twelve-month period ending June thirtieth in which such retiree shall have attained age sixty-two and continuing thereafter.

b. Such supplemental retirement allowance for those closed pension fund disability retirees and closed pension fund other-than-disability retirees who retired prior to January first, nineteen hundred sixty-eight shall include an amount computed by multiplying the base amount by a percentage determined on the basis of the consumer price index (all items-United States city average) published by the United States bureau of labor statistics.

c. (1) The percentage referred to in subdivision b of this section shall be determined as the ratio of two indexes, in the manner prescribed in this subdivision c.

(2) The average of the twelve monthly consumer price indexes of the calendar year nineteen hundred sixty-nine divided by the average of twelve monthly consumer price indexes of the calendar year of retirement, shall be the ratio of the indexes.

(3) Such ratio, minus one, shall be expressed as a percentage and shall be adjusted to the lower one-tenth of one percentum. Such adjusted percentage shall be the percentage of the base amount which is payable as a supplement included in a supplemental retirement allowance as provided for in subdivision b of this section. However, no such supplement shall be paid where such percentage is less than three percentum. Such percentage for a person who retired prior to October first, nineteen hundred fifty-seven shall be increased by one hundred percentum thereof and the adjusted percentage shall be further adjusted to the lower one-tenth of one percentum. Such percentage shall be computed by the actuary and certified to the comptroller who shall, by directive, promulgate a schedule of percentages by year of retirement to be used for this purpose.

d. (1) Commencing with a payment for the month of July, nineteen hundred eighty-one and continuing thereafter, there shall be payable:

(a) to each closed pension fund other-than-disability retiree who retired prior to January first, nineteen hundred sixty-eight and who is eligible to receive a supplemental retirement allowance under the provisions of subdivision a of this section; and

(b) to each closed pension fund disability retiree who retired prior to January first, nineteen hundred sixty-eight: a supplemental retirement allowance which shall consist of the sum of:

(i) the amount determined for such retiree pursuant to the provisions of subdivisions b and c of this section; and

(ii) the product obtained by multiplying the base amount for such retiree by the percentage thereof applicable to such retiree, as determined by the year of retirement in accordance with the schedule set forth in paragraph two of this subdivision d.

(2) The schedule referred to in paragraph one of this subdivision d is as follows:

**[See tabular material in printed version]**

(3) Commencing with a payment for the month of July, nineteen hundred eighty-one and continuing thereafter, there shall be payable:

(a) to each closed pension fund other-than-disability retiree who retired on or after January first, nineteen hundred sixty-eight and prior to April first, nineteen hundred seventy, and who is eligible to receive a supplemental retirement allowance under the provisions of subdivision a of this section; and

(b) to each closed pension fund disability retiree who retired on or after January first, nineteen hundred sixty-eight and prior to April first, nineteen hundred seventy; a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by the percentage thereof applicable to such retiree, as determined by the date of retirement in accordance with the schedule set forth in paragraph four of this subdivision d.

(4) The schedule referred to in paragraph three of this subdivision d is as follows:

**[See tabular material in printed version]**

e. (1) Commencing with a payment for the month of July, nineteen hundred eighty-one and continuing

thereafter, there shall be payable to each closed pension fund disability retiree who retired on or after April first, nineteen hundred seventy and before January first, nineteen hundred seventy-three, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by the percentage thereof applicable to such retiree, as determined by the date of retirement in accordance with the schedule set forth in paragraph three of this subdivision e.

(2) (a) Each closed pension fund other-than-disability retiree who retired on or after April first, nineteen hundred seventy and prior to January first, nineteen hundred seventy-three shall be entitled to receive, for the period provided for by subparagraph (b) of this paragraph two, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by the percentage thereof applicable to such retiree, as determined by the date of retirement in accordance with the schedule set forth in paragraph three of this subdivision e.

(b) Such supplemental retirement allowance referred to in subparagraph (a) of this paragraph two shall commence with a payment for the later of the month of July, nineteen hundred eighty-one or the month of July next following the twelve-month period ending June thirtieth in which such retiree shall have attained age sixty-two and shall continue thereafter.

(3) The schedule referred to in paragraphs one and two of this subdivision e is as follows:

**[See tabular material in printed version]**

f. (1) Commencing with a payment for the month of July, nineteen hundred eighty-two and continuing thereafter, there shall be payable to each closed pension fund disability retiree who retired during the calendar year nineteen hundred seventy-three, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by six per centum.

(2) (a) Each closed pension fund other-than-disability retiree who retired during the calendar year nineteen hundred seventy-three shall be entitled to receive, for the period provided for by subparagraph (b) of this paragraph two, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by six per centum.

(b) Such supplemental retirement allowance referred to in subparagraph (a) of this paragraph two shall commence with a payment for the later of the month of July, nineteen hundred eighty-two or the month of July next following the twelve-month period ending June thirtieth in which such retiree shall have attained age sixty-two and shall continue thereafter.

g. (1) Commencing with a payment for the month of July, nineteen hundred eighty-three and continuing thereafter, there shall be payable to each closed pension fund disability retiree who retired on or after January first, nineteen hundred seventy-four and before January first, nineteen hundred seventy-seven, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by the percentage thereof applicable to such retiree, as determined by the date of retirement in accordance with the schedule set forth in paragraph three of this subdivision g.

(2) (a) Each closed pension fund other-than-disability retiree who retired on or after January first, nineteen hundred seventy-four and prior to January first, nineteen hundred seventy-seven shall be entitled to receive, for the period provided for by subparagraph (b) of this paragraph two, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by the percentage thereof applicable to such retiree, as determined by the date of retirement in accordance with the schedule set forth in paragraph three of this subdivision g.

(b) Such supplemental retirement allowance referred to in subparagraph (a) of this paragraph two shall commence with a payment for the later of the month of July, nineteen hundred eighty-three or the month of July next following the twelve-month period ending June thirtieth in which such retiree shall have attained age sixty-two and

shall continue thereafter.

(3) The schedule referred to in paragraphs one and two of this subdivision g is as follows:

**[See tabular material in printed version]**

h. (1) Commencing with a payment for the month of July, nineteen hundred eighty-four and continuing thereafter, there shall be payable to each closed pension fund disability retiree who retired on or after January first, nineteen hundred seventy-seven and before January first, nineteen hundred seventy-nine, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by three per centum.

(2) (a) Each closed pension fund other-than-disability retiree who retired on or after January first, nineteen hundred seventy-seven and prior to January first, nineteen hundred seventy-nine shall be entitled to receive, for the period provided for by subparagraph (b) of this paragraph two, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by the percentage thereof applicable to such retiree, as determined by the date of retirement in accordance with the schedule set forth in paragraph three of this subdivision h.

(b) Such supplemental retirement allowance referred to in subparagraph (a) of this paragraph two shall commence with a payment for the later of the month of July, nineteen hundred eighty-four or the month of July next following the twelve-month period ending June thirtieth in which such retiree shall have obtained age sixty-two and shall continue thereafter.

i. (1) Commencing with a payment for the month of July, nineteen hundred eighty-five and continuing thereafter, there shall be payable to each closed pension fund disability retiree who retired during the calendar year nineteen hundred seventy-nine, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by three per centum.

(2) (a) Each closed pension fund other-than-disability retiree who retired during the calendar year nineteen hundred seventy-nine shall be entitled to receive, for the period provided for by subparagraph (b) of this paragraph two, a supplemental retirement allowance equal to the product obtained by multiplying the base amount for such retiree by three per centum.

(b) Such supplemental retirement allowance referred to in subparagraph (a) of this paragraph two, shall commence with a payment for the later of the month of July, nineteen hundred eighty-five or the month of July next following the twelve-month period ending June thirtieth in which such retiree shall have attained age sixty-two and shall continue thereafter.

k. The supplemental retirement allowance shall be rounded off to the nearest dollar.

l. The supplemental retirement allowance hereinabove provided for any such closed pension fund disability retiree or closed pension fund other-than-disability retiree shall be in lieu of any supplemental retirement allowance for such retiree provided by article one or article two of this subchapter or any other existing law or law hereafter enacted, unless such other supplemental retirement allowance is in excess of that provided for by this article seven, in which latter case such other supplemental retirement allowance shall be paid and no supplemental retirement allowance shall be paid under this article seven.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

See also Note after § 13-680

**DERIVATION**

Formerly § D49-61.0 added LL 69/1973 § 1

Subs a, b, c amended chap 422/1981 § 19

Subs k, l relettered chap 422/1981 § 20

(formerly subs d, e)

Subs d-i added chap 422/1981 § 21

Sub e par 2 subpar b amended chap 1049/1981 § 2

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ARTICLE 7 SUPPLEMENTAL RETIREMENT ALLOWANCES FOR RETIREES OF CLOSED PENSION FUNDS OR PLANS, BASED ON THE COST-OF-LIVING INDEX

§ 13-692 Payment of supplemental retirement allowances.

a. On or before the last day of each month during the payment period mentioned in subdivision a of section 13-691 of this chapter, there shall be paid from the suppplemental pension fund to each retiree entitled thereto under such section, the applicable supplemental retirement allowance prescribed by such section.

b. On or before the last day of each month with respect to which an additional supplemental retirement allowance is payable pursuant to section thirty or section thirty-one of chapter six hundred fifty-eight of the laws of nineteen hundred eighty-four, there shall be paid from the supplemental pension fund to each pensioner entitled thereto under either such section, the applicable additional supplemental retirement allowance prescribed by such section.

**HISTORICAL NOTE**

Section amended ch. 580/1989 § 13

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-62.0 added LL 69/1973 § 1



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ARTICLE 7 SUPPLEMENTAL RETIREMENT ALLOWANCES FOR RETIREES OF CLOSED PENSION FUNDS OR PLANS, BASED ON THE COST-OF-LIVING INDEX

§ 13-693 Information to be furnished to comptroller.

The comptroller shall have authority to require any department or agency of the city to furnish him or her with such records, information and data as he or she may need to carry out the provisions of this article.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D49-63.0 added LL 69/1973 § 1



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CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 8 FUNDING OF CERTAIN SUPPLEMENTAL RETIREMENT ALLOWANCES

§ 13-694 Definitions.

As used in this article, the following terms shall mean and include:

a. "Fire section two hundred seven-i." Section two hundred seven-i of the general municipal law, as added by chapter five hundred forty-six of the laws of nineteen hundred sixty-seven.

b. "Obligor responsible for supplementation." (1) In relation to any retiree, such term shall mean the public employer which employed any retiree immediately prior to the effective date of such retiree's retirement, or, where such public employer no longer exists or is no longer performing the functions in relation to which such retiree was then employed, such term shall mean its successor performing or substantially performing the same or similar functions; provided, however, that in any case where a retiree was employed by the board of education of the city or the former board of higher education of the city immediately prior to his or her retirement, such term shall mean the city.

(2) In relation to any surviving spouse who is a designated annuitant (as defined in paragraph ten of subdivision a of section 13-680 of the code) entitled to receive a supplemental retirement allowance under subdivision 1 of such section 13-680, such term shall mean the public employer which would be the obligor responsible for supplementation

with respect to the retiree from whom such spouse's entitlement to a supplemental retirement allowance is derived, if such retiree were living.

2-a. In relation to any surviving spouse under a continuing benefit option (as defined in subdivision h of this section), such term shall mean the public employer which would be the obligor responsible for supplementation with respect to the retiree from whom such spouse's entitlement to a supplemental retirement allowance is derived, if such retiree were living.

(3) Notwithstanding any other provision of this article to the contrary, in any case where the obligor responsible for supplementation is other than the city, such obligor and the mayor may agree upon an allocation formula which shall be used to determine the amount to be paid by such obligor with respect to any fiscal year as such obligor's share of any contribution to the contingent reserve fund of a retirement system required to be made in such fiscal year by the provisions of this article for the purpose of funding supplemental retirement allowances. Payment of such share with respect to such fiscal year pursuant to such formula shall be in full satisfaction of the obligation of such obligor to make contributions for such fiscal year under the provisions of this article.

c. "Original supplemental retirement allowance." The portion of a supplemental retirement allowance, which portion is payable pursuant to the applicable provisions of subdivisions b, c and d of section 13-680 of this chapter and section 13-682 thereof (other than that part of any such portion, which part is attributable to forty per centum of the adjusted one hundred per centum increase required by paragraph three of such subdivision d to be made in the adjusted percentage otherwise applicable to the computation of supplements under such subdivisions b, c and d for eligible persons who retired prior to October first, nineteen hundred fifty-seven) or subdivisions a and b of the police section two hundred seven-i (other than (1) that part of any such portion, which part is attributable to forty per centum of the adjusted one hundred per centum increase required by subdivision b of such section two hundred seven-i to be made in the adjusted percentage otherwise applicable to the computation of supplements under subdivisions a and b of such section two hundred seven-i for pensioners who retired prior to April first, nineteen hundred fifty-eight and (2) the portion of any such allowance payable pursuant to subdivisions a and b of such section two hundred seven-i to a police other-than-disability retiree who shall have attained age sixty-two on or after October first, nineteen hundred seventy-two) or subdivisions a and b of the fire section two hundred seven-i (other than (1) that part of any such portion, which part is attributable to forty per centum of the adjusted one hundred per centum increase required by subdivision b of such section two hundred seven-i to be made in the adjusted percentage otherwise applicable to the computation of supplements under subdivisions a and b of such section two hundred seven-i for pensioners who retired prior to April first, nineteen hundred fifty-eight and (2) the portion of any such allowance payable pursuant to subdivisions a and b of such section two hundred seven-i to a fire other-than-disability retiree who shall have attained age sixty-two on or after October first, nineteen hundred seventy-two).

d. "Police section two hundred seven-i." Section two hundred seven-i of the general municipal law, as added by chapter five hundred sixty-one of the laws of nineteen hundred sixty-seven.

e. "Retiree." A person who retired as a member of a retirement system and who is entitled to receive, as a result of such retirement, (1) a supplemental retirement allowance under the applicable provisions of sections 13-680 and 13-682 of this chapter or the police section two hundred seven-i or the fire section two hundred seven-i or (2) an additional supplemental retirement allowance under the provisions of section thirty of chapter six hundred fifty-eight of the laws of nineteen hundred eighty-four or section thirty-one of such chapter.

f. "Retirement system." Any of the following: the New York city employees' retirement system; the retirement system of the teachers' retirement association provided for by title B of chapter twenty of the code; the police pension fund provided for by subchapter two of chapter two of this title; the fire department pension fund provided for by subchapter two of chapter three of this title; and the board of education retirement system of the city.

g. "Supplement commencing in nineteen hundred eighty-one or later." Such term shall mean any of the

following supplemental retirement allowances or portions thereof: (1) The portion of a supplemental retirement allowance, which portion is payable pursuant to the provisions of subparagraph (b) of paragraph one of subdivision e of section 13-680 of this chapter and section 13-682 thereof, or (2) a supplemental retirement allowance payable pursuant to the provisions of paragraph three or paragraph five or paragraph six of such subdivision e, or (3) the portion of a supplemental retirement allowance, which portion is payable pursuant to the provisions of subdivision b-1 of the police section two hundred seven-i, to retirees who retired prior to the calendar year nineteen hundred seventy, or (4) the supplemental retirement allowance payable pursuant to the provisions of such subdivision b-1 to retirees who retired during the period beginning on January first, nineteen hundred seventy and ending on March thirty-first, nineteen hundred seventy, or (5) the portion of a supplemental retirement allowance, which portion is payable pursuant to paragraph three of subdivision b-1 of the fire section two hundred seven-i to retirees who retired prior to the calendar year nineteen hundred seventy, or (6) the supplemental retirement allowance payable pursuant to the provisions of subdivision b-1 of the fire section two hundred seven-i to retirees who retired during the period beginning on January first, nineteen hundred seventy and ending on March thirty-first, nineteen hundred seventy, or (7) any supplemental retirement allowance payable pursuant to any of the provisions of subdivisions f, g, h, i, j, l and k of section 13-680 of this chapter, or subdivisions b-2, b-3, b-4, b-5, b-6 and b-7 of the police section two hundred seven-i of the general municipal law or subdivisions b-2, b-3, b-4, b-5, b-6 and b-7 of the fire section two hundred seven-i of the general municipal law, or (8) any portion of a supplemental retirement allowance, which portion is payable pursuant to subdivisions a and b of the police section two hundred seven-i to police other-than-disability retirees who shall have attained age sixty-two on or after October first, nineteen hundred seventy-two or any portion of a supplemental retirement allowance, which portion is payable pursuant to subdivisions a and b of the fire section two hundred seven-i to fire other-than-disability retirees who shall have attained age sixty-two on or after October first, nineteen hundred seventy-two, or (9) that part of the portion of a supplemental retirement allowance payable pursuant to the applicable provisions of subdivisions b, c and d of section 13-680 of this chapter and section 13-682 thereof, which part is attributable to forty per centum of the adjusted one hundred per centum increase required by paragraph three of such subdivision d to be made in the adjusted percentage otherwise applicable to the computation of supplements under such subdivisions b, c and d for persons who retired prior to October first, nineteen hundred fifty-seven, or (10) that part of the portion of a supplemental retirement allowance payable pursuant to the applicable provisions of subdivisions a and b of police section two hundred seven-i, which part is attributable to forty per centum of the adjusted one hundred per centum increase required by subdivision b of such section two hundred seven-i to be made in the adjusted percentage otherwise applicable to the computation of supplements under subdivisions a and b of such section two hundred seven-i for pensioners who retired prior to April first, nineteen hundred fifty-eight, or (11) that part of the portion of a supplemental retirement allowance payable pursuant to subdivisions a and b of fire section two hundred seven-i, which part is attributable to forty per centum of the adjusted one hundred per centum increase required by subdivision b of such section two hundred seven-i to be made in the adjusted percentage otherwise applicable to the computation of supplements under subdivisions a and b of such section two hundred seven-i for pensioners who retired prior to April first, nineteen hundred fifty-eight, or (12) the increase in any supplemental retirement allowance, which increase both (i) was made by any of sections fourteen, and sixteen to twenty-nine, inclusive, of chapter six hundred fifty-eight of the laws of nineteen hundred eighty-four and (ii) is required to be paid by a retirement system (as defined in subdivision f of this section), or (13) any additional supplemental retirement allowance payable by a retirement system pursuant to the provisions of section thirty or section thirty-one of such chapter.

h. "Surviving spouse under a continuing benefit option." A deceased retiree's spouse who is or may become eligible to receive a supplemental retirement allowance under subdivision k of section 13-680 of the code or subdivision b-7 of police section two hundred seven-i of the general municipal law or subdivision b-7 of fire section two hundred seven-i of the general municipal law, whether or not such supplemental retirement allowance has become payable to such spouse.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended chap 454/1988 § 4 par 2-a added chap 580/1989 § 14

Subd. e amended chap 580/1989 § 14-a

Subd. g amended chap 580/1989 § 15 par 7 amended chap 454/1988 § 5

Subd. h added chap 580/1989 § 16

**DERIVATION**

Formerly § D49-70.0 added chap 422/1981 § 28

Sub b amended chap 914/1982 § 51

Sub c amended chap 1049/1981 § 3

Sub g amended chap 1049/1981 § 4

Sub c amended chap 371/1984 § 6

Sub g amended chap 371/1984 § 7



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Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 8 FUNDING OF CERTAIN SUPPLEMENTAL RETIREMENT ALLOWANCES

§ 13-695 Obligation of obligors responsible for supplementation to make contributions on account of supplemental retirement allowances.

a. Commencing with the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year, and in each city fiscal year thereafter, each obligor responsible for supplementation with respect to any retirees of a retirement system or with respect to any surviving spouses who are designated annuitants (as defined in paragraph ten of subdivision a of section 13-680 of the code) or with respect to any surviving spouses under continuing benefit options (as defined in subdivision h of section 13-694 of the code) shall contribute to the contingent reserve fund of such retirement system the amounts determined pursuant to the provisions of this article to be the contribution by such obligor required to be made to fund the supplemental retirement allowances payable to such retirees and surviving spouses.

b. (1) Notwithstanding any other provision of law to the contrary, for the purpose of calculation of the nineteen hundred eighty unfunded accrued liability adjustment of each retirement system, there shall be included in the total liability for all benefits, as of June thirtieth, nineteen hundred eighty, the present value, as of such June thirtieth, of the future liability of such retirement system for all original supplemental retirement allowances payable after such June thirtieth.

(2) Notwithstanding any other provision of law to the contrary, for the purpose of calculation of the nineteen hundred eighty-two unfunded accrued liability adjustment of each retirement system, there shall be included in the actuarial accrued liability, as of June thirtieth, nineteen hundred eighty-two, the present value, as of such June thirtieth, of the future liability of such retirement system for all original supplemental retirement allowances payable after such June thirtieth and for all supplements commencing in nineteen hundred eighty-one or later which commenced prior to June thirtieth, nineteen hundred eighty-two, to the extent that such last mentioned supplements are payable after such June thirtieth.

c. If the nineteen hundred eighty unfunded accrued liability adjustment with respect to any such retirement system is a charge, each obligor responsible for supplementation in relation to retirees of such retirement system shall in each city fiscal year in which any installment of such charge is payable, pay to the contingent reserve fund of such retirement system, in the manner required with respect to payment of public employer contributions to such fund, the portion of such installments attributable to original supplemental retirement allowances.

d. If the nineteen hundred eighty unfunded accrued liability adjustment with respect to any such retirement system is a credit, the obligation of each obligor responsible for supplementation in relation to retirees of such retirement system to make contributions to fund the original supplemental retirement allowances of such retirees shall be appropriately recognized in the application of the installments of such credit.

e. (1) Subject to the provisions of paragraph seven of this subdivision e, in relation to each city fiscal year (the "initial payment year") in which any retirement system makes its first payment of any supplements commencing in nineteen hundred eighty-one or later, the actuary of such retirement system shall determine the present value, as of December thirty-first of such fiscal year, of the future liability of such retirement system for all such supplements with respect to which the first payment was made or will be made in such fiscal year.

(2) Subject to the provisions of paragraph seven of this subdivision e, with respect to each such future liability so determined for such retirement system, there shall be a supplemental retirement allowance deficiency contribution which shall be an amount determined and payable in ten successive annual installments in the manner hereinafter provided in this subdivision e.

(3) In the case of an initial payment year which occurs before July first, nineteen hundred eighty-two, there shall be computed an amount which, if paid to the contingent reserve fund of such retirement system in ten equal annual installments, commencing with payment of a first installment in the initial payment year, would be the actuarial equivalent, on the basis of interest at the rate of seven and one-half per centum per annum, of the amount of such future liability.

(4) One of such equal annual installments computed pursuant to paragraph three of this subdivision e shall be applicable to and payable in such initial payment year.

(5) (a) The nine annual installments computed pursuant to paragraph three of this subdivision e which are attributable to city fiscal years occurring after June thirtieth, nineteen hundred eighty-two (hereinafter referred to as "original post-June thirtieth, nineteen hundred eighty-two installments") shall be recomputed so as to remain the same in number and equal in amount and so that their present value, computed as of June thirtieth, nineteen hundred eighty-two at an interest rate of eight per centum per annum, shall be equal to the present value, computed as of such June thirtieth at an interest rate of seven and one-half per centum per annum, of such original post-June thirtieth, nineteen hundred eighty-two installments. One of such recomputed installments shall be applicable to and payable in each of those city fiscal years which occur during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight.

(b) The remaining three of the installments recomputed pursuant to subparagraph (a) of this paragraph five, shall be recomputed so that their present value, computed as of June thirtieth, nineteen hundred eighty-eight at an interest rate

of eight and one-quarter per centum per annum, shall be equal to the present value, computed as of June thirtieth at an interest rate of eight per centum per annum, of such three installments. One of such three installments shall be applicable to and paid in each of the three city fiscal years succeeding June thirtieth, nineteen hundred eighty-eight.

(6) (a) Subject to the provisions of paragraph seven of this subdivision e, in the case of each initial payment year which succeeds June thirtieth, nineteen hundred eighty-two and commences prior to July first, nineteen hundred eighty-eight, there shall be computed an amount which, if paid to the contingent reserve fund of such retirement system in ten equal annual installments, commencing with payment of a first installment in the initial payment year, would be the actuarial equivalent, on the basis of interest at the rate of eight per centum per annum, of the amount of such future liability. One of such annual installments shall be applicable to and payable in the initial payment year and one of such installments shall be applicable to and payable in each of the succeeding fiscal years preceding July first, nineteen hundred eighty-eight.

(b) The annual installments computed pursuant to subparagraph (a) of this paragraph six which are attributable to city fiscal years occurring after June thirtieth, nineteen hundred eighty-eight (hereinafter referred to as "original post-June thirtieth, nineteen hundred eighty-eight installments") shall be recomputed so that their present value, computed as of June thirtieth, nineteen hundred eighty-eight at an interest rate of eight and one-quarter per centum per annum, shall be equal to the present value, computed as of such June thirtieth at an interest rate of eight per centum per annum, of such original post-June thirtieth, nineteen hundred eighty-eight installments. One of such recomputed installments shall be applicable to and payable in each of those city fiscal years which occur after June thirtieth, nineteen hundred eighty-eight and which are a part of such payment period of ten fiscal years.

(7) (a) The supplemental retirement allowance deficiency contribution with respect to (i) the increases in supplemental retirement allowances referred to in paragraph twelve of subdivision q of section 13-694 of this chapter and (ii) the additional supplemental retirement allowances payable by retirement systems pursuant to the provisions of section thirty of chapter six hundred fifty-eight of the laws of nineteen hundred eighty-four (such increases and additional supplemental retirement allowances being hereinafter collectively referred to as "new supplements payments effective September first, nineteen hundred eighty-six") and the supplemental retirement allowance deficiency contribution with respect to the additional supplemental retirement allowances payable by retirement systems pursuant to the provisions of section thirty-one of such chapter six hundred fifty-eight (such additional supplemental retirement allowances being hereinafter referred to as "section thirty-one supplements") shall be paid in the manner provided for in the succeeding subparagraphs of this paragraph seven.

(b) The actuary shall determine the present value, as of June thirtieth, nineteen hundred eighty-six, of the future liability of each retirement system for the new supplements payments effective September first, nineteen hundred eighty-six.

(c) The actuary shall compute ten equal annual installments of employer contributions, which, if successively paid to the contingent reserve fund of such retirement system, commencing with payment of a first annual installment in the twelve-month period beginning on September first, nineteen hundred eighty-six, would be the actuarial equivalent, on the basis of interest at the rate of eight per centum per annum, of the present value computed pursuant to subparagraph (b) of this paragraph. The ten-year payment period for the supplemental retirement allowance deficiency contribution payable to the contingent reserve fund of such retirement system on account of new supplements payments effective September first, nineteen hundred eighty-six shall begin on September first, nineteen hundred eighty-six.

(d) The amount of the installment of such deficiency contribution payable in the period beginning on September first, nineteen hundred eighty-six and ending on June thirtieth, nineteen hundred eighty-seven shall be ten-twelfths of one of the annual installments computed pursuant to subparagraph (c) of this paragraph.

(e) (i) The amount of the installment of such deficiency contribution payable in each of the city's fiscal years occurring during the period beginning on July first, nineteen hundred eighty-seven and ending on June thirtieth,

nineteen hundred eighty-eight, shall be one of such annual installments computed pursuant to subparagraph (c) of this paragraph.

(ii) The eight and two-twelfths annual installments computed pursuant to subparagraph (c) of this paragraph seven which are attributable to city fiscal years (and two-twelfths of one fiscal year) occurring after June thirtieth, nineteen hundred eighty-eight (hereinafter referred to as "original post-June thirtieth, nineteen hundred eighty-eight installments") shall be recomputed so that their present value, computed as of June thirtieth, nineteen hundred eighty-eight at an interest rate of eight and one-quarter per centum per annum, shall be equal to the present value, computed as of June thirtieth, nineteen hundred eighty-eight at an interest rate of eight per centum per annum, of such original post-June thirtieth, nineteen hundred eighty-eight installments. One of such recomputed installments, as recomputed for a full fiscal year, shall be applicable to and payable in each of the city fiscal years occurring during the period beginning on July first, nineteen hundred eighty-eight and ending on June thirtieth, nineteen hundred ninety-six.

(f) The amount of the installment of such deficiency contribution payable in the city's nineteen hundred ninety-six-nineteen hundred ninety-seven fiscal year shall be two-twelfths of one of such annual installment recomputed pursuant to item (ii) of subparagraph (e) of this paragraph.

(g) The amount and time and manner of payment of the installments of the deficiency contribution with respect to the section thirty-one supplements shall be as prescribed in subparagraphs (b), (c), (d), (e) and (f) of this paragraph except that for the purposes of this subparagraph (g):

(i) the term "section thirty-one supplements" shall be deemed to be substituted for the term "new supplements payments effective September first, nineteen hundred eighty-six" appearing in such subparagraphs (b) and (c); and

(ii) each calendar year referred to in subparagraphs (b), (c) and (d) shall be deemed to be one calendar year later; and

(iii) item (i) of such subparagraph (e) shall not apply; and

(iv) the word "eight" used in item (ii) of such subparagraph (e) shall be deemed to be nine; and

(v) the words "nineteen hundred ninety-six" used in such item (ii) shall be deemed to be nineteen hundred ninety-seven; and

(vi) the words "nineteen hundred ninety-six-nineteen hundred ninety-seven" used in such subparagraph (f) shall be deemed to be nineteen hundred ninety-seven-nineteen hundred ninety-eight.

f. With respect to each supplemental retirement allowance deficiency contribution determined for a retirement system pursuant to subdivision e of this section, each obligor responsible for supplementation shall in each fiscal year constituting a part of the applicable payment period designated in such subdivision, pay to the contingent reserve fund of such retirement system, in the manner required with respect to payment of its other public employer contributions to such contingent reserve fund, the installment of such contribution applicable to such fiscal year as prescribed by such subdivision.

g. In the computation of the normal contribution payable to the contingent reserve fund of any such retirement system in any fiscal year referred to in subdivision e of this section, the present value of future required supplemental retirement allowance deficiency contributions payable to the contingent reserve fund of such retirement system by obligors responsible for supplementation shall be an item of deduction from the total liability of such retirement system for benefits.

h. All payments required to be made in any fiscal year to the contingent reserve fund pursuant to the provisions of this section by any obligor responsible for supplementation shall be made with interest at a rate per centum per

annum equal to the rate per centum per annum used in determining the normal contribution payable to the contingent reserve fund of such retirement system in the same fiscal year.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 580/1989 § 17 amended chap 454/1988 § 6

Subd. e pars (1), (2) amended chap 580/1989 § 18 par (5) amended chap 581/1989 § 67 par (6) separately amended chap 580/1989 § 18 and chap 581/1989 § 67 Subd. e par (7) added chap 580/1989 § 19 Subd. e par (7) subpars (e), (f), (g) amended chap 581/1989 § 68 Subd. f amended chap 580/1989 § 20

**DERIVATION**

Formerly § D49-71.0 added chap 422/1981 § 28

Amended chap 914/1982 § 34



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

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Title 13 Retirement and Pensions

CHAPTER 5 MISCELLANEOUS PENSION AND RETIREMENT PROVISIONS

SUBCHAPTER 6 SUPPLEMENTAL PENSIONS

ARTICLE 8 FUNDING OF CERTAIN SUPPLEMENTAL RETIREMENT ALLOWANCES

§ 13-696 Cost-of-living adjustment.

a. A cost-of-living adjustment shall be payable to retired members of the New York city employees' retirement system, the New York city teachers' retirement system, the New York city police pension fund, the New York city fire department pension fund, the New York city board of education retirement system or the relief and pension fund of the department of street cleaning provided for in subchapter one of this chapter on the basis provided for in this section to: (i) all retired members who have attained age sixty-two and have been retired for five years; (ii) all retired members who have attained age fifty-five and have been retired for ten years; (iii) all members who retired for disability regardless of age who have been retired for five years; and (iv) all recipients of an accidental death benefit regardless of age who have been receiving such benefit for five years.

b. Said cost-of-living adjustment shall be a percentage of the annual fixed retirement allowance otherwise payable, computed without optional modification, but including any benefit derived from subdivision f of this section and any prior year's cost-of-living adjustment derived from this section. Said percentage is set forth in subdivision d of this section.

c. Said cost-of-living adjustment shall be computed on a base benefit amount not to exceed eighteen thousand

dollars of the annual fixed retirement allowance defined in subdivision b of this section.

d. The percentage referred to in this section shall be determined annually by reference to the consumer price index (all urban consumers, CPI-U, U.S. city average, all items, 1982-84=100), published by the United States bureau of labor statistics, for each applicable calendar year. Said percentage shall equal fifty percent of the annual inflation, as determined from the increase in the consumer price index in the one year period ending on the March thirty-first prior to the cost-of-living adjustment effective on the ensuing September first. Said percentage shall then be rounded up to the next higher one-tenth of one percent and shall not exceed three percent nor be less than one percent.

e. Said cost-of-living adjustment shall be payable in monthly installments and shall take effect September first of each year commencing with a payment for the month of September, two thousand one, or, if later, as soon as practicable after the retired member first becomes eligible to receive the benefits provided pursuant to subdivision a of this section.

f. Commencing September first, two thousand, all retired members who have retired prior to the calendar year nineteen hundred ninety-seven and who meet the eligibility criteria set forth in subdivision a of this section shall be paid an adjusted benefit in monthly installments on the basis provided for in this subdivision. Said adjusted benefit shall be equal to a percentage of the change in consumer price index (all urban consumers, CPI-U, U.S. city average, all items, 1982-84=100), published by the United States bureau of labor statistics, measured from the year of retirement through calendar year nineteen hundred ninety-seven according to the following schedule:

| Year of retirement | Percentage |
|---|---|
| 1968 through 1996 | 50% |
| 1966 and 1967 | 55% |
| 1965 | 60% |
| 1964 | 65% |
| 1963 | 70% |
| 1962 | 80% |
| 1961 | 90% |
| prior to 1961 | 100% |

Said adjusted benefit shall be computed on a base benefit amount not to exceed eighteen thousand dollars of the annual fixed retirement allowance otherwise payable, computed without optional modification. Any benefit received pursuant to this subdivision shall be in lieu of any benefit received pursuant to chapter three hundred ninety of the laws of nineteen hundred ninety-eight, and any preceding provision of law providing for supplementation.

g. Notwithstanding any other provision of law, the surviving spouse of a deceased retired member of the New York city employees' retirement system, the New York city teachers' retirement system, the New York city police pension fund, the New York city fire department pension fund or the New York city board of education retirement system who retired under an option which provides that benefits are to be continued for life to the surviving spouse after the death of the member, shall be entitled to receive a benefit pursuant to this section. Said benefit shall be fifty percent of the monthly benefit which the pensioner would be receiving if living, and shall commence (i) with a payment for the month of September, two thousand, or (ii) the month following the death of the deceased retired member, whichever is later.

h. Notwithstanding any law to the contrary, said cost of living adjustment shall be in lieu of the supplemental

retirement allowance provided pursuant to sections 13-680 and 13-691 of this subchapter or section two hundred seven-i of the general municipal law or sections thirty and thirty-one of chapter six hundred fifty-eight of the laws of nineteen hundred eighty-four or section ten of chapter eight of the laws of nineteen hundred eighty-eight as amended by chapter five hundred eighty-one of the laws of nineteen hundred eighty-nine or section twelve of chapter one hundred nineteen of the laws of nineteen hundred ninety-five or sections four and eight of chapter three hundred ninety of the laws of nineteen hundred ninety-eight, unless such other supplemental retirement allowances payable to a pensioner are in excess of that provided by this section, in which latter case such other supplemental retirement allowances shall be paid and no supplemental retirement allowance shall be paid under this section, provided however, that in the case of benefits provided pursuant to article fourteen of the retirement and social security law, the cost of living adjustment provided herein shall be in lieu of the escalation provided by section five hundred ten of the retirement and social security law (other than the escalation provided for in subdivision e of such section), unless such escalation is in excess of the cost of living adjustment provided for in this section, in which latter case such escalation shall be paid and this section shall not apply.

i. Notwithstanding any other provision of law, and subject to the provisions of subdivisions j and k of this section, the cost-of-living adjustment payable by an actuarially funded retirement system pursuant to this section shall be funded by obligors responsible for supplementation (as defined in subdivision b of section 13-694 of this article) through the normal contribution, provided, however, that the additional employer costs attributable to the increase in benefits provided by this section shall be phased in over a period of five fiscal years; the actuary for each such retirement system, in calculating the normal contribution for each obligor in each of the following fiscal years, shall include in the calculation of the final amount of the normal contribution for each obligor the following percentage of the increase in the normal contribution for each such fiscal year that is attributable to the increase in benefits provided by this section: (a) twenty percent in fiscal year two thousand-two thousand one, (b) forty percent in fiscal year two thousand one-two thousand two, (c) sixty percent in fiscal year two thousand two-two thousand three, (d) eighty percent in fiscal year two thousand three-two thousand four, and (e) in fiscal year two thousand four-two thousand five and in each fiscal year thereafter, the full amount of the increase in the normal contribution that is attributable to the increase in benefits provided by this section shall be included in the calculation of the final amount of the normal contribution for each such obligor.

j. Notwithstanding the provisions of subdivision i of this section, or any other provision of law to the contrary, and subject to the provisions of subdivision k of this section, the method of funding the cost-of-living adjustment payable by an actuarially funded retirement system pursuant to this section set forth in subdivision i of this section shall be modified retroactively in accordance with the provisions of this subdivision, commencing with fiscal year two thousand-two thousand one. Such cost-of-living adjustment payable by an actuarially funded retirement system shall be funded by obligors responsible for supplementation (as defined in subdivision b of section 13-694 of this article) through the normal contribution, provided, however, that the additional actuarial present value of benefits provided by this section, as determined by the actuary, shall be phased in over a period of ten fiscal years in accordance with the following percentages:

| Fiscal Year | Percentage |
|---|---|
| 2000-2001 | 10% |
| 2001-2002 | 20% |
| 2002-2003 | 30% |
| 2003-2004 | 40% |
| 2004-2005 | 50% |
| 2005-2006 | 60% |

2006-2007 70%

2007-2008 80%

2008-2009 90%

In fiscal year two thousand nine-two thousand ten and in each fiscal year thereafter, the actuary for each such retirement system shall include in the calculation of the final amount of the normal contribution the full amount of the increase in the actuarial present value of benefits, as determined by the actuary, that is attributable to the increase in benefits provided by this section, provided further that the amount of the normal contribution that would otherwise be payable for fiscal year two thousand two-two thousand three shall be reduced by an amount equal to the difference between (a) the total amount of the increase in the normal contribution for fiscal years two thousand-two thousand one and two thousand one-two thousand two, which was attributable to the increase in benefits provided by this section, as calculated by the actuary in accordance with the provisions of subdivision i of this section, and which was paid for such fiscal years, and (b) the total amount of the increase in the normal contribution for fiscal years two thousand-two thousand one and two thousand one-two thousand two, which was attributable to the increase in benefits provided by this section, as calculated by the actuary in accordance with the provisions of this subdivision, and which would have been paid for such fiscal years if the act which added this subdivision had been in effect at the time such normal contribution was made for such fiscal years. In no event, however, shall the normal contribution be less than that amount necessary, as determined by the actuary, to provide for the funding requirements of the group life insurance fund.

k. (1) Notwithstanding the provisions of subdivision i or j of this section, or any other provision of law to the contrary, the cost-of-living adjustment payable by an actuarially funded retirement system pursuant to this section shall be funded in accordance with the provisions of subdivision j of this section through and including fiscal year two thousand four-two thousand five.

(2) Notwithstanding the provisions of subdivision i or j of this section, or any other provision of law to the contrary, commencing in fiscal year two thousand five-two thousand six, and in each fiscal year thereafter, the cost-of-living adjustment payable by an actuarially funded retirement system pursuant to this section shall be funded by obligors responsible for supplementation (as defined in subdivision b of § 13-694 of this article) through the normal contribution, and the actuary for each such retirement system shall include in the calculation of the final amount of the normal contribution for each such fiscal year the full amount of the increase in the actuarial present value of benefits, as determined by the actuary, that is attributable to the increase in benefits provided by this section.

**HISTORICAL NOTE**

Section added chap 125/2000 § 4, eff. July 11, 2000.

Subd. a amended chap 288/2001 § 1, eff. Sept. 5, 2001 and deemed

in force and effect on and after July 11, 2000.

Subd. i amended chap 152/2006 § 16, eff. July 7, 2006 and deemed

to have been in full force and effect on and after July 1, 2005. [See

§ 13-103 Note 1]

Subd. i amended chap 278/2002 § 1, eff. July 30, 2002 and deemed to

have been in full force and effect on and after July 11, 2000.

Subd. j amended chap 152/2006 § 16, eff. July 7, 2006 and deemed to have been in full force and effect on and after July 1, 2005. [See § 13-103 Note 1]

Subd. j added chap 278/2002 § 2, eff. July 30, 2002 and deemed to have been in full force and effect on and after July 11, 2000.

Subd. k added chap 152/2006 § 17, eff. July 7, 2006 and deemed to have been in full force and effect on and after July 1, 2005. [See § 13-103 Note 1]

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*NYC Administrative Code 13-701*

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Title 13 Retirement and Pensions

CHAPTER 6 INVESTMENT BY PENSION FUNDS OR RETIREMENT SYSTEMS

§ 13-701 Investments by pension funds or retirement systems maintained, administered or supported by the city or an agency, in notes or bonds secured by certain purchase money mortgages.

a. The trustee or trustees of a pension fund or retirement system maintained, administered or supported by the city or an agency or by city funds may invest the funds of such pension fund or retirement system in any notes or bonds secured by purchase money mortgages accepted by the city at the time of the sale of real property acquired by virtue of tax enforcement foreclosure proceedings or by deed in lieu thereof, and any other notes or bonds secured by purchase money mortgages accepted by the city, provided however, no such other note or bond may be purchased by said trustee or trustees at a price in excess of two-thirds of the selling price of the real property secured by such purchase money mortgage at the time of its execution in connection with a sale resulting from a public auction of such real property, without regard to any limitations or restrictions contained in this code or in the provisions of article four-a of the retirement and social security law or section two hundred thirty-five of the banking law or any other law and in addition to the powers conferred by any such law. The aggregate unpaid principal amount of bonds and notes secured by such mortgages held at any time in such a fund or system shall not exceed two per centum of the assets of such fund or system. Any assignment of such a note or bond and mortgage to a pension fund or retirement system pursuant to this section shall contain a provision that if property which is collateral security for such bond or note and mortgage shall be acquired by the City of New York as a result of a foreclosure in rem proceeding and/or if a deficiency judgment is obtained by such fund or system by reason of a default under the terms of the note or bond and mortgage, the city will reimburse such fund or system by payment to said pension fund or retirement system of the amounts due under such note or bond and mortgage, including principal, interest, and any costs and expenses involved in obtaining such deficiency judgment by appropriation in the annual expense budget, provided that (1) the trustee or trustees of such pension fund or retirement system shall certify and include the amounts due, including principal, interest, and any costs

and expenses, in the annual estimate of the requirements of such fund or system submitted to the director of the budget pursuant to charter section one hundred fourteen; and (2) upon the effective date of the budget containing the appropriation for such amounts due as specified herein, the trustee or trustees of such fund or system shall assign any deficiency judgment thus obtained to the city.

b. Nothing contained in this section shall be construed to affect any lawful investment made prior to the effective date of this section by the trustee or trustees of any such fund or system, and any such investment may be retained or disposed of by such trustee or trustees in accordance with any other provision of law.

c. Notwithstanding any other provision in this section, or any other law, a pension fund or retirement system in connection with any note or bond and mortgage heretofore or hereafter acquired by it pursuant to this section may, where there has occurred or shall occur a default under the terms of any such note or bond and mortgage, for a period of one year, tender an assignment of such note or bond or mortgage to the city of New York. The city shall accept the same and pay said pension fund or retirement system the amounts due under such note or bond and mortgage including principal, interest and any costs involved in effectuating such assignment. A bond or note and mortgage assigned by the city of New York to a pension fund or retirement system shall be subject to the provisions of this subdivision c and in the future any such assignment shall contain a clause to such effect. The provisions of this section shall only relate to and be binding between the city of New York and the said pension fund or retirement system and shall not inure to the benefit of any other person, party or entity.

d. In addition to the provisions and remedies set forth in subdivisions a, b and c of this section, a pension fund or retirement system may tender to the city of New York a deed of title to property to which it had acquired title and which had been subject to a vote or bond and mortgage which had been assigned to it pursuant to the aforesaid subdivisions. The said city shall accept the deed and pay to the pension fund or retirement system as consideration therefor, the principal that was due under such note or bond and mortgage with interest thereon from the due date of the principal to the date of delivery of the deed to the city, together with any costs and expenditures incurred by the said pension fund or retirement system in acquiring the title and conveying it to said city.

e. The intent of this section is to reimburse and make whole the pension funds or retirement systems against any loss incurred by reason of the investments in the purchase money mortgages as described in this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § E49-1.0 added chap 649/1962 § 1

Renumbered chap 100/1963 § 663

(formerly § E40-1.0)

Amended chap 905/1965 § 1

Amended chap 1000/1971 § 1

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*NYC Administrative Code 13-702*

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Title 13 Retirement and Pensions

CHAPTER 6 INVESTMENT BY PENSION FUNDS OR RETIREMENT SYSTEMS

§ 13-702 Delegation of investing powers to comptroller.

a. Notwithstanding any provisions of the code or any other law to the contrary, the trustee, trustees, or other officer, board or body having the power to invest the funds of a pension fund or retirement system maintained, administered, or supported by the city or an agency, or by city funds may delegate such power either in its entirety or with any limitations including limitations with respect to the type and amount of investments, to the comptroller. Such delegation shall be in writing, and shall be filed in the office of such trustee, trustees, officer, board or body making such delegation, and in the office of the comptroller. Every such delegation shall be effective for a period specified therein, not to exceed one year, and shall automatically terminate and expire at the end of such specific period. Renewals or new delegations may be granted for additional periods in the same manner as herein provided for original delegations, but each such renewal or new delegation shall be effective for a specified period, not to exceed one year. Upon the filing of such delegation or renewal thereof as herein prescribed the comptroller shall, subject to the terms of such delegation, have the power:

1. To make any investment which the trustee, trustees, officer, board or body delegating such power is or are authorized by law to make;

2. To hold, sell, assign, transfer or dispose of any of the properties, securities or investments in which any of the funds of said fund or system shall have been invested, including the proceeds of such investments and any moneys belonging to such funds, subject to the terms, conditions, limitations and restrictions imposed by law upon such trustee, trustees, officer, board or body delegating such power; and

3. In his or her name as agent of such trustee, trustees, officer, board or body making such delegation and of

such fund or system, to foreclose mortgages upon default or to take title to real property in such proceedings in lieu thereof or to lease and sell such property so acquired.

b. The comptroller shall exercise any power delegated pursuant to this section until the expiration date specified in such delegation or any renewal thereof unless the trustee, trustees, officer, board, or body making such delegation shall sooner elect to reassume such power by filing a written revocation of the delegation in the office of such trustee, trustees, officer, board or body and in the office of the comptroller.

c. Notwithstanding any other provision of this section, the termination, expiration or revocation of any delegation of power or renewal thereof, as herein provided, shall not affect any binding commitment previously made by the comptroller pursuant to such delegation and the comptroller shall have the power to fully discharge any such binding commitment according to its terms.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § E49-2.0 added chap 585/1963 § 1

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*NYC Administrative Code 13-703*

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Title 13 Retirement and Pensions

CHAPTER 6 INVESTMENT BY PENSION FUNDS OR RETIREMENT SYSTEMS

§ 13-703 Investments in railroad, industrial, electric and gas, telephone and waterworks obligations.

Notwithstanding the provisions of the code or any other law to the contrary, the trustee, trustees or other officer, board or body having the power to invest the funds of a pension fund or retirement system maintained, administered, or supported by the city or an agency, or by city funds, may, in addition, invest in obligations consisting of notes, bonds, debentures or equipment trust certificates issued under an indenture which are the direct obligations of, or in the case of equipment trust certificates, are secured by the direct obligations of, a railroad or industrial corporation, or a corporation engaged directly and primarily in the production, transportation, distribution or sale of electricity or gas, or the operation of telephone or telegraph systems or waterworks, or in some combination of them; provided the obligor corporation is one which is incorporated under the laws of the United States, or any state thereof, of the District of Columbia, and said obligations shall be rated at the time of purchase within the three highest classifications established by at least two standard rating services. The maximum amount that they may invest in such obligations pursuant to this subdivision shall not exceed ten per centum of the assets of a fund; and provided further that of said ten per centum not more than two per centum of the assets of a fund shall be invested in the obligations of any one corporation of the highest classification and subsidiary or subsidiaries thereof, that not more than one and one-half per centum of the assets of a fund shall be invested in the obligations of any one corporation of the second highest classification and subsidiary or subsidiaries thereof, that not more than one per centum of the assets of a fund shall be invested in the obligations of any one corporation of the third highest classification and subsidiary or subsidiaries thereof.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § E49-3.0 added chap 961/1965 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 13-704*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 6 INVESTMENT BY PENSION FUNDS OR RETIREMENT SYSTEMS

§ 13-704 Graduated crediting of gains and amortization of losses on dispositions of securities by certain retirement systems.

a. As used in this section, the following terms shall mean and include:

1. "Retirement system". Any of the following: the New York city employees' retirement system; the teachers' retirement system; the police pension fund provided for by subchapter two of chapter two of this title; the fire department pension fund provided for by subchapter two of chapter three of this title; and the board of education retirement system of the city.

2. "Teachers' retirement system". The retirement system of the teachers' retirement association provided for by chapter four of this title.

3. "Contingent reserve fund". The contingent reserve fund of a retirement system; provided, however, that such term, where used in relation to public employer contributions payable to the fire department pension fund subchapter two during any period preceding the starting date of the improved benefits plan, as defined in subdivision twenty-seven of section 13-313 of this title, shall mean the retirement allowance accumulation fund provided for by section 13-325 of this title, as in effect before such starting date.

4. "Responsible public employer". The city and in any case where the state or any public authority, corporation, body corporate or entity is required by any provision of this title or any other law to make contributions to a retirement system on behalf of any members thereof, such term, as applicable to such retirement system, shall mean, collectively, the city, the state and each such authority, corporation, body corporate and entity; subject, however, to the mutual rights,

obligations and responsibilities in relation to such retirement system, as prescribed by law, of the city, the state and such authority, corporation, body corporate or entity.

5. "Retirement system act". (a) In the case of the New York city employees' retirement system, such term shall mean chapter one of this title.

(b) In the case of the teachers' retirement system, such term shall mean chapter four of this title.

(c) In the case of the police pension fund, article two, such term shall mean subchapter two of chapter two of this title.

(d) In the case of the fire department pension fund subchapter two, such term shall mean subchapter two of chapter three of this title.

(e) In the case of the board of education retirement system, such term shall mean the rules and regulations of such retirement system and subdivisions sixteen, seventeen and eighteen of section twenty-five hundred seventy-five of the education law.

6. "Securities". Bonds, obligations, and mortgages which constitute lawful investments for a retirement system.

7. "Sell". To carry out a transaction whereby a retirement system transfers title to any securities which it holds, or exchanges or otherwise disposes of any such securities.

8. "Sale". The carrying out of any transaction described in paragraph seven of this subdivision a.

b. (1) Notwithstanding any other provision of law to the contrary, the provisions of paragraph two of this subdivision shall apply in any case where, on or after May twentieth, nineteen hundred seventy and prior to July first, nineteen hundred eighty-eight:

(i) a retirement system sells securities in which any of its funds are invested; and

(ii) realizes a gain or sustains a loss with respect to such sale; and

(iii) under the retirement system act governing such retirement system, the responsible public employer is entitled to credit for any such gain in the determination of its required contributions to such retirement system, or is required to reimburse such retirement system for any such loss.

(2) Such gain or loss shall be treated in the manner prescribed by the applicable provisions of subdivisions c, d, e, f and g of this section.

c. (1) If any such sale occurring in the city's nineteen hundred sixty-nine-nineteen hundred seventy fiscal year or in any subsequent fiscal year up to and including the nineteen hundred seventy-nine-nineteen hundred eighty fiscal year results in a gain, the amount of such gain shall be credited in favor of the responsible public employer with respect to such retirement system, pursuant to the applicable provisions of paragraphs two to eight inclusive, of this subdivision c, in relation to the required contributions of such responsible public employer to such retirement system.

(2) If any such gain referred to in paragraph two of this subdivision c was realized in the city's nineteen hundred sixty-nine-nineteen hundred seventy fiscal year or in any subsequent city fiscal year up to and including the nineteen hundred seventy-eight-nineteen hundred seventy-nine fiscal year, there shall be computed twenty equal annual installments of credit, the aggregate of which, if one of such installments were credited in favor of such responsible public employer in each of the twenty city fiscal years commencing with the second fiscal year succeeding the fiscal year in which such gain was realized, would be the actuarial equivalent of the amount of such gain. For the purpose of making such computation with respect to any such gains realized prior to July first, nineteen hundred seventy-five, an

interest rate of four per centum per annum shall be used and for the purpose of making such computation with respect to any such gains realized during the period beginning on July first, nineteen hundred seventy-five and ending on June thirtieth, nineteen hundred seventy-nine, an interest rate of five and one-half per centum per annum shall be used.

(3) In the case of any such gain referred to in paragraph one of this subdivision c which was realized in any city fiscal year occurring during the period beginning on July first, nineteen hundred sixty-nine and ending on June thirtieth, nineteen hundred seventy-eight, the first of such installments shall be credited in favor of such responsible public employer in the second city fiscal year succeeding that in which such gain was realized and one such installment shall be so credited in each succeeding fiscal year to and including the nineteen hundred seventy-nine-nineteen hundred eighty fiscal year. Such crediting in any such fiscal year shall be effected with respect to any such retirement system in the manner prescribed by the provisions of this section and of the retirement system act governing such retirement system, as such provisions were in effect during such fiscal year.

(4) With respect to each gain to which paragraph two of this subdivision c applies, there shall be computed the present value, as of June thirtieth, nineteen hundred eighty, of the annual installments of credit thereon remaining uncredited as of such June thirtieth. For the purpose of making such calculation, an interest rate of five and one-half per centum shall be used.

(5) With respect to each present value computed pursuant to paragraph four of this subdivision c, there shall be computed a number of equal annual installments of credit in favor of the responsible public employer, which number shall equal one less than the number of such uncredited installments referred to in such paragraph four, and the aggregate of which computed installments, on the basis of crediting the first of such installments to such responsible public employer in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year and one of such installments in each subsequent fiscal year until all of such installments are so credited, shall be the actuarial equivalent of such present value referred to in such paragraph four. For the purpose of making such computation, an interest rate of seven and one-half per centum per annum shall be used.

(6) (a) One of such installments computed pursuant to paragraph five of this subdivision c shall be credited in favor of such responsible public employer in each of the city's nineteen hundred eighty-nineteen hundred eighty-one and nineteen hundred eighty-one-nineteen hundred eighty-two fiscal years.

(b) (i) In each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, there shall be credited in favor of such responsible public employer an installment computed in accordance with items (ii) and (iii) of this subparagraph (b).

(ii) With respect to each present value computed pursuant to paragraph four of this subdivision c, there shall be computed as of June thirtieth, nineteen hundred eighty-two, using an interest rate of seven and one-half per centum per annum, the present value of the annual installments of credit in favor of the responsible public employer determined in accordance with paragraph five of this subdivision c and allocated to fiscal years subsequent to June thirtieth, nineteen hundred eighty-two.

(iii) The annual installments to be credited, for each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, in respect of each present value computed in accordance with item (ii) of this subparagraph (b) shall be an amount which, when credited in equal annual installments commencing with the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year and continuing for the number of fiscal years equal to the number of installments used in computing such present value, would be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-two on the basis of eight per centum interest per annum, of an amount equal to such present value.

(iv) (A) As used in this item (iv), the term "remaining uncredited installments as of July first, nineteen hundred eighty-eight" shall mean, in relation to any gain referred to in paragraph two of this subdivision c, the number of

installments, if any, obtained by subtracting eight installments from the number of installments computed pursuant to paragraph five of this subdivision c in relation to such gain.

(B) There shall be computed, as of June thirtieth, nineteen hundred eighty-eight, using an interest rate of eight per centum per annum, the present value of the remaining uncredited installments as of July first, nineteen hundred eighty-eight, if any, with respect to any such gain referred to in paragraph two of this subdivision.

(C) The annual installments to be credited with respect to such gain in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending with the last day of a number of fiscal years equal to the number of remaining uncredited installments as of July first, nineteen hundred eighty-eight with respect to such gain, shall be an amount which, when credited in equal annual installments, commencing with the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year and continuing during each fiscal year of the period above mentioned in this sub-item (C), shall be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight and one-quarter per centum interest per annum, of such present value computed pursuant to sub-item (B) of this item (iv).

(7) (a) If any such gain referred to in paragraph one of this subdivision c was realized in the city's nineteen hundred seventy-nine-nineteen hundred eighty fiscal year, the amount of such gain shall, beginning with the nineteen hundred eighty-nineteen hundred eighty-one fiscal year, be credited in favor of such responsible public employer in twenty successive equal annual installments determined in the manner provided for by subparagraphs (b), (c) and (d) of this paragraph seven.

(b) The first and second annual installments referred to in subparagraph (a) of this paragraph seven shall be determined so that if they were the first and second of twenty equal annual installments of the amount of such gain, the present value of such twenty equal annual installments, computed at an interest rate of seven and one-half per centum per annum, would be equal to the amount of such gain.

(c) The next six annual installments required to be credited under the provisions of subparagraph (a) of this paragraph seven shall be determined so as to be equal and so that the present value of such six equal annual installments, computed as of June thirtieth, nineteen hundred eighty-two at an interest rate of eight per centum per annum as if they were part of a remainder of eighteen equal annual installments so computed, shall be equal to the present value, computed as of such June thirtieth at an interest rate of seven and one-half per centum per annum, of the corresponding next six of the twenty equal annual installments computed pursuant to the provisions of subparagraph (b) of this paragraph seven.

(d) The remaining twelve annual annual installments required to be credited under the provisions of subparagraph (a) of this paragraph seven shall be determined so as to be equal and so that the present value of such twelve equal annual installments, computed as of June thirtieth, nineteen hundred eighty-eight at an interest rate of eight and one-quarter per centum per annum, shall be equal to the present value, computed as of such June thirtieth at an interest rate of eight per centum per annum, of such last twelve equal annual installments.

d. (1) If any such sale occurring in the city's nineteen hundred sixty-nine-nineteen hundred seventy fiscal year or in any subsequent fiscal year up to and including the nineteen hundred seventy-nine-nineteen hundred eighty fiscal year results in a loss, the responsible public employer with respect to such retirement system shall make payments to the contingent reserve fund of such retirement system on account of such loss in the manner prescribed by paragraphs two to seven, inclusive, of this subdivision d.

(2) If any such loss referred to in paragraph one of this subdivision d was sustained in the city's nineteen hundred sixty-nine-nineteen hundred seventy fiscal year or in any subsequent city fiscal year up to and including the nineteen hundred seventy-eight-nineteen hundred seventy-nine fiscal year, there shall be computed twenty equal annual installments of payment on account of such loss, the aggregate of which installments, if one of such installments were

paid by such responsible public employer to the contingent reserve fund in each of the twenty city fiscal years commencing with the second fiscal year succeeding the fiscal year in which such loss occurred, would be the actuarial equivalent of the amount of such loss. For the purpose of making such computation with respect to losses which occurred prior to July first, nineteen hundred seventy-five, an interest rate of four per centum per annum shall be used and for the purpose of making such computation with respect to losses which occurred during the period beginning on July first, nineteen hundred seventy-five and ending on June thirtieth, nineteen hundred seventy-nine, an interest rate of five and one-half per centum per annum shall be used.

(3) In the case of any such loss referred to in paragraph one of this subdivision d which was sustained in any city fiscal year occurring during the period beginning on July first, nineteen hundred sixty-nine and ending on June thirtieth, nineteen hundred seventy-eight, one of such installments shall be paid by such responsible public employer to the contingent reserve fund of such retirement system in the second city fiscal year succeeding that in which such loss was sustained and one such installment shall be so paid by such responsible public employer in each succeeding fiscal year to and including the nineteen hundred seventy-nine-nineteen hundred eighty fiscal year.

(4) With respect to each loss to which paragraph two of this subdivision d applies, there shall be computed the present value, as of June thirtieth, nineteen hundred eighty, of the annual installments of such loss remaining unpaid by such responsible public employer as of such June thirtieth. For the purpose of making such calculation, an interest rate of five and one-half per centum per annum shall be used.

(5) With respect to each present value computed pursuant to paragraph four of this subdivision d, there shall be computed a number of equal annual installments of loss to be paid by such responsible public employer to the contingent reserve fund, which number shall equal one less than the number of the unpaid installments of such loss to which such present value relates, and the aggregate of which computed installments, on the basis of payment of the first of such installments by such responsible public employer in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year and one of such installments in each subsequent fiscal year until all of such installments are paid, shall be the actuarial equivalent of such present value. For the purpose of making such computation, an interest rate of seven and one-half per centum per annum shall be used.

(6) (a) Such responsible public employer shall pay one of such installments computed pursuant to paragraph five of this subdivision d to the contingent reserve fund of such retirement system in each of the city's nineteen hundred eighty-nineteen hundred eighty-one and nineteen hundred eighty-one-nineteen hundred eighty-two fiscal years.

(b) (i) Such responsible public employer, in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, shall pay an installment computed in accordance with items (ii) and (iii) of this subparagraph (b).

(ii) With respect to each present value computed pursuant to paragraph four of this subdivision d, there shall be computed as of June thirtieth, nineteen hundred eighty-two, using an interest rate of seven and one-half per centum per annum, the present value of the annual installments of loss determined in accordance with paragraph five of this subdivision d and allocated to fiscal years subsequent to June thirtieth, nineteen hundred eighty-two.

(iii) The annual installments of loss required to be paid by such responsible public employer, for each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-two and ending on June thirtieth, nineteen hundred eighty-eight, in respect of each present value computed in accordance with item (ii) of this subparagraph (b) shall be the applicable installments of an amount which, if paid in equal annual installments commencing with the city's nineteen hundred eighty-two-nineteen hundred eighty-three fiscal year and continuing for the number of fiscal years equal to the number of installments used in computing such present value, would be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-two on the basis of eight per centum interest per annum, of an amount equal to such present value.

(iv) (A) As used in this item (iv), the term "remaining unpaid installments as of July first, nineteen hundred eighty-eight" shall mean, in relation to any loss referred to in paragraph two of this subdivision d, the number of installments, if any, obtained by subtracting eight installments from the number of installments computed pursuant to paragraph five of this subdivision d in relation to such loss.

(B) There shall be computed, as of June thirtieth, nineteen hundred eighty-eight, using an interest rate of eight per centum per annum, the present value of the remaining unpaid installments as of July first, nineteen hundred eighty-eight, if any, with respect to any such loss referred to in paragraph two of this subdivision.

(C) The annual installments to be paid with respect to such loss in each city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-eight and ending with the last day of a number of fiscal years equal to the number of remaining unpaid installments as of July first, nineteen hundred eighty-eight with respect to such loss, shall be an amount which, when paid in equal annual installments, commencing with the city's nineteen hundred eighty-eight-nineteen hundred eighty-nine fiscal year and continuing during each fiscal year of the period above mentioned in this sub-item (C), shall be the actuarial equivalent, as of June thirtieth, nineteen hundred eighty-eight on the basis of eight and one-quarter per centum interest per annum, of such present value computed pursuant to sub-item (B) of this item (iv).

(7) (a) If any such loss referred to in paragraph one of this subdivision was sustained in the city's nineteen hundred seventy-nine-nineteen hundred eighty fiscal year, such responsible public employer shall, beginning with the nineteen hundred eighty-nineteen hundred eighty-one fiscal year, pay to the contingent reserve fund of such retirement system on account of such loss, twenty successive equal annual installments in amounts determined in the manner provided for in subparagraphs (b), (c) and (d) of this paragraph seven.

(b) The first and second annual installments referred to in subparagraph (a) of this paragraph seven shall be determined so that if they were the first and second of twenty equal annual installments of the amount of such loss, the present value of such twenty equal annual installments, computed at an interest rate of seven and one-half per centum per annum, would be equal to the amount of such loss.

(c) The next six annual installments required to be paid under the provisions of subparagraph (a) of this paragraph seven shall be determined so as to be equal and so that the present value of such six equal annual installments, computed as of June thirtieth, nineteen hundred eighty-two at an interest rate of eight per centum per annum as if they were a part of a remainder of eighteen equal annual installments so computed, shall be equal to the present value, computed as of June thirtieth at an interest rate of seven and one-half per centum per annum, of the corresponding next six of the twenty equal annual installments computed pursuant to the provisions of subparagraph (b) of this paragraph seven.

(d) The remaining twelve annual installments required to be paid under the provisions of subparagraph (a) of this paragraph seven shall be determined so as to be equal and so that the present value of such twelve equal annual installments, computed as of June thirtieth, nineteen hundred eighty-eight at an interest rate of eight and one-quarter per centum per annum, shall be equal to the present value, computed as of such June thirtieth at an interest rate of eight per centum per annum, of such last twelve equal annual installments.

e. (1) In the case of sales occurring in the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year or in any subsequent fiscal year ending before July first, nineteen hundred eighty-eight, the retirement system making such sales shall, with respect to any such fiscal year above specified in this paragraph, provide credit for realized gains and amortization of realized losses for each responsible public employer pursuant to the applicable provisions of paragraphs two and three of this subdivision e.

(2) For each fiscal year to which paragraph one of this subdivision e applies, there shall be calculated for each retirement system the net amount of aggregate gains and aggregate losses produced by sales in such fiscal year and such

net amount shall be transferred to a special account in the retirement system to be known as the "deferred charge on account of security sales". Such net amount for each such fiscal year shall be amortized within such account, commencing with such fiscal year, over the average maturity, rounded to the nearest year, of all securities (excluding securities maturing in less than one year) acquired in such fiscal year or sold in such fiscal year by the retirement systems, whichever is less.

(3) The amount to be amortized in each fiscal year over the period of average maturity referred to in paragraph two of this subdivision e shall be computed on a scientific basis, (a) using a reinvestment rate of seven and one-half per centum per annum with respect to any such net amount computed for the city's nineteen hundred eighty-nineteen hundred eighty-one fiscal year, and (b) using a reinvestment rate of eight per centum per annum with respect to any such net amount computed for any city fiscal year occurring during the period beginning on July first, nineteen hundred eighty-one and ending on June thirtieth, nineteen hundred eighty-four and (c) in the case of any such net amount computed for any city fiscal year occurring thereafter, using a reinvestment rate equivalent to that prescribed by the legislature as the rate to be used for the purpose of any actuarial valuation, determination or appraisal made in determining the employer contributions to be paid by responsible public employers to the contingent reserve fund of such retirement system in the city fiscal year next succeeding that for which such net amount was computed.

(4) Any account constituting a deferred charge on account of security sales (whether a positive or negative quantity) which, in the absence of the enactment of a chapter of the laws of nineteen hundred eighty-nine which added this paragraph, would exist with respect to any retirement system as of July first, nineteen hundred eighty-eight, shall be cancelled and terminated as of such July first, and shall not be applied in the determination of the normal contribution or any other contribution payable by any responsible public employer to such retirement system with respect to any fiscal year beginning on or after such July first.

e-1. (1) In the case of sales by any retirement system occurring in any fiscal year of the city beginning on or after July first, nineteen hundred eighty-eight:

(i) any gain resulting from any such sale shall not be directly and separately credited against contributions otherwise required to be made by the responsible public employer or employers to such retirement system; and

(ii) any loss resulting from any such sale shall not be directly and separately charged as additional contributions payable to such retirement system by the responsible public employer or employers; and

(iii) the effects of such gains or losses shall be actuarially reflected in the valuations made for the purpose of determining contributions payable to such retirement system.

(2) In relation to determination of the normal contribution for any fiscal year beginning on or after July first, nineteen hundred eighty-eight, the provisions of sub-item (C) of item (i) of subparagraph (b) of paragraph two of subdivision b of section 13-127 of the code, and sub-item (D) of item (i) of subparagraph (i) of paragraph two of subdivision b of section 13-228 of the code, and sub-item (E) of item (i) of subparagraph (b) of paragraph two of subdivision b of section 13-331 of the code, and item (iii) of subparagraph (a) of paragraph two of subdivision b of section 13-527 of the code, or paragraph three of sub-item (A) of item (ii) of subparagraph four of paragraph (c) of subdivision sixteen of section twenty-five hundred seventy-five of the education law (relating to the actuarial treatment of certain losses on sales of fixed-income securities in the determination of the normal contribution) shall not be deemed to refer to or include any gains or losses on any such sales occurring in any fiscal year of the city beginning on or after July first, nineteen hundred eighty-eight.

f. The provisions of section one hundred seventy-seven-b of the retirement and social security law shall be inapplicable to any sale described in subdivisions b and e-1 of this section.

g. Nothing contained in this section shall be construed as applicable to any sale of securities constituting an investment made with funds which are a part of a variable annuity program in the teachers' retirement system or the

board of education retirement system of the city.

h. (1) For the purpose of determining the balance sheet liability of any retirement system as of June thirtieth, nineteen hundred eighty pursuant to the provisions of the retirement system act of such retirement system governing such determination, the "annual contribution, for balance sheet liability purposes, on account of amortization of losses on dispositions of certain securities within the meaning of this section", as referred to in such provisions, shall be a hypothetical amount computed pursuant to the provisions of paragraphs two to four, inclusive, of this subdivision g.

(2) With respect to each city fiscal year (the "subject fiscal year") occurring during the period beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred eighty, there shall be determined the amount by which:

(i) The total of the annual installments of losses which, under the provisions of this section as in effect prior to July first, nineteen hundred eighty, was or would have been payable by the responsible public employer in the second city fiscal year succeeding the subject fiscal year, exceeds

(ii) The total of the installments of gain required by such provisions of this section as they are in effect to be credited to the responsible public employer in such second fiscal year.

(3) (i) There shall be computed the discounted value of the amount of such excess as of January first of the subject fiscal year, such discounting being calculated on the basis of the applicable interest rate prescribed in subparagraph (ii) of this paragraph three and a discount period of two years extending retroactively from December thirty-first of such second fiscal year succeeding the subject fiscal year to January first of the subject fiscal year.

(ii) With respect to the nineteen hundred seventy-four-nineteen hundred seventy-five subject fiscal year, the rate of interest to be used in calculating such discounted value shall be five and one-half per centum per annum for the period beginning on July first, nineteen hundred seventy-five and ending on December thirty-first, nineteen hundred seventy-six and four per centum per annum for the period beginning on January first, nineteen hundred seventy-five and ending on June thirtieth, nineteen hundred seventy-five. With respect to each subject fiscal year occurring during the period beginning on July first, nineteen hundred seventy-five and ending on June thirtieth, nineteen hundred eighty, the rate of interest used in calculating such discounted value shall be five and one-half per centum per annum.

(4) The amount of such discounted value, as so computed with respect to each subject fiscal year, shall be the annual contribution, for balance sheet liability purposes, on account of amortization of losses on dispositions of certain securities within the meaning of this section, which annual contribution is deemed to have been hypothetically payable in such subject fiscal year.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par 1 separately amended chap 580/1989 § 21 and chap 581/1989 § 70

par 5 subpar (e) separately added chap 580/1989 § 22 and chap

581/1989 § 71

Subd. b amended chap 580/1989 § 23

Subd. c pars (6), (7) amended chap 581/1989 § 72

Subd. d pars (6), (7) amended chap 581/1989 § 73

Subd. e par (1) amended chap 580/1989 § 24 par (3) amended chap 581/1989 § 74 par (4) added chap 580/1989 § 25

Subd. e-1 added chap 580/1989 § 26.

Subd. f. amended chap 580/1989 § 37

Subd. g separately amended chap 580/1989 § 37 and chap 581/1989 § 75

**DERIVATION**

Formerly § E49-4.0 added chap 1043/1970 § 1

Sub a pars 6, 7 amended chap 906/1971 § 1

Amended chap 385/1981 § 49

Amended chap 957/1981 § 65

(Note chap 957/1981 § 65 repealed chap 447/1982 § 1)

Sub b amended chap 447/1982 § 2

Sub c par 1 amended chap 447/1982 § 3

Sub c par 7 amended chap 447/1982 § 4

Sub d par 1 amended chap 447/1982 § 5

Sub d par 7 amended chap 447/1982 § 6

Subs f, g, h relettered chap 447/1982 § 7

(formerly subs e, f, g)

Sub e added chap 447/1982 § 7

Sub c par 6 amended chap 914/1982 § 29

Sub d par 6 amended chap 914/1982 § 30

Sub c par 7 amended chap 914/1982 § 31

Sub d par 7 amended chap 914/1982 § 32

Sub e pars 2, 3 amended chap 914/1982 § 33

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Administrative Code of the City of New York



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

*NYC Administrative Code 13-705*

Administrative Code of the City of New York

Title 13 Retirement and Pensions

CHAPTER 6 INVESTMENT BY PENSION FUNDS OR RETIREMENT SYSTEMS

§ 13-705 Acquisition, management and protection of investments of retirement system funds.

a. As used in this section, the term "retirement system" shall mean any of the following: the New York city employees' retirement system, the New York city teachers' retirement system, the New York city board of education retirement system, the police pension fund maintained pursuant to subchapter two of chapter two of this title and the fire department pension fund maintained pursuant to subchapter two of chapter three of this title.

b. Notwithstanding any other provision of law to the contrary, such expenses as may necessarily be incurred by a retirement system in acquiring, managing and protecting investments of its funds may be paid from any income, interest or dividends derived from deposits or investments of such funds.

c. (1) The provisions of this section shall not be applicable:

(i) to the acquisition, management or protection of investments of variable annuity funds of the New York city teachers' retirement system or of variable annuity funds of any other retirement system which may at any time have a variable annuity program; or

(ii) to contracts for services in relation to the acquisition, management or protection of investments of any variable annuity funds referred to in subparagraph (ii) of this paragraph one.

(2) Nothing contained in this section shall be construed as amending, modifying or affecting section 13-570 of this title.

d. In each city fiscal year, beginning with investment expenses paid during the nineteen hundred ninety-eight-nineteen hundred ninety-nine fiscal year, whenever the income, interest or dividends derived from deposits or investments of the funds of a retirement system are used pursuant to subdivision b of this section to pay the expenses incurred by such retirement system in acquiring, managing or protecting investments of its funds, the monies so paid shall be made a charge to be paid by each participating employer otherwise required to make contributions to such retirement system no later than the end of the fiscal year next succeeding the fiscal year during which such monies were drawn upon, provided, however, that where such charge is for such investment expenses paid during fiscal year two thousand four-two thousand five or during any subsequent fiscal year, such charge shall be paid by each such participating employer no later than the end of the second fiscal year succeeding the fiscal year during which such monies were drawn upon. In the event that such retirement system has more than one participating employer, the actuary shall calculate and allocate to each such participating employer its share of such charge. All charges to be paid pursuant to this subdivision shall be paid at the regular rate of interest utilized by the actuary in determining employer contributions to the retirement system pursuant to the provisions of paragraph two of subdivision b of section 13-638.2 of this title.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 628/1997 § 1, eff. Sept. 17, 1997 and deemed in force and effect on and after June 22, 1973.

Subd. d amended chap 152/2006 § 18, eff. July 7, 2006 and deemed to have been in full force and effect on and after July 1, 2005. [See § 13-103 Note 1]

Subd. d added chap 85/2000 § 23, eff. June 23, 2000 and deemed to have been in effect on and after July 1, 1999.

**DERIVATION**

Formerly § E49-5.0 added chap 814/1973 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-101*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-101 Definitions.

As used in this title the following words shall have the following meanings:

a. "Commissioner" shall mean the commissioner of the police department of the city.

b. "Department" shall mean the police department of the city.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-102*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-102 Composition of force.

Until otherwise provided by the mayor, upon the recommendation of the commissioner, the police force in the police department, shall consist of the following ranks of members, to wit:

1. Captains of police, not exceeding in number one to each fifty of the total number of police officers, in addition to the number detailed to act as inspectors;

2. Lieutenants of police, not exceeding four in number to each fifty of the total number of police officers;

3. Sergeants not exceeding six in number to each fifty police officers;

4. Surgeons of police, not exceeding forty in number, one of whom shall be chief surgeon;

5. A veterinarian;

6. Police officers to the number of seven thousand eight hundred thirty-nine.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-1.0 added chap 929/1937 § 1

Amended LL 18/1946 § 1

(Special provision, roentgenologist LL 18/1946 § 2)

Amended LL 38/1953 § 1

Open par amended chap 100/1963 § 385



Administrative Code of the City of New York



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

*NYC Administrative Code 14-103*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-103 Detective bureau.

a. The commissioner shall organize and maintain a bureau for detective purposes to be known as the detective bureau and shall, from time to time, detail to service in said bureau as many members of the force as the commissioner may deem necessary and may at any time revoke any such detail.

b. Of the members of the force so detailed the commissioner may designate:

1. police officers not exceeding two hundred eighty in number, as detectives of the first grade, who while performing duty in such bureau and while so designated as detectives of the first grade, shall be paid the same salary as lieutenants; and

2. a certain number of police officers, as detectives of the second grade, who while performing duty in such bureau and while so designated as detectives of the second grade, shall be paid the same salary as sergeants; and a certain number of police officers as detectives of the third grade, who while performing duty in such bureau and while so designated as detectives of the third grade shall be paid such salary as may be determined by the mayor. Any person who has received permanent appointment as a police officer and is temporarily assigned to perform the duties of a detective shall, whenever such assignment exceeds eighteen months in duration, be appointed as a detective and receive the compensation ordinarily paid to a detective performing such duties.

c. The commissioner may designate lieutenants as commanders of detective squads, and sergeants as supervisors of detective squads, who while performing duty in such bureau and while so designated as commanders of detective squads or supervisors of detective squads shall be paid such salary as may be determined by the mayor.

d. Any member of the force detailed to such bureau while so detailed shall retain his or her rank in the force and shall be eligible for promotion the same as if serving in the uniformed force, and the time during which he or she serves in such bureau shall count for all purposes as if served in his or her rank or grade in the uniformed force.

e. The commissioner may at his or her pleasure revoke any designation made pursuant to the provision of this section after complying with the provisions of section seventy-five of the civil service law.

**HISTORICAL NOTE**

Section amended chap 755/1990 § 1 eff. Jan. 18, 1991

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-3.0 added chap 929/1937 § 1

Amended LL 17/1964 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. The petitioner served as a detective of the first grade for more than five years during which time he was paid a salary of $5,150. Thereafter, he was promoted to sergeant but at a pay of only $4,650. Although petitioner was only a first-grade patrolman when he was acting as detective and thus was receiving $1,000 per year for extra duties, he was not entitled to have his contributions increased as if his pay were $5,650 upon the claim that he had a right to be retired on the basis of that salary.-Matter of Jefferys, 278 App. Div. 496, 105 N.Y.S. 2d 723 [1951], aff'd 303 N.Y. 792, 103 N.E. 2d 898 [1952].

¶ 2. A police lieutenant whom the police commissioner detailed but did not designate to act in a supervisory capacity in the detective division did not become entitled per se to an increase in his level of compensation since designation by the commissioner rather than de facto service in the past is required by this section.-McGowan v. Mayor, City of N.Y., 53 N.Y. 2d 86 [1981].

¶ 3. Police comr. "detailing" officers to detective duty and not "designating" them as detectives, precludes them from receiving detective salaries.-Olivari v. N.Y.C., 190 (107) N.Y.L.J. (12-6-83) 6, Col. 2 T.

**CASE NOTES**

¶ 1. An Appellate Division order that the Mayor and Police Commissioner comply with the appointment directive of Ad Cd §14-103(b)(2) by officially designating as detectives petitioner police officers performing duties in for separate categories of investigation, and declaring NYC Police Department Interim Order 61 and related orders restricting the applicability of Ad Cd §14-103(b)(2) are null and void, is affirmed. Matter of Scotto v. Dinkins, 194 AD2d 415, affirmed 85 NY2d 209, 623 NYS2d 809 [1995].

¶ 2. Where police officers have been temporarily assigned to detective work and the assignments have lasted for 18 months or more, the officers must either be promoted to the rank of detective or must be returned to uniform status. It was unlawful for the City to require waivers from police officers of the rule. Matter of Scotto v. Giuliani, N.Y.L.J., Jan. 14, 1997, page 27, col. 2 (Sup. Ct. New York Co.), aff'd N.Y.L.J., Oct. 30, 1997, page 27, col. 1 (App. Div. 1st Dept.), aff'd 243 A.D.2d 388, 663 N.Y.S.2d 551 (1st Dept. 1997).

¶ 3. Petitioner, who had been a member of the Police Department's Harbor Unit Vessel Theft Team for more than the 18 month period specified in the statute, brought an Article 78 proceeding seeking to be designated as a Detective Third Grade. The court held that the Police Department cannot arbitrarily refuse the Third Grade designation to officers

who in effect performed the investigatory functions of detectives. In other words, the department cannot exercise legislative functions. Thus, the court ordered that a hearing be held on the question of whether petitioner's duties were similar to those in other units that were similar to those whose members received the Detective Third Grade designations. Ryff v. Safir, 264 A.D.2d 349, 694 N.Y.S.2d 59 (App.Div. 1st Dept. 1999).

¶ 4. A court rejected petitioners' claim that their work in the Intelligence Division for an 18 month period qualified them for appointment to detective positions. The court noted that the department had designated certain positions within the Intelligence Division as "non-detective track positions." There was nothing in the statute which prohibited the department from establishing both detective track and ancillary non-detective track positions in the same command, the court said. Scotto v. Guiliani, 280 A.D.2d 315, 720 N.Y.S.2d 140 (1st Dept. 2001).

¶ 5. Admin. Code §14-103 provides that a police officer who is temporarily assigned to perform the duties of a detective shall, whenever such assignment exceeds 18 months in duration, be appointed as a detective and receive the compensation ordinarily paid to a detective. Admin. Code §14-103 does not prohibit the Police Commissioner from designating positions, and entire commands, as non-detective track, even though the positions involve some investigative work. In one case, the court held that officers who served in the Transit Authority Police Department's (TAPD) surface crime unit, and who failed to establish that they performed investigative duties comparable to those performed in units given a detective track after the TAPD's merger with the Police Department, were not entitled to promotion to detective. Finelli v. Bratton, 298 A.D.2d 197, 748 N.Y.S.2d 133 (1st Dept. 2002).

¶ 6. The court denied an Article 78 petition which had sought to compel the Police Commissioner to designate petitioners as detectives third grade. The court found that the duties performed by petitioners in the Evidence Collection Team (ECT) were not equivalent to those performed by detectives in the Crime Scene Unit (CSU). The crime-scene functions performed by CSU involve more extensive training, more sophisticated equipment, more serious crimes and more coordination with the District Attorney's office than the investigative crime-scene functions performed by the ETC, the court said. Brown v. Kerik, 29 A.D.3d 478, 816 N.Y.S.2d 41 (1st Dept. 2006).

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-104*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-104 Juvenile bureau.

a. There shall be a bureau in the department organized and maintained for the prevention of crime and delinquency among minors and for the performance of such other duties as the commissioner may assign thereto.

b. Any member of the force assigned to such juvenile bureau shall retain his or her rank and pay in the force and shall be eligible for promotion as if serving in the uniformed force and the time served in such bureau shall count for all purposes as if served in his or her rank or grade in the uniformed force of the department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-4.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where the question was raised as to the constitutionality of Code § 434A-2.0, which prohibits the promotion of any policewoman to the rank of sergeant, the Court determined that the statute might violate the equal protection clauses of the Constitution. The Court ordered a hearing to determine whether policewomen can perform assignments which are currently performed by male sergeants so as to warrant the promotion of at least one policewoman.-Shpritzer v. Lang, 32 Misc. 2d 693, 224 N.Y.S. 2d 105 [1962], aff'd 13 N.Y. 2d 744, 191 N.E. 2d 919, 241 N.Y.S. 869 [1963].

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-105*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-105 Superintendent of buildings; compensation.

a. There shall be an officer to be known as superintendent of buildings, to be selected from among the members of the uniformed force by the commissioner. He or she shall be subject to the rules and regulations governing other members of the force as regards promotion and otherwise. The superintendent of buildings shall be entitled to all the benefits and privileges extended to each member of the force with regard to a pension, and shall not be removed or dismissed except in the manner prescribed for other members of the force. His or her time served as superintendent of buildings shall count as time served in such force for pension purposes.

b. Such superintendent, under the direction of the commissioner, shall have supervision over the maintenance of all department buildings, and supervision over the mechanical force of the police department.

c. The salary of the superintendent of buildings shall not be less than five thousand dollars per annum. Previous experience in construction, repair and maintenance of buildings in the police department shall be taken into consideration by the commissioner in the selection of such superintendent of buildings.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-6.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-106*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-106 Special patrolmen; when may be appointed.

a. The commissioner, upon an emergency or apprehension of riot, tumult, mob, insurrection, pestilence or invasion, may appoint as many special patrolmen without pay from among the citizens as he or she may deem desirable.

b. Special patrolmen, appointed in pursuance of law while acting as such special patrolmen shall possess the powers, perform the duties, and be subject to the orders, rules and regulations of the department in the same manner as regular members of the force. Every such special patrolman shall wear a badge, to be prescribed and furnished by the commissioner.

c. The commissioner, whenever expedient, may on the application of any person or persons, corporation or corporations, showing the necessity therefor, appoint and swear any number of special patrolmen to do special duty at any place in the city upon the person or persons, corporation or corporations by whom the application shall be made, paying, in advance, such special patrolmen for their services, and upon such special patrolmen, in consideration of their appointment, signing an agreement in writing releasing and waiving all claim whatever against the department and the city for pay, salary or compensation for their services and for all expenses connected therewith; but the special patrolmen so appointed shall be subject to the orders of the commissioner and shall obey the rules and regulations of the department and conform to its general discipline and to such special regulations as may be made and shall during the term of their holding appointment possess all the powers and discharge all the duties of the force, applicable to regular members of the force.

d. The special patrolmen so appointed may be removed at any time by the commissioner, without assigning cause therefor, and nothing in this section contained shall be construed to constitute such special patrolmen members of

the force, or to entitle them to the privileges of the regular members of the force, or to receive any salary, pay, compensation or moneys whatever from the department or the city, or to share in the police pension fund.

e. The commissioner, upon the application of the head of any agency, public authority exercising jurisdiction within the city, or state agency, may appoint and swear any number of officers or employees of such agency or authority to do special duty at any place in the city, on behalf of such agency. The special patrolmen so appointed shall be subject to the orders of the commissioner and shall obey the rules and regulations of the department and conform to its general discipline and to such special regulations as may be made and shall during the term of their holding appointment possess all the powers and discharge all the duties of a peace officer while in the performance of their official duties.

An appointment as a special patrolman may be revoked at any time by the commissioner, without assigning cause therefor, and nothing in this section contained shall be construed to constitute such special patrolmen members of the force, or to entitle them to the privileges of the regular members of the force, or to receive any additional salary, pay, compensation or moneys whatever from the department or the city by reason of such appointment, or to share in the police pension fund. Every special patrolman appointed pursuant to the provisions of this subdivision is hereby authorized and empowered to proceed under the provisions of the criminal procedure law in the same manner and with like force and effect as a member of the force in respect to procuring, countersigning and serving the summons referred to therein.

f. Notwithstanding any other provision of law, in cases relating to violation of the health code and those provisions of the code pertaining to the jurisdiction of the sanitation department employees of such department who are special patrolmen by appointment pursuant to subdivision e of this section may execute warrants of arrest and bench warrants in the same manner and with the same powers and immunities as if such special patrolmen were members of the department. The issuance and execution of any such warrant of arrest or bench warrant shall in all other respects be governed by the applicable provisions of the criminal procedure law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-7.0 added chap 929/1937 § 1

Sub e added chap 117/1970 § 1

Sub f added chap 395/1973 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where special patrolman employed by the City Board of Transportation had discovered plaintiff's intestate intoxicated and asleep on station platform of municipal subway system and, in fracas resulting when the patrolman attempted to walk the intestate off the platform, the intestate had fled to the street and was shot by the patrolman some 100 yards from the station when he broke away after having been apprehended, in action thereafter brought against the City for the death of the intestate, question whether the patrolman at the time he fired the fatal shot was acting in the course of his employment by the Board of Transportation or solely as a police officer in the execution of a public function, **held** to present an issue for the jury (Admin. Code § 434a-7.0).-Biniewski v. City of New York, 267 App. Div. 108, 44 N.Y.S. 2d 543 [1943].

¶ 2. Where employee of Sanitation Department was appointed special patrolman by the Police Commissioner to do special duty, and he issued a summons charging petitioner with disorderly conduct, **held,** such summons unauthorized for reasons (1) that the authority of the Police Commissioner to appoint special patrolman was not

intended to apply to employees of the City and (2) that the employee was not a peace officer under CCP § 154; and (3) that patrolman's authority would be limited specifically for purposes of the Sanitation Department which did not include the right to issue summons for disorderly conduct.-Matter of Kenler (Murtaugh), 24 Misc. 2d 864, 204 N.Y.S. 2d 758 [1960], rev'd on other grounds 12 A.D. 2d 662, 209 N.Y.S. 2d 384 [1960].

¶ 3. Police Commissioner is not authorized under this section to designate a civil service employee of the Department of Social Services appointed the position of Special Officer, a special patrolman. Del Giorno v. Police Dept. of City of N.Y., 26 N.Y. 2d 821, 257 N.E. 2d 900, 309 N.Y.S. 2d 354 [1970], aff'g 33 App. Div. 2d 665, 305 N.Y.S. 2d 63 [1969].

¶ 4. Plaintiffs who were "special officers" employed by the Department of Social Services and appointed pursuant to this section were not peace officers as defined in the Criminal Procedure Law and had no right to carry firearms although they had limited peace officer powers.-Velez v. Sugarman, 75 Misc. 2d 746, 349 N.Y.S. 2d 53 [1973].

¶ 5. Subdivision (e) of this section is not so vague as to be unconstitutional.-Id.

¶ 6. Hospital special patrolman under this section have all the powers and duties of police officers and hence have power to make arrests.-People v. Perez, 79 Misc. 2d 88, 359 N.Y.S. 2d 510 [1974].

¶ 7. Special patrolman employed by department store being licensed by city and appointed by police commissioner is an agent of the government and hence evidence obtained by an illegal search and seizure conducted by such a patrolman must be suppressed.-People v. Diaz, 85 Misc. 2d 41 [1975].

¶ 8. Where defendants moved to suppress physical evidence obtained by a search by a department store employee on the theory that he was a special patrolman and therefore was required to arrest and search only upon probable cause, a hearing was required to first determine whether employee was a special patrolman and if so whether he was functioning within the specialized limited nature of his particular duties at the time in question.-People v. Laurence, 100 Misc. 2d 612, 420, N.Y.S. 2d 65 [1979].

¶ 9. Charge of resisting arrest was dismissed against defendant when he was arrested by a special patrolman at a private hospital since such a special patrolman is not a police or peace officer unless appointed by the commissioner on application of an agency or public authority such as a public hospital.-People v. Kapuano, 109 Misc. 2d 295 [1981].

¶ 10. The appointment of special patrolmen upon the application of the New York City Health and Hospitals Corporation was obtained under subdivison e of this section since the Health and Hospitals Corporation is an agency within the meaning of New York City Charter § 1150(2) and hence the special patrolmen were peace officers.-People v. Butt, 113 Misc. 2d 538 [1981], aff'd 58 N.Y. 2d 846 [1983].

**CASE NOTES**

¶ 1. Where an applicant had prior arrests for robbery, assault and rape, the City could deny the applicant an appointment as a special patrolman, even though the criminal charges against him were ultimately dismissed. Doe v. Safir, 706 N.Y.S.2d 871 (Sup.Ct. New York Co. 2000).

¶ 2. The statute applies where the police commissioner, or any other superior officer, assigns a police officer to investigative duties. The officer does not have a vested right to remain in the position for 18 months (and thus qualify for appointment as a detective), and the assignment can lawfully be terminated prior to the end of the 18 month period. Vazquez v. Safir, N.Y.L.J., July 3, 2000, page 23, col. 2, 2000 WL 863066 (App.Div. 1st Dept.).

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-107*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-107 Unlawful use of police uniform or emblem.

It shall be unlawful for any person not a member of the police force to represent himself or herself falsely as being such a member with a fraudulent design upon persons or property, or to have, use, wear or display without specific authority from the commissioner any uniform, shield, buttons, wreaths, numbers or other insignia or emblem in any way resembling that worn by members of the police force. A violation of this section shall constitute a misdemeanor punishable by a fine of not more than one hundred dollars or by imprisonment for not more than sixty days, or both.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-7.1 added LL 95/1939 § 1

Section heading added LL 50/1942 § 36

**CASE NOTES FROM FORMER SECTION**

¶ 1. Possession of miniature New York City Detective shield not being an official shield of the police department does not require police department sanction and hence application for order directing District Attorney to return designated shield to petitioner whose property it was, was granted.-Cerotti v. Dist. Att., 167 (13) N.Y.L.J. (5-26-72) 18, Col. 6 T.

**CASE NOTES**

¶ 1. Defendant was arrested after he flagged down a passing motorist, represented himself to be a New York City police officer, displayed what appeared to be a Police Department shield and attempted to force the motorist to drive him to an area near the Queens Midtown Tunnel. Defendant then brought a constitutional challenge to that portion of the statute which prohibited unauthorized persons from displaying or wearing any uniform, shield, buttons, wreaths, numbers of other insignia or emblem "in any way resembling that worn by members of the police force.

Specifically, defendant contended that the statute was unconstitutionally vague. In order to survive, the statute had to meet two tests: (1) it had to provide sufficient notice of what conduct was prohibited; and (2) it could not be written in such a manner as to permit or encourage arbitrary and discriminatory enforcement. The court found the challenged portion of the statute to be unconstitutional, stating that it did not meet either test. The statutory language regarding items "resembling" police equipment was particularly troubling, the court said. For example, it is common in the fashion industry to manufacture garments containing buttons similar to those contained on police uniforms, and it is common in the toy industry to make toys which look something like police equipment. The statute is was so broadly drawn that such items conceivably would be illegal. In other words, the statute provided no guidance to the average citizen as to what form of possessory conduct was permitted and what was prohibited. Moreover, the statute gave the Police Department almost unfettered discretion as to when the purportedly prohibited conduct warranted an arrest. People v. Iftikar, N.Y.L.J., Oct. 5, 2000, page 32, col. 6 (Crim.Ct. Queens Co.).

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-108*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-108 Unlawful use or possession of official police cards.

Any person who without permission of the commissioner:

1. makes or engraves, or causes or procures to be made or engraved, or willingly aids or assists in making or engraving, a plate or other means of reproducing or printing the resemblance or similitude of an official department identification card, working press card, emergency repair service card, press photographer's vehicle card, newsreel camera vehicle card, emergency service card or any other official card issued by the department; or

2. has in his or her possession or custody any implements, or materials, with intent that they shall be used for the purpose of making or engraving such a plate or means of reproduction; or

3. has in his or her possession or custody such a plate or means of reproduction with intent to use, or permit the same to be used, for the purpose of taking therefrom any impression or copy to be uttered; or

4. has in his or her possession or custody any impression or copy taken from such a plate or means of reproduction, with intent to have the same filled up and completed for the purpose of being uttered; or

5. makes or engraves, or causes or procures to be made or engraved, or willingly aids or assists in making or engraving, upon any plate or other means of reproduction, any figures or words with intent that the same may be used for the purpose of altering any genuine card hereinbefore indicated or mentioned; or

6. has in his or her custody or possession any of the cards hereinbefore mentioned, or any copy or reproduction

thereof;

Is guilty of an offense punishable by a fine of not less than two hundred fifty dollars, or imprisonment for not more than thirty days, or both.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-7.2 added LL 162/1952 § 1

Sub 1 amended LL 9/1972 § 1

(Section heading and open par laid out)

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-109*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-109 Qualifications of members of force; publishing names and residence of applicants and appointees; probation.

a. Only persons shall be appointed or reappointed to membership in the police force or continue to hold membership therein, who are citizens of the United States and who have never been convicted of a felony, and who can read and write understandably the English language. Skilled officers of experience may be appointed for temporary detective duty who are not residents of the city. Only persons shall be appointed police officers who shall be at the date of the filing of an application for civil service examination less than thirty-five years of age, except, that every person who, as of the fifteenth day of April 1997, satisfied all other requirements for admission to the New York city police department academy shall be admitted to such academy and shall be eligible for appointment as a police officer, subject to the provisions of the civil service law and any applicable provisions of the charter, notwithstanding that such person was thirty-five years of age or older on the fifteenth day of April 1997. Persons who shall have been members of the force, and shall have been dismissed therefrom, shall not be reappointed. Persons who are appointed as police trainees, after examination in accordance with the civil service law and the rules of the commissioner of citywide administrative services and who have satisfactorily completed service as such trainees, may likewise be appointed as police officers without further written examination, provided that they shall have passed a medical examination at the end of their required trainee period. Persons appointed as police trainees shall not be considered members of the uniformed force of the department.

b. Preliminary to a permanent appointment as police officer there shall be a period of probation for such time as is fixed by the civil service rules, and permanent appointments shall only be made after the required probationary period has been served, but the service during probation shall be deemed to be service in the uniformed force, if succeeded by a permanent appointment, and as such shall be included and counted in determining eligibility for advancement,

promotion, retirement and pension.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended L.L. 23/1998 § 2, eff. June 10, 1998. [See Note below]

Subd. a amended L.L. 59/1996 § 71, eff. Aug. 8, 1996

Subd. a amended L.L. 19/1991 § 1 eff. Apr. 1, 1991

**DERIVATION**

Formerly § 434a-8.0 added chap 929/1937 § 1

Amended LL 9/1958 § 1

Sub a amended LL 68/1963 § 1

**NOTE**

Provisions of L.L. 23/1998 § 1:

Section one. Declaration of legislative findings and intent. The Council of the City of New York intends to rectify an inequity caused by the lapse of an exemption for states and municipalities from the federal Age Discrimination in Employment Act ("ADEA") which would have allowed the City of New York to set and maintain age requirements for police officers and firefighters.

Although the Council finds that age restrictions on the hiring of police officers and firefighters are necessary and in furtherance of public safety, the Council also recognizes that police officer candidates who were scheduled to enter the April 15, 1997 class at the Police Academy may not have received timely notification of the reinstatement of the ADEA exemption for states and municipalities. Accordingly, the Council acts herein solely to rectify the resulting inequity. With the federal exemption reinstated and the New York State Civil Service Commissions determination as to its retroactive applicability, however, the Council intends that the age restriction apply to all other candidates not covered by the specific provisions of this legislation. It further finds that such age restriction is necessary to secure the public safety of the City of New York.

**CASE NOTES FROM FORMER SECTION**

¶ 1. Plaintiffs who had been appointed to the position of "probationary" patrolmen, and after the probationary period of six months to the position of "permanent" patrolmen, were entitled to be compensated during the "probationary" period at the rate prescribed in the Admin. Code for patrolmen, seventh grade. The Board of Estimate was without power to fix the compensation during the "probationary" period at a different rate under the authority granted it by § 67 of the Charter to fix compensation of persons whose compensation was not otherwise provided for by the Charter or statute. The probationary period was for purpose of granting certain powers to the Commissioner of the Police Department, and after such period the Commissioner's powers ceased and the appointees became vested with certain rights. The original appointment as patrolmen began as of date of the original appointment.-Schneider v. City of N.Y., 178 Misc. 238, 33 N.Y.S. 2d 170 [1942], aff'd without opinion 264 App. Div. 855, 36 N.Y.S. 2d 423 [1942], aff'd 289 N.Y. 785, 46 N.E. 2d 847 [1943].

¶ 2. The grades and compensation of patrolmen in New York City having been adopted in the Admin. Code, may be changed by local law. Hence, L.L. No. 40, fixing the rate of pay of patrolmen while in their probationary period, is

valid and effective. Even if a change in salary would create a new grade so far as patrolmen were concerned, it would not affect a change in civil service classification.-Almendinger v. City of New York, 182 Misc. 142, 46 N.Y.S. 2d 641 [1944], aff'd 269 App. Div. 691, 54 N.Y.S. 2d 392 [1945], aff'd 295 N.Y. 644, 64 N.E. 2d 712 [1945].

¶ 3. In view of New York City Admin. Code § 434a-8.0, providing that only those persons shall be appointed patrolmen who at date of filing of an application for a civil service examination were less than 29 years of age, petitioner, who was 27 days over the age of 29 years at time of filing his application, was ineligible for appointment as patrolman, and his appointment was therefore void ab initio, and consequently the Civil Service Commission might revoke its certification notwithstanding his subsequent appointment, and the Police Commissioner might dismiss him following the revocation of the certification (260 A.D. 495; 241 N.Y. 49; &c.).-In re McInerney (Valentine), 181 Misc. 1062, 43 N.Y.S. 2d 327 [1943].

¶ 4. Petitioner who, even after allowing full credit for military service, was over the maximum age limit of 29 years when he filed his application to take a Civil Service examination for position of patrolman, was ineligible for appointment, and Court could not overlook his failure to satisfy the statutory mandate. His certification for appointment was properly revoked by the Municipal Civil Service Commission.-Iannicelli v. Civil Service Commission, 281 App. Div. 519, 120 N.Y.S. 2d 557 [1953].

¶ 5. Under Civil Service Law § 25-a, empowering the Civil Service Commission to adopt "reasonable minimum and maximum age requirements for positions such as policeman, fireman, prison guards . . ." the Municipal Civil Service Commission **held** to have acted reasonably within its authorization in fixing 20 as the minimum age for filing applications to take an examination for patrolman, Police Department, New York City.-In re Walden-El (Brennan), 205 Misc. 351, 125 N.Y.S. 2d 95 [1953], aff'd 283 App. Div. 771, 128 N.Y.S. 2d 578 [1953].

¶ 6. Where the minimum age for applicants to take examination for patrolman was fixed at 20, in his application petitioner, by an honest mistake, stated his birth date as November 1, 1928 and subsequently petitioner, who successfully passed the examination, was appointed a patrolman, on probation, and it was then discovered that actually he was under the age of 20 at time he took the examination, the Commission **held** properly to have revoked its certification of petitioner. Petitioner did not acquire a vested right by his appointment nor was his removal governed by Civil Service Law § 22, applicable to veterans, since petitioner had not been eligible to take the examination and therefore all subsequent acts on his part or on part of the Civil Service Commission in relying on the premise that he was eligible, were void.-Id.

¶ 7. Application to compel Police Commissioner to appoint petitioner forthwith as a patrolman in the Police Department, was denied, as under the rules of the Civil Service Commission the appointing official has the unrestricted power of selecting or rejecting persons on the eligible list, and moreover the eligible list upon which the petitioner's name appeared had expired as a new list for patrolman had been promulgated. Also, petitioner's name had been rejected three times and the Commissioner had failed to request a further certification of his name.-O'Connell v. Monaghan, 126 (91) N.Y.L.J. (11-9-51) 1191, Col. 2 M.

¶ 8. Petitioner sought to be appointed as a probationary patrolman. However, the Police Commissioner refused to so appoint. **Held:** the petitioner was entitled to a hearing as to whether the Commissioner acted within his proper discretion or whether he based his refusal on the fact that petitioner while in military service was subjected to a general court martial on which he was acquitted of the charges.-Matter of Poggi, 138 (78) N.Y.L.J. (10-18-57) 5, Col. 5 M.

¶ 9. The Commissioner in refusing to appoint petitioner to the force after passing civil service examination was not arbitrary or capricious, where the determination was based on a series of arrests starting at age 12 and ending with court martial in the Navy. The fact that the petitioner passed a civil service examination was not conclusive on the issue of petitioner's qualifications for police service.-Matter of Jansen, 1 Misc. 2d 186, 147 N.Y.S. 2d 733 [1955].

¶ 10. The Police Commissioner may refuse to appoint a policeman without giving any reason therefor. Matter of

Krilow, 25 Misc. 2d 739, 197 N.Y.S. 2d 20 [1960].

¶ 11. The Police Commissioner of the City of New York, in view of the provisions of Article 9, § 8 of the State Constitution, and § 6 subdivision 1 of the Civil Service Law has discretion to select any one of the three eligibles certified by the Civil Service Commission. Matter of Krilow, 25 Misc. 2d 739, 197 N.Y.S. 2d 20 [1960].

¶ 12. The Police Commissioner on a single day considered three eligibles, including petitioner for appointment as sergeant. One of the three was appointed and then petitioner and the other non-appointed candidate were considered for a second and then for a third appointment but were not selected on any of the three occasions. **Held:** this procedure constituted three certifications within the requirements of the Civil Service Law rather than a single certification.-Robeson v. Kennedy, 135 (81) N.Y.L.J. (4-26-56) 7, Col. 4 F.

¶ 13. Petitioner's dismissal as a patrolman at the end of his probationary period for his failure to disclose, on four separate occasions, that he had been a member of a union was not arbitrary.-Matter of Stein, 139 (77) N.Y.L.J. (4-21-58) 6, Col. 6 M.

¶ 14. Where probationary patrolman stated in his application that he had quit his job because no route was available to him when in fact he left because of a garnishee against him, and during his probationary period he was adjudicated a bankrupt with a total indebtedness of $15,057, although that sum was not mentioned by him in the financial statement of his questionnaire, and the Police Commissioner terminated petitioner's services at the end of the probationary period because of the above, **held,** such dismissal was not arbitrary. It was within the authority of the Commissioner to determine whether the inaccuracy and omissions in the answers were unintentional or deliberate, but in either case, there was sufficient basis for the Commissioner's determination that the petitioner did not meet the required standards.-Matter of Goodman (Kennedy), 143 (86) N.Y.L.J. (5-4-60) 12, Col. 2 T.

¶ 15. Determination of Municipal Civil Service Commission disqualifying petitioner from the eligible lists for positions of patrolman and fireman because of falsity of his statement in questionnaire to effect that he had never been treated nor confined to a mental hospital, **held** not arbitrary.-In re Bluitt (Watson), 125 (125) N.Y.L.J. (6-28-51) 2376, Col. 6 M.

¶ 16. Rule of Municipal Civil Service Commission disqualifying applicants for position of patrolman who had been convicted of petty larceny, had the force and effect of law (Civil Service Law § 6) and was binding on the Commission, and the Commission therefore properly refused to consider evidence of petitioner's good character and reputation, where he had been convicted of petty larceny (Civil Service Law § 14, subd. 1, § 11, subd. 2; Admin. Code § 434a-8.0). The Commission could narrow the qualification for applicants for position of patrolman by adopting such rule, which was more restrictive than Civil Service Law, § 14, subd. 1.-Walsh v. Watson, 198 Misc. 643, 99 N.Y.S. 2d 805 [1950].

¶ 17. Civil Service Commission acted lawfully and reasonably in refusing to certify the petitioner to the Police Department on the grounds that he had been adjudicated a wayward minor.-Phillips v. Brennan, 135 N.Y.S. 2d 591 [1954].

¶ 18. Where petitioner had been charged with juvenile delinquency and had evaded full disclosure of the incident when questioned in respect thereto shortly after appointment, the Commissioner **held** to have acted legally in dismissing petitioner for moral unfitness.-Tucker v. Adams, 141 N.Y.S. 2d 235 [1955].

¶ 19. Where petitioner was appointed by the former Police Commissioner after full disclosure of his prior detention as a juvenile delinquent he could not thereafter be dismissed as unsatisfactory except for conduct subsequent to his original appointment or upon new facts or upon a showing of clear error by the former Commissioner.-Cannon v. Adams, 141 N.Y.S. 2d 230 [1955].

¶ 19.1. Notwithstanding several minor delinquencies and traffic violations which the Commission had before it,

the petitioner was found qualified and certified on the eligible list for patrolmen in June, 1937. **Held:** the Commission could not thereafter, on the same evidence, disqualify the petitioner for the position of patrolman. It was immaterial that in the interim, the personnel of the Commission had changed for the Commission is a continuous body acting as an entity regardless of any change occurring in its membership.-Matter of Suchman, 170 Misc. 586, 10 N.Y.S. 2d 973 [1939].

¶ 20. The discharge of petitioner by the Commissioner at the end of the probationary period on the basis of past criminal record **held** to be a continuing wrong so as to toll the statute of limitations since after certification and appointment after full disclosure of petitioner's record and after adherence by the Civil Service Commission to the original certification the discharge was not a proper exercise of discretion.-Alliano v. Adams, 140 N.Y.S. 2d 443 [1955].

¶ 21. Adjudication as a juvenile delinquent **held** not an absolute bar to appointment, but where petitioner did not allege sufficient facts to enable the Court to reach the conclusion that the Police Commissioner acted arbitrarily, capriciously or unreasonably, the petition was dismissed.-DeNicola v. Adams, 133 (11) N.Y.L.J. (1-17-55) 8, Col. 6 M; 132 (59) N.Y.L.J. (9-23-54) 6, Col. 3 F.

¶ 22. The petitioner, whose appointment as patrolman was terminated at the end of his probationary period, was entitled to a trial of whether the Commissioner's action was arbitrary. Petitioner had received a suspended sentence on a plea of guilty to a charge of disorderly conduct when he was 20 years old but the matter had not been sufficiently explored and the precinct report of service recommended petitioner for a permanent appointment. Further, the matter of petitioner's business ethics while employed was not sufficiently explored.-Santorelli v. Kennedy, 134 (72) N.Y.L.J. (10-13-55) 6, Col. 7 T.

¶ 23. The decision of the Police Commissioner refusing to appoint the petitioner as a probationary patrolman was arbitrary where the record indicated that the petitioner was drinking excessively and had been convicted by a general court martial of leaving his post before being properly relieved. This was sufficient to justify the Commissioner's action even though the petitioner subsequently received an honorable discharge from the armed forces.-Hyland v. Kennedy, 135 (96) N.Y.L.J. (5-17-56) 5, Col. 6 F.

¶ 24. Whether the Police Commissioner was arbitrary when he refused to appoint petitioner as a probationary patrolman because, while in the Navy, petitioner had been punished on three occasions for being AWOL for short periods of time and on another occasion for using disrespectful language to a superior officer was held to require a trial of the issues of fact as to the arbitrary nature of the Commissioner's action.-Walsh v. Kennedy, 135 (43) N.Y.L.J. (3-5-56) 7, Col. 7 T.

¶ 25. In determining the qualifications of an applicant for appointment to the police force the Commissioner may consider the facts upon which an adjudication of juvenile delinquency was based. Such an adjudication is not an actual bar to an appointment to the police force as is a conviction of a felony but neither does it have the effect of excluding the Commissioner's consideration of the facts in determining whether the appointment would be in the public interest.-DeNicola v. Adams, 133 (11) N.Y.L.J. (1-17-55) 8, Col. 6 M.

¶ 26. The Police Commissioner was arbitrary in refusing to appoint petitioner as a probationary patrolman where petitioner's record was unblemished except for one arrest on a charge of bookmaking which had occurred seven years previously. This arrest had not resulted in a conviction and had been satisfactorily explained by the petitioner.-Lembo v. Adams, 135 (48) N.Y.L.J. (3-12-56) 6, Col. 6 F.

¶ 27. The Police Commissioner was not arbitrary where he refused to appoint the petitioner as a probationary patrolman on a record which showed that petitioner had several convictions for minor offenses, 2 undisclosed traffic violations, and an undisclosed suspension of his driving license.-Matter of Keller, 135 (44) N.Y.L.J. (3-6-56) 7, Col. 4 F.

¶ 28. Petitioner **held** entitled to trial of issues raised in proceeding to set aside the action of the Municipal Civil Service Commission in marking him "not qualified" for the position of patrolman in the Police Department, where petitioner's Selective Service record, indicating mental disorder, was urged by respondents as the sole basis of their action but petitioner disputed the accuracy and conclusiveness of the Selective Service record and the completeness of the hearing before the psychiatrist, and petitioner also disputed the findings that his religious beliefs and scruples amounted to psychoneurosis or psychopathic personality incompatible with performance of duty as a policeman.-Massa v. Brennan, 129 (108) N.Y.L.J. (6-4-53) 1885, Col. 2 F.

¶ 29. Commissioner acted lawfully in terminating petitioner's employment as a policeman where he had been found physically unfit and had not been given a proper answer to the question propounded by the police academy in respect of prior nervous or mental disorder.-Machino v. Adams, 133 (37) N.Y.L.J. (2-23-55) 8, Col. 6 T.

¶ 30. The refusal of the Police Commissioner to appoint petitioner as a probationary patrolman was not arbitrary where the evidence indicated that petitioner suffered from a psychoneurosis disability, had a poor employment record and had been previously rejected from the Police Department in Washington.-DiDregorio v. Adams, 135 (67) N.Y.L.J. (4-6-56) 8, Col. 2 F.

¶ 31. Determination of the Municipal Civil Service Commission discharging petitioner from his position as a City patrolman as "not qualified medically" because of fact that in 1945 he had been honorably discharged from the Army with a 10 per cent disability allegedly as result of a nervous disorder and that he had been treated for such disorder at an Army hospital where he remained for three months, and that he had failed to reveal the history of the condition, **held** not arbitrary, notwithstanding petitioner's claim that over a three-year period five different examinations of his physical and mental health demonstrated his fitness for the position and that he had merely suffered from battle fatigue and was not confined in a hospital for mental disorders. The Commission operated under a rule that any candidate for patrolman who has a mere history of confinement in an institution for mental illness must be rejected, and that a history of nervous disorder may reject.-Lasskow v. Brennan, 131 (92) N.Y.L.J. (5-13-54) 7, Col. 5 M.

¶ 32. Where petitioner on eligible list for patrolman was found "not qualified" for medical reasons based upon an investigation into his background and upon a psychiatric examination which resulted in a finding of "chronic emotional illness" and the same conclusion was reached after another examination following an administrative appeal, the refusal of the Civil Service Commission to maintain him on the eligible list but was not arbitrary. Contrary medical findings by two other physicians was no basis for granting petitioner's application to set aside the action of the Commission.-Smith v. Schechter, 144 (4) N.Y.L.J. (7-7-60) 5, Col. 6 F.

¶ 33. Termination of police trainee's services was arbitrary when based on report of U.S. Navy physician that he had an "emotionally unstable personality" which resulted in an "unsuitability discharge" from the Navy and a 1-Y draft classification when made more than a year prior to the determination and absent a psychiatric examination by either the Police Department or the Civil Service Commission.-Matter of Menichino (Leary), 163 (17) N.Y.L.J. (1-26-70) 16, Col. 3 F.

¶ 34. The conduct of the Municipal Civil Service Commission in striking petitioner's name from eligible list for patrolman because, within the year prior to his probationary appointment, he had signed a petition for the nomination of a Communist Party candidate for public office, and had also been a member of that party for three to five months, **held** not to have been arbitrary.-Rabouine v. McNamara, 275 App. Div. 1052, 92 N.Y.S. 2d 110 [1949], aff'd without opinion, 301 N.Y. 785, 96 N.E. 2d 91 [1950].

¶ 35. Motion to annul determination of Municipal Civil Service Commission and of the Police Commissioner, dismissing petitioner from his position as probationary patrolman, was denied, since, bearing in mind the nature of police service, it could not be said that the pronouncement of petitioner as a poor risk was so lacking in support in the record as to warrant judicial correction.-Riddick v. Brennan, 131 (7) N.Y.L.J. (1-12-54) 7, Col. 6 T.

¶ 36. False answers made by police officer to his superior officers, in course of an official investigation relating to the association of members of the Police Department with Communists, that he had not been a member of the Communist Party and had never attended any of its meetings, **held** to warrant his dismissal from the police force. Although it might be that a former association with the Communist Party would not justify removal of a Civil Service employee, petitioner's false answers did warrant removal.-Rubenstein v. Monaghan, 124 N.Y.S. 2d 76 [1953].

¶ 37. The Court directed a trial of the issue of fact as to the arbitrary and capricious nature of the Commissioner's actions in rejecting a man from civil service merely because he signed a nominating petition for a Communist candidate for political office.-Maynard v. Monaghan, 284 App. Div. 280, 131 N.Y.S. 2d 556 [1954].

¶ 38. It was not proper exercise of discretion for Police Commissioner to refuse to appoint petitioner as policeman merely because he appealed from the Civil Service Commission's action in disqualifying him arbitrarily when in fact there was no evidence of his membership in the Communist Party and the Commissioner had later certified petitioner to the eligible list.-Hamilton v. Monaghan, 133 N.Y.S. 2d 324 [1955].

¶ 39. Petitioner, a patrolman, had a long record of faithful service in the Department, and there was enough evidence in the record to support the inference that he was denied promotion because of his visits to a certain camp which, allegedly unknown to the patrolman, was said to be tainted with a subversive character. **Held:** he was entitled to a trial of the issues.-Matter of Hughes, 139 (17) N.Y.L.J. (1-24-58) 6, Col. 5 M.

¶ 40. Petitioner was improperly disqualified from appointment as patrolman where he was rejected upon the strength of his Army medical record, without further physical examination.-Simon v. Kennedy, 5 Misc. 2d 17, 159 N.Y.S. 2d 995 [1957].

¶ 41. The removal of petitioner's name from the eligible list for patrolman, following a hearing, was not arbitrary where the petitioner failed to disclose the nature of his various illnesses, that he was the father of an illegitimate child, that he failed to list all his traffic violations, that he failed to meet financial obligations and that he failed to list ownership of a motor vehicle.-Estaba v. Municipal Civil Service Commission, 139 (13) N.Y.L.J. (1-20-58) 6, Col. 7 F.

¶ 42. A probationary patrolman passed pre-appointed medical examinations by the Civil Service Commission and the Police Department. His probationary period expired July 31. Prior thereto, two departmental physical examinations showed him to be suffering from hypertension. Under such circumstances, the Police Commissioner had the right to dismiss him at the end of the probationary period. The notice of dismissal, dated July 30 and effective July 31, was not served until August 1, because of petitioner's absence from the city. Such service was a substantial compliance with statutory requirements.-Matter of Going v. Kennedy, 5 A.D. 2d 173, 170 N.Y.S. 2d 234 [1958], aff'd 5 N.Y. 2d 900, 183 N.Y.S. 2d 81, 156 N.E. 2d 711 [1959]. See also in re Myricks (Kennedy), 6 Misc. 2d 854, 161 N.Y.S. 2d [1957].

¶ 43. Petitioner, after passing a civil service examination and preliminary medical tests, was certified as eligible for appointment as a probationary patrolman and was duly appointed. Thereafter the Police Department medical test showed him to be suffering from hypertension, and he was dismissed as of the end of the probationary period. The Commissioner's action, not being arbitrary or capricious, was proper. It was not an interference with the Civil Service Commission's certification of eligibility.-Matter of Gribbin v. Kennedy, 7 Misc. 2d 479, 163 N.Y.S. 2d 304 [1957].

¶ 44. Disqualifying petitioner for appointment as patrolman because of his military service medical record which revealed that he was treated during service for asthma, and based upon his admission that on discharge from the service he applied for a veteran's pension claiming, among other things, asthma, was not arbitrary.-In re Goldrick (Lang), 149 (45) N.Y.L.J. (3-7-63) 15, Col. 3 F.

¶ 45. Where petitioner was found physically qualified for City patrolman under the medical regulations pertaining to the 1950 examination, which he took, and which merely provided that a perforated ear drum, from which he suffered, "**may** reject," his appointment might not thereafter be terminated by force of medical regulations subsequently promulgated and providing that "ear drum perforation or canal infection eliminates," and which regulations by their

terms were confined in their application to the 1952 examination.-Lamey v. Monaghan, 131 (47) N.Y.L.J. (3-11-54) 7, Col. 7 M.

¶ 46. Determination of Municipal Civil Service Commission rejecting petitioner as an eligible for patrolman in the Police Department on basis of report of the joint medical board that a fracture of petitioner's left foot suffered when he was ten years old made him a poor risk so far as future fitness was concerned, **held** not to have been arbitrary, notwithstanding petitioner did not appear handicapped by the deformity of his foot, was above average in athletic prowess, presently walked without any limp, and had received a grade of 93% in the competitive physical examination.-Adamsky v. Municipal Civil Service Commission, 131 (6) N.Y.L.J. (1-11-54) 7, Col. 3 M.

¶ 47. The disqualification of petitioner for the position of patrolman because of an old knee injury was not arbitrary, even though the determination was made on petitioner's medical history, and not on a recent medical examination which petitioner claimed would show that his injury was completely cured.-Lasher v. Lang, 148 (56) N.Y.L.J. (9-19-62) 12, Col. 1 F.

¶ 48. The petitioner, whose services as a patrolman were terminated at the end of his probationary period because of hypertension was entitled to a trial on the issue of the Police Commissioner's discretion where he had been found physically fit prior to his appointment and submitted proof of present good health and an explanation of the symptoms found by the medical board.-Matter of Going, 135 (49) N.Y.L.J. (3-13-56) 6, Col. 5 M.

¶ 49. Two blood pressure readings within five minutes did not eliminate policemen under regulation providing "two confirmations of an abnormal finding eliminates". The two examinations called for must be on separate occasions.-Gettings v. Kennedy, 143 (25) N.Y.L.J. (2-5-60) 13, Col. 7 F.

¶ 50. Discharge of three probationary patrolmen because of failure to pass physical fitness test at conclusion of recruit training was not arbitrary even though they had passed physical examination given by Civil Service Commission at time of their selection as Police Commissioner has the authority to conduct examinations with respect to academic instruction of probationary patrolmen, notwithstanding their prior certification of fitness by the Civil Service Commission.-Farrell v. Broderick, 155 (64) N.Y.L.J. (4-1-66) 15, Col. 4 M.

¶ 51. The petitioner who had been refused permanent appointment as a patrolman because of a "nervous stomach" was entitled to a trial of the question as to whether he had such a condition where he alleged he had not been examined by the department's physician for the stomach condition, had no past history of such complaint and two private physicians stated that they found the petitioner suffering from no such condition.-In re Anselmo, 135 (41) N.Y.L.J. (3-1-56) 7, Col. 1 F.

¶ 52. A re-examination was ordered by an impartial physician who had no prior contact with petitioner in the presence of his own physician where petitioner found physically unqualified to remain as a police trainee because of high blood pressure had been subjected to unusual emotional stress by police department physician while his blood pressure was being tested.-In re Ferrentino (Leary) 162 (76) N.Y.L.J. (10-17-69) 15, Col. 5 F.

¶ 53. Where certification of petitioner for appointment to the uniformed force of the Police Department of the City of New York resulted from the error of a clerk who mistook certain entries on petitioner's record as indicating that petitioner had qualified in his physical examination when in fact he had not done so, petitioner **held** not to have been properly certified for appointment, and was therefore not entitled to the requested credits for salary and advancement. Rule of Commission providing that if a person who is not entitled to be certified is certified such certification shall be revoked by notification to the appointing officer, was inapplicable as it applied to persons who may have already been appointed whereas petitioner's certification was without validity.-Reilly v. Grumet, 130 N.Y.S. 2d 841 [1954].

¶ 54. Petitioner dismissed prior to his permanent appointment as policeman **held** entitled to a jury trial on the question whether or not the Commissioner acted arbitrarily where the testimony of the only witness against the petitioner was questionable as to probity.-D'Emidio v. Adams, 133 (104) N.Y.L.J. (5-27-55) 7, Col. 3 F.

¶ 55. After the petitioner had been denied certification by the Civil Service Commission for appointment as a probationary patrolman, he was certified, on review, as qualified for the eligible list. Subsequently, the Commissioner rejected the petitioner without giving a stated reason and then denied a requested hearing "in view of the record and findings of the investigator". **Held** the petitioner was entitled to a hearing and to an opportunity to know what the findings and proof against him were upon which the Commissioner acted.-Jansen v. Adams, 134 (16) N.Y.L.J. (7-25-55) 2, Col. 3 F.

¶ 56. In terminating employment at the end of the probationary term the police commissioner may take probationer's past into consideration to determine his character, capability and fitness.-Fiorenza v. Leary, 162 (109) N.Y.L.J. (12-8-69) 15, Col. 5 M.

¶ 57. The Police Commissioner was arbitrary where, after petitioner had resigned from the police force, the Commissioner refused to reinstate him and did not furnish any reasonable basis for the exercise of his discretion in so refusing.-In re Leahy (Kennedy) 135 (111) N.Y.L.J. (6-8-56) 6, Col. 5 F.

¶ 58. Commissioner's denial of an application for reinstatement by a retired policewoman two weeks after her retirement because of Police Department Policy, held arbitrary. Such rules of the Department are contrary to Civil Service rule permitting reinstatement of a retired employee within one year of retirement.-Matter of Schimmel (Murphy), 145 (112) N.Y.L.J. (6-12-61) 16, Col. 3 F.

¶ 59. The petitioner, passed over for appointment as a lieutenant because evidence before a grand jury indicated that the petitioner had committed acts of misconduct was entitled to a trial of an issue of whether the Commissioner was acting arbitrary where the grand jury had not indicted the petitioner and on a departmental trial, petitioner had been exonerated.-Donovan v. Kennedy, 135 (47) N.Y.L.J. (3-6-56) 6, Col. 7 T.

¶ 60. The Police Commissioner was justified, in the exercise of sound discretion, in refusing to appoint the petitioner as a probationary policeman upon the ground that the latter had been subjected to disciplinary action upon four occasions while serving in the Navy. The fact that the petitioner had been honorably discharged did not preclude consideration of his record.-Matter of Verbiest v. Kennedy, 4 Misc. 2d 855, 158 N.Y.S. 2d 142 [1956]; aff'd 3 A.D. 2d 994, 163 N.Y.S. 2d 944 [1957].

¶ 61. Applicant for certification as a patrolman was properly disqualified where it appeared that he filed no income tax return for seven years, had pleaded guilty to a charge of selling "tout" sheets, and had incurred disciplinary action as a Marine.-In re Boden (Schechter), 138 (63) N.Y.L.J. (9-27-57) 5, Col. 8 M.

¶ 62. The petitioner was properly dismissed from the Police Department at the end of his probationary period where he was guilty of various minor infractions, including the losing of his badge and lateness to work.-In re Arnold (Kennedy), 140 (38) N.Y.L.J. (8-3-58) 2, Col. 3 F.

¶ 63. Where probationary policeman was dismissed because of a violation of Police Department rules and he had a past history of traffic violations, **held,** determination of Commissioner was not arbitrary.-Matter of Curley (Kennedy), 145 (24) N.Y.L.J. (2-3-61) 14, Col. 7 M.

¶ 64. The Police Commissioner was not arbitrary in disqualifying petitioner for appointment as patrolman where petitioner had a poor driving record and had falsified information as to this record and as to his Coast Guard disciplinary record.-In re Finkelstein 148 (27) N.Y.L.J. (8-8-62) 4, Col. 7 T.

¶ 65. The Commissioner was not arbitrary in dismissing petitioner from position of probationary patrolman where petitioner had received the lowest passing mark in his class at the Police Academy, had failed to qualify in firearms training and was rated unsatisfactory as to deportment and attitude.-Matter of Gratz, 134 (84) N.Y.L.J. (10-31-55) 8, Col. 4 M.

¶ 66. The petitioner's low rating on an examination after taking the three months' course in the police school was sufficient basis for the finding that the petitioner was an unsatisfactory employee within the meaning of this section.-Matter of Sinaly, 2 Misc. 2d 107, 152 N.Y.S. 2d 210 [1956].

¶ 67. The dismissal of a patrolman at the end of his probationary period because he failed to pass the academic part of a written test was not arbitrary. The Commissioner may inquire into the capabilities of a probationary appointee and may employ a written examination as an appropriate means of appraising fitness.-Matter of Williams, 135 (24) N.Y.L.J. (2-3-56) 8, Col. 4 T.

¶ 68. The requirement of the Police Commissioner that a probationary patrolman maintain a minimum general average of 68 per cent in training in instruction courses was not arbitrary or in excess of the Commissioner's authority. The dismissal of the petitioner for failing to maintain such an average and based upon recommendations of the Police Academy staff and the commanding officers of the academy was not arbitrary.-Tedali v. Kennedy, 135 (74) N.Y.L.J. (4-17-56) 6, Col. 7 M.

¶ 69. The Police Commissioner has the authority to conduct all unwritten examinations to determine the fitness of each probationary patrolman. The refusal of the Commissioner to appoint the petitioner as a patrolman at the end of his probationary period because he failed to obtain a general academic passing mark was not arbitrary.-Matter of Rago, 135 (44) N.Y.L.J. (3-6-56) 6, Col. 7 F.

¶ 70. City **held** not liable to plaintiff who was attacked by another motorist in police station where both had been taken after altercation following a traffic violation. Neither motorist had been arrested and police had no authority to search for a weapon or any reason to believe plaintiff would be assaulted.-Stephens v. City of N.Y., 133 (15) N.Y.L.J. (1-21-55) 6, Col. 8 F.

¶ 71. The City was liable for the negligence of a policeman when the policeman, while walking on the platform of a subway station on his way to report for duty, accidentally dropped a paper bag in which he was carrying his off-duty revolver, which went off when it hit the ground, with the bullet striking the plaintiff.-Collins v. City of New York, 11 Misc. 2d 76, 171 N.Y.S. 2d 710 [1958], aff'd 8 A.D. 2d 613, 185 N.Y.S. 2d 740 [1959], aff'd 7 N.Y. 2d 822, 196 N.Y.S. 2d 700, 164 N.E. 2d 719 [1959].

¶ 72. Verdict in favor of plaintiff against the City and policeman who, in the reasonable performance of his duty, accidentally shot and injured plaintiff, set aside on the ground that it was against the weight of credible evidence.-Rayano v. City of N.Y., 138 N.Y.S. 2d 267 [1955].

¶ 73. The city was liable for the negligence of a policeman in operating a patrol car in such a manner as to injure another policeman engaged in directing traffic.-Gilhooly v. City of New York, 135 (69) N.Y.L.J. (4-10-56) 8, Col. 1 T.

¶ 74. Petitioner, a New York City patrolman, was disqualified by the Civil Service Commission because he had received 14 traffic summons between October 1954 and January 1958, 10 for parking, 3 for signal lights and 1 for speeding and had failed to answer 6 of the summons on the due date and had not paid the fine until October of 1959. **Held,** the action was not arbitrary. The failure to appear to answer the mandates of the Court compounded the insignificant violation (except one) and indicated a disrespect for authority.-Matter of Mondesin (Schechter), 143 (120) N.Y.L.J. (6-22-60) 8, Col. 6 M.

¶ 75. Patrolman was dismissed on his plea of guilty to two violations of department rules with explanations. It appeared that the Commissioner took into consideration other violations and a statement of his commanding officer that petitioner was an alcoholic although such charges were not made against him. **Held,** the punishment of dismissal was excessive and the matter is remitted for imposition of an appropriate penalty based on the charges made against the petitioner.-Matter of Keane (Kennedy), 145 (35) N.Y.L.J. (2-21-61) 15, Col. 2 M.

¶ 76. The question of the termination of petitioner's service as a probationary patrolman was remitted to the

Commissioner where petitioner was afforded no proper hearing to answer charges made against her by a former employer.-In re Watkins (Murphy), 147 (53) N.Y.L.J. (3-19-62) 14, Col. 3 F.

¶ 77. The Police Commissioner did not act arbitrarily in refusing to appoint petitioner on three separate occasions without giving reasons.-In re Levy (Murphy), 146 (118) N.Y.L.J. (12-2-61) 8, Col. 5 F.

¶ 78. In determining whether or not to appoint a probationary patrolman to the regular force, the Commissioner may rely on reports of his subordinates. There is no requirement that there be a hearing.-Monico v. Kennedy, 16 App. Div. 2d 634, 227 N.Y.S. 2d 230 [1962].

¶ 79. The Police Commissioner was arbitrary in dismissing a patrolman who had been placed on sick report in 1957 on the grounds that he was absent from his residence without permission of the police physician and participated in another occupation during his sick leave. The patrolman's participation in another employment was limited to checking the affairs of a laundromat operated by his brother-in-law in which the patrolman had invested funds. And the absences were to run errands, pick up his wife at the laundromat, or pick up his children at school.-In re Shiels, 148 (118) N.Y.L.J. (12-20-63) 13, Col. 7 M.

¶ 80. Where there was some evidence to indicate that petitioner was passed over in making appointments from eligible list to position of patrolman because of his family background, the matter was remanded to the Commissioner to enable him to reconsider his action. However, the Commissioner could not be directed to appoint petitioner.-Colino v. Murphy, 150 (14) N.Y.L.J. (7-19-63) 5, Col. 7 F.

¶ 81. Refusal of Police Commissioner to appoint petitioners as patrolmen because in the exercise of discretion he had passed over their names, when certified for appointment on three occasions, and had appointed other eligibles on the list, held not arbitrary.-In re Wecklein (Murphy), 149 (94) N.Y.L.J. (5-15-63) 14, Col. 6 F.

¶ 82. Determination of Commissioner finding respondent unqualified to serve as a patrolman at the end of his probationary period because of a physical condition, namely a "chronically unstable right ankle joint" was not arbitrary when supported by finding of orthopedic consultant of Police Department even though there was medical testimony to the contrary by respondent's expert. Matter of Hallman (Leary), 157 (63) N.Y.L.J. (4-3-67) 18, Col. 3 T.

¶ 83. Action of Police Department in relieving petitioner from his duties as probationary patrolman because of hypertension was not arbitrary when this diagnosis was made several times by police surgeons but contradicted by petitioner's personal physician.-Kranz v. Leary, 165 (42) N.Y.L.J. (3-4-71) 2, Col. 3 M.

¶ 84. Court remanded matter for further consideration where petitioner who sought to rescind an order terminating his employment as a probationary police officer asserted his favorable performance record and claimed that his termination was based upon prejudice and bias and in support of this claim pointed to questions asked of him relating to his parents and ethnic background.-Matter of Serrano (Codd) 173 (91) N.Y.L.J. (5-12-75) 15, Col. 2 T.

**CASE NOTES**

¶ 1. A group of police officer candidates, who were 35 years of age or over, challenged the statutory provision which limited entry into the Police Department to persons under 35 years of age. The court denied their application for a preliminary injunction against enforcement of the statute, holding that the law did not per se violate the constitutional right of equal protection. Walter v. City of New York Police Department, N.Y.L.J., June 9, 1997, page 30, col. 1 (Sup. Ct. New York Co.), aff'd 664 N.Y.S.2d 21 (App. Div. 1st Dept. 1997), 244 A.D.2d 205, 664 N.Y.S.2d 21, aff'd 680 N.Y.S.2d 519 (Ct. of Appeals).

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-110*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-110 Warrant of appointment; oath.

a. Every member of the force shall have issued to him or her by the department, a proper warrant of appointment, signed by the commissioner and chief clerk or first deputy clerk of the department or of the commissioner, which warrant shall contain the date of appointment and rank.

b. Each member of the force shall, before entering upon the duties of his or her office, take an oath of office and subscribe the same before any officer of the department who is empowered to administer an oath.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-9.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-111*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-111 Salaries of first grade police officers.

a. There shall be paid a minimum of three thousand dollars to all police officers of the first grade.

b. Such pay or compensation shall be paid bi-weekly to each person entitled thereto, subject to such deductions for or on account of lost time, sickness, disability, absence, fines or forfeitures, as the commissioner may by rules and regulations, from time to time, prescribe or adopt.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-10.0 added chap 929/1937 § 1

Sub a par 7 item c amended LL 40/1942 § 1

Sub a par 7 amended LL 37/1948 § 1

(Special provisions LL 37/1948 §§ 2-4)

Amended chap 100/1963 § 388

**CASE NOTES FROM FORMER SECTION**

¶ 1. The grades and compensation of patrolmen in New York City, having been adopted in the Admin. Code, may be changed by local law (Const. Art. IX, § 12; City Home Rule Law § 11). Hence Local Law No. 40, fixing the rate of pay of patrolmen while in their probationary period, is valid and effective (Admin. Code § 434a-10.0; &c.). Even if a change in salary would create a new grade as far as patrolmen were concerned, it would not effect a change in civil service classification.-Allmendinger v. City of New York, 182 Misc. 142, 46 N.Y.S. 2d 641 [1944], aff'd without opinion, 269 App. Div. 691, 54 N.Y.S. 2d 392, and 295 N.Y. 644, 64 N.E. 2d 712.

¶ 2. Military Law § 246, subd. 7, providing that any person whose name is on an eligible civil service list shall, while in military duty, retain his rights and status on such list and that for purpose of computing seniority credit and training and experience credit for promotion and seniority in the event of suspension or demotion he should be deemed to have been appointed on the earliest date upon which any eligible, who was the lower on such eligible list, was appointed, **held,** when construed with subd. 5, to indicate that the legislative intent, in the case of qualified eligibles, was merely to grant them "seniority" credit in situations involving promotions, suspensions or demotions. Hence, patrolman of the police department of the City of New York whose name had been reached for certification in February, 1943, while he was in military service, **held,** after his discharge in June, 1946, to have been properly appointed a patrolman, seventh grade, at a salary of $2,000 per year, and was not entitled to appointment as patrolman, fourth grade, at a salary of $2,500.-Mulligan v. City of N.Y., 194 Misc. 579, 86 N.Y.S. 2d 501 [1948], aff'd 275 App. Div. 795, 88 N.Y.S. 2d 911 [1949], aff'd 300 N.Y. 541, 89 N.E. 2d 256 [1949].

¶ 3. The retroactive service credit given by Military Law § 246(5) applies to seniority on promotion or suspension but does not confer a salary benefit for any period prior to actual appointment. Thus, where a lieutenant in the Police Department missed a promotional examination held in 1944 due to his military service and upon his discharge passed a comparable examination and was promoted to captain in 1946, the five-year period which would give him an increment in pay under subd. 2 of this section started to run in 1946 rather than in 1944 even though seniority credit started to run in 1944.-McKeon v. City of New York, 201 Misc. 1111, 113 N.Y.S. 2d 164 [1952].

¶ 4. Although this section fixes the minimum salary of patrolmen at $2,000 per annum the Board of Estimate could fix the salary of probationary patrolmen at the rate of $1,200 per annum. The Greater New York Charter, § 299 provided that the minimum salary of patrolmen should be $800 annually. The City's contention that the Legislature, in enacting the Code, did not intend to enact a new law and that the salary change for patrolmen was therefore a nullity was rejected and plaintiffs were given judgment for the difference between the salary paid them and the amount set as a minimum by this section.-Schneider v. City of New York, 289 N.Y. 785, 46 N.E. 2d 847 [1943].

¶ 5. Although this section defines patrolmen of the first grade as those who have served five years or upwards, and § 434(a)-13.0 provides that police sergeants shall be selected from among patrolmen of the first grade, it was not improper for the Civil Service Commission to set forth eligibility requirements for examination for promotion to sergeant that the examination was open to all patrolmen who had served not less than one year.-Matter of Rumack, 195 Misc. 84, 88 N.Y.S. 2d 548 [1949], aff'd 275 App. Div. 805, 89 N.Y.S. 2d 920 [1949].

¶ 6. The provisions of this section setting a salary for captains referred only to the minimum and did not set an upper limit. It was not illegal to pay certain captains additional salary for performing higher services. An assignment to perform higher services did not constitute a promotion.-Matter of Hagan, 39 Misc. 2d 82, 239 N.Y.S. 2d 913 [1963], aff'd 19 App. Div. 2d 862, 243 N.Y.S. 2d 414 [1964], aff'd 14 N.Y. 2d 701, 250 N.Y.S. 2d 55, 199 N.E. 2d 156 [1964].

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-112*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-112 Computation of compensation of members of the department after service in the fire department.

a. Any member of the police force in the department who prior to his or her appointment or employment as such, has served or shall have served, as a member of the uniformed force of the fire department, after appointment therein pursuant to the rules of the commissioner of citywide administrative services and the provisions of law applicable thereto, shall have the time served by him or her in such fire department counted as service in the department in determining his or her compensation, promotion, retirement and pension in such department as herein or otherwise provided, upon condition that he or she shall contribute to the police relief or pension fund a sum equal to the amount which he or she would have been required to contribute had the time served in the fire department been served in the department.

b. Within one year after the police pension fund shall request a transfer of reserves with respect to any such person who becomes a member of the police pension fund on or after July first, nineteen hundred ninety-eight, who performed such prior service in the uniformed force of the fire department, and who has qualified for benefits under this section, the fire department pension fund shall transfer to the contingent reserve fund of the police pension fund the reserve on the benefits of such member which is based on the contributions made by the employer (including the reserve-for-increased-take-home-pay). Such reserve shall be determined by the actuary of the fire department pension fund in the same manner as provided in section forty-three of the retirement and social security law. No such transfer of reserves pursuant to this subdivision shall be made with respect to any person who became a member of the police force in the department prior to July first, nineteen hundred ninety-eight.

**HISTORICAL NOTE**

Section amended chap 645/1998 § 1, eff. Dec. 21, 1998.

Section amended L.L. 59/1996 § 72, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-11.0 added chap 929/1937 § 1

Amended chap 100/1963 § 389



Administrative Code of the City of New York



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

*NYC Administrative Code 14-113*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-113 Computation of compensation of members of the department restored to duty after service in the fire department.

The time served by a member of the uniformed force of the department, who was appointed pursuant to the rules of the commissioner of citywide administrative services and the provisions of law applicable thereto and thereafter resigned after serving as such, to accept a position in the fire department and is thereafter restored to his or her former position as a member of the department, in accordance with the rules of such commissioner and the provisions of law applicable thereto, in both departments, shall be included and counted as service in the department, in determining his or her compensation, promotion, retirement and pension as herein or otherwise provided. Any such person shall be entitled to participate in the benefits of the police pension fund if he or she shall have contributed to such pension fund a sum equal to that which he or she would have been required to contribute had he or she remained a member of the uniformed force of the department from the date of his or her entry into the service of the department.

**HISTORICAL NOTE**

Section amended L.L. 59/1996 § 73, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-12.0 added chap 929/1937 § 1

Amended LL 50/1942 § 37

Amended chap 100/1963 § 390



Administrative Code of the City of New York



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

*NYC Administrative Code 14-114*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-114 Promotions.

a. Promotions of officers and members of the force shall be made by the commissioner, as provided in section eight hundred seventeen of the charter, on the basis of seniority, meritorious service and superior capacity, as shown by competitive examination, but a detail to act as inspector, or to service in the detective bureau, as hereinafter provided, shall not be deemed a promotion. Individual acts of personal bravery or honorable service in the United States army, navy, marine corps or army nurse corps in times of war may be treated as an element of meritorious service in such examination, the relative rating therefor to be fixed by the commissioner of citywide administrative services. The police commissioner shall transmit to the commissioner of citywide administrative services in advance of such examination the complete record of each candidate for promotion.

b. Sergeants shall be selected from among police officers of the first grade. Lieutenants shall be selected from among sergeants who shall have served at least one year continuously as such. Captains shall be selected from among lieutenants who shall have served at least one year as lieutenants.

c. The commissioner shall, in the exercise of his or her discretion, from time to time, detail nineteen captains and so many others as the mayor may authorize upon the recommendation of the commissioner to act as inspectors, with the title, while so acting, of inspectors of police and at his or her pleasure may revoke any or all such details. While so detailed, such officers shall receive a salary to be fixed by the mayor, in addition to the amount of salary which regularly attaches to the office of captain. When a captain shall have acted under regular detail in any capacity above the rank of captain, during a period or periods aggregating two years, such officer, upon becoming eligible therefor, shall be entitled to a pension of not less than one-half of the salary received by him or her per year. When the commissioner, however, designates a captain to act in the place of a captain under regular detail as inspector, during the temporary

absence or disability of the latter the officer so designated shall not be entitled to any additional salary, and the period of such designation shall not be counted in his or her favor in computing such two-year period. When a captain shall have served in the rank of captain for a period of ten years, he or she shall have the same rights in respect to the police pension fund as a captain detailed to act as inspector who shall have served as such for a period of time aggregating two years. A captain who shall have served as such less than ten years and more than five years shall have the same rights in respect to such police pension fund as a captain detailed to act as a deputy inspector who shall have served as such for a period of time aggregating two years. A period beginning March thirtieth, nineteen hundred sixty-five, and ending November thirtieth, nineteen hundred sixty-six, during which a captain shall have served as a provisional captain immediately prior to a permanent promotion to such rank shall be deemed to have been service as a permanent captain for the purposes of this section. A captain, while detailed to act as inspector, shall be chargeable with and responsible for the discipline and efficiency of the force under his or her command.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended L.L. 59/1996 § 74, eff. Aug. 8, 1996

**DERIVATION**

Formerly § 434a-13.0 added chap 929/1937 § 1

Sub c amended LL 50/1942 § 38

Amended chap 100/1963 § 391

Amended chap 753/1968 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. The Civil Service Law and the Rules of the Municipal Civil Service Commission should be liberally construed in favor of veterans to give full force and effect to the manifest legislative intent to prefer veterans in promotion examinations for honorable service in the armed forces during time of war.-Flaherty v. Marsh, 268 App. Div. 380, 51 N.Y.S. 2d 145 [1944].

¶ 2. Rule of Municipal Civil Service Commission commanding that added points for honorable service in the army be allowed in examinations subject to the condition that "credit will be given in one examination only as in the case of official awards", was not construable as authorizing the allowance of credit for battle participation only in the first successful promotion examination.-Id.

¶ 3. Petitioner's failure to claim credit for his battle service in the first promotion examination did not constitute an abandonment and waiver of his right to make such claim at a later time.-Id.

¶ 4. Admin. Code § 434a-13.0, providing that sergeants shall be selected from among patrolmen of the first grade, and defining such patrolmen as members who shall have served five years or upwards as patrolmen, governs eligibility for promotion, as distinguished from eligibility to compete in a promotion examination. Accordingly, it was not necessary that candidates who took promotion examination for sergeant, have completed five years of service as patrolmen on the day of examination.-Rumack v. McNamara, 195 Misc. 84, 88 N.Y.S. 2d 548 [1949], aff'd 275 App. Div. 805, 89 N.Y.S. 2d 920 [1949].

¶ 5. Although petitioner had been recommended by the Civil Service Commission for promotion to sergeant, he had been passed over, while others had been promoted. His record showed certain infractions of departmental rules. He was entitled to a trial on the question whether the Commissioner had acted arbitrarily.-In re Blaier (Kennedy), 138 (64)

N.Y.L.J. (9-30-57) 6, Col. 2 M.

¶ 6. The Police Commissioner was not arbitrary in passing over a patrolman three times in making promotions to sergeant even though the patrolman's name was among the three highest on the list. The Commissioner could consider offenses on petitioner's disciplinary record. Also, the Commissioner was not limited to a comparison of the penalty imposed for past disciplinary charges regarding the patrolman and others who were promoted over him.-Blaier v. Kennedy, 139 (40) N.Y.L.J. (2-27-58) 6, Col. 5 M.

¶ 7. An examination was held for captain on June 2, 1956, which required applicants to have served as lieutenant prior to that date. Petitioners were thereafter appointed to be lieutenants. They were not so appointed sooner because of a practice of having lieutenants serve as acting captains, thus minimizing vacancies in the lieutenant's rank. Under such circumstances, petitioners were not entitled to an order permitting them to take a special examination for captain or giving them the status of lieutenant as of June 2.-In re O'Sullivan (Schechter), 136 (114) N.Y.L.J. (12-14-56) 7, Col. 2 M.

¶ 8. Subdivision d of § 434a-2.0 does not make policewomen ineligible to compete in examinations for promotion to sergeant. And the other provisions of the Charter and Code do not impose duties on the office of sergeant or on the Police Department generally which would make a policewoman ineligible for the office of sergeant. And since there is nothing in the law which would make it impossible for a woman to perform the duties of sergeant, the refusal to permit policewomen to participate in a promotion examination was unwarranted and an abuse of discretion.-Matter of Shpritzer, 17 App. Div. 2d 285, 234 N.Y.S. 2d 285 [1962].

¶ 9. The designation by the Police Commissioner of certain police captains to other positions, such as inspector, deputy inspector, chief of staff, etc. was not tantamount to an illegal promotion without examination or to illegal out-of-title work.-Matter of Hagan, 39 Misc. 2d 82, 239 N.Y.S. 2d 913 [1963], aff'd 19 App. Div. 2d 862, 243 N.Y.S. 2d 414 [1964], aff'd 14 N.Y. 2d 701, 199 N.E. 2d 156, 250 N.Y.S. 55 [1964].

¶ 10. Article 78 proceeding brought by petitioner, who had been detailed to position of Deputy Inspector for three years, on ground that advice by the Director of Police Personnel that it would be in petitioner's best interest to file for retirement or he would be reduced to Captain constituted discrimination because of age, was dismissed as public officer has a nonreviewable discretion to appoint or revoke an appointment and court can not go behind order to find an unstated motivation for action.-Foran v. Cawley, 77 Misc. 2d 809, 354 N.Y.S. 2d 757 [1973].



Administrative Code of the City of New York



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

*NYC Administrative Code 14-115*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-115 Discipline of members.

a. The commissioner shall have power, in his or her discretion, on conviction by the commissioner, or by any court or officer of competent jurisdiction, of a member of the force of any criminal offense, or neglect of duty, violation of rules, or neglect or disobedience of orders, or absence without leave, or any conduct injurious to the public peace or welfare, or immoral conduct or conduct unbecoming an officer, or any breach of discipline, to punish the offending party by reprimand, forfeiting and withholding pay for a specified time, suspension, without pay during such suspension, or by dismissal from the force; but no more than thirty days' salary shall be forfeited or deducted for any offense. All such forfeitures shall be paid forthwith into the police pension fund.

b. Members of the force, except as elsewhere provided herein, shall be fined, reprimanded, removed, suspended or dismissed from the force only on written charges made or preferred against them, after such charges have been examined, heard and investigated by the commissioner or one of his or her deputies upon such reasonable notice to the member or members charged, and in such manner or procedure, practice, examination and investigation as such commissioner may, by rules and regulations, from time to time prescribe.

c. The commissioner is also authorized and empowered in his or her discretion, to deduct and withhold salary from any member or members of the force, for or on account of absence for any cause without leave, lost time, sickness or other disability, physical or mental; provided, however, that the salary so deducted and withheld shall not, except in case of absence without leave, exceed one-half thereof for the period of such absence; and provided, further, that not more than one-half pay for three days shall be deducted on account of absence caused by sickness.

d. Upon having found a member of the force guilty of the charges preferred against him or her, either upon such

member's plea of guilty or after trial, the commissioner or the deputy examining, hearing and investigating the charges, in his or her discretion, may suspend judgment and place the member of the force so found guilty upon probation, for a period not exceeding one year; and the commissioner may impose punishment at any time during such period.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-14.0 added chap 929/1937 § 1

Sub c amended LL 6/1940 § 1

Sub b amended LL 30/1955 § 1

Sub b amended LL 10/1962 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Police Commissioner **held** justified in dismissing patrolman who was found guilty of signing the name of another to an application for a City license as stationary engineer and falsely testifying before Commissioner of Accounts that he did not know two certain persons.-Higgins v. Valentine, 256 App. Div. 673, 11 N.Y.S. 2d 395 [1939]; aff'd without opinion, 285 N.Y. 791, 35 N.E. 2d 190 [1941].

¶ 2. A member of the police force who pleaded guilty to charges based on illegal possession and use of wire-tap instruments was properly dismissed from the force by the Commissioner.-Matter of Connolly (Kennedy), 142 (97) N.Y.L.J. (11-18-59) 12, Col. 1 M.

¶ 3. Where petitioner pleaded guilty to violation of rules nine days before retirement date, though violations occurred 11 months prior thereto, his dismissal eight hours before retirement date was set aside, in view of his unblemished record for 18 years prior to retirement date.-Matter of Abush (Kennedy), 142 (107) N.Y.L.J. (12-3-59) 14, Col. 2 F.

¶ 4. A policeman was properly fined three days pay and placed on probation for one year where the Commissioner found that he had refused to answer questions propounded to him by superior officers.-Barrett v. Kennedy, 7 A.D. 2d 718, 181 N.Y.S. 2d 169 [1958].

¶ 5. A patrolman was properly dismissed from the force where he had a long record of willful violations of rules and orders.-Barrett v. Kennedy, 142 (120) N.Y.L.J. (12-22-59) 9, Col. 3 T.

¶ 6. Police officer was found guilty of using abusive language and interfering with other officers issuing a summons for speeding to a civilian friend with whom he was riding while off duty and on his way back from a party at 3 a.m. on a deserted Staten Island street. **Held,** punishment of dismissal was excessive taking into consideration circumstances surrounding the incident and the prior good record of the policeman.-McDermott v. Kennedy, 145 (50) N.Y.L.J. (3-15-61) 13, Col. 4 T.

¶ 7. Police officer pleaded guilty at a departmental trial of failing to give summonses to a motorist for passing a red light and not having any license and registration and instead giving him a ticket for jaywalking and making false entries in official reports concerning the jaywalking summons. Dismissal from the force by the Commissioner was not arbitrary, and was not so excessive as to shock the conscience of the court.-Matter of Nocerino (Kennedy), 145 (48) N.Y.L.J. (3-13-61) 13, Col. 6 M.

¶ 8. Police Commissioner's dismissal of petitioner for "moonlighting" was upheld where it appeared that some of the outside work was done during sick leave when petitioner was under orders to stay at home.-Lemmond v. Kennedy, 26 Misc. 2d 267, 213 N.Y.S. 2d 128 [1961].

¶ 9. Dismissal of patrolman because he was absent from his post for 30 minutes was not an abuse of discretion in view of patrolman's record showing that during seven years he had been absent from his post on six different occasions.-Lee v. City of N.Y., 150 (8) N.Y.L.J. (7-11-63) 8, Col. 7 M, aff'd 269 N.Y.S. 2d 677 [1966].

¶ 10. Dismissal from police department was not excessive punishment where petitioner was found guilty of living with an unmarried woman as man and wife while married to someone else in addition to various other violations of police department rules thereby conducting himself in a manner tending to bring adverse criticism on the police department. In re Steward (Leary) 160 (50) N.Y.L.J. (9-10-68) 2, Col. 5 T.

¶ 11. Police Commissioner **held** justified in dismissing patrolman who admittedly had received moneys from an attorney whose practice for the most part was as attorney for defendants arraigned in court to which were brought persons arrested in the patrolman's precinct, where the patrolman's explanation of the transactions was of such dubious quality that a trier of the facts was justified reasonably in rejecting it, and the lawyer's explanation was false by his own prior statements and his office records.-Id.

¶ 12. A police officer who knowingly receives moneys under the circumstances presently disclosed, should not be heard to complain when his departmental superiors require him to explain his act which without such explanation would destroy his usefulness as a police oficer.-Id.

¶ 13. Where evidence presented upon trial of policeman before Police Commissioner upon charges of conduct unbecoming a police officer and conduct prejudicial to efficiency of the Department, established the receipt by the officer, during the course of a year, of three checks of $3 each from a lawyer who had most of his practice in the Magistrate's Court located in the precinct to which the police officer was assigned, and the evidence justified the Commissioner in disbelieving the explanation that the checks were Christmas or birthday presents for the officer's children, Commissioner **held** to have been warranted in dismissing the officer from the force.-Smith v. Valentine, 282 N.Y. 351, 26 N.E. 2d 288 [1940], rev'g 257 App. Div. 281, 12 N.Y.S. 2d 898 [1939].

¶ 14. Where police lieutenant had been charged by the Police Department with unlawfully accepting a bribe to assist civilian in procuring a liquor license, with failing to take proper police action in connection with such matter and with failing to report the matter to his commanding officer, the Trial Commissioner's findings that the lieutenant was not guilty on the bribery charge did not render inconsistent the Commissioner's other findings that the lieutenant was guilty of failing to take proper police action and of failing to report the matter to his commanding officer, since there might nevertheless have been substantial evidence that there was at least a suggestion to the lieutenant that a reward would be given for police service desired and that the lieutenant was derelict in his duty in failing to report and to take proper police action upon such a criminal suggestion.-Murphy v. Valentine, 284 N.Y. 524, 32 N.E. 2d 537 [1940], rev'g 259 App. Div. 522, 19 N.Y.S. 2d 815 [1940].

¶ 15. Greater New York Charter § 302, authorizing the Police Commissioner, upon finding a member of the force guilty of charges preferred against him, to place such member upon probation for a period not exceeding one year and providing that "the police commissioner may impose punishment at any time during such period", **held,** by the reference to "at any time during such period", to restrict the Commissioner's power to dismiss a member from the force to the probationary period, and hence the Commissioner was without power in the immediate case to dismiss a patrolman 13 months and three days after he had been placed on probation, on ground he had not made satisfactory progress in paying the debts as to which complaint had been made and for which he had been suspended.-Budd v. Valentine, 283 N.Y. 508, 29 N.E. 2d 65 [1940].

¶ 16. Determination of Police Commissioner dismissing petitioner from his position of patrolman upon charges

that while off duty in civilian clothes he represented himself to be a federal officer and demanded money after threatening to arrest and charge a person with having committed a crime, that he abandoned posts of duty, and that he failed to have an entry in his memorandum book of his absence from such posts, was affirmed by the Court of Appeals without opinion.-Stanton v. Valentine, 293 N.Y. 836, 59 N.E. 2d 435 [1944].

¶ 17. Determination of Police Commissioner finding patrolman guilty on charge that for 35 minutes on a certain day he did not properly patrol his post, was annulled as not sustained by the evidence.-Cushman v. Wallander, 275 App. Div. 779, 87 N.Y.S. 2d 761 [1949], aff'd 300 N.Y. 647, 90 N.E. 2d 896 [1950].

¶ 18. Where injured policeman applied for leave of absence without pay to enable him to receive medical treatment in Michigan, the Police Commissioner in granting the leave of absence without pay must have exercised his discretion as head of the Department and not under Local Law No. 6 of 1940 (amending Admin. Code § 434a-14.0(c)), which authorized the Commissioner to withhold from a member absent on leave no more than one-half his salary. Acting as head of the Department the Commissioner was without authority to withhold any salary on granting leave of absence, and the policeman's acceptance of the leave of absence without pay did not constitute a waiver thereof, as the doctrine of waiver is inapplicable when the salary of a municipal officer is fixed by law.-Dubins v. City of N.Y., 177 Misc. 675, 31 N.Y.S. 2d 390 [1941].

¶ 19. In actions by police officers to recover pay allegedly wrongfully withheld during period of suspension, the condition precedent to such recovery was that the officers "not be convicted . . . of the charges so preferred".-Brenner v. City of New York, 9 N.Y. 2d 447, 214 N.Y.S. 2d 444, 174 N.E. 2d 526 [1961].

¶ 20. Proper notice of hearing of policeman on charges of being absent without leave, **held** to have been made by leaving notice of the hearing and charges at his last known place of residence, where it appeared that efforts to locate the policeman had been unsuccessful and that actually he had been in California.-In re Wilson (Valentine), 100 (137) N.Y.L.J. (12-14-38) 2134, Col. 1 M.

¶ 21. Service of a copy of the charges and notice of hearing against accused police officer effected through posting them on door to apartment of premises which the officer had occupied up until the time of his disappearance, **held** insufficient, since it was not a compliance with § 308, subd. b of Rules and Regulations of the Police Department providing for service, in event personal delivery might not be made, through leaving the papers at the accused's place of residence with some person of age and discretion and by notifying such person orally of the nature of the papers. The service might not be validated under subdivision C because such subdivision was applicable only if personal service could not be made and the residence could not be located, whereas in this case the residence could be located.-In re McKeogh (Valentine), 102 (102) N.Y.L.J. (10-31-39) 1399, Col. 4 M.

¶ 22. Police officer was not entitled to a trial by jury of the charges preferred against him, as trial by jury in a disciplinary proceeding is not guaranteed the accused by constitution nor provided for by any statute.-Woods v. Murphy, 125 (80) N.Y.L.J. (4-25-51) 1506, Col. 4 M.

¶ 23. In disciplinary proceedings before a Police Commissioner or other administrative officer, rules of evidence or proof devised for trials in court may prove impractical. Some latitude must be allowed as to rules of evidence, methods of examination, and the like, although no essential element of a fair trial or vital safeguard can be dispensed with or violated.-Roge v. Valentine, 280 N.Y. 263 [1939], rev'g 255 App. Div. 475, 7 N.Y.S. 2d 958 [1938].

¶ 24. Determination of Police Commissioner, after hearing, dismissing petitioner's intestate from position of patrolman because of conduct unbecoming an officer, was annulled, where his trial was had in a hospital while he was seriously ill, without counsel and with no opportunity to produce character witnesses or otherwise prepare himself to meet the charge, it was necessary to administer sedatives to him, much incompetent and prejudicial testimony was admitted, and testimony of the sole witness in support of the charge was deemed incredible.-Simms v. Monaghan, 282 App. Div. 733, 122 N.Y.S. 2d 408 [1953], aff'd 307 N.Y. 637, 120 N.E. 2d 834 [1954].

¶ 25. The failure or the refusal of the Commissioner to try a patrolman on criminal charges prior to or at the time of his trial on lesser charges did not authorize an adjournment of the trial.-Matter of Grottano, 5 N.Y. 2d 381, 184 N.Y.S. 2d 648, 157 N.E. 2d 632 [1959].

¶ 26. The refusal of the Commissioner to grant an adjournment beyond July 11 and the trial of the defendant on charges in absentia could not be considered an abuse of discretion. The petitioner had been served with a bill of particulars on the escort charges, as well as a copy of the minutes of investigation, on June 27-and his attorney offered no valid reason why he had been unable to conduct the necessary investigation preparatory to trial, nor why such investigation could not have been completed prior to the trial date of July 11. In view of the fact that defendant's retirement would take effect August 2, the Trial Commissioner could take into account petitioner's apparent attempt to render the trial futile insofar as his pension was concerned.-Matter of Grottano, 5 N.Y. 2d 381, 184 N.Y.S. 2d 648, 157 N.E. 2d 632 [1959].

¶ 27. A patrolman was entitled to an adjournment where he was not furnished a bill of particulars as to the charges until the morning of the trial. Furthermore, the refusal of petitioner on the advice of counsel, to obey the order to proceed to trial on said date could not be made the basis of an insubordination charge.-Matter of Grottano, 5 N.Y. 2d 381, 184 N.Y.S. 2d 648, 157 N.E. 2d 632 [1959].

¶ 28. (Sup., N.Y., Saypol, J.) Amendment of the Manual of Procedure of the Police Department to provide that the Trial Commissioner may require the accused at any stage of the proceedings to take the stand and give sworn testimony, might validly be applied to trial of respondent, as the doctrine of ex post facto is applicable only to criminal or penal statutes (201 N.Y. 358), and the instant disciplinary trial was not a criminal proceeding (112 N.Y.S. 2d 786, aff'd 280 A.D. 144; 10 N.Y.S. 764, aff'd 123 N.Y. 512; 280 N.Y. 268; &c.).-In re Delehanty (Sullivan), 202 Misc. 33, 115 N.Y.S. 2d 602 [1952], aff'd 280 App. Div. 542, 115 N.Y.S. 2d 614 [1952], aff'd 304 N.Y. 725, 108 N.E. 2d 46 [1952].

¶ 29. A policeman must submit his official memorandum book and binder to inspection upon command of his superior officer, and narcotics found in such a binder are lawful evidence in a prosecution of the policeman for violation of Penal Law § 1751-a.-People v. Russell, 33 Misc. 2d 851, 227 N.Y.S. 2d 826 [1962].

¶ 30. Refusal of respondent, who had appeared before the third deputy Police Commissioner in response to a subpoena issued in a police departmental disciplinary trial, to answer certain questions on ground C.P.A. § 355 permits a witness to refuse to answer when the answer would "expose him to a penalty or forfeiture," **held** unauthorized, as the kind of penalty and forfeiture within meaning of § 355 imports a sanction essentially criminal in nature whereas the disciplinary trial was not a criminal proceeding nor are the sanctions which might be imposed considered punishment for crime. The privilege of public employment is subject to reasonable terms laid down by the proper authorities. The loss of one's position does not constitute a forfeiture.-In re Delehanty (Goubeaud), 202 Misc. 40, 115 N.Y.S. 2d 610 [1952], aff'd 280 App. Div. 542, 115 N.Y.S. 2d 614 [1952], aff'd 304 N.Y. 727, 108 N.E. 2d 46 [1952].

¶ 31. Section 399 of the Code of Criminal Procedure, requiring corroboration of the testimony of an accomplice, does not apply to departmental trials which are civil in nature, although the basic reason for the section should not be lost sight of in police trials upon charges involving criminality.-Evans v. Monaghan, 306 N.Y. 312, 118 N.E. 2d 452 [1954], aff'g 282 App. Div. 382, 123 N.Y.S. 2d 662 [1953].

¶ 32. Contention that petitioner police officers were not granted a fair trial, was rejected, notwithstanding the time allotted by the Commissioner for preparation for trial was brief. The Commissioner had indicated that he would postpone the trial for a longer time if petitioners would withdraw their applications for retirement in order that the issues might be decided prior to their pensions irrevocably taking effect.-Id.

¶ 33. Where an indictment had been filed charging members of the New York City Police Department with conspiracy to obstruct justice, having allegedly entered into an agreement to provide a certain notorious bookmaker with immunity from police interference, but on the trial the bookmaker refused to testify and the case thereupon

collapsed and the indictment was dismissed, the grand jury testimony of the bookmaker **held** thereafter properly released to the Police Commissioner for disciplinary action against the police officers, pursuant to the authority of C.C.P. § 952t, as public interest required that the testimony be made available to the Commissioner. The County Court would not prohibit use of the testimony upon the trial of the disciplinary proceeding, as the proper forum for determination of the contentions as to the admissibility of the testimony was the disciplinary proceeding, which would be presided over by a distinguished former member of the judiciary.-In re Scro (Gross), 126 (94) N.Y.L.J. (11-15-51) 1257, Col. 2 M.

¶ 34. The Police Commissioner may suspend members of the force without pay pending filing of formal charges, filed within a reasonable time.-Brenner v. The City of New York, 9 A.D. 2d 729, 192 N.Y.S. 2d 449 [1959], aff'd 9 N.Y. 2d 447, 214 N.Y.S. 2d 444, 174 N.E. 2d 526 [1961].

¶ 35. Constitutional provision against double jeopardy did not apply to departmental disciplinary proceedings against members of the N.Y.C. Police Department, as such proceedings could result at most in fines, dismissal of the members from the police force, and perhaps in the loss of their pensions, but were clearly not criminal prosecutions (Admin. Code, § 434a-14.0).-McGillicuddy v. Monaghan, 201 Misc. 650, 112 N.Y.S. 2d 786 [1952], aff'd 280 App. Div. 144, 112 N.Y.S. 2d 792 [1952], on ground an injunction pendente lite might be granted only upon a showing that plaintiffs would otherwise suffer irreparable injury.

¶ 36. A finding of not guilty with respect to petitioner police officers in a former disciplinary proceeding based on a conspiracy with one H.G. in promoting a systematic business of bookmaking, did not bar maintenance of a second proceeding upon similar charges where H.G., who had refused to testify at the first departmental trial, now was willing to testify. The proceeding was a civil one and there was no double jeopardy or other bar to a second trial on departmental charges. The situation fell in the area in which new trials or hearings are granted by courts.-Evans v. Monaghan, 306 N.Y. 312, 118 N.E. 2d 452 [1954], aff'g 282 App. Div. 382, 123 N.Y.S. 2d 662 [1953].

¶ 37. The statutory authority given to the Police Commissioner, as the chief executive officer of the Police Department, to dismiss a member of the police force, calls for the exercise of his discretion, but the scope of that discretion has been limited by enactment of Court of Claims Act § 8, which waives the State's sovereign immunity from suit. If the retention of an employee may involve a known risk of bodily harm to others, the discretion exercisable by the Commissioner is limited and is superseded by the duty to abate that risk if in related circumstances danger to others is reasonably to be perceived.-McCrink v. City of New York, 296 N.Y. 99, 71 N.E. 2d 419 [1947].

¶ 38. Whether Police Commissioner's retention in police service of a patrolman who on three occasions had been disciplined for intoxication involved danger to others reasonably to be foreseen so as to render City liable for the death of one person and the wounding of another when the officer, while in an intoxicated condition while off duty and in civilian clothes, shot them without provocation, **held** to constitute a question of fact for the jury, particularly in view of the Commissioner's statements that a revolver in the hands of a drunken person was fraught with potential danger, and the rule of the Police Department that a patrolman is required to carry a revolver at all times whether on or off duty.-Id.

¶ 38.1. In action against City of New York to recover for death of intestate who was shot by police officer while attempting to arrest him, evidence that the intestate was intoxicated at the time, that a scuffle had resulted when the officer attempted to arrest him on ground of lewd and lascivious conduct, and that the officer had immediately shot the intestate when in the scuffle the intestate moved his hand toward his hip pocket, **held** to sustain a finding against the City on theory the officer used more force than was necessary in an attempt to arrest the intestate.-McCarthy v. City of N.Y., 118 (54) N.Y.L.J. (9-13-47) 447, Col. 5 F.

¶ 39. A policeman, on the force for nine years observed a holdup in progress. He entered the store, ordered the holdup men to drop their guns and when they fired he returned their fire and killed plaintiff's intestate, the victim of the holdup. In an action by plaintiff's intestate to recover against the City it was error to dismiss the complaint at the close of the evidence for although there was no proof of the policeman's negligence there was proof from which the jury

could find that the policeman had not received adequate instruction in the use of small firearms in emergency situations.-Meistinsky v. City of New York, 285 App. Div. 1153, 140 N.Y.S. 2d 212, aff'd 309 N.Y. 998, 132 N.E. 2d 900 [1956].

¶ 40. Patrolman whom the Police Commissioner had found guilty of neglect of duty, did not cease to be aggrieved by the conviction by fact that he had resigned from the police force, and accordingly his right to review the determination continued to exist (177 Misc. 773).-Cushman v. Wallander, 120 (80) N.Y.L.J. (10-25-48) 907, Col. 3 F. See 275 App. Div. 779, 87 N.Y.S. 2d 761.

¶ 41. Proceeding under C.P.A. Art. 78 to review finding of Police Commissioner that petitioner was guilty of neglect of duty in his capacity as patrolman, should be remitted to the App. Div., as the determination was arrived at as a result of a trial held pursuant to statute.-Id.

¶ 42. The presumption of regularity will support the action of the Police Commissioner. However where after a six-day trial the Police Commissioner, on the same day as the deputy reported his conclusion, approved the finding of guilt and dismissal, the presumption of regularity was rebutted to the extent that it was incumbent upon the Commissioner to come forward and show that he made an informed decision without the transcript of the minutes. Since he failed to do so, the order of the Commissioner was annulled and the proceeding remanded to the Commissioner to render his decision on the evidence educed before the trial Commissioner.-Matter of Kelly, 9 A.D. 2d 92, 191 N.Y.S. 2d 632 [1959].

¶ 43. Application by members of the N.Y.C. Police Department for preliminary injunction restraining their impending trial on departmental charges on ground the charges were substantially identical with those upon which they were previously tried in departmental proceedings, was denied, as the claim of res judicata might be asserted as a defense in the proceeding, and moreover two of the five charges presently made could not have been the subject of the determination in the prior proceeding as these charges were that plaintiffs had committed perjury at the prior trial.-McGillicuddy v. Monaghan, 201 Misc. 650, 112 N.Y.S. 2d 786 [1952], aff'd 280 App. Div. 144, 112 N.Y.S. 2d 792 [1952], on ground an injunction pendente lite might be granted only upon a showing that plaintiffs would otherwise suffer irreparable injury.

¶ 44. Application by petitioner police officers of the City of New York to prohibit and restrain Police Commissioner from carrying forward a disciplinary departmental trial in which they were charged with grave misconduct and corruption, was denied, as contention that the designated Trial Commissioner was not qualified to try the charges was a matter which might be considered on review after the disciplinary trial, in a parallel proceeding it had been adjudged that the Trial Commissioner was qualified, the claimed defense of res judicata might be interposed in the disciplinary proceeding, and claim that petitioners would be damaged irreparably by publicity and exposure of the disciplinary trial presented no ground for relief.-In re Kapple (Monaghan), 115 N.Y.S. 2d 599 [1952].

¶ 45. Motion for temporary injunction restraining New York Police Commissioner from proceeding with trial, was denied.-Alge Hldg. Corp. v. Monaghan, 129 (21) N.Y.L.J. (1-30-53) 350, Col. 1 T.

¶ 46. Article 78 proceeding in the nature of prohibition seeking to enjoin the Police Department from proceeding with a departmental trial of petitioner was improper where there was adequate relief from an adverse judgment entered against petitioner.-Matter of Harding (Police Dept.), 163 (63) N.Y.L.J. (4-2-70) 2, Col. 4 F.

¶ 47. Police Commissioner would be stayed from having petitioners, who were members of the police department, tried on departmental charges until after the disposition of an indictment involving the same charges which were pending against them since their constitutional right to silence on the trial would be impaired if they were required to testify at the departmental hearing and they would be required to disclose in advance their defense to the indictment.-Callwood v. Leary, 162 (84) N.Y.L.J. (10-29-69) 2, Col. 7 T.

¶ 48. The exclusion of policemen from grievance procedure provisions of executive order No. 49 does not violate

their right to equal protection of the law under the 14th Amendment of the U.S. Constitution.-Matter of Patrolmen's Benevolent Association v. Wagner, 7 N.Y. 2d 813, 196 N.Y.S. 2d 694, 164 N.E. 2d 715 [1960], cert. den. 363 U.S. 810 [1961].

¶ 49. An executive order by the Mayor providing for grievance procedure in the various City Departments but excluding said procedure in the Police Department was valid and would be given effect by the Court.-Matter of Patrolmen's Benevolent Association v. Wagner, 3 A.D. 2d 369, 196 N.Y.S. 2d 694 [1959], aff'd 7 N.Y. 2d 813, 196 N.Y.S. 2d 694, 164, N.E. 2d 715 [1959], cert. den. 363 U.S. 810 [1961].

¶ 50. Patrolman's dismissal for "moonlighting" while on sick report did not constitute an abuse of discretion.-In re Maltese (Murphy), 147 (35) N.Y.L.J. (2-20-62) 13, Col. 5 T.

¶ 51. The function of the trial commissioner is to examine, hear and investigate the charges brought against a policeman. He is not required as a matter of law or regulation to come to a conclusion as to the guilt or innocence of the accused. He may make a conclusion in a proper case and may also make a recommendation as to punishment. The Police Commissioner, with the full record before him may determine that the accused is guilty and may dismiss him from the force.-Matter of Ross, 37 Misc. 2d 47, 234 N.Y.S. 2d 940 [1962].

¶ 52. Though the members of the police force are civil service employees, they are subject to strict discipline and special proceedings, sanctions and punishments.-People v. Russell, 33 Misc. 2d 851, 227 N.Y.S. 2d 826 [1962].

¶ 53. Dismissal from the force was excessive punishment for police officer who, while on duty, went aboard an ocean liner and purchased a quantity of untaxed bottled liquor from the chief steward. The officer had an impressive record of over 15 years of service. Instead, a fine of 30 days pay was imposed and all salary earned prior to reinstatement was forfeited.-McWeeney v. Murphy, 149 (58) N.Y.L.J. (3-26-63) 15, Col. 6 F.

¶ 54. While in a restaurant for his midnight meal, a policeman was joined by a civilian whom he knew. Shortly thereafter he noticed that his holster strap was unsnapped and that his gun hammer was cocked. He withdrew his gun from the holster to uncock the hammer and it discharged accidently killing the civilian. The court finding that the dismissal of petitioner from the Police Department on charges of neglecting to properly handle and safeguard his service revolver and failing to be equipped with a regulation holster too severe a penalty reduced it to a one year suspension.-Wiegmann v. Broderick, 155 (93) N.Y.L.J. (5-12-66) 17, Col. 8 M, aff'd 279 N.Y.S. 2d 156 [1967].

¶ 55. It is within discretion of the Police Commissioner to determine that proper administration of the Police Department can best be effectuated by use of a civilian advisory board. Cassese v. Lindsay, 51 Misc. 2d 59, 272 N.Y.S. 2d 324 [1966].

¶ 56. Application of widow to expunge from records of police department dismissal of her husband and to reinstate him and pay back salary and pension benefits was remanded to Police Commissioner for appropriate action on the specifications as to which no formal disposition had been made where police officer was suspended on September 24, 1964 and specifications were filed against him and he was convicted of the crime of attempted extortion on November 1, 1965 following which he was discharged from the police force. His conviction was sustained by the App. Div. and he died while his appeal to the Court of Appeals was pending. Because of his death the Court of Appeals directed the judgment of conviction to be vacated and the indictment dismissed. Since his conviction was vacated his dismissal was vacated. Breslin v. Leary, 59 Misc. 2d 1053, 302 N.Y.S. 2d 642 [1969].

¶ 57. Where police captain was found guilty of departmental charges amounting to perjury after a departmental hearing he was subject to penalty under this section and not Civil Service Law § 75 which limits the fine which may be imposed upon an employee found guilty of charges of misconduct to $100. Hence police captain could be penalized by a forfeiture of 30 days pay.-Foran v. Murphy, 73 Misc. 2d 486, 354 N.Y.S. 2d 757 [1973].

¶ 58. Determination of police commissioner finding petitioner guilty of a violation of police department rules and

fining him 90 days' pay and relieving him of duty for that period was modified to provide for a fine of 30 days with relief of duty in the place of the fine imposed since under this section a forfeiture or deduction of pay as a punishment is limited to "no more than thirty days' salary".-Murphy v. Murphy, 47 A.D. 2d 516, 363 N.Y.S. 2d 591 [1975], aff'd 38 N.Y. 2d 690, 345 N.E. 2d 577, 382 N.Y.S. 2d 33 [1976].

¶ 59. Restoration of patrolman to duty for a year after he pleaded guilty and accepted a forfeiture of pay during the nine months of his suspension pending a criminal proceeding against him for a misdemeanor did not constitute an estoppel against his dismissal after a departmental trial based on his misdemeanor conviction.-Arroya v. Codd, 50 A.D. 2d 752, 376 N.Y.S. 2d 158 [1975].

¶ 60. Application for modification of penalty imposed as result of disciplinary proceeding as result of a negotiated plea agreed to by the parties was denied where petitioner was represented at all stages by counsel and plea minutes and written agreement embodying the negotiated plea indicated that petitioner voluntarily entered into the agreement and no coercion or duress was involved.-In re Ward (Codd), 179 (15) N.Y.L.J. (1-23-78) 10, Col. 5 M.

¶ 61. Deputy Commissioner of Trials of New York City police department had authority to enter into plea settlements in disciplinary proceedings.-Brown v. Codd, 62 A.D. 2d 547, 405 N.Y.S. 2d 687 [1978].

¶ 62. Dismissal of petitioner from police force without a hearing after he had pleaded guilty to accepting money from an undercover police officer and was sentenced to 60 days imprisonment was not improper where crime, although not a felony, involved a violation of his oath of office and invocation of Public Officers Law § 30 at the time of petitioners dismissal or in the Article 78 proceeding was not required.-Hodgson v. McGuire, 75 A.D. 2d 763 [1980].

¶ 63. This section does not confer authority upon the Police Department to institute disciplinary proceedings with regard to behavior of a police officer that occurred prior to that officer's appointment to the force.-Borges v. McGuire, 107 A.D. 2d 492 [1985].

**CASE NOTES**

¶ 1. The mere fact that a police officer has been convicted of a misdemeanor offense (arising out of off-duty conduct) does not lead to an automatic dismissal of the officer, who is entitled to a disciplinary hearing on the charge. Brapham v. Safir, N.Y.L.J., May 9, 1997, page 29, col. 2 (Sup.Ct. New York Co.). See also Blindbury v. Bratton, N.Y.L.J., Jan. 11, 1996, page 27, col. 2 (Sup.Ct. New York Co.).

¶ 2. A police officer who is convicted of a felony, or is convicted of any crime involving the "oath of office" can be dismissed without a hearing. However, a police officer who is convicted of a misdemeanor not involving official conduct, cannot be summarily dismissed but is entitled to a hearing. In one case, the officer was convicted of a misdemeanor assault which occurred during the off-duty hours. The court held that the officer could not relitigate the underlying assault conviction but, at a hearing, could present evidence to mitigate the seriousness of the offense. Foley v. Bratton, 92 N.Y.2d 781, 686 N.Y.S.2d 359 (1999). See also, Farrell v. Safir, 259 A.D.2d 328, 687 N.Y.S.2d 18, (police officer, who was convicted of failing to file income tax returns for two years, could not be dismissed without a hearing).

¶ 3. The Civil Service Commission lacks jurisdiction to hear an appeal by a uniformed police officer disciplined under Section 14-115. Montella v. Bratton, 93 N.Y.2d 424, 691 N.Y.S.2d 372 (1999).

¶ 4. Where substantial evidence supported charges against petitioner for use of excessive force, discourtesy and committing a false arrest, a penalty of probation dismissal for one year and forfeiture of 30 vacation days was not shocking to the court's sense of fairness, and was sustained. Quinn v. Kerik, 757 N.Y.S2d 850 (1st Dept. 2003).

¶ 5. Civil Service Law §77, which prohibits a reduction in back pay for outside earnings during the period of an improper termination, applies to employees who were removed in violation of the Civil Service Law, but does not apply

to persons who were terminated under Admin. Code §15-115. Buric v. Safir, 4 A.D.3d 160, 772 N.Y.S.2d 36 (1st Dept. 2004)leave to appeal denied, 2 N.Y.3d 706, 781 N.Y.S.2d 287, 814 N.E.2d 459 (2004).

¶ 6. At issue in this case was whether the city and town police officers were subject to the collective bargaining provisions under the Taylor Law. These were two cases, based in New York City and the Town of Orangetown, that were consolidated for purposes of this action.

The Taylor Law (Civil Service Law Art. 14) requires collective bargaining to be conducted with respect to all terms of conditions of employment. As long as an employee organization is certified or otherwise officially recognized, the appropriate public employer is required to conduct collective bargaining with respect to any grievances that might arise among employees, pursuant to Civil Service Law section 204(2). This provision cannot be easily overcome, the court commented.

On the other hand, the court has held that some subjects are excluded from collective bargaining, as a matter of public policy, even where no statute specifically states that this is so. Courts have held the following with respect to police departments:

1) they may not be required to bargain over imposing certain requirements on officers receiving benefits following injuries sustained in the line of duty;

2) the City may not surrender its statutory right to choose among police officers seeking promotion in collective bargaining 3) public policy bars enforcement of a provision in a collective bargaining agreement that would limit the power of the NYC Dept. of Investigation to interrogate city employees in a criminal investigation.

Although there was no statutory provision excluding collective bargaining as a practice, public policy was strong enough to warrant such an exclusion. The scope of collective bargaining may be limited by "plain and clear, rather than express prohibitions in the statutes or decisional law, or in neither."

Procedures for disciplining police officers are generally governed by Civil Service Law sections 75 and 76, which provide for hearing and appeal procedures. Civil Service Law section 76(4) states that sections 75 and 76 shall not be construed to repeal or modify pre-existing laws. Among the laws that have been grandfathered under this provision deal with the express right of local officials in certain communities to control discipline of police officers. These laws are applicable in both New York City and Orangetown, the two locales at the center of this controversy.

Section 434 of the City Charter provides that the Police Commissioner have cognizance and control of the city government, administration, disposition and discipline of the department, as well as the police force of the Dept. NYC Admin. Code section 14-115(a) provides that the Commissioner has power in his or her discretion to punish the offending party, in cases of police misconduct.

Admin. Code § 14-115 sets forth a strong public policy in favor of vesting in the Police Commission control over police discipline. The issue was not whether the provision was intended to create an exception to the Taylor Law, since it was enacted prior to the Taylor Law. However, the law expresses a policy so important that the policy favoring collective bargaining gives way. Although these two provisions were initially state statutes, the Charter and Code provisions were adopted by the State Legislature and reflect state policy that police discipline in New York City is subject to the Commissioner's authority. Thus, the law precluded collective bargaining over the subject of police discipline. Patrolmen's Benevolent Assn. v. N.Y. State Public Employment Relations Bd., 6 N.Y.3d 563, 815 N.Y.S.2d 1 (2006).

¶ 7. The police commissioner has authority to discharge probationary police officer for on duty conduct as long as the decision to discharge the officer was not predicated on bad faith or for an improper reason. Duncan v. Kelly 2008 NY Slip Op. 181, 9 NY3d 1024, 882 NE2d 872, 853 NYS2d 260 (2008).

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-116*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-116 Limitations of suits.

a. Actions or proceedings, either at law or in equity, shall be commenced or maintained against the police department, or any member thereof, or against the commissioner, or against the mayor, or against the city by any member or officer, or former member or officer of the force or department to recover or compel the payment of any salary, pay, money or compensation for or on account of any service or duty, or to recover any salary, compensation or moneys, or any part thereof forfeited, deducted or withheld for any cause, only if such action, suit or proceedings shall be commenced within two years after the cause of action shall have accrued.

b. A proceeding may be brought to procure the restoration or reinstatement to the force or department of any member or officer thereof, if such proceeding be instituted within four months after the decision or order sought to be reviewed. Such proceeding when so brought shall be placed upon the calendar by the party instituting the same for hearing by a term of the court not later than the second term after the filing of the answer or return and of service of notice of such filing upon the party instituting the proceeding. In the event of the failure of the party instituting the proceeding to place it upon the calendar, then such proceeding shall be dismissed for want of prosecution upon application therefor by the corporation counsel, unless the court for good and sufficient cause shall otherwise order.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-15.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where a patrolman was suspended upon his indictment for homicide, of which he was acquitted, but departmental charges against him were not issued until two weeks after his suspension, his action for back salary, instituted more than two years after his reinstatement, was dismissed.-Napolitano v. Kennedy, 15 Misc. 2d 597, 182 N.Y.S. 2d 913 [1958].

¶ 2. Provisions of this section allowing a police officer to sue the police department for pay and back pay are not abrogated by collective bargaining agreements which set forth various salary scales and provide for binding arbitration where the agreement provides that it "shall not be construed as a waiver of any right or benefits to which" police officers "are entitled by law".-Campbell v. Lindsay, 78 Misc. 2d 841, 358 N.Y.S. 2d 833 [1974], modified 48 A.D. 2d 621, 367 N.Y.S. 2d 497 [1975].

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-117*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-117 Assignment to police duty.

Only officers and members of the police force shall be assigned to police duty.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-16.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 14-118*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-118 School crossing guards.

a. Notwithstanding the provisions of section 14-117 of this title, the commissioner may employ persons to be known as school crossing guards, for such periods of time as in his or her discretion the commissioner deems advisable. Such school crossing guards shall be empowered to direct pedestrian and vehicular traffic at locations to which they may be assigned, and shall perform such other related duties as may be prescribed by the commissioner.

b. Nothing contained herein shall be construed to constitute such school crossing guards members of the police force, or to entitle them to the privileges and benefits of the members of the police force, or to become members of the police pension fund.

c. The commissioner shall have authority to promulgate rules and regulations governing the conduct of such school crossing guards. The commissioner shall prescribe the insignia or uniform to be worn by the guards while on duty.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-16.1 added LL 34/1954 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-118.1*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-118.1 Voluntary fingerprinting of school children.

a. The commissioner shall, in cooperation with the board of education, local school boards and private schools, institute a program to train persons designated by the appropriate school authority to administer the voluntary fingerprinting of New York city public and private school students in grades kindergarten through twelve and such persons to be trained shall not be police or police auxiliary personnel.

b. The program shall provide resources so that every school may offer the parents or legal guardians of a child the opportunity to have the child fingerprinted at school.

c. No child may be fingerprinted without first presenting an authorization form signed by a parent or legal guardian. Notwithstanding parental consent, any child over the age of fourteen shall also sign an authorization form, or may refuse to participate in the program.

d. Any fingerprints or other information supplied under the program shall be placed in the sole custody of the child's parents or legal guardians on the same day as supplied and no copy or record of such fingerprints shall be retained by the commissioner or the school. Upon the child attaining the age of eighteen years, said child shall be entitled to the return of his/her fingerprints from the parents or legal guardians.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-16.2 added LL 42/1983 § 2

(Legislative findings, locate missing children, LL 42/1983 § 1)



Administrative Code of the City of New York



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

*NYC Administrative Code 14-118.2*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-118.2 Traffic and parking enforcement by employees not police officers.

a. Notwithstanding any other provision of law, the commissioner may employ persons who shall not be police officers to engage in the performance of duties involving the enforcement of laws and regulations relating to (1) the parking of vehicles and (2) the regulating, directing, controlling and restricting of the movement of vehicular and pedestrian traffic, both such duties in furtherance of the facilitation of traffic, the convenience of the public and the proper protection of human life and health.

b. Nothing contained herein shall be construed to entitle such employees to the privileges and benefits of police officers, or to become members of the police pension fund.

**HISTORICAL NOTE**

Section added L.L. 58/1996 § 2, eff. Aug. 8, 1996

Section heading amended L.L. 22/2006 § 2, eff. July 2, 2006. [See Note 1]

Subd. a amended L.L. 22/2006 § 2, eff. July 2, 2006. [See Note 1]

**NOTE**

1. Provisions of L.L. 22/2006:

§ 4. In order to effectuate the provisions of subdivision a of section 14-118.2 of the administrative code of the city of New York, as amended by section 2 of this local law, officers and employees in the classified city civil service who are engaged in the performance of the functions, powers or duties described in such section shall be transferred to the police department without further examination or qualification, and shall retain their respective civil service classifications and civil service status; provided, however, that employees who are subject to pending disciplinary charges on the date of the functional transfer, or against whom a disciplinary penalty has been assessed but not yet served or paid on or prior to such date, may be retained in the employment of the department of transportation until the resolution of the adjudicative or administrative proceedings and until any outstanding disciplinary penalty has been served or paid.

§ 5. No existing right or remedy of any character to the city shall be lost or impaired or affected by reason of the enactment of this local law.

§ 6. No civil, criminal or administrative action or proceeding pending at the time when this local law shall take effect, brought by or against the city or any agency or officer of the city, shall be affected or abated by the enactment of this local law or by anything contained herein; but any or all such actions and proceedings may be assigned or transferred to the police department, but in that event the same may be prosecuted or defended by the police commissioner.

§ 7. This local law shall take effect July 2, 2006, or as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to this local law and subdivision 2 of section 70 of the civil service law; provided, however, that any or all actions necessary to effectuate such transfer may be taken prior to such effective date.

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

*NYC Administrative Code 14-119*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-119 Department to cooperate with department of health and mental hygiene.

a. It shall be the duty of the department, and of its officers and members of the force, as the commissioner shall direct, to promptly advise the department of health and mental hygiene of all threatened danger to human life and health, and of all matters thought to demand its attention, and to regularly report to the department of health and mental hygiene all violations of its rules and ordinances, and of the health laws, and all useful sanitary information.

b. It shall be the duty of the department, by and through its proper officers, members and agents, to faithfully and at the proper time enforce and execute the sanitary rules and regulations, and the orders of the department of health and mental hygiene, made pursuant to the power of the department of health and mental hygiene, upon the same being received in writing and duly authenticated.

c. In and about the execution of any order of the department of health and mental hygiene, or of the department made pursuant thereto, members of the force shall have power and authority as when obeying any order of or law applicable to the department; but for their conduct they shall be responsible to the department and not to the department of health and mental hygiene. The department of health and mental hygiene may, with the consent of the department, impose any portion of the duties of subordinates in such department upon subordinates in the department.

d. The department is authorized to employ and use the appropriate persons and means, and to make the necessary expenditures for the execution and enforcement of the rules, orders and regulations of the department of health and mental hygiene, and such expenditures, so far as the same may not be refunded or compensated by the means herein elsewhere provided, shall be paid as the other expenses of the department of health and mental hygiene are paid.

**HISTORICAL NOTE**

Section amended L.L. 22/2002 § 14, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 435-2.0 added chap 929/1937 § 1

Sub d amended LL 50/1942 § 41

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-120*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-120 Detail of officers to assist department of health.*

The commissioner, upon the2 requisition of the department of health and mental hygiene, shall detail suitable officers to the service of such department of health and mental hygiene for the purpose of the enforcement of the provisions of the health code, and of the acts relating to multiple dwellings. Such officers shall belong to the sanitary company of police, and shall report to the department of health and mental hygiene. The department of health and mental hygiene may report back to the department for punishment any member of such company guilty of any breach of order or discipline or of neglecting his or her duty. Thereupon the commissioner shall detail another officer in his or her place. The discipline of such members of the sanitary company shall be in the jurisdiction of the department, but at any time the department of health and mental hygiene may object to any member of such company on the ground of inefficiency.

**HISTORICAL NOTE**

Section amended L.L. 22/2002 § 15, eff. July 29, 2002 and deemed in

effect as of July 1, 2002.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-17.0 added chap 929/1937 § 1

Amended chap 100/1963 § 392

**FOOTNOTES**

2

[Footnote 2]: * Should be "department of health and mental hygiene".

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-121*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-121 Details to special duty.

A transfer, detail or assignment to special duty of any member of the force, except in cases authorized or required by law, shall not hereafter be made or continued, except for police purposes and in the interests of police service. The commissioner, however, whenever the exigencies of the case require it, may make a detail to special duty for a period not exceeding three days, at the expiration of which the member or members so detailed shall report for duty to the officer of the command from which the detail was made.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-18.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. The assignment of lieutenant to the Police Department as "acting captain" could not be enjoined where there was no vacancies in the position of police captain and there was no showing that any lieutenants had been assigned for any substantial period of time to perform the regular duties of a captain.-Matter of Clifford, 135 (59) N.Y.L.J. (3-27-56) 4, Col. 7 M.

¶ 2. The assignment of Police Department lieutenants on a fairly permanent basis as captains, patrol supervisors

and other positions regularly carried on by captains would serve to prevent the promotion in due course of men on the eligible list for captain and could be enjoined.-In re Clifford, 135 (80) N.Y.L.J. (4-25-56) 7, Col. 7 F.

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

*NYC Administrative Code 14-122*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-122 Relief from active duty due to disability.

The commissioner shall have power to relieve from active duty on patrol any member of the police force, who, while in the actual performance of duty and without fault or misconduct on his or her part, shall have become disabled, physically, as a result of injuries or illness attributable thereto, so as to be unfit to perform full police duty, such disability having been certified to by so many of the police surgeons as the commissioner may require. Such member may be assigned to the performance of such light duties as he or she may be qualified to perform.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-19.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Termination of employment of petitioner was not arbitrary merely because he submitted medical evidence contrary to the reports of the medical board.-Matter of Sheridan (Kennedy), 143 (27) N.Y.L.J. (2-9-60) 13, Col. 3 F.

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-122.1*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-122.1 Receipt of line of duty pay.

a. A member of the force in the rank of police officer, other than an officer who is detailed or designated as a detective or who holds the position of sergeant or any position of higher rank in such force, shall be entitled pursuant to this section to the full amount of his or her regular salary for the period of any incapacity due to illness or injury incurred in the performance and discharge of duty as a member of the force, as determined by the department.

b. A member of the force who is detailed or designated as a detective or who holds the position of sergeant or any position of higher rank in such force shall be entitled pursuant to this section to the full amount of his or her regular salary for the period of any incapacity due to illness or injury incurred in the performance and discharge of duty as a member of the force, as determined by the department, only in the event that a collective bargaining agreement granting such entitlement pursuant to this section has been made by the city and the certified employee organization representing such member. The first entitlement of any such member of the force to the full amount of regular salary under this section shall commence on the date of execution of the collective bargaining agreement providing for such entitlement with respect to such member.

c. Nothing in this section shall be construed to affect the rights, powers and duties of the commissioner pursuant to any other provision of law, including, but not limited to, the right to discipline a member of the force by termination, reduction of salary, or any other appropriate measure; the power to terminate an appointee who has not completed his or her probationary term; and the power to apply for ordinary or accident disability retirement for a member of the force.

d. Nothing in this section shall be construed to require payment of salary to a member of the force who has been

terminated, retired, suspended or otherwise separated from service by reason of death, retirement or any other cause.

e. A decision as to eligibility for benefits pursuant to this section shall not be binding on the medical board or the board of trustees of any pension fund in the determination of eligibility for an accident disability or accidental death benefit.

f. As used in this section the term "incapacity" shall mean the inability to perform full, limited, or restricted duty.

**HISTORICAL NOTE**

Section added L.L. 87/1988 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 14-123*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-123 Suspension of members of force.

The commissioner shall have power to suspend, without pay, pending the trial of charges, any member of the force. If any member so suspended shall not be convicted by the commissioner of the charges so preferred, he or she shall be entitled to full pay from the date of suspension, notwithstanding such charges and suspension.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-20.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Police Commissioner's right to suspend, without pay, members of the police force pending trial of charges, as provided by Admin. Code § 434a-20.0, **held** not limited to a period of 30 days, as set forth in Civil Service Law § 22, subd. 2. Admin. Code, ch. 18, contains within itself the complete law with reference to the Police Department of the City of New York, and it was intended that there be a distinction in the powers of suspension of the Police Commissioner and those of the heads of the other departments.-In re Cugell (Monaghan), 201 Misc. 607, 107 N.Y.S. 2d 117 [1951].

¶ 2. Although the 30-day limitation on suspensions of other civil service employees, as set forth in the Civil

Service Law, was indicative of the legislative intent as to the reasonable duration of suspension without trial, the fact that the instant suspension of police officers had already existed three months and would undoubtedly continue for several further months was not unreasonable in view of the special circumstances that the charges against the petitioner members of the police force originated with the Kings County Grand Jury which charged petitioners with being co-conspirators with the defendants named in an indictment in seeking to assist a certain alleged bookmaker and his employees to avoid arrest and conviction for bookmaking and other crimes, and the evidence and witnesses to support such accusations were within the sole jurisdiction of the district attorney who refused to release the evidence pending the major trial, and therefore the Police Commissioner was presently unable to proceed with the departmental trial.-Id.

¶ 3. A policeman was not entitled to an order in the nature of prohibition against Police Commissioner to restrain him in the prosecution of a departmental trial where, after the policeman had been suspended, but before a trial, he had filed an application for immediate retirement. This section provides that if a suspended policeman shall not be convicted he shall be entitled to full pay from the date of suspension and a prosecution of the disciplinary proceeding was necessary to prevent the policeman from collecting his full salary from the date of suspension.-Matter of Flood, 201 Misc. 560, 108 N.Y.S. 2d 414 [1951].

¶ 4. The Police Commissioner has power to suspend police officers without pay pending trial where charges are filed and trial is held within a reasonable time.-Brenner v. City of New York, 9 N.Y. 2d 447, 214 N.Y.S. 2d 444, 174 N.E. 2d 526 [1961].

¶ 5. This section does not require the filing of departmental charges before suspension. The statute is satisfied so long as departmental charges are filed within a reasonable time after suspension and a trial is thereafter held. Brenner v. City of New York, 9 A.D. 2d 729, 192 N.Y.S. 2d 449 [1959], aff'd 9 N.Y. 2d 447, 214 N.Y.S. 2d 444, 174 N.E. 2d 526 [1961].

¶ 6. On November 2, 1955, the petitioner was suspended from the police force for an assault upon his wife. The next day charges were filed with the commissioners. On April 19, 1956, the petitioner was granted a disability pension by the trustees of the Police Pension Fund. Following his conviction on charges of assault the Police Commissioner tried him on charges filed with him and found him guilty. The petitioner filed an action to recover full pay from the date of his suspension until the date he was granted a disability pension. **Held:** The charges were validly made against the petitioner, since at the time the charges were made, he was subject to the disciplinary powers of his superiors in the Police Department. The mere fact that the Commissioner gave him the right to defend his freedom upon the criminal charges prior to trying him on the charges filed with the Commissioner did not entitle the petitioner to recover.-Matter of Baker, 6 Misc. 2d 589, 161 N.Y.S. 2d 720 [1959].

¶ 7. In an action for wages wrongfully withheld during a period of suspension, it is immaterial that plaintiff's name may have been dropped from the payroll. It is also immaterial that the period of suspension may have been prolonged because of certain adjournments of hearing requested by plaintiff, where defendant consented thereto. However, where plaintiff was charged with felonious assault, was acquitted in County Court, but was found guilty in a departmental trial of assault without just cause, he was not entitled to recover back pay. A delay of 19 days in serving him with written charges and specifications was not prejudicial, where he knew the cause of his suspension.-O'Neill v. City of New York, 13 Misc. 2d 1008, 178 N.Y.S. 2d 334 [1958], aff'd 9 A.D. 2d 729, 193 N.Y.S. 2d 440 [1959], aff'd 9 N.Y. 2d 447, 214 N.Y.S. 2d 444, 174 N.E. 2d 526 [1961].

¶ 8. In actions by police officers to recover pay allegedly wrongfully withheld during period of suspension, the condition precedent to such recovery was that the officers "not be convicted . . . of the charges so preferred".-Brenner v. City of New York, 9 N.Y. 2d 447, 214 N.Y.S. 2d 444, 174 N.E. 2d 526 [1961].

¶ 9. Discharge of a policeman on the grounds that he falsely answered questions as to Communist activities and failed to reveal same under the term "remarks" was annulled because of insufficient evidence to support charges.-Matter of Kaminsky v. Kennedy, 9 App. Div. 2d 541, 196 N.Y.S. 2d 520 [1960].

¶ 10. A patrolman restored to his position after being acquitted in a disciplinary proceeding is entitled to his pay less the compensation he earned in another employment and less unemployment insurance benefits.-LaForge v. City of New York, 147 (120) N.Y.L.J. (6-21-62) 10, Col. 1 F.

¶ 11. Though the members of the police force are civil service employees, they are subject to strict discipline and special proceedings, sanctions and punishments.-People v. Russell, 33 Misc. 2d 851, 227 N.Y.S. 2d 826 [1962].

¶ 12. A policeman must submit his official memorandum book and binder to inspection upon command of his superior officer, and narcotics found in such a binder are lawful evidence in a prosecution of the policeman for violation of Penal Law § 1751-a.-People v. Russell, 33 Misc. 2d 851, 227 N.Y.S. 2d 826 [1962].

¶ 13. Policeman who was dismissed following trial but whose dismissal was reversed and reinstatement directed was entitled to recover from the City only the salary earned during the period of suspension and dismissal, less outside earnings.-Kaminsky v. City of N.Y., 149 (4) N.Y.L.J. (1-7-63) 16, Col. 2 T.

¶ 14. Where plaintiff was dismissed as a police officer but was not suspended prior thereto and after an Article 78 CPLR proceeding in which plaintiff sought review the matter was remanded and plaintiff reinstated with a penalty of loss of a month's pay plaintiff was entitled to recovery of back pay for the period of his dismissal until his reinstatement as he was never suspended. Giaquinto v. Beame, 51 Misc. 2d 845, 274 N.Y.S. 2d 6 [1965].

¶ 15. Patrolmen were not entitled to back pay for period during which they were suspended pending determination of departmental charges because of a delay in final determination of the charges when they were convicted of the charges.-Scornavacca v. Leary, 38 N.Y. 583, 345 N.E. 2d 304, 381 N.Y.S. 2d 833 [1976].

¶ 16. Petitioner, who had been suspended from police force was entitled upon return to be paid entire salary he would have received had he worked for the entire period of his suspension but was not entitled to recover vacation pay and personal leave pay for the suspension period.-Alongi v. City of N.Y., 92 Misc. 2d 1082 [1977].

**CASE NOTES**

¶ 1. Under the unambiguous provisions of § 14-123 a suspended officer is entitled to back pay only if he has "not been convicted by the commissioner of the charges so preferred". Petitioners conviction after trial, upon a plea of guilty, barred an award of back pay for the period of suspension.-Rivera v. Ward, 155 AD2d 285 [1989].

¶ 2. Petitioner, a former NYC police officer whose manslaughter conviction was reversed prior to the effective date of a 1987 statutory amendment granting a nonelected public official convicted of a felony the right to a reinstatement hearing upon the reversal of the conviction that resulted in the vacateur of his office is entitled to a reinstatement hearing however his claim for back pay that accrued during his suspension is dismissed with leave to replead since petitioner is required to allege that he was not convicted of the departmental changes that were preferred (Admin. Code of the City of NY § 14-123) and the record does not reflect that a hearing was held or that there has been a resolution of the changes.-Matter of Hays v. Ward, 144 Misc. 2d 227.

¶ 3. A police officer was charged with misconduct, and suspended without pay, after money taken from a robbery suspect was missing. The court held that even though petitioner resigned (for reasons other than the charges, according to petitioner), he had the right to a hearing after which, if he prevailed, he would be entitled to back pay for the period covered by the suspension. Pacheco v. Kerik, N.Y.L.J., July 26, 2002, page 18, col. 3 (Sup.Ct. New York Co.).

¶ 4. In one case, an officer was charged with three offenses, and was suspended for 30 days without pay, pending the hearing on three charges. Two of the three charges proved to be unfounded, but he was found guilty on the third charge (removing a prisoner from a holding cell without authority) and penalized five vacation days. In an effort to recover full back pay, the officer argued that he would not have been suspended at all if the third charge had been the only charge. The court, however, said that the officer was not entitled to back pay. The statute requires restoration of

full pay only if the officer is found not guilty on all charges, and does not contain any exception for those who are found guilty only on relatively minor charges. Buric v. Safir, 4 A.D.3d 160, 772 N.Y.S.2d 36 (1st Dept. 2004), leave to appeal denied, 2 N.Y.3d 706, 781 N.Y.S.2d 287, 814 N.E.2d 459 (2004).

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

*NYC Administrative Code 14-124*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-124 Termination of service of members of force because of superannuation.

No member of the police force in the department, except surgeons of police, a roentgenologist and a veterinarian, who is or hereafter attains the age of sixty-three years shall continue to serve as a member of such force but shall be retired and placed on the pension rolls of the department, provided, however, that any member who is not eligible for retirement at age sixty-three shall continue to serve as a member only until such time as he or she becomes eligible for such pension service retirement, provided further that any member participating in the social security program may elect to remain in the department but only until such time as he or she has earned the minimum number of quarters of coverage required to assure future eligibility for social security retirement benefits, but in no event beyond sixty-five years of age.

Notwithstanding the provisions of this section or of any other section of law, any member who shall not have completed thirty-five years of creditable city service within the meaning of subdivision j of section 13-206, prior to attaining the age of sixty-three years may continue to serve as a member until he or she shall have completed such thirty-five years of creditable city service.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-21.0 added chap 929/1937 § 1

Repealed LL 7/1940 § 1

Added LL 71/1951 § 1

Amended LL 195/1951 § 1

Amended LL 201/1951 § 1

Clos. par added chap 681/1952 § 1

Clos. par amended chap 680/1952 § 1

Amended LL 59/1959 § 1

Amended LL 66/1971 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Admin. Code § 434a-21.0, providing for retirement of members of the police force at the age of 63, except that any person who was not eligible for retirement at such age should continue to serve as a member until he became eligible for pension service retirement, **held** not unconstitutional as contrary to Civil Service Law § 22(2), providing for removal of employees, or as in conflict with §§ 953 and 963 of the Charter providing that nothing in the Charter should affect rights of employees at the time the Charter took effect, or as being discriminatory because of the exception in favor of members not eligible for retirement at the age of 63, or as being unreasonable in providing for retirement at the age of 63.-Humbeutel v. City of N.Y., 125 N.Y.S. 2d 198 [1953], aff'd 283 App. Div. 1011, 131 N.Y.S. 2d 445 [1953], aff'd 308 N.Y. 904, 126 N.E. 2d 569 [1955].

¶ 2. Contention that Admin. Code § 434a-2.0 contravened public policy in providing for compulsory retirement of policemen at the age of 63, **held** untenable, as from 1897 to 1940 the law granted the Police Commissioner power to retire any police officer at the age of 60 without reason, and such law had never been successfully attacked. However, court felt that § 434a-21.0, was unwise in its results in that it deprived the police department of a number of its most skilled police officers and would undoubtedly prove to be a hardship to many officers.-Id.

¶ 3. In fixing the retirement age at 63, the local law was not so unreasonable that the Court could interfere.-Id.

¶ 4. The Legislature by amending § 113-a of the Social Security Law unequivocally manifested that its intention was to suspend temporarily and until June, 1958, the provisions of all State and local laws requiring termination of service or retirement on account of age, including § 34a-21.0 of the Admin. Code, and thus assure all public employees approaching mandatory retirement age between June, 1957 and June, 1958, the basic protection provided by the Federal Old-Age Law. Thus, a policeman who was retired at the age of 63, was entitled to reinstatement to active duty, so that he could attain eligibility for payment of benefits under the Federal Old-Age and Survivors Law.-Matter of Kiley, 16 Misc. 2d 969, 190 N.Y.S. 2d 53 [1959].

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*NYC Administrative Code 14-125*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-125 Rehearing of charges; reinstatement of members of department.

a. Upon written application to the mayor by the person aggrieved, setting forth the reasons for demanding such rehearing, the commissioner may rehear the charges upon which a member or a probationary member of the uniformed force has been dismissed, or reduced from the rank theretofore held by him or her. Such person or persons shall be required to waive in writing all claim against the city for back pay and shall obtain from the mayor his or her consent to such rehearing, such consent to be in writing and to state the reasons why such charges should be reheard.

b. Such application for a rehearing shall be made within one year from the date of the removal or reduction in rank.

c. If the commissioner shall determine that such member has been illegally or unjustly dismissed or reduced, the commissioner may reinstate such member or restore him or her to the rank from which he or she was reduced, as the case may be, and allow him or her the whole of his or her time since such dismissal, to be applied on his or her time of service in the department, or the commissioner may grant such other or further relief as he or she may determine to be just, or the commissioner may affirm the dismissal or reduction, as he or she may determine from the evidence.

d. If the applicant be a probationary member of the department, the commissioner may allow him or her the time already served as a probationary member to count as time served, but shall not allow the time between the date of his or her dismissal and his or her restoration to count as service in the department.

e. Employees of the department, not entitled to a trial before dismissal, and who were given an opportunity to explain charges before they were removed, may apply to the mayor, within one year from the date of the order

separating them from the service, for a further opportunity to explain, setting forth the reasons for such action. The mayor, in his or her discretion, may grant such application. The commissioner, thereupon, shall afford a further opportunity to the dismissed employee to explain the charges filed against him or her, on which the removal was based. Thereafter the commissioner, in his or her discretion, may reinstate the dismissed employee or reaffirm the previous removal. Prior to any reinstatement hereunder, such former employee shall file a written statement waiving all claim or claims for back salary and damages of any kind whatsoever.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-22.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Remedy of policeman who was dismissed from the service for being absent without leave and who now claimed that his absence was involuntary and induced by a condition of psychic amnesia, was to make application to the Mayor pursuant to Admin. Code § 434a-22.0 and not to appeal to the Court for an order compelling the Commissioner to grant him in effect a rehearing, inasmuch as the Police Commissioner was without power to grant a rehearing (158 App. Div. 654), and moreover general policy of Court was not to interfere with administration of another branch of the government.-In re Wilson (Valentine), 100 (137) N.Y.L.J. (12-14-38) 2134, Col. 1 M.

¶ 2. Dismissed policeman's application to Court to compel Police Commissioner to grant him a rehearing to enable him to establish that his absence without leave, which occasioned his dismissal, was not intentional, **held** barred by his failure to institute the proceeding within four months of the dismissal order.-Id.

¶ 3. Petitioner could maintain an Article 78 proceeding to review his discharge as a policeman without first applying for a rehearing of charges before the Mayor.-In re Tarkan (Wagner), 141 (91) N.Y.L.J. (5-12-59) 12, Col. 3 M.



Administrative Code of the City of New York



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

*NYC Administrative Code 14-126*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-126 Resignations, absence on leave.

a. A member of the force, under penalty of forfeiting the salary which may be due such member, shall not withdraw or resign, except by permission of the commissioner.

b. Absence, without leave, of any member of the force for five consecutive days shall be deemed and held to be a resignation, and the member so absent shall, at the expiration of such period cease to be a member of the force and be dismissed therefrom without notice.

c. Leave of absence, other than for sickness, exceeding thirty days in any one year shall be granted or allowed to any member of the force, only upon the condition that such member shall waive and release not less than one-half of all salary and claim thereto during such absence.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-23.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Admin. Code § 434a-23.0, subd. b, providing that absence of officer without leave for five consecutive days

should be deemed a resignation, applies only to voluntary and intentional absences.-In re McKeogh (Valentine), 102 (102) N.Y.L.J. (10-31-39) 1399, Col. 4 M.

¶ 2. Member of New York City Police Department who re-entered the armed forces pursuant to a Department of Air Force document which appeared on its face to be an order and to have re-activated petitioner, and who was not shown to have made an application for re-call, **held** entitled to benefits of Military Law § 246 and hence was not to be considered a resigned member pursuant to Admin. Code § 434a-23.0, par. b.-Biehusen v. Wallander, 121 (22) N.Y.L.J. (2-14-49) 558, Col. 5 F.

¶ 3. Patrolman who, while under suspension and while disciplinary proceedings were pending against him, voluntarily submitted on a Police Department form his unconditional resignation, was not entitled to rescission of the order of the Police Commissioner made pursuant to Admin. Code § 434a-23.0 finding that he had resigned without the Commissioner's permission and dropping him from the rolls and declaring all salary due him forfeited. In filing the form the patrolman subjected himself to the risk that the Commissioner would hold the resignation to be without permission. The Commissioner had no duty to adopt regulations or make other forms available to police officers.-In re Woods (Monaghan), 126 (21) N.Y.L.J. (7-31-51) 172, Col. 7 F.

¶ 4. In the face of disciplinary charges, the petitioner resigned from the Police Department without the Commissioner's approval. He was not thereafter entitled to an order of reinstatement.-Jacobson v. Kennedy, 137 (21) N.Y.L.J. (1-30-57) 6, Col. 5 F.

¶ 5. Under this section, a patrolman of the Police Department of the City of New York had the absolute right to resign by parole. Hence, a patrolman's petition for reinstatement to the position of patrolman was dismissed without prejudice to an application by him for leave to rescind his resignation.-Matter of Formoso, 5 A.D. 2d 332, 171 N.Y.S. 2d 482 [1958], aff'd 5 N.Y. 2d 830, 181 N.Y.S. 2d 505, 155 N.E. 2d 401 [1958].

¶ 6. Rule of Civil Service Commission limiting reinstatement of employees to a one-year period after retirement, applies only to the time of presentation of application and not to actual reinstatement. Hence petitioner who had applied for reinstatement within one year after his retirement, was entitled to reinstatement even though this would occur after expiration of the one-year period.-In re Sullivan (Murphy), 150 (81) N.Y.L.J. (9-23-63) 12, Col. 8 F.

¶ 7. Application for reinstatement was timely where made five days before expiration of the one-year limitation period of the New York City Civil Service Rules and Regulations and police commissioner could not refuse to accept application because of fact that he did not have sufficient time to process it which normally takes at least six weeks.-Meskill v. McManus, 160 (18) N.Y.L.J. (7-25-68) 10, Col. 1 T.

¶ 8. Where policeman applied for reinstatement after voluntary resignation and passed necessary medical and physical tests refusal to reinstate was not in violation of his constitutional rights where rules of Civil Service Commission made reinstatement subject to willingness of appointing officer to do so, and failure to give an explanation for refusal to reinstate was not evidence of arbitrariness.-Borowski v. Leary, 162 (87) N.Y.L.J. (11-3-69) 17, Col. 6 F.

¶ 9. Where petitioner, a probationary patrolman, resigned from the Police Department without permission to enter the fire department and about one month after being notified by the police department that because he had resigned without permission all salary due him would be forfeited as provided by this section. He resigned from the fire department and asked to be reinstated in his former position. Denial of his request would not be interfered with by the court since eligibility for reinstatement is subject to the discretion of the Police Commissioner.-Haney v. Leary, 165 (23) N.Y.L.J. (2-3-71) 2, Col. 5 T.

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

*NYC Administrative Code 14-127*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-127 Contingent expenses of department, bond of commissioner.

a. The commissioner of finance shall from time to time pay over and advance to the commissioner such portions of the appropriation made to the department for contingent expenses, not exceeding one hundred fifty thousand dollars at any one time, for which requisition may be made by such commissioner. The commissioner shall transmit to the department of finance the original vouchers for the payment of all sums of money disbursed by such commissioner on account of such contingent expenses, and no greater sum than one hundred fifty thousand dollars in excess of the amount duly accounted for by such vouchers shall be advanced to the commissioner at any one time.

b. The commissioner shall give a bond of one hundred fifty thousand dollars, with two sufficient sureties, to be approved by the comptroller, for the faithful performance of the duties imposed and privileges conferred upon such commissioner by this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-24.0 added chap 929/1937 § 1

Amended LL 124/1951 § 1

Amended chap 100/1963 § 393

Amended LL 46/1968 § 1

Amended LL 85/1972 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 14-128*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-128 Three platoon system; traffic squad not affected by.

The three platoon system shall not apply to or govern the hours or tours of duty of sergeants or police officers of the city of New York, who may from time to time be detailed or assigned to what is known and designated as the traffic squad, provided, nevertheless, that the total number of members of the police force or department of such city, so detailed or assigned to such traffic squad, shall not at any time exceed in the aggregate one-third of the entire police force or department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-25.0 added chap 929/1937 § 1

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

*NYC Administrative Code 14-129*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-129 Commissioner; to fix boundaries of precincts; to furnish station houses.

a. The number and boundaries of the precincts shall be fixed by the commissioner. The commissioner shall, from time to time, with the approval of the mayor, within the appropriation provided therefor, establish, provide and furnish stations and station houses, or substations and substation houses, at least one to each precinct, for the accommodation thereat of members of the force, and as places of temporary detention for persons arrested and property taken within the precinct. However, the commissioner shall provide written notice with supporting documentation at least forty-five days prior to the permanent closing, removal or relocation of any permanent station, station house, substation or substation house to the council members, community boards and borough presidents whose districts are served by such facility and the chairperson of the council's public safety committee. For purposes of this section, the term "permanent" shall mean a time period in excess of six months. In the event that the permanent closing of any stations and station houses, or substations and substation houses does not occur within four months of the date of the written notice, the commissioner shall issue another written notice with supporting documentation prior to such permanent closing. The four months during which the written notice is effective shall be tolled for any period in which a restraining order or injunction prohibiting the closing of such noticed facility shall be in effect.

b. A sufficient sum of money shall be appropriated annually for the purpose of furnishing horses, automotive equipment and apparatus connected therewith, and the maintenance thereof, and for the other purposes authorized by this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended L.L. 40/1989 § 2 amended L.L. 21/1988 § 2

**DERIVATION**

Formerly § 434a-26.0 added chap 929/1937 § 1

Amended chap 100/1963 § 394

**CASE NOTES FROM FORMER SECTION**

¶ 1. In proceeding to annul determination to close the 70th Police Precinct in Kings County and to consolidate the personnel and operations of this precinct with those of surrounding precincts court held that determination of Mayor and Police Commissioner to do so was not illegal or arbitrary. The adequacy of facilities is a matter of internal management and administration with which the court is reluctant to interfere.-Golden v. Leary, 159 (71) N.Y.L.J. (4-11-68) 12, Col. 8 T.

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

*NYC Administrative Code 14-130*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-130 Returns of arrests; accused to be taken before judge of the criminal court.

a. Every arrest made by any member of the force shall be made known immediately to the superior on duty in the precinct wherein the arrest was made, by the person making the same. It shall be the duty of such superior, to make written return of such arrest within twenty-four hours, according to the rules and regulations of the department, with the name of the party arrested, the alleged offense, the time and place of arrest, and the place of detention.

b. Each member of the force, under the penalty of ten days' fine, or dismissal from the force, at the discretion of the commissioner, immediately upon an arrest, shall convey in person the offender before the nearest sitting judge of the criminal court, that he or she may be dealt with according to law. If the arrest is made during the hours that the judge of the criminal court does not regularly hold court, or if the judge of the criminal court is not holding court, such offender may be detained in a precinct or station house thereof, until the next regular public sitting of the judge of the criminal court, and no longer, and shall then be conveyed without delay before the judge of the criminal court to be dealt with according to law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 435-12.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where petitioner for habeas corpus was arrested on a Sunday for the crime of robbery at a time when no criminal court was in session in Queens County it was legal to take him to the criminal court in Kings County which was then the "nearest sitting magistrate". Hence detention of petitioner was not illegal because of his arraignment in Kings County.-People v. Warden, 54 Misc. 2d 907, 283 N.Y.S. 2d 727 [1967].

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

*NYC Administrative Code 14-131*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-131 Accommodations for women.

The commissioner shall designate one or more station houses for the detention and confinement of women under arrest in the city. The commissioner shall provide sufficient accommodations for women held under arrest, keep them separate and apart from the cells, corridors and apartments provided for males under arrest, and so arrange each station house that no communication can be had between men and women therein confined, except with the consent of the officer in command of such station house. Officers or employees other than female staff assigned to this detail, shall be admitted to the corridors or cells of the women prisoners only with the consent of the officer in command of such station house. In every station house to which female members of the force or other female staff are detailed, toilet accommodations shall be provided for female staff, which accommodations shall be wholly separate and apart from the toilet accommodations provided for prisoners, or for male personnel attached to such station house.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-27.0 added chap 929/1937 § 1

Amended LL 42/1977 § 1

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

*NYC Administrative Code 14-132*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-132 Proceedings where woman is arrested.

Whenever a woman is arrested and taken to a police station, it shall be the duty of the officer in command of the station to cause a female staff member assigned to this detail to be summoned forthwith, and whenever a woman is arrested in any precinct in which no such female staff member is assigned, she shall be taken directly to the station house designated to receive the women prisoners of the precinct in which the arrest is made. Such separate confinement, or any such removal of any woman, shall not operate to take from any court any jurisdiction which it would have had. The term "woman" as used in this section and section 14-131 of this title shall not include any female either actually or apparently under the age of sixteen years whose care is assumed by any incorporated society for the prevention of cruelty to children; but every such female detainee under the age of sixteen shall be taken directly to a station house designated to receive women prisoners and shall be at once transferred therefrom by the officer in charge, to the custody of such society.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-28.0 added chap 929/1937 § 1

Amended LL 42/1977 § 2

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-133*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-133 Use of boats.

In any precinct or precincts, comprising waters of the harbor, the commissioner may use and procure, through the department of citywide administrative services, such boats as shall be deemed necessary.

**HISTORICAL NOTE**

Section amended L.L. 59/1996 § 75, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-29.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 14-134*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-134 Civil process.

A police officer while actually on duty shall not be liable to arrest on civil process, or to service of subpoena from civil courts.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-30.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Admin. Code § 434a-30.0 of City of New York, providing that a patrolman while on duty shall not be liable to arrest on civil process or to service of subpoenas from civil courts, **held** not to render invalid a service of summons, complaint and motion papers made upon an officer while on duty, since intendment of the section was merely to prevent officers from being compelled to leave their posts of duty.-Ryan v. Ryan, 169 Misc. 380, 7 N.Y.S. 2d 281 [1938].

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-135*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-135 Reimbursement for loss of property by member of force while in performance of duty.

Whenever any member of the uniformed force of the department shall, while in the actual performance of police duty, lose or have destroyed any of his or her personal belongings, satisfactory proof thereof having been shown to the commissioner, such member shall be reimbursed to the extent of the loss sustained, at the expense of the city.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-31.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 14-136*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-136 Rewards.

a. To members of force. The commissioner for meritorious and extraordinary services rendered by any member of the force in due discharge of his or her duty, may permit any member of the force to retain for his or her own benefit any reward or present, or some part thereof, tendered him or her therefor; and it shall be cause for removal from the force for any member thereof to receive any such reward or present without notice thereof to the commissioner. Upon receiving such notice, the commissioner may either order the said member to retain the same, or shall dispose of it for the benefit of the police pension fund.

b. To informers. The commissioner shall have authority to offer rewards to induce any person to give information which shall lead to the detection, arrest and conviction of persons guilty of a felony and to pay such awards to such persons who shall give such information. Such a reward shall be offered only if there be an unexpended appropriation therefor. The city shall make the necessary appropriation for such purpose.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-32.0 added chap 929/1937 § 1

Sub b amended chap 100/1963 § 395



Administrative Code of the City of New York



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

*NYC Administrative Code 14-137*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-137 Subpoenas; administration of oaths.

a. The commissioner, and his or her deputies shall have the power to issue subpoenas, attested in the name of the commissioner and to exact and compel obedience to any order, subpoena or mandate issued by them and to that end may institute and prosecute any proceedings or action authorized by law in such cases. The commissioner, and his or her deputies may in proper cases issue subpoena duces tecum. The commissioner may devise, make and issue process and forms of proceedings to carry into effect any powers or jurisdiction possessed by him or her.

b. The commissioner, each of his or her deputies, the chief clerk, and the first and second deputy clerks of such department and hearing officers of the division of licenses or any superior officer of the rank of sergeant or above specifically designated by the commissioner, are hereby authorized and empowered to administer oaths and affirmations in the usual or appropriate forms, to any person in any matter or proceedings authorized as aforesaid, and in all matters pertaining to the department, or the duties of any officer or other person in matters of or connected with such department and to administer oaths of office which may be taken or required in the administration or affairs of such department, and to take and administer oaths and affirmations, in the usual or appropriate forms in taking any affidavit or disposition which may be necessary or required by law or by order, rule or regulation of the commissioner for or in connection with the official purposes, affairs, powers, duties or proceedings of the department, or of such commissioner or member of the force or any official purpose lawfully authorized by said commissioner.

c. Any person making a complaint that a felony or misdemeanor has been committed may be required to make oath or affirmation thereto, and for this purpose the commissioner, each of his or her deputies, the chief clerk, or deputy clerks of the department, the inspectors, captains, lieutenants and sergeants shall have power to administer oaths and affirmations.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended chap 175/1987 § 1

**DERIVATION**

Formerly § 434a-33.0 added chap 929/1937 § 1

Amended LL 127/1954 § 1

Amended LL 29/1955 § 1

Amended LL 9/1962 § 1

Amended LL 29/1966 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Application to vacate subpoena directing petitioner to appear before a Deputy Police Commissioner to testify concerning matters alleged in charges pending against the operator of a night club under a City license, was denied, where the record before the Court did not demonstrate the "futility of the process to uncover anything legitimate" from the petitioner. Only when interrogation of the witness was begun could questions of relevancy and materiality be resolved with any certainty, and it was not incumbent upon the respondent on the present application to disclose the exact testimony he would try to elicit from the witness.-In re Costello (O'Leary), 50 N.Y.S. 2d 390 [1944], appeal dismissed on ground issues had become academic, 268 App. Div. 223, 50 N.Y.S. 2d 798 [1944].

¶ 2. Petitioner who was served with a subpoena issued by the Police Commissioner apparently pursuant to Admin. Code § 434a-33.0 for his examination before the Property Clerk as to facts relative to the justness of his claim for the return of certain money, was entitled to institute a special proceeding to procure the vacating of the subpoena, and was not obliged to proceed by motion in an action brought in the City Court by petitioner for alleged conversion of the money by the Property Clerk.-Russo v. Valentine, 182 Misc. 632, 49 N.Y.S. 2d 577 [1944], aff'd 268 App. Div. 990, 51 N.Y.S. 2d 697 [1944], rev'd on other grounds, 294 N.Y. 338, 62 N.E. 2d 221 [1945].

¶ 3. Power of the Property Clerk of the Police Department to examine respondent relative to the justness of his claim to a certain fund in possession of the Property Clerk, **held** to have survived the institution of a civil action brought by respondent for recovery of the fund, and hence motion to cancel subpoena issued by the Police Commissioner requiring petitioner to appear and be sworn before the Property Clerk and be examined, was denied.-Russo v. Valentine, 294 N.Y. 338, 62 N.E. 2d 221 [1945], reversing 268 App. Div. 990, 51 N.Y.S. 2d 697 [1944], which had aff'd 182 Misc. 632, 49 N.Y.S. 2d 577 [1944].

**CASE NOTES**

¶ 1. The Deputy Commissioner of Trials in the New York City Police Department has the power to issue subpoenas. Thus, where a New York City police officer was facing sexual harassment charges and sought to examine files of other cases in which the same complainant charged sexual harassment, the officer could not apply directly to a court for production of the material but had to apply to the Deputy Commissioner for issuance of an appropriate subpoena. Irizarry v. New York City Police Dept., 260 A.D.2d 269, 688 N.Y.S.2d 541 (1st Dept. 1999).

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

*NYC Administrative Code 14-138*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-138 Minutes of commissioner; when evidence.

A copy of the minutes of the commissioner or of any part of such minutes, or of any order or resolution of the commissioner, or of the rules and regulations established by him or her when certified by the commissioner or the chief clerk, or first deputy clerk of the department, may be given in evidence upon any trial, investigation, hearing or proceeding in any court, or before any tribunal, commissioner or commissioners, or board, with the same force and effect as the original.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-34.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. This section relates only to the requirements for offering a copy of minutes into evidence and does not relate to a person's right to obtain a copy of the minutes.-Matter of Galasso, 139 (49) N.Y.L.J. (3-12-58) 7, Col. 3 M.



Administrative Code of the City of New York



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

*NYC Administrative Code 14-139*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-139 Disposal of horses.

Whenever any horses used in the department shall have become unfit for use therein, the commissioner, instead of causing such horses to be sold at auction, may transfer such horses to the custody of the American Society for the Prevention of Cruelty to Animals, provided such society is willing to accept the custody thereof, to be disposed of in such manner as such society may deem best. If, however, any horse so received into the custody of such society and formerly used in the department shall thereafter be sold by such society, or any profit be derived from its use, the proceeds from such sale or use shall be paid over by such society to the commissioner, for the benefit of the police pension fund.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 434a-35.0 added chap 929/1937 § 1

Amended LL 50/1942 § 39

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-140*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-140 1 Property clerk.

a. Appointment, duties and security.

1. The commissioner shall employ a property clerk who shall take charge of all property and money hereinafter described.

2. All such property and money shall be described and registered by the property clerk in a record kept for that purpose, which shall contain a description of such property or money, the name and address of the owner or claimant if ascertained, the date and place where obtained or found, the name and address of the person from whom taken or obtained, with the general circumstances, the name of the officer by whom recovered or obtained, the date when received by the property clerk, the names and addresses of all claimants thereto, and any final disposition of such property or money.

3. The property clerk shall have power to administer oaths to and take affidavits and depositions of any person or claimant in all matters pertaining to the powers and duties of the property clerk, and property and money in his or her custody and claims thereto.

4. The commissioner may require and take security for the faithful performance of the duties of the property clerk.

b. Custody of property and money. All property or money taken from the person or possession of a prisoner, all property or money suspected of having been unlawfully obtained or stolen or embezzled or of being the proceeds of

crime or derived through crime or derived through the conversion of unlawfully acquired property or money or derived through the use or sale of property prohibited by law from being held, used or sold, all property or money suspected of having been used as a means of committing crime or employed in aid or furtherance of crime or held, used or sold in violation of law, all money or property suspected of being the proceeds of or derived through bookmaking, policy, common gambling, keeping a gambling place or device, or any other form of illegal gambling activity and all property or money employed in or in connection with or in furtherance of any such gambling activity, all property or money taken by the police as evidence in a criminal investigation or proceeding, all property or money taken from or surrendered by a pawnbroker on suspicion of being the proceeds of crime or of having been unlawfully obtained, held or used by the person who deposited the same with the pawnbroker, all property or money which is lost or abandoned, all property or money left uncared for upon a public street, public building or public place, all property or money taken from the possession of a person appearing to be insane, intoxicated or otherwise incapable of taking care of himself or herself, that shall come into the custody of any member of the police force or criminal court, and all property or money of inmates of any city hospital, prison or institution except the property found on deceased persons that shall remain unclaimed in its custody for a period of one month, shall be given, as soon as practicable, into the custody of and kept by the property clerk except that vehicles suspected of being stolen or abandoned and evidence vehicles as defined in subdivision b of section 20-495 of the code may be taken into custody in the manner provided for in subdivision b of section 20-519 of the code.

c. Return of property and money to person accused. Whenever property or money taken from any person arrested shall be alleged to have been feloniously obtained, or to be the proceeds of crime, and brought, with all ascertained claimants thereof, and the person arrested, before a judge of the criminal court for adjudication, and the judge of the criminal court shall be satisfied from the evidence that the person arrested is innocent of the offense alleged, and that the property rightfully belongs to him or her, then such judge thereupon, in writing, may order such property or money to be returned, and the property clerk, if he or she have it, to deliver such property or money to the accused person, and not to any attorney, agent or clerk of such accused person.

d. Disputed ownership. If any claim to the ownership of such property or money shall be made on oath before the judge, by or in behalf of any other persons than the person arrested, and such accused person shall be held for trial or examination, such property or money shall remain in the custody of the property clerk until the discharge or conviction of the person accused and until lawfully disposed of.

e. Disposition of property and money. 1. Abandoned vehicles subject to the provisions of section twelve hundred twenty-four of the vehicle and traffic law in the custody of the property clerk shall be disposed of in accordance with the provisions of such section twelve hundred twenty-four. The city may convert to its own use in any calendar year one percent of any such abandoned vehicles not subject to subdivision two of such section twelve hundred twenty-four which are not claimed. All moneys or property other than abandoned vehicles subject to the provisions of such section twelve hundred twenty-four that shall remain in the custody of the property clerk for a period of three months without a lawful claimant entitled thereto shall, in the case of moneys, be paid into the general fund of the city established pursuant to section one hundred nine of the charter, and in the case of property other than such abandoned vehicles, be sold at public auction after having been advertised in "the City Record" for a period of ten days and the proceeds of such sale shall be paid into such fund. In the alternative, any such property may be used or converted to use for the purpose of any city, state or federal agency, or for charitable purposes, upon consultation with the human resources administration and other appropriate city agencies, and the commissioner shall report annually to the city council on the distribution of such property. Notwithstanding the foregoing, all property or money of a deceased person that shall come into the custody of the property clerk shall be delivered to a representative of the estate of such decedent and if there be no such representative, to the public administrator of the county where the decedent resided. Where moneys or property have been unlawfully obtained or stolen or embezzled or are the proceeds of crime or derived through crime or derived through the conversion of unlawfully acquired property or money or derived through the use or sale of property prohibited by law from being held, used or sold, or have been used as a means of committing crime or employed in aid or in furtherance of crime or held, used or sold in violation of law, or are the proceeds of or derived through

bookmaking, policy, common gambling, keeping a gambling place or device, or any other form of illegal gambling activity or have been employed in or in connection with or in furtherance of any such gambling activity, a person who so obtained, received or derived any such moneys or property, or who so used, employed, sold or held any such moneys or property or permitted or suffered the same to be used, employed, sold or held, or who was a participant or accomplice in any such act, or a person who derives his or her claim in any manner from or through any such person, shall not be deemed to be the lawful claimant entitled to any such moneys or property except that as concerns any vehicle taken into custody in the manner provided for in subdivision b of section 20-519 of the code, the authorized tow company shall receive from the department the cost of towing and storage as provided under subdivision c of section 20-519.

2. The commissioner, however, where the property consists of any property that has been used as a means of committing crime or employed in aid or in furtherance of crime or held, used or sold in violation of law, or gambling apparatus or any property employed in or in connection with or in furtherance of any gambling activity, or burglar tools of any description, or firearms, cartridges or explosives, or armored or bullet-proof clothing or motor vehicles, or instruments, articles or medicines for the purpose of procuring abortion or preventing conception, or wines, fermented liquors and other alcoholic beverages and the receptacles thereof, or soiled, bloody or unsanitary clothing, or solids and liquids of unknown or uncertain composition, or opium, morphine, heroin, cocaine or any of its admixtures or derivatives, and other narcotics, or hypodermic syringes and needles, or obscene pictures, prints, books, publications, effigies or statues, or any poisonous, noxious, or deleterious solids or liquids, or any property which in the opinion of the commissioner, is of slight value or the sale of which might result in injury to the health, welfare or safety of the public, may direct and empower the property clerk to destroy each and every article of such nature. If, in the opinion of the commissioner, any such property may be used or converted to use for the purpose of the department or any city, state or federal agency, such property may in the discretion of the commissioner be used or converted to use for any such purpose, and the same need not be sold or destroyed as in this section provided.

3. Perishable property may be sold as soon as practicable on the best terms available and the proceeds of such sale shall be disposed of as in this section provided.

f. Lawful property right to be established. In any action or proceeding against the property clerk for or on account of any property or money in his or her custody, a claimant from whose possession such property or money was taken or obtained, or any other claimant, shall establish that he or she has a lawful title or property right in such property or money and lawfully obtained possession thereof and that such property or money was held and used in a lawful manner. In any such action or proceeding, a claimant who derives his or her title or right by assignment, transfer or otherwise from or through the person from whose possession such property or money was taken or obtained, shall further establish that such person had a lawful title or property right in such property or money and lawfully obtained possession thereof and that such property or money was held and used in a lawful manner.

g. No action for property or money held as evidence. No action or proceeding may be brought against the property clerk for or on account of any property or money held as evidence in any criminal investigation or proceeding until the termination thereof.

h. Preservation of property. Where the property consists of furs or other valuable property that may be subject to deterioration or damage if stored by the property clerk, the property clerk in his or her discretion may store such property with a private concern having special facilities for such storage, and the cost thereof shall be a lien upon such property to be paid by the owner thereof prior to the recovery of such property.

i. Removal and storage charges for motor vehicles and boats.

1. Whenever an abandoned motor vehicle or boat, or a motor vehicle or boat involved in an accident, or a boat found adrift and unoccupied upon the waters of the city of New York which is in the custody of the property clerk, shall be claimed by the owner or other person lawfully entitled to possession thereof, such owner or other person shall not be entitled to the return thereof unless he or she shall first pay to the property clerk a removal charge of twenty-five dollars

and a storage charge of five dollars for each day, or fraction thereof, except that in the case of a boat found adrift and unoccupied upon the waters of the city of New York, such storage charge shall not be applied until three days after notice to the owner by registered mail from the property clerk that such boat is in police custody.

2. Whenever a stolen motor vehicle or boat, which is in the custody of the property clerk, shall not be removed by the owner or other person lawfully entitled to possession thereof within three days after notice by registered mail from the property clerk, such owner or other person shall not be entitled to the return thereof unless he or she shall first pay to the property clerk a storage charge of five dollars for each day, or fraction thereof, after the expiration of such three-day period.

3. Notwithstanding the provisions of paragraphs one and two of this subdivision, where the department has incurred charges for removal and storage of an abandoned or stolen motor vehicle pursuant to subchapter thirty-one of chapter two of title twenty of the code, an owner or other person lawfully entitled to possession of such motor vehicle shall not be entitled to the return thereof unless he or she shall first pay all such charges incurred by the department pursuant to such subchapter thirty-one together with any applicable storage charge provided for in this subdivision.

4. The removal and storage charges provided by this subdivision, or incurred by the department pursuant to subchapter thirty-one of chapter two of title twenty of such code, as applicable, shall be a lien upon such motor vehicle or boat and the property clerk shall refuse to return such motor vehicle or boat until such charges are paid, except that where such motor vehicle or boat is the property of an estate administered by a public administrator, the removal charge and the storage charge shall be general claims against the estate of the deceased.

5. The property clerk shall not require the payment of any charges provided by this subdivision for the removal or storage of any motor vehicle or boat in his or her custody while it is held as evidence in a criminal investigation or proceeding.

6. It shall be the duty of the property clerk to keep a complete record of the moneys collected pursuant to this subdivision. Such moneys shall be paid into the general fund of the city established pursuant to section one hundred nine of the charter.

j. Property and money desired to be produced in criminal court. If any property or money placed in the custody of the property clerk shall be desired to be produced as evidence in any criminal court, such property or money shall be delivered to any officer who shall present an order to that effect from such court. Property or money used as evidence in any criminal court shall not be retained in such court but shall be turned over as soon as practicable to the property clerk to be disposed of according to the provisions of this section.

k. Public administrators not affected. Nothing in this section shall in any way contravene, modify or repeal any existing provision of law, general, special or local, relating to the jurisdiction, powers, privileges, personnel, duties and functions of any public administrator.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended L.L. 28/1987 § 4

Subd. e par 1 amended chap 503/1995 § 10, eff. Aug. 2, 1995.

Subd. e par 1 amended L.L. 28/1987 § 5

Subd. i amended L.L. 28/1987 § 6

Subd. i par 6 amended chap 503/1995 § 11, eff. Aug. 2, 1995.

Subd. l repealed L.L. 28/1987 § 7

**DERIVATION**

Formerly § 435-4.0 added chap 929/1937 § 1

Sub g added LL 21/1939 § 1

Subs b, c, d amended LL 50/1942 § 42

Repealed and added LL 47/1943 § 1

Sub i pars 1, 2 amended LL 13/1955 § 1

Sub b amended LL 27/1955 § 1

Sub i pars 1-4 amended LL 6/1963 § 1

Sub e par 1 amended LL 5/1969 § 1

Sub i pars 1-4 amended LL 5/1969 § 2

(sub heading laid out)

Sub b amended LL 46/1978 § 1

Sub l added LL 46/1978 § 2

Sub e par 1 amended LL 46/1978 § 5

Sub e par 1 amended LL 57/1983 § 1

Sub l par 5 amended LL 5/1985 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. There is no provision of law making it compulsory for a finder of lost property to deposit it with the Police Department to enable it to locate its true owner, or any statute vesting the Property Clerk of the Police Department with authority to accept such deposit for that or any like purpose, or which empowers him to retain it for any period of time or to deal with or to exercise any right or dominion thereover. Hence Property Clerk of the Police Department, with whom finder of diamond had deposited it to enable the police to locate the true owner, was entitled to a return of the diamond where after six months the true owner had not appeared, since the finder is the owner of lost property against everyone but the loser.-Garramone v. Simmons, 177 Misc. 330, 30 N.Y.S. 2d 465 [1941].

¶ 2. Neither Admin. Code § 435-4.0, subd. d, relating to the registering and advertising of stolen property, nor subd. e relating to the disposal of stolen property authorized the acceptance or advertising by the Property Clerk of lost property offered to him for deposit to enable the true owner to be ascertained. Reference, in the title to subds. d and e, to **lost** and **unclaimed** property did not permit a construction that the Property Clerk was vested with authority to retain, advertise and dispose of lost property, inasmuch as the statute itself clearly expressed the legislative intent and made no provision for acceptance of lost property.-Id.

¶ 3. That the conduct of the Property Clerk and finder of the diamond resulted from a custom of long standing was not persuasive as to the proper construction of Admin. Code § 435-4.0, since usage or custom do not control plain language nor create or take the place of positive law.-Id.

¶ 4. Where safe deposit company maintained a branch bank and safe deposit at 125th Street, with the main office and major portions of the premises being the bank's, but with two rooms entering through the bank's office being operated by the safe deposit company, and in the first of these rooms, which was the one nearest the outer door, the safe deposit company's representative on the day in question and on several days prior thereto had been soliciting new accounts and selling United States bonds, such use of the room was deemed a public one and the room was deemed to constitute public premises within meaning of P.L. § 1300 and Admin. Code § 435-4.1. Hence, money found by customer on floor of the first room was required to be turned over to the Property Clerk of the City of N.Y., to be held in accordance with obligations under the law, and if no true owner appeared it was to be given to the finder.-Mfrs. Safe Deposit Co. v. Cohen, 200 Misc. 334, 101 N.Y.S. 2d 820 [1950]. See also 297 N.Y. 266, 78 N.E. 2d 604 [1948].

¶ 5. The plaintiff, when arrested on a gambling charge, had in his possession certain sums of money which were seized by the police and thereafter kept in the possession of the Property Clerk. After pleading guilty to the crime of bookmaking the plaintiff commenced an action to replevin the money retained by the Property Clerk. **Held** the plaintiff was not entitled to summary judgment for to recover in a replevin action plaintiff must show a possessory right recognized by law. As a professional gambler the plaintiff did not acquire title to money won on wagers because one cannot acquire a valid title by criminal means.-Hofferman v. Simmons, 290 N.Y. 449, 49 N.E. 2d 523 [1943].

¶ 6. Mere suspicion that money abstracted by the police from two safes on plaintiff's premises at time of a police raid constituted proceeds of a common gambling enterprise conducted by the plaintiff, did not justify the Property Clerk of the Police Department in retaining the money where the persons arrested at the time of the raid were acquitted of the charge of being common gamblers, and the affidavits submitted established that the moneys were received by plaintiff as club dues and for the use of its gymnasium facilities.-Roxy Athletic Club, Inc. v. Simmons, 44 N.Y.S. 2d 47 [1943], rev'd 80 N.Y.S. 2d 277 [1944].

¶ 7. Plaintiff **held** entitled to return of money taken from him by Police Department on ground he was a common gambler, where it appeared that he had been acquitted of criminal charges brought against him on such ground. Even if a gambling game were in progress just before the police officer entered the premises and that plaintiff participated in the game, there was no reason for indulging in the belief that he was a common gambler whose money was forfeit, as mere participation does not make one a common gambler.-Fuest v. Simmons, 112 (103) N.Y.L.J. (11-1-44) 1130, Col. 7 F.

¶ 8. Plaintiff, against whom an information charging him with being a common gambler in violation of Penal Law § 970 had been dismissed, was entitled to a return of the money taken from him by the Police Department. The plaintiff was not shown to have had any connection with the alleged "gambling house", and the broadest assumption permissible was that he was one of the players (203 N.Y. 73; 290 N.Y. 499; &c.).-Falotico v. Simmons, 113 (103) N.Y.L.J. (5-3-45) 1687, Col. 7 M.

¶ 9. Where the police had seized 268 bills, in denominations ranging from $1 to $100, which were found stuffed in plaintiff's pockets when the police raided premises wherein a dice game was in process, and thereafter plaintiff had been convicted for being a common gambler, plaintiff's contention that he had borrowed the money from relatives three days prior was deemed incredible and not to warrant the return to him of the seized money. Plaintiff's contention that the burden of proof was upon the city to establish precise identification of the money with the gambling activity, was rejected.-Goldberg v. Leuci, 123 N.Y.S. 2d 154 [1953].

¶ 10. In an action to recover certain guns allegedly not registered by plaintiff and consequently held in violation of the law and seized by the police following the arrest of plaintiff for illegal possession of gun charges, the evidence supported the finding that the guns were curios, flares, or used for repair parts only and that they were purchased from authorized vendors and due notice had been given to the police after each purchase.-Retting v. Leuci, 132 (82) N.Y.L.J. (10-27-54) 8, Col. 4 F.

¶ 11. Subdivision (f) of this section requires the plaintiff to establish among other things lawful use of the property. Thus, the plaintiff, who engaged in a shooting episode at a so-called social club, were not entitled to recover

three hunting rifles and a rifle scope, seized by the police at plaintiff's apartment along with some 24 other rifles, all stolen property.-Hmelo v. Rosetti, 18 Misc. 2d 603, 184 N.Y.S. 2d 823 [1959].

¶ 12. Where charges for discharging a rifle within City limits were dropped against the plaintiff, the Property Clerk of the New York City Police Department could not refuse to return plaintiff's confiscated rifle.-Hutchinson v. Rosetti, 24 Misc. 2d 949, 205 N.Y.S. 2d 526 [1960].

¶ 13. Petitioner was arrested for felonious assault and a .22 caliber rifle was taken from his apartment at the time of his arrest. Petitioner was acquitted of the charge and the District Attorney informed the Property Clerk that the rifle was no longer needed as evidence. The Police Commissioner refused to return the rifle on the ground that the arresting officer stated the petitioner admitted that he had fired one shot from his apartment into the street. **Held,** the refusal to return was justified. The dismissal of the assault charge would not prevent a prosecution for violation of Penal Law 1906 making it a misdemeanor to discharge a firearm in any public place, endangering life. Furthermore, petitioner's remedy if any is by replevin.-Harrison v. Kennedy, 205 N.Y.S. 2d 381 [1960].

¶ 14. The Property Clerk's right to cross-examine and test the questions of lawful title and lawful use pursuant to Admin. Code § 435-4.0, cannot be abrogated by a motion for summary judgment.-Cohen v. Leuci, 129 (13) N.Y.L.J. (1-20-53) 209, Col. 4 M.

¶ 15. County Court was without jurisdiction to determine ownership of property allegedly held by Property Clerk of the Police Department. Proper remedy was by civil suit under Admin. Code § 435-4.0.-People v. Peist, 129 (15) N.Y.L.J. (1-22-53) 246, Col. 8 F.

¶ 16. In action against City Property Clerk to recover currency lost by plaintiff, wherein the United States intervened, claiming a lien thereon for unpaid income taxes, the record was held to present issues of fact which could not be decided on a motion for summary judgment.-Costello v. Simmons, 269 App. Div. 823, 55 N.Y.S. 2d 735 [1945], aff'd without opinion, 295 N.Y. 801, 66 N.E. 2d 581 [1946].

¶ 17. Claimant of $27,200 cash, which on June 14, 1944, came into hands of the Property Clerk of the Police Department after being found in a taxicab, **held** not entitled to vacating of subpoena issued by Police Commissioner requiring appearance of claimant as witness before the Property Clerk for purpose of inquiring as to facts relative to justness of his claim. The validity of power of examination of the Property Clerk and the Police Commissioner's power to issue subpoenas to effectuate such examination have been sustained by Court of Appeals, the examination sought was reasonable and necessitated by claimant's arbitrary refusal theretofore to furnish the Property Clerk with necessary information, the examination of claimant on June 17, 1944, was never concluded and the examination sought was a continuance of the prior examination, and the examination was desirable in the interests of justice. Furthermore, there is nothing in the law which would prohibit a second examination, and in view of the prior appeal to the Court of Appeals there was no undue delay in issuing the subpoena, even though the trial of the claimant's replevin action was now imminent.-In re Costello, 116 (109) N.Y.L.J. (11-20-46) 1387, Col. 5 M.

¶ 18. Under Admin. Code § 435-4.0 and C.C.P. §§ 685-688, a person seeking a court order for delivery of money held by the Property Clerk of the Police Department must prove title in such money. It is not sufficient for an applicant merely to show that the sum in possession of the Property Clerk was removed from a safe deposit box in her own name, but she must go further and establish a lawful property right in the money and that she lawfully obtained possession thereof.-People v. Nickel, 118 (42) N.Y.L.J. (8-28-47) 336, Col. 6 F.

¶ 19. Testimony of claimant **held** insufficient to establish that sum of money in possession of Property Clerk, having been taken from a safe deposit vault in the name of claimant and another who had been convicted for complicity in the Mergenthaler Linotype "swindle", was claimant's lawful money, in view of her inability to establish the origin of any of the money found in the safe deposit box. Her testimony that the sum emanated partly from a divorce settlement and partly from earnings was unsupported by competent evidence. The money apparently originated in the

Mergenthaler "swindle" activities of the other party in whose name the safe deposit box was carried.-Id.

¶ 20. Defendant, who had pleaded guilty to burglary and been sentenced, **held** entitled to have turned over to him by the Property Clerk of the N.Y.C. Police Department a savings bank account in his name, where it was satisfactorily established that the moneys on deposit in such account were not the proceeds of any burglaries committed by defendant.-People v. Williams, 118 (83) N.Y.L.J. (10-18-47) 925, Col. 7 F.

¶ 21. Proceeding under C.P.A. Article 78 for order directing Property Clerk of the New York City Police Department to turn over to petitioner certain postal money notes in his custody, was dismissed, on ground petitioner had an adequate remedy at law in an action in replevin to recover possession of the property, and furthermore a conflicting claim to the notes was interposed by respondent M so that petitioner failed to make out a clear case for relief.-Miller v. Leuci, 105 N.Y.S. 2d 115 [1951].

¶ 22. Petitioner, who was arrested for grand larceny, applied under Art. 78 of the Civil Practice Act for an order directing the Property Clerk to turn over to him $225 taken from him at the time of his arrest. It was disputed whether this money was the proceeds of the alleged larceny. The petition is dismissed, the proper remedy being by an action of replevin.-Petz v. Property Clerk, 149 N.Y.S. 2d 179 [1956].

¶ 23. The Court did not have jurisdiction to direct the Police Department to turn over an automobile where the owner's action lay in replevin in a civil court.-People v. Donovan, 146 (73) N.Y.L.J. (10-16-61) 17, Col. 3 F.

¶ 24. Petitioner was not entitled to bring an Article 78 proceeding to compel the Property Clerk to surrender money found in petitioner's apartment where petitioner was thereafter charged with contriving a lottery or keeping a place for a policy game. The rights of the parties were not finally determined by the Property Clerk's refusal to answer petitioner's demand.-Zaccaro v. Rosetti, 146 (51) N.Y.L.J. (9-13-61) 11, Col. 4 F.

¶ 25. The power of the Property Clerk of the Police Department to examine respondent relevant to the justice of his claim to a certain fund in possession of the Property Clerk was held to have survived the institution of a civil action brought by respondent for recovery of the fund, and hence, motion to cancel subpoena issued by the Police Commissioner requiring petitioner to appear and be sworn before the Property Clerk and be examined, was denied.-Russo v. Valentine, 294 N.Y. 338, 62 N.E. 2d 221 [1945], rev'g 268 App. Div. 990, 61 N.Y.S. 2d 697 [1944], which had aff'd 182 Misc. 632, 49 N.Y.S. 2d 577 [1944].

¶ 26. The title to money taken from the defendant at the time of his arrest and placed in possession of the Property Clerk could not be decided upon an application for an order directing the Police Department to turn the money over to the defendant. The required procedure was an action in replevin.-People v. Ludwig, 135 (52) N.Y.L.J. (3-16-56) 7, 6 T.

¶ 27. The County Court did not have jurisdiction to determine the ownership of property which had been taken from a defendant at the time of his arrest and was being held by the Property Clerk of the Police Department. The proper remedy was a civil action under this section.-People v. Mistretta, 135 (118) N.Y.L.J. (6-19-56) 14, Col. 8 M.

¶ 28. Cash and savings bank books which were the proceeds of certain jewelry stolen from the plaintiff and had been seized by the police as evidence and were now in possession of the Property Clerk, should be returned to the plaintiff now that the criminal proceedings had been completed and the authorities had no further use for the cash or books as evidence (Admin. Code § 435-4.0).-Nat Koslow, Inc. v. Kelly, 194 Misc. 90, 86 N.Y.S. 2d 424 [1948].

¶ 29. Although it appears shocking, it seems to be the law of this State at the present time that the police can seize a citizen's property and then when he seeks to get it back challenge him to prove his title to the satisfaction of a jury.-Gonzales v. Leuci, 120 (85) N.Y.L.J. (11-1-48) 993, Col. 4 M.

¶ 30. Plaintiff was arrested in his parked automobile on suspicion of gambling. A search of the car revealed a secret compartment in which policy slips were found. A grand jury declined to indict plaintiff. But the Property Clerk

refused to return his automobile. **Held** the finding of policy slips in the secret compartment and the evidence of the police officers who had plaintiff under surveillance was sufficient to show that the car was being used for gambling purposes. Under this section, plaintiff was not entitled to recover possession of the car.-Angrisani v. Rosetti, 36 Misc. 2d 523, 233 N.Y.S. 2d 351 [1962].

¶ 31. Plaintiff was entitled to recover the possession of his car which had been seized by the police in connection with the arrest of three men who were charged with the possession of narcotics, but were subsequently acquitted. The men had been arrested while sitting in the car and they allegedly had a hypodermic needle in their possession. Plaintiff testified that he had no knowledge of illegal acts and had asked an acquaintance to watch his car which was parked at a construction site. He had not been charged with any crime and had no prior criminal record.-Cortes v. Rosetti, 38 Misc. 2d 250, 235 N.Y.S. 2d 403 [1962].

¶ 32. Plaintiff's car was seized by the police on the ground that it was used to conceal and convey narcotics, but the plaintiff was acquitted on the narcotics charge. Such an acquittal is immaterial in the present action. Plaintiff has a record of conviction for petty theft and has not satisfactorily explained the circumstances surrounding the seizure of the car. He has failed to meet the burden of proof as to his lawful right to the automobile. Judgment is granted in defendant's favor.-Sochemaro v. Rosetti, 6 Misc. 2d 23, 161 N.Y.S. 2d 454 [1957].

¶ 33. Where the police seized various pictures and publications upon the ground that they were obscene, the owner was not entitled to summary judgment for the possession thereof. The question of obscenity remained to be determined.-Marino v. Rosetti, 140 (123) N.Y.L.J. (8-1-58) 3, Col. 4 M.

¶ 34. An order for the property clerk to return property to its lawful owner need not be signed by the judge who authorized the warrant under which the property was originally seized.-In re Rosa, 140 (103) N.Y.L.J. (11-28-58) 12, Col. 1 M.

¶ 35. Where petitioner was acquitted upon a trial for abortion, she was entitled to an order for the return of $1,800 taken from her safe at the time of her unlawful arrest without warrant.-Matter of Marshall, 17 Misc. 2d 985, 181 N.Y.S. 2d 413 [1959].

¶ 36. A convict held in State prison may not bring a proceeding to compel the return to him of moneys taken from him at the time of his arrest.-In re De Rosa (Rosetti), 141 (17) N.Y.L.J. (1-26-59) 13, Col. 4 F.

¶ 36.1. Article 78 proceeding brought by petitioner to recover sum of money from Police Property Clerk. **Held:** the proceeding dismissed as proper remedy is by an action in replevin. Furthermore, petitioner being confined in a state prison could not maintain the proceeding while incarcerated.-Matter of Elfe (Commissioner of Police of New York City), 144 (60) N.Y.L.J. (9-26-60) 12, Col. 7 F.

¶ 37. A person confined in a State prison, was not entitled to bring a C.P.A. Article 78 proceeding for the return of property which was taken from him at time of his arrest.-Colligan v. Rosetti, 150 (81) N.Y.L.J. (10-23-63) 12, Col. 4 M.

¶ 38. The petitioner was not entitled to recover boxes containing books of lewd and indecent pictures from the Property Clerk, since same were pornographic and obscene.-Himmel v. Rosetti, 142 (98) N.Y.L.J. (11-19-59) 12, Col. 3 F.

¶ 39. Where, at the time of petitioner's arrest on a charge of illegal practice of dentistry, the police searched his apartment without a warrant and seized certain dental instruments and equipment, petitioner was entitled to an order for the return of such property. The prosecutor could still take lawful measures to secure these items if they were needed for evidence. Subsequently the Police Department and the prosecutor were directed to release to the petitioner photographs and photostats relating to his property.-Silfa v. Kennedy, 5 Misc. 2d 375, 159 N.Y.S. 2d 68 [1957], aff'd 3 A.D. 2d 818, 161 N.Y.S. 2d 572 [1957], aff'd 3 N.Y. 2d 734, 163 N.Y.S. 2d 971, 143 N.E. 2d 518 [1957].

¶ 40. Where plaintiff had no knowledge and did not acquiesce in actions of his son he was entitled to replevin automobile seized by police who had unlawfully searched and seized automobile and arrested son and charged him with unlawful possession of narcotic drugs secreted in motor vehicle. Because the illegally obtained evidence was suppressed in the criminal proceeding there was no justiciable defense to the replevin action. Chmielewski v. Rosetti, 59 Misc. 2d 335, 298 N.Y.S. 2d 875 [1969].

¶ 41. A wife was not permitted to recover a car owned by her and used by her husband in connection with gambling activities that the wife knew about or should have known about.-Rivera v. Rosetti, 38 Misc. 2d 1030, 239 N.Y.S. 2d 691 [1963].

¶ 42. Petitioners who were awaiting trial for having violated the gambling laws of the state brought an Article 78 proceeding directing the Property Clerk of the City of New York to return to them certain property seized at the time of their arrest. The court held that where the question of the status of the sums of money and automobiles as "evidence" was disputed it may not be resolved in such a mandamus proceeding. Hence petitioners were not entitled to return of the property.-D'Alessio v. Rosetti, 155 (34) N.Y.L.J. (2-17-66) 16, Col. 7 M.

¶ 43. Property Clerk of Police Department was directed to return petitioner's twenty-eight foot cruiser after charge that he attempted grand larceny in a claim made to an insurance company for destruction of the boat by fire was dismissed and where boat had been held without any legal process despite claim of District Attorney that retention of boat was necessary after indictment of son of owner to show that no fire ever occurred thereon where there was no reason why such proof could not be established by witnesses and pictures. Garafolo v. Leary, 158 (90) N.Y.L.J. (11-9-67) 21, Col. 4 T.

¶ 44. Civil rights of person under arrest but before conviction are not suspended and thus such a person could sell his motor vehicle to his father and where motor vehicle was not used to aid in the commission of the crime of which the transferor was convicted the transferee was entitled to replevin it. Williams v. Rosetti, 57 Misc. 2d 62, 291 N.Y.S. 2d 738 [1968].

¶ 45. Plaintiff who presented a paid bill and cancelled check showed that he had paid for a quantity of razor blades which had been seized by a detective of the Police Department without a warrant over a year before, was entitled to their return where although it was claimed that they constituted the product of a crime no one had been charged in connection with the property.-Entin v. Rosetti, 163 (121) N.Y.L.J. (6-24-70) 13, Col. 6 T.

¶ 46. The proper remedy for person seeking return of automobile which had been impounded but was no longer needed by the authorities in the prosecution of a crime with which petitioner was charged was by an action in replevin and not by an Article 78 proceeding.-Johnston v. Rosetti, 165 (93) N.Y.L.J. (5-14-71) 19, Col. 4 F.

¶ 47. Plaintiff insurer who was the subrogee of the former owner of a motor vehicle which was being held by Police Property Clerk following its recovery after it had been stolen was entitled to its possession where the car had been recovered on October 1, 1969 and it was not shown that the car was the instrumentality or fruits of a crime and the car was not contraband. Moreover, the city has the burden of proving that the investigation had not been completed.-County-Wide Insur. Co. v. Rosetti, 164 (12) N.Y.L.J. (7-17-70) 8, Col. 6 F.

¶ 48. Section giving Police Property Clerk power to dispose of property taken in criminal proceeding was declared unconstitutional except as to property seized as contraband on ground of violation of due process.-McClendon v. Rosetti, 460 F. 2d 111 (C.A. 2, 1972).

¶ 49. Although McClendon v. Rosetti (460 F. 2d 111) declared this section unconstitutional as applied to persons from whom money or property other than contraband has been taken because it placed the burden of proving lawful title and property right and lawful use on the claimant, that case does not preclude the city from seizing or confiscating contraband and hence the plaintiff was not entitled to summary judgment for the recovery of a sum of money from the Police Property Clerk seized in connection with plaintiff's arrest on a gambling charge since the city might be able to

prove on a trial that the money was contraband.-Yedvobnick v. Grupposo, 73 Misc. 2d 689, 343 N.Y.S. 2d 293 [1973].

¶ 50. Police Department Property Clerk was directed to turn over to plaintiff her automobile and registration documents which were seized when her father was arrested for illegal possession of 200 cartons of untaxed cigarettes contained in the car which he had permission to use even though the case against him was still pending, since the seizure of property not belonging to the defendant in the criminal proceeding, without proof that the owner of the property was a party to the criminal act, or knew and sanctioned the use of the property for criminal purposes, is not permitted.-Aronofsky v. Grupposo, 72 Misc. 2d 701, 339 N.Y.S. 2d 299 [1972].

¶ 51. Where Police Property Clerk disposed of automobile in violation of law in that the notice of the disposal or sale of property was inadequate and because this section is unconstitutional as applied to noncontraband not related to a criminal proceeding and not needed as evidence, petitioner was entitled to the fair market value of the vehicle at the time of seizure.-Hill v. Gold, 79 Misc. 2d 1055, 362 N.Y.S. 2d 328 [1974].

¶ 52. Where police found $9,000 in a pillowcase along with cocaine and drug paraphernalia, evidence in proceeding by defendant against city for return of cash seized during arrest as to whether money represented proceeds of a crime or was used in the course of criminal activity was ambiguous and hence summary resolution could not be made and matter was remitted for a hearing on the issues.-Matter of City of N.Y. v. Cosme, 67 A.D. 2d 852 [1979].

¶ 53. Where money was found in a locked cabinet in a room separate from where gambling operations were taking place it could not be considered contraband and claimant was entitled to return of the money from the Police Department Property Clerk.-In re City of N.Y. (Steigerwald), 180 (68) N.Y.L.J. (10-6-78), 4, Col. 4 T.

¶ 54. N.Y.C. Criminal Court has jurisdiction to order release of "spring whips" held by police after criminal charges against defendant were dismissed by the court and defendant was not required to bring a civil action of replevin where there was no question that he was the owner of property, the property was not needed by the people as evidence and it was not contraband.-People v. Braunhut, 101 Misc. 2d 975 [1979].

¶ 55. Summary relief was not warranted where Property Clerk brought proceeding to have cash found in desk of respondent which was searched pursuant to a warrant forfeited when the desk also contained illegal gambling records and respondent was arrested and pleaded guilty to possession of gambling records since there was a factual issue as to whether the cash constituted the proceeds of illegal gambling activities.-Property Clerk of N.Y.C. Police Dept. v. Di Paola, 78 A.D. 2d 834 [1980].

¶ 56. That district attorney permitted driver of car to plead guilty to disorderly conduct rather than drug paraphernalia charges was not binding in a civil proceeding for forfeiture of money as constituting the proceeds of a crime since a decision not to press criminal charges is less determinative in a subsequent civil proceeding than a judgment of acquittal.-Property Clerk v. Corbett, 116 Misc. 2d 1097 [1982].

¶ 57. Taxicab and medallion were forfeited as money or property used in commission of crime. The court found that a medallion is not money or physical property and therefore cannot be subject to such forfeiture provisions.-Property Clerk of N.Y.C. v. Maurice Rosea, 99 A.D. 2d 961 [1984].

¶ 58. Property Clerk seeks judgment to declare property seized. Criminal charges against individual, who was officer of non-profit social club, for selling and storing liquor without a license were dropped. An independent determination must be made in civil proceeding as to whether the seized property constitutes the proceeds of a crime. The court found that the property did constitute the proceeds of a crime.-Property Clerk, N.Y.C. Police Dept. v. Welgart, 191(54) N.Y.L.J. (3-20-84) 6, Col. 2 B.

**CASE NOTES**

¶ 1. Forfeiture proceedings must be instituted within 10 "working days" rather than 10 "calendar days" pursuant to

a controlling 1974 Federal court order in McClendon v. Rosetti (460 F2d 111, 114-116) which ruled on unconstitutional application of former § 435-4.0. Property Clerk has the burden of proving he is entitled to detain property. The order applies to return of property by claimant's demand and without judicial intervention. § 14-140 provides that Property Clerk retain property or money which are proceeds or instumentality of a crime and that the prisoners are not lawful claimants to such property or money.-Property Clerk, NYC Police Dept. v. Seroda 131 A.D. 2d 289 [1987].

¶ 2. Property seized in connection with commission of a crime within 90 days from release by District Attorney. This auto was seized when respondent was arrested with a dangerous weapon and possessing a controlled substance. It was delivered to Property Clerk "suspected of having been used . . . in aid . . . of crime", § 14-140(b). Auto must be released after 10 days if the Property Clerk has not commenced forfeiture proceedings. Clerk does not have untrammeled discretion to start forfeiture proceedings.-Property Clerk v. Madden, 138 Misc.2d 1023, 526 N.Y.S.2d 710 (Sup.Ct. New York Co. 1988).

¶ 3. Vehicle being held as evidence in pending criminal prosecution may not be seized by plaintiff with a security interest. District attorney must release the vehicle before the Property Clerk may determine if there is a basis for civil forfeiture of vehicle as instrumentality of a crime. Such a proceeding must be commenced by the Property Clerk within 10 working days following release of the property.-Chrysler Credit Corp. v. Shaw, 139 Misc. 2d 154 [1988].

¶ 4. Property Clerk is authorized to bring a forfeiture action by authority delegated to him by Corporation Counsel, § 392(a), § 394(c). Although property was seized during a drug sale it must also be proved that defendant, while not present when alledged crime took place had knowledge of future illegal use. Replead case.-Property Clerk v. Covell, 139 Misc. 2d 707, 528 N.Y.S.2d 299 (Sup.Ct. New York Co. 1988).

¶ 5. Property Clerk may bring forfeiture proceeding against owner of an automobile seized carrying controlled substance. It is an affirmative defense that the defendant property owner did not know his property was being used for this purpose but burden of proof is on defendant.-Property Clerk v. Scricca, 140 Misc. 2d 433 [1988].

¶ 6. Criminal forfeiture proceeding may be brought even though respondent plea bargained from a drug possession charge to a disorderly conduct violation. However the car used was merely a means of locomotion to make drug purchase and did not make underlying "crime" any easier to commit. Respondent left car to make purchase. Further the Admin. Code contains no express provision authorizing forfeiture of vehicles transporting contraband.-Property Clerk v. Aponte, 141 Misc. 2d 129 [1988].

¶ 7. In a forfeiture proceeding pursuant to § 14-140(b)(e), authorizing police to keep a vehicle or property used as a means of committing a crime, service on respondent's parent at last known address pursuant to CPLR § 308(2) is allowable as a higher form of service than Public Health Law § 3388(5) which deals with such forfeitures. Also, dismissal of the criminal charge does not determine issues in civil forfeiture proceeding.-Property Clerk v. Mason, 145 Misc. 2d 1059 [1989].

¶ 8. When a forfeiture proceeding is commenced pursuant to § 14-140 and not CPLR Article 13-A and property other than contraband is taken from the person at the time of arrest, there is no requirement that the complaint be verified.-Property Clerk v. Gully, 144 Misc. 2d 833 [1990].

¶ 9. Authorization of the Police Department Property Clerk to seize and maintain possession of any property suspected of having been "used as a means of committing crime or employed in aid or furtherance of crime" (Admin. Code § 14-140) is not unconstitutional because forfeiture procedures, although predicated on criminal behavior, are civil in nature and does not amount to double jeopardy, there is no impropriety in the imposition of both criminal and civil penalties based on the same criminal acts.-Property Clerk v. Ayre, 147 Misc. 2d 774.

¶ 10. The adjournment of the criminal matter in contemplation of dismissal of that action, where respondent drove her passenger to a drug-prone area, purchased a vial of crack cocaine and returned to the vehicle, did not operate as an adjudication of the claim to ownership of property subject to forfeiture, nor did the waiver executed by the District

Attorney stating that the automobile was not required for prosecution of the crime pursuant to section 14-140(e)(1) of the Admin. Code of the City of New York which precludes any person who "permits or suffers" property to be "employed in aid or furtherance of crime." from making claim to the property in a forfeiture action.-Property Clerk v. Lanzetta, 157 A.D. 2d, 600. Property Clerk v. Lanzetta reversed 157 A.D. 2d 600 [Jan. 1990], disposal of a criminal action by adjournment in contemplation of dismissal and the ultimate dismissal of that action does not preclude a civil forfeiture proceeding.

¶ 11. Use of a vehicle to transport a controlled substance away from the point of sale is sufficient to substantiate a finding that the vehicle was used to aid a crime, i.e. possession of a controlled substance. Property Clerk of New York City Police Dept. v. Negron, 157 A.D.2d 602, 550 N.Y.S.2d 351. Thus, the fact that respondent id not use the car during the actual purchase or that the sale occurred only a few blocks from respondent's home will not prevent forfeiture of the car, where he was seen driving away in his vehicle from the scene of a drug purchase and a post-arrest search uncovered the presence of drugs. Property Clerk, New York City Police Department v. Aponte, 158 A.D.2d 431, 552 N.Y.S.2d 118 (1st Dept. 1990).

¶ 12. Respondent's car was seized following his arrest on a drug possession charge. He later pleaded guilty to disorderly conduct in exchange for which the prosecutor was to "release the necessary papers to have the Police Department release the vehicle in question." However, the court denied a forefeiture proceeding in the interest of justice . Even assuming that the release by the District Attorney did not preclude an independent forfeiture proceeding by the Police Property Clerk, such a forfeiture would be unfair here, the court said; the guilty plea eliminated the need to call witnesses at trial, and it appeared that the promise of having the automobile returned was an important consideration in respondent's decision to plead guilty. Property Clerk of the City of New York v. Ferris, 158 A.D.2d 433, 552 N.Y.S.2d 119 (1st Dept. 1990).

¶ 13. An Article 78 action may be maintained by incarcerated petitioner seeking to compel the NYC Police Dept. Property Clerk to return money recovered from petitioner upon his arrest (see Admin. Code § 14-140(b)) without having first filed a notice of claim because petitioner is seeking to compel respondent to perform a ministerial, nondiscretionary and nonjudgmental act, an act previously authorized by the District Attorney.-Torres v. NYC Police Dept., 147 Misc. 2d 137.

¶ 14. Admin. Code of the City of NY section 14-140(e)(1) provides for the civil forfeiture of property which is employed in aid or in furtherance of crime and must be read in harmony with CPL170.55(6). The Property Clerk is not seeking a civil forfeiture on the basis of the grant of an adjournment in contemplation of dismissal, but rather on the underlying facts leading to respondents arrest.-Property Clerk v. Famiglietti, 160 A.D. 2d 542.

¶ 15. Property Clerk v. Negron reversed 157 A.D. 2d 602 [Jan. 1990], held that use of the vehicle to transport a controlled substance away from the point of sale is sufficient to substantiate a finding that the vehicle was employed to aid a crime.

¶ 16. Automobile used to patronize a prostitute was "employed in aid and furtherance of crime" and is subject to forfeiture provisions of § 14-140.-Property Clerk v. Small, 153 Misc. 2d 673 [1992].

¶ 17. A school teacher at George Washington High School was arrested after police officer observed him enter his car, which he had parked hours earlier in teachers' parking lot, and sniff cocaine. Court ruled that vehicle was "employed in aid or in furtherance of crime" within the meaning of § 14-140(e)(1) when used to conceal defendant's use of an illegal drug. Car was used as a "portable haven for carrying on illicit activities during the school day."-Property Clerk v. Vogel, 175 A.D. 2d 760 [1991].

¶ 18. Ford Motor Credit Co. was lienholder on a vehicle used in a drug purchase. As an instrumentality of crime, the car was subject to forfeiture under § 14-140. Ford contends city's forfeiture procedure is constitutionally unfirm because it doesn't require notice to lienholder nor grant "wholly innocent" lienholders right to possession. These

contentions have no merit. Ford received notice of seizure and participated in disposition proceedings. Furthermore a claim of innocence does not defeat forfeiture. Prop. Clerk & Ford v Molomo, 81 NY 2d 936, 597 N.Y.S.2d 661 [1993]

¶ 19. Forfeiture of an auto was not excessive penalty or fine for Class B misdemeanor of patronizing a prostitude. It is not double jeopardy to prosecute defendant after he has paid $1,000 fine to retrieve his auto. People v Milone, 158 Misc 2d 316 [1994], 600 NYS 2d 1010.

¶ 20. A forfeiture action based on the presence in an automobile of illegal drugs, was dismissed, where the court found that the placement of drugs on the tailpipe of the vehicle was without the knowledge of the owner. Property Clerk, New York City Police Department v. Velez, 202 A.D.2d 305, 609 N.Y.S.2d 194 (1st Dept. 1994).

¶ 21. Where a forfeiture proceeding has been brought by reason of the use of a vehicle in making a drug purchase, a lienholder is not entitled to immediate possession of the vehicle but can only satisfy its lien from the proceeds of the property after the forfeiture has been adjudicated. Although the lienholder was not guilty of wrongful conduct and potentially stood to lose its security interest, this result was mandated by the law. The risks for the lienholder are no greater in this instance than they would be, for example, if a debtor violated a retail installment contract by failing to obtain the required insurance and the vehicle were stolen or destroyed. Property Clerk, New York City Police Department v. Molomo, 179 A.D.2d 210, 583 N.Y.S.2d 251 (1st Dept. 1992).

¶ 22. Where in a criminal action an order is issued directing the Propety Clerk to return property, that order is not appealable by the City. People v. Renville-Oviedo, 178 A.D.2d 442, 577 N.Y.S.2d 301 (2nd Dept. 1991).

¶ 23. When the Property Clerk seeks to justify continued retention of property which has come into his possession but is no longer related to or needed as evidence in a pending criminal proceeding, due process requires the commencement of a timely action and proof by a preponderance of evidcne that the Property Clerk is entitled to retain the property. Here, the Property Clerk sought to retain possession of an automobile by reason of reckless driving committed by the owner's son. The court held that the mere fact that the owner had permitted his son to use the car was not enough to justify forfeiture. Instead, the Property Clerk had to show that the father permitted the illegal use of the property. Thus, the Property Clerk had to establish that when the owner permitted his son to use the car, he knew or should have known that the car would be used in furtherance of or the instrumentality of, a crime. Property Clerk, New York City Police Department v. Pagano, 170 A.D.2d 30, 573 N.Y.S.2d 658 (1st Dept. 1991).

¶ 24. The Police Department sought forfeiture of a vehicle in which respondent was observed sniffing cocaine. In opposing forfeiture, respondent contended that his car was merely the place he was sitting when arrested. The court, however, held that the City could maintain an action seeking forfeiture, on the theory that the car was used as a "portable haven for carrying on illicit activities durint the school day." Respondent, a teacher, returned to the teachers' parking lot hours after he had parked it and was caught with the drugs. The forfeiture law does not require that the respondent use the car for the transport of narcotics away from the point of sale or to transport the user away from the place where the drugs were purchased. In other words, the use of the vehicle to facilitate the possession and use of illegal drugs. Property Clerk, New York City Police Department, 175 A.D.2d 760, 573 N.Y.S.2d 511 (1st Dept. 1991).

¶ 25. The court found the evidence sufficient to justify a forfeiture of an automobile, where police officers testified that defendant had been seen driving an automobile to a location known for its illegal drug transactions, engaging in such a tranasaction himself and leaving the area. Upon a search by the police, defendant was found to possess a white powder which was later confirmed to be heroin. Where the laboratory report was admiissible into evidence as a record maintained in the ordinary course of business, the Property Clerk was not required to call a chemist as a witness to prove its case. Property Clerk, New York City Police Department v. McDermott, 185 A.D.2d 134, 585 N.Y.S.2d 746 (1st Dept. 1992).

¶ 26. The dismissal of a criminal action does not preclude a civil forfeiture action based on the alleged criminal activity. Property Clerk, City of New York v. Jacobs, 650 N.Y.S.2d 711 (App.Div. 1st Dept. 1996). The institution of

the civil proceeding does not constitute double jeopardy (see Property Clerk, New York City Police Department v. Hyne, 147 Misc.2d 774, 557 N.Y.S.2d 244 [Sup. Ct. New York Co. 1990]).

¶ 27. Since forfeiture is a civil proceeding, petitioner need only prove by a preponderance of evidence (as opposed to proof beyond a reasonable doubt) that the property is subject to forfeiture. Property Clerk of New York City Police Department v. Ferris, 77 N.Y.2d 428, 568 N.Y.S.2d 577 (1991).

¶ 28. Respondent was driving on his way home from work when he stopped to purchase a small quantity of heroin. When he was arrested for drug possession, the City sought forfeiture of respondent's automobile, which he was driving when he stopped to buy the drugs. The court held that the use of a vehicle to transport a controlled substance away from the point of sale is sufficient to sustain a finding that the vehicle was employed in furtherance of a crime. Thus, the facts that respondent did not use his car in the actual purchase of the controlled substance or that the sale occurred only four blocks from respondent's home, are irrelevant where he was seen driving away in his vehicle from the scene of the transaction and a post-arrest search uncovered the presence of the contraband. Property Clerk, New York City Police Dept. v. Aponte, 158 A.D.2d 431, 552 N.Y.S.2d 118 (1st Dept. 1990).

¶ 29. The statute provides that property seized by the police that remains in the custody of the Property Clerk for three months without a lawful claimant being entitled thereto, is paid to the Police Pension Fund. This simply fixes the point at which the Property Clerk may be relieved of the responsibility of retaining the money in custody, and provides for the transfer of the money from one fund to another at the end of the statutory period. It does not impose an affirmative obligation on the owner to demand the money within 90 days of dismissal of the criminal charges or impose any penalty for failure to do sol. Thus, even past the 90 day period, an owner may maintain a common law replevin action to recover the property. Moreno v. City of New York, 69 N.Y.2d 432, 515 N.Y.S.2d 733 (1987).

¶ 30. A forfeiture proceeding is timely if it was served upon respondent within ten working days of the owner's demand for return of the property. Property Clerk, New York City Police Department v. Weisbard, 145 A.D.2d 335, 534 N.Y.S.2d 997 (1st Dept. 1988).

¶ 31. The City's policy of seizing the vehicles of persons arrested for driving while intoxicated, has been upheld. The City's rationale is that the vehicle has been used in furtherance of a crime. The court rejected claims that the policy violated the due process clauses of the state and federal Constitutions, that the forfeiture constituted an excessive "fine" under the state and federal Constitutions, and that the forfeiture was an unreasonable seizure within the meaning of the Fourth Amendment of the federal Constitution. Grinberg v. Safir, 181 Misc.2d 444, 694 N.Y.S.2d 316 (Sup.Ct. New York Co. 1999), aff'd 266 A.D.2d 43, 698 N.Y.S.2d 218 (1st Dept. 1999). However, a federal court found the statute to be unconstitutional. See Krimstock v. Kelly, note 34.

¶ 32. The City obtained a closing order in connection with a motel alleged to be a site for prostitution activity. The City seized books, records, currency and computer hardware and software, purportedly for "safekeeping." The owner of the premises demanded the return of the property but the City refused. The court held that where the City produced only bald, conclusory allegations that the property had been used in connection with criminal activity, and the City had held the property for more than two months without commencing a forfeiture proceeding, there was no longer any basis for continuing to hold the property. Accordingly, the court ordered the City to return the property to the owner. City of New York v. Jai Balaji, 176 Misc.2d 719, 673 N.Y.S.2d 861 (Sup.Ct. Queens Co. 1998).

¶ 33. The City has aggressively pursued vehicle forfeiture cases where the vehicle owner has been charged with driving while intoxicated. The situation, however, is complicated where the vehicle purchased was financed. Where the secured lender would stand to lose its security if the forfeiture were sustained, the lender has the right to intervene in the forfeiture proceeding. Property Clerk, New York City Police Dept. v. Lee, 183 Misc.2d 360, 702 N.Y.S.2d 792 (Sup.Ct. New York Co. 2000).

¶ 34. Claimant vehicle owners successfully challenged a New York statute, which permitted the pre-conviction

seizure of vehicles driven by persons accused of driving while intoxicated. The court held that the law violated the Due Process clause of the Fourteenth Amendment because it did not provide for a hearing, promptly after the seizure, to contest probable cause for the seizure. The challenge may not be made until the City seeks the vehicle's forfeiture in a separate civil proceeding that could take place months or even years after the seizure. A car or truck is often central to a person's livelihood or daily activities. An individual must be permitted to challenge the City's continued possession of his or her vehicle during the pendency of legal proceedings where such possession may ultimately prove improper and where less drastic measures than deprivation **pendente lite** are available and appropriate. Although the City argued that seizure was necessary to insure that vehicles would not be disposed of by the owners prior to the institution of forfeiture proceedings, the court said that the City's concerns could be met by lesser measures, such as the filing of a bond or a court order restraining the sale or destruction of the vehicle. The City also argued that since forfeiture is an **in rem**proceeding, jurisdiction was dependent upon its continued possession of the vehicle, but the court said that possession of the **res**during the entire course of the proceedings was unnecessary to preserve jurisdiction. The City also sought to justify the seizures by citing the need to prevent intoxicated drivers from driving again, but the court found that the pre-conviction seizure did not necessarily achieve this objective, since the drivers are not prevented from driver any other vehicle when the opportunity presents itself (e.g. the driver could borrow a car from a friend). As a remedy, Court of Appeals directed that claimants be given a prompt post-seizure retention hearing, with adequate notice. The case was remanded to the District Court, which will fashion appropriate procedural relief consistent with the Court of Appeals opinion. Although the Court of Appeals declined to dictate a specific form for the prompt retention hearing, it said that as a minimum, the hearing must enable claimants to test the probable validity of continued deprivation of their vehicles, including the City's probable cause for the initial warrantless seizure. In the absence of either probable cause for the seizure or post-seizure evidence supporting the probable validity of continued deprivation, the owner's vehicle would have to be released during the pendency of the criminal and civil proceedings. Krimstock v. Kelly, 306 F.3d 40 (2d Cir. 2002), cert denied, 539 U.S. 969, 123 (S.Ct. 2640, 2003).

¶ 35. CPLR 1311(4), which provides for dismissal of forfeiture actions in the interests of justice, does not apply to forfeiture actions brought by the Property Clerk under Adm. Code. Sec. 14-140. In effect, this means that a plea bargain reached between a defendant and the District Attorney will not be binding on the Property Clerk, who can still bring a forfeiture proceeding. Property Clerk, New York City Police Department v. Deans Overseas Shippers, Inc., 275 A.D.2d 204, 712 N.Y.S.2d 492 (1st Dept. 2000).

¶ 36. In some cases, the City has sought forfeiture of property which is encumbered by prior liens. Suppose, for example, a driver is stopped by police for driving while intoxicated, and the vehicle is seized. Suppose further that the vehicle was financed, and that the financing company previously filed a lien. A court, however, has held that the lien holder has only limited rights in such a situation. The City can still sell the property, and if the proceeds of sale are insufficient to repay the lien holder's remaining principal balance, the lien holder will have to seek a deficiency judgment against the borrower. Moreover, the lien holder does not have standing to challenge administrative fees which may be imposed by the Property Clerk. Property Clerk v. Aquino, N.Y.L.J., Oct. 2, 2000, page 26, col. 1 (Sup.Ct. New York Co.).

¶ 37. A civil forfeiture complaint must allege the specific acts justifying forfeiture of the vehicle. Property Clerk, New York City Police Dept. v. BMW Financial, 293 A.D.2d 378, 740 N.Y.S.2d 608 (1st Dept. 2002), leave to appeal dismissed, 98 N.Y.2d 715, 748 N.Y.S.2d 896, 2002.

¶ 38. In one case, the criminal charges against claimant were dismissed, by reason of the District Attorney's failure to proceed to trial within 90 days of commencement (Criminal Procedure Law §30.30(1)). Property Clerk v. Bonilla, N.Y.L.J., Nov. 25, 2002, page 20, col. 1 (Sup.Ct. New York Co.).

¶ 39. In one case, a man was arrested on drug charges, and the vehicle he was driving at the time was seized by the City. In a post-seizure vehicle retention hearing, it was established that the vehicle was jointly owned by the man and his wife. At a hearing before the Office of Administrative Trials and Hearings (OATH), OATH found that the City had demonstrated probable cause for the husband's arrest and a likelihood that the City would be able to prove its

entitlement to forfeiture of the vehicle. The wife claimed to be an innocent owner (unaware that the vehicle was allegedly being used in furtherance of a crime), and OATH directed a release of the vehicle on the ground that the City had not established that the wife was not a lawful claimant. Although the Supreme Court upheld the position of OATH, the Appellate Division, First Department reversed. It is true that where there is one owner who was involved in the commission of the crime and one innocent owner, the innocent owner's interest in the property is not subject to forfeiture. However, the innocence of one co-owner does not change the fact that the interest of the co-owner charged with using the vehicle illegally is potentially subject to forfeiture. If the City (having shown a requisite case against the husband) were required to release the vehicle based on the innocence of the wife, the City's ultimate right (after a final determination on the merits) to the interest of the charged owner would, as a practical matter be destroyed. On the other hand, if the City were permitted to retain the vehicle, the wife's interest in the vehicle would not be at risk, because the wife would receive a share (one-half, in this case) of the proceeds of the forfeiture sale (less administrative expenses). Police Property Clerk v. Harris, 34 A.D.3d 215, 825 N.Y.S.2d 442 (1st Dept. 2006).

¶ 40. A vehicle was seized in connection with a drug arrest. The wife of the arrested man sought to retain possession of the car as an "innocent co-owner." The court held that, although the City does not have to prove, at a post-seizure retention hearing, that the co-owner is not an innocent co-owner, due process requires that an innocent co-owner be given an opportunity to demonstrate that his or her present possessory interest in a seized vehicle outweighs the City's interest in continuing impoundment. The wife claimed to be innocent in the sense that, even though she knew of her husband's prior criminal background, she allegedly was not aware that he was again getting involved in drug activity. Additionally, she and her husband were making regularly scheduled car payments, and she would lose substantial funds if the car were not returned. An innocent co-owner's possessory interest is significant, since a car is a necessity of life. The prospect of a proportional payment of future forfeiture proceeds probably will not be sufficient to compensate the co-owner, who lost possession and use. Moreover, if an innocent co-owner is not permitted to contest impoundment, there is a substantial risk of an erroneous deprivation of a present possessory interest in a vehicle. It is true that the government's interest in preventing an impounded vehicle's future use in furtherance of a crime is significant. However, that interest will not always trump an innocent co-owner's possessory interest. Instead, the adjudicating body (Office of Trials and Appeals must balance both sets of interests to determine whether continued possession to prevent future criminality is justifiable, and whether means other than retention (such as posting a bond or temporary restraining order prohibiting sale or destruction would adequately protect the government's interest in future forfeiture proceeds. Thus, a co-owner should be entitled to return of the vehicle if he or she can establish a valid title, and show they were not participants or accomplices in the crime and did not knowingly permit the vehicle to be used in furtherance of the crime, and that continued deprivation would substantially interfere with his or her ability to obtain critical life necessities, such as earning a living, obtaining an education or receiving medical care. Property Clerk of the Police Dept. of the City of NY v. Harris, 9 NY3d 237, 848 NYS2d 588 (2007).

**FOOTNOTES**

1

[Footnote 1]: * In **McClendon v. Rossetti** 460 F.2d 111 (2d Cir. 1972) the court held that certain procedures of the police property clerk, which required persons from whom property was taken in the course of an arrest to commence a court proceding to obtain the return of such property, combined with the provisions of section 14-140(f) of the Administrative Code which require such persons to prove lawful possession of the property denied such persons due process of law under the Fifth and Fourteenth amendments to the U.S. Constitution. Subsequent to the McClendon decision the Police Department and the District Attorneys adopted procedures for claiming property taken or obtained by the police in the course of an arrest which were approved by the **McClendon** court. These procedures are codified as Subchapter B of chapter 12 of title 38 of the Rules of the City of New York.

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-141*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-141 Common law and statutory powers of constables.

The members of the force while on duty in the city and whenever in any other part of this state, shall possess all the common law and statutory powers of constables, except for the service of civil process, and any warrant for search or arrest, issued by any judge of this state, may be executed, in any part thereof, by any member of the force.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 435-11.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-147*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-147 Workers' compensation for members of auxiliary police.

a. As used in this section, the term "member of the auxiliary police" shall mean and include only a volunteer who is a duly enrolled member in good standing of the auxiliary police which the city is authorized to recruit by subdivision five of section twenty-three of the New York state defense emergency act, as enacted by chapter seven hundred eighty-four of the laws of nineteen hundred fifty-one, and who is not within the coverage of the workers' compensation law pursuant to group seventeen of subdivision one of section three of the workers' compensation law.

b. Pursuant to the authorization contained in group nineteen of subdivision one of section three of the workers' compensation law the coverage of the workers' compensation law is hereby extended to the activities of any member of the auxiliary police during any period which such member is actually engaged in auxiliary police activites duly authorized by regulation or order issued pursuant to the New York state defense emergency act including any such activities as may be prescribed by the commissioner of the city pursuant to such regulation or order, such coverage shall extend to such member of the auxiliary police, but only to the extent that such member is not, as to any such activities, covered by article ten of the workers' compensation law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § U51-10.0 added LL 151/1952 § 1

Renumbered chap 100/1963 § 1499

(formerly § U41-10.0)

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-148*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-148 Uniform allowance for members of auxiliary police.

a. Legislative intent. In the public interest and under the powers granted by the charter to the council to enact legislation for the good and welfare of the citizens of New York, it is the intent of the council by this legislation to attract more men and women to serve as auxiliary police. These men or women are trained by our regular police forces and are similarly uniformed and equipped except that they do not carry guns. The appearance on the streets of many men or women wearing the police uniform, in precincts where auxiliary police are active, has done much to reduce the crime rates in those areas. Auxiliary police serve without pay as civic minded citizens. Their presence in uniform on the streets serves to release regular uniformed police for patrol duty and lessens the neighborhood fear of crime. Auxiliary police patrol in pairs and by radio can summon instant assistance from the regular police should they encounter a situation which they have not been trained to handle. Their presence on the streets makes for good community relations between the citizens and the regular police. It is small repayment for the valuable services they render to provide them with a uniform allowance.

b. Allowance. Duly enrolled members in good standing of the auxiliary police, upon successful completion of training, shall receive an initial allowance not to exceed two hundred fifty dollars towards the initial purchase of uniforms and accessories for same, including care and maintenance. The amount of such allowance shall be determined by the police commissioner and shall not exceed the actual costs incurred for such uniforms and accessories including care and maintenance. Such members other than those receiving such initial allowance in the then current or preceding fiscal year, shall be eligible for an allowance towards the purchase of uniforms and accessories for same, including care and maintenance to be awarded to each such member who shall otherwise qualify in accordance with the provisions of this subdivision. The commissioner shall determine the amount of the allowance to be awarded based on but not limited

to the member's participation, hours of service, expense incurred in maintaining uniforms and equipment and such other facts deemed pertinent by the commissioner. Payments shall be made for the preceding fiscal year after certification by the commanding officer of the auxiliary forces section to the police commissioner of such facts as the commissioner may deem pertinent to enable him or her to make his or her determination.

c. Auxiliary police not to be members of regular police force. Notwithstanding the provisions of this section nothing contained therein shall be construed to constitute such auxiliary police officers members of the regular police force or to entitle them to the privileges and benefits of the regular police force or to become members of the police pension funds.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § U51-11.0 added LL 19/1973 § 1

Sub b amended LL 50/1974 § 1

Sub b amended LL 75/1979 § 1

Sub b amended LL 4/1981 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-149*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-149 Police 911 operational time analysis report.

a. Definitions. For the purposes of this section, the following terms shall be defined as follows:

(i) "Call" shall mean a telephone call to the 911 emergency assistance system.

(ii) "Incident" shall mean an event which results in the response of a police unit as a result of a call to the 911 emergency assistance system, regardless of the number of calls made with respect to such incident.

(iii) "Police unit" shall mean a radio motor patrol unit, patrol officer or other police department personnel.

(iv) "Dispatch time" shall mean the interval of time between the time the information received by the 911 telephone operator is entered into the 911 emergency assistance system and the assignment of a police unit to the scene of the incident.

(v) "Travel time" shall mean the interval of time between the assignment of a police unit and the arrival of the first police unit at the scene of the incident.

(vi) "Response time" shall mean the sum of dispatch time and travel time.

(vii) "Disposition" shall mean a police unit's report to the 911 emergency assistance system on its response to an assignment that has resulted from a call or incident.

b. The New York city police department shall submit to the city council an operational time analysis report

summarizing departmental performance with respect to calls to the 911 emergency assistance system. Such report shall include the following information:

1. The aggregate number of calls on a citywide and borough-wide basis.

2. The aggregate number of incidents.

3. The aggregate number of incidents where the dispatcher has received a disposition from a police unit.

4. The aggregate number of incidents involving a report of a crime in progress.

5. The aggregate number of incidents involving a report of a crime in progress resulting in the dispatch of a police unit where the dispatcher received confirmation of a police unit's arrival at the scene of the incident.

6. The average dispatch time, travel time and response time for all police units responding to incidents involving a report of a crime in progress.

7. The aggregate number of incidents involving a report of a crime in progress in each of the following categories:

(i) those for which response time was no greater than ten minutes;

(ii) those for which response time was greater than ten minutes but no more than twenty minutes;

(iii) those for which response time was greater than twenty minutes but no more than thirty minutes;

(iv) those for which response time was greater than thirty minutes but no more than one hour; and

(v) those for which response time was greater than one hour.

c. The data contained in the 911 operational time analysis report required by paragraphs two through seven of subdivision b of this section shall be provided on a citywide, borough-wide, precinct-by-precinct and tour-by-tour basis. The 911 operational time analysis report shall be submitted to the council quarterly. In addition, the data contained in such report shall be incorporated in the mayor's preliminary and final management reports. Notwithstanding any other provision of law, the operational time analysis report required by subdivision b to be submitted to the council is not required to be transmitted in electronic format to the department of records and information services, or its successor agency, and is not required to be made available to the public on or through the department of records and information services' web site, or its successor's web site.

**HISTORICAL NOTE**

Section added L.L. 89/1991 § 1, eff. May 20, 1992.

Subd. c amended L.L. 48/2004 § 1, eff. Nov. 1, 2004.

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

*NYC Administrative Code 14-150*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-150 Police department reporting requirements.

a. The New York City Police Department shall submit to the city council on a quarterly basis the following materials, data and reports:

1. All academy, in-service, roll-call and other specialized department training materials and amendments thereto distributed to cadets, recruits, officers and other employees of the department, except where disclosure of such material would reveal nonroutine investigative techniques or confidential information or where disclosure could compromise the safety of the public or police officers or could otherwise compromise law enforcement investigations or operations.

2. All patrol guide procedures newly promulgated or revised.

3. A report detailing the number of uniformed personnel and civilian personnel assigned to each and every patrol borough and operational bureau performing an enforcement function within the police department, including, but not limited to, each patrol precinct, housing police service area, transit district and patrol borough street crime unit, as well as the narcotics division, fugitive enforcement division and the special operations division including its subdivisions, but shall not include internal investigative commands and shall not include undercover officers assigned to any command. Such report shall also include, for each school operated by the department of education to which school safety agents are assigned, the number of school safety agents, averaged for the quarter, assigned to each of those schools.

4. A crime status report. Such report shall include the total number of crime complaints (categorized by class of crime, indicating whether the crime is a misdemeanor or felony) for each patrol precinct, including a subset of housing

bureau and transit bureau complaints within each precinct; arrests (categorized by class of crime, indicating whether the arrest is for a misdemeanor or felony) for each patrol precinct, housing police service area, transit district, street crime unit and narcotics division; summons activity (categorized by type of summons, indicating whether the summons is a parking violation, moving violation, environmental control board notice of violation, or criminal court summons) for each patrol precinct, housing police service area and transit district; domestic violence radio runs for each patrol precinct; average response time for critical and serious crimes in progress for each patrol precinct; overtime statistics for each patrol borough and operational bureau performing an enforcement function within the police department, including, but not limited to, each patrol precinct, housing police service area, transit district and patrol borough street crime unit, as well as the narcotics division, fugitive enforcement division and the special operations division, including its subdivisions, but shall not include internal investigative commands and shall not include undercover officers assigned to any command.

5. A report based on the information provided in the department's Stop, Question and Frisk Report Worksheet and any successor form or worksheet. Such report shall include the number of stop, question and frisks for each patrol precinct, housing police service area, transit district, street crime unit and narcotics division; a breakdown of the number of stop, question and frisks by race and gender for each patrol precinct, housing police service area, transit district, street crime unit and narcotics division; the number of suspects arrested or issued a summons as indicated on each stop, question and frisk report for each patrol precinct, housing police service area, transit district, street crime unit and narcotics division; a breakdown by race and gender of the suspects arrested or issued a summons as indicated on each stop, question and frisk report for each patrol precinct, housing police service area, transit district, street crime unit and narcotics division; a listing, by category, of the factors leading to the stop, question and frisk for each patrol precinct, housing police service area, transit district, street crime unit and narcotics division, with a breakdown by race and gender for each listed factor; and a summary of complaints of violent felony crime for each patrol precinct, with a breakdown by race and gender of the suspect as identified by the victim.

6. A report, for each patrol precinct, housing police service area, transit district, street crime unit and narcotics division, of the number of summonses issued for moving violations, with a breakdown by race and gender. Such report shall be generated using data provided by the State Department of Motor Vehicles at such time as the State Department of Motor Vehicles amends its traffic summons to reflect such race and gender information.

7. A report of the number of positions that are civilianizable, including a listing of each position by job title, and the number of positions that were civilianized. "Civilianizable" shall mean any position that does not require uniformed expertise.

8. A report of the number of firearms possessed in violation of law that have been seized, disaggregated by precinct and type of firearm. Such report shall also include, disaggregated by precinct: (i) the number of arrests made and type of crimes charged involving firearms possessed in violation of law, including arrests for the distribution and sale of such firearms; and (ii) the total number and type of firearms recovered in the course of arrests made.

b. The New York city police department shall submit to the city council on an annual basis a firearms discharge report, which shall include substantially the same information and data categories, disaggregated in substantially the same manner, as the department's 2007 Annual Firearms Discharge Report. It shall also include, at a minimum, in tabular form:

1. The number of firearms incidents disaggregated by (i) day of week; (ii) tour; (iii) borough; (iv) month; (v) precinct; (vi) number of incidents that occurred outside New York city; and (vii) on-duty or off-duty status of officer.

2. The total number of firearms incidents for the year of the report and the year preceding the report, as well as the percentage change between the two years, and disaggregated by (i) intentional discharge-adversarial conflict; (ii) intentional discharge-animal attack; (iii) unintentional discharge; and (iv) unlawful use of firearm.

3. For all firearms incidents for the year of the report and the year preceding the report, both the raw number for each year and the percentage change between the two years, for each of the following categories (i) the total number of officers firing; (ii) the total number of shots fired; (iii) the total number of officers shot and injured by a subject; (iv) the total number of officers shot and killed by a subject; (v) the total number of subjects shot and injured by an officer; and (v)*3 the total number of subjects shot and killed by an officer.

4. The number of intentional firearms incidents disaggregated by incidents in which (i) a subject used or threatened the use of a firearm; (ii) a subject used or threatened the use of a cutting instrument; (iii) a subject used or threatened the use of a blunt object; (iv) a subject used or threatened the use of overwhelming physical force; (v) an officer perceived a threat of other deadly physical force; (vi) a dog attack was involved; and (vii) an attack by an animal other than a dog was involved.

5. The number of firearms incidents disaggregated by (i) unintentional discharge during adversarial conflict; (ii) unintentional discharge while handling a firearm; (iii) suicide; (iv) unlawful intentional discharge; and (v) unauthorized person discharging officer's firearm.

6. For each firearms incident determined to fall within the category of Intentional Discharge-Adversarial Conflict: (i) an indication of whether or not a firearm was fired by a subject; (ii) an indication of whether the subject used or threatened the use of a firearm, subject used or threatened the use of a cutting instrument, subject used or threatened the use of a blunt object, subject used or threatened the use of overwhelming physical force, or an officer perceived threat of other deadly physical force; (iii) whether or not the weapon possessed or used by a subject or subjects is known, and if known, the type of weapon used or possessed by the subject; (iv) the total number of officers who fired; (v) the total number of shots fired by officers; (vi) the number of shots fired per officer; (vii) the objective completion rate of the incident; (viii) the number of subjects; and (ix) for each subject, the age, race and gender of the subject.

7. A synopsis of each firearms incident resulting in the death of either a subject or an officer.

8. For purposes of this section, the following terms shall have the following meanings: (i) "firearms incident" means any incident during which one or more New York city police officers discharge any firearm, or when a firearm belonging to a New York city police officer is discharged by any person, except for a discharge during an authorized training session, or while lawfully engaged in target practice or hunting, or at a firearms safety station within a department facility; (ii) "subject" means a person engaged in adversarial conflict with an officer or third party, in which the conflict results in a firearms discharge; (iii) "civilian" means a person who is not the subject in the adversarial conflict but is included as a victim, bystander, and/or injured person; (iv) "officer" means a uniformed member of the department, at any rank; (v) "intentional firearms discharge" means a firearms discharge in which an officer intentionally discharges a firearm, which may include firearms discharges that are determined to be legally justified but outside department guidelines; (vi) "adversarial conflict" means an incident in which an officer acts in defense of self or another during an adversarial conflict with a subject and does not include an animal attack or situations in which an officer only intentionally discharges a firearm to summon assistance; (vii) "unintentional firearms discharge" means a firearms discharge in which an officer discharges a firearm without intent, regardless of the circumstance, commonly known as an accidental discharge; and (viii) "unauthorized use of a firearm" means a firearms discharge that is considered unauthorized and is not listed as an intentional firearms discharge, is being discharged without proper legal justification, and includes instances when an unauthorized person discharges an officer's firearm.

c. The information, data and reports requested in subdivisions a and b shall be provided to the council except where disclosure of such material could compromise the safety of the public or police officers or could otherwise compromise law enforcement operations. Notwithstanding any other provision of law, the information, data and reports requested in subdivisions a and b are not required to be transmitted in electronic format to the department of records and information services, or its successor agency, and are not required to be made available to the public on or through the department of records and information services' web site, or its successor's web site. These reports shall be provided to

the council within 30 days of the end of the reporting period to which the reports correspond or for which the relevant data may be collected, whichever is later. Where necessary, the department may use preliminary data to prepare the required reports and may include an acknowledgment that such preliminary data is non-final and subject to change.

**HISTORICAL NOTE**

Section added L.L. 55/2001 § 1, eff. Nov. 5, 2001. [See Note]

Subd. a par 3 amended L.L. 5/2005 § 1, eff. Jan. 5, 2005.

Subd. a par 8 added L.L. 57/2008 § 1, eff. Jan. 31, 2009.

Subd. b added L.L. 1/2009 § 1, eff. Mar. 22, 2009.

Subd. c relettered and amended (former subd. b)) L.L. 1/2009 § 1, eff.

Mar. 22, 2009.

Subd. c amended (as subd. b) L.L. 48/2004 § 2, eff. Nov. 1, 2004.

**NOTE**

Provisions of L.L. 55/2001 § 2:

§ 2. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

**FOOTNOTES**

3

[Footnote 3]: * Should be (vi) law is wrong.



Administrative Code of the City of New York



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

*NYC Administrative Code 14-151*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 1 POLICE DEPARTMENT

§ 14-151 Racial or Ethnic Profiling Prohibited.

a. Definitions. As used in this section, the following terms have the following meanings:

1. "Racial or ethnic profiling" means an act of a member of the force of the police department or other law enforcement officer that relies on race, ethnicity, religion or national origin as the determinative factor in initiating law enforcement action against an individual, rather than an individual's behavior or other information or circumstances that links a person or persons of a particular race, ethnicity, religion or national origin to suspected unlawful activity.

2. "Law enforcement officer" means (i) a peace officer or police officer as defined in the Criminal Procedure Law who is employed by the city of New York; or (ii) a special patrolman appointed by the police commissioner pursuant to section 14-106 of the administrative code.

b. Prohibition. Every member of the police department or other law enforcement officer shall be prohibited from racial or ethnic profiling.

**HISTORICAL NOTE**

Section added L.L. 30/2004 § 1, eff. Sept. 10, 2004 provided, however,

that effective immediately, the addition, amendment and/or repeal of

any rule or regulation necessary for the implementation of this local

law on its effective date are authorized and directed to be made and completed on or before such effective date.



Administrative Code of the City of New York



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

*NYC Administrative Code 14-201*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 2 SOLICITATION BY LAW ENFORCEMENT AFFILIATED ORGANIZATIONS

§ 14-201 Regulation of solicitation by law enforcement affiliated organizations.

As used in this chapter, the following terms shall have the following meanings:

1. "Law enforcement affiliated organization." a. Any organization, association, or conference of present or former members of the force, sheriffs, deputy sheriffs, detectives, investigators, constables or similar law enforcement officers or peace officers or police officers as defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law, or any auxiliary or affiliate of such an organization, association, or conference composed of one or more such organizations.

b. Any organization, association or conference established for the benefit of, benevolence towards or support of present or former members of the force, sheriffs, deputy sheriffs, detectives, investigators, constables or similar law enforcement officers or peace officers or police officers as defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law, or the families of such law enforcement personnel.

2. "Professional fund raiser." Any person who for compensation or other consideration plans, conducts, manages, or carries on any drive or campaign in the city for the purpose of soliciting funds or contributions for or on behalf of any law enforcement affiliated organization, or who engages in the business of, or holds himself or herself out to persons in the city as independently engaged in the business of soliciting contributions for such purposes.

3. "Professional solicitor." Any person who is employed or retained for compensation by a professional fund raiser to solicit funds or contributions on behalf of any law enforcement affiliated organization from persons in the city.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a open par, par 1 amended (Subd. a designation deleted) L.L. 7/1999 § 1, eff. Apr. 10, 1999.

**DERIVATION**

Formerly § C18-1.0 added LL 61/1983 § 2

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-202*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 2 SOLICITATION BY LAW ENFORCEMENT AFFILIATED ORGANIZATIONS

§ 14-202 Registration of law enforcement affiliated organizations.

No law enforcement affiliated organization shall solicit funds or contributions from the public, or have funds or contributions solicited on its behalf, unless it has filed a registration statement with the commissioner or the commissioner's designee in accordance with the provisions of this section. Each registration statement shall be refiled and updated every twelve (12) months so long as the law enforcement affiliated organization is engaged in solicitation activities in the city. Such statements shall be made available to the public in a manner determined by the commissioner or the commissioner's designee and shall contain the following information:

1. The name of the organization and the purpose for which it was organized;

2. The principal address of the organization;

3. A statement indicating whether the organization intends to use professional fund raisers to solicit funds or contributions from the public;

4. The general purpose or purposes for which the contributions solicited shall be used;

5. The names and business addresses of the person or persons in direct charge of conducting the solicitation;

6. The names and business addresses of all professional fund raisers who will be connected with the solicitation;

7. A statement to the effect that the fact of registration will not be used or represented in any way as an endorsement by the city or by the department of the solicitation conducted thereunder;

8. Documents verifying the information provided under provisions one through six above, including all contracts and subsequent amendments thereto between a law enforcement affiliated organization and any professional fund raiser with whom it does business; 9. Once each year on the fifteenth day of February, a report shall be filed with the commissioner stating the amount of funds or contributions collected in the preceding calendar year, the amount expended and the specific recipients and purposes for which said amount was expended, the administrative expenses incurred in said period including a statement of the fees or other charges by any professional fund raisers and the amount paid to same.

10. A statement to the effect that the organization acknowledges that the information contained in the registration statement shall be made available to the public in a manner determined by the commissioner or the commissioner's designee.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Open par amended L.L. 7/1999 § 2, eff. Apr. 10, 1999.

Subd. 10 added L.L. 7/1999 § 3, eff. Apr. 10, 1999.

**DERIVATION**

Formerly § C18-2.0 added LL 61/1983 § 2



Administrative Code of the City of New York



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

*NYC Administrative Code 14-203*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 2 SOLICITATION BY LAW ENFORCEMENT AFFILIATED ORGANIZATIONS

§ 14-203 Representation.

During the course of each and every solicitation for funds or contributions on behalf of a law enforcement affiliated organization and on an acknowledgement which shall be mailed to the person and/or persons who agree to contribute pursuant to the solicitation, the fund raiser, solicitor or any other person acting on behalf of the law enforcement affiliated organization shall make the following representations.

1. The name and address of the organization represented;

2. A description of the programs in which the organization is actually engaged and for which the funds or contributions will be used;

3. A statement of the percentage of the funds collected during the preceding year which were actually used for the programs in which the organization was then engaged, and that the remaining funds were used for fund raising activities.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C18-3.0 added LL 61/1983 § 2

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

*NYC Administrative Code 14-204*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 2 SOLICITATION BY LAW ENFORCEMENT AFFILIATED ORGANIZATIONS

§ 14-204 Prohibited acts.

It shall be unlawful to solicit funds or contributions on behalf of a law enforcement affiliated organization:

1. By using a name, symbol or statement so closely related to that used by another law enforcement affiliated organization or governmental agency that the use thereof would tend to confuse or mislead the public, including the use of statement or materials that would indicate that such funds or contributions were being raised for the department or the patrolman's benevolent association of the city of New York, unless such agency or association shall have given its written permission for the raising of such funds for it, and the use of its name in connection with the solicitation of funds;

2. By means of a false pretense, representation or promise which includes representing:

(i) that the professional fund raisers or solicitors are members of the police force or employees of any law enforcement agency;

(ii) that funds collected will be used to aid surviving spouses, domestic partners or children of members of the police force slain in the line of duty or that the funds collected will be used for any other charitable program unless the organization is actually engaged in such a program;

(iii) that contributors will receive special benefits from members of the police force;

(iv) that contributions are tax exempt as a charitable contribution or as a business expense unless they so qualify

under the applicable provisions of the internal revenue codes;

(v) by any manner, means, practice or device that misleads the person solicited as to the use of the funds or the nature of the organization.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. 2 par (ii) amended L.L. 27/1998 § 17, eff. Sept. 5, 1998.

**DERIVATION**

Formerly § C18-4.0 added LL 61/1983 § 2



Administrative Code of the City of New York



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

*NYC Administrative Code 14-205*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 2 SOLICITATION BY LAW ENFORCEMENT AFFILIATED ORGANIZATIONS

§ 14-205 Criminal and civil penalties.

a. Any person who violates or assists in the violation of any of the provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of not less than one thousand nor more than ten thousand dollars or up to one year imprisonment, or both. Each such violation shall be a separate and distinct offense.

b. Such person shall also be subject to a civil penalty of not less than one thousand nor more than ten thousand dollars for each violation. Each such violation shall be a separate and distinct offense.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C18-5.0 added LL 61/1983 § 2

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-206*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 2 SOLICITATION BY LAW ENFORCEMENT AFFILIATED ORGANIZATIONS

§ 14-206 Enforcement actions or proceedings.

The civil penalties prescribed by this chapter shall be recovered by an action or proceeding in any court of competent jurisdiction. All such actions or proceedings shall be brought in the name of the city by the corporation counsel. In addition, the corporation counsel may institute any other action or proceeding in any court of competent jurisdiction that may be appropriate or necessary for the enforcement of the provisions of this chapter, including actions to secure permanent injunctions enjoining any acts or practices which constitute a violation of any provision of this chapter, mandating compliance with the provisions of this chapter or for such other relief as may be appropriate. In any such action or proceeding the city may apply to any court of competent jurisdiction, or to a judge or justice thereof, for a temporary restraining order or preliminary injunction enjoining and restraining all persons from violating any provision of this chapter, mandating compliance with the provisions of this chapter, or for such other relief as may be appropriate, until the hearing and determination of such action or proceeding and the entry of final judgment or order therein. The court, or judge or justice thereof, to whom such application is made, is hereby authorized forthwith to make any or all of the orders above specified, as may be required in such application, with or without notice, and to make such other or further orders or directions as may be necessary to render the same effectual. No undertaking shall be required as a condition to the granting or issuing of such order, or by reason thereof.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C18-6.0 added LL 61/1983 § 2



Administrative Code of the City of New York



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

*NYC Administrative Code 14-207*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 2 SOLICITATION BY LAW ENFORCEMENT AFFILIATED ORGANIZATIONS

§ 14-207 Scope of remedies.

The remedies and penalties provided for herein shall be in addition to any other remedies and penalties provided under other provisions of law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C18-7.0 added LL 61/1983 § 2

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Administrative Code of the City of New York



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

*NYC Administrative Code 14-208*

Administrative Code of the City of New York

Title 14 Police

CHAPTER 2 SOLICITATION BY LAW ENFORCEMENT AFFILIATED ORGANIZATIONS

§ 14-208 Construction.

The provisions of this chapter shall not be construed to apply to any law enforcement affiliated organizations when solicitation of contributions is confined to their membership. In addition, the provisions of this chapter shall not be construed to apply to any person or law enforcement affiliated organization which solicits contributions for the relief of any individual, specified by name at the time of solicitation, if all of the contributions collected, without any deductions whatsoever, are turned over to the named beneficiary.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C18-8.0 added LL 61/1983 § 2

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-101*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-101 Definitions; bureaus, divisions and offices.

a. For the purposes of this title the following terms shall have the following meanings:

(1) "Commissioner" shall mean the fire commissioner.

(2) "Department" shall mean the fire department.

b. In addition to such other bureaus, divisions and offices as the commissioner may organize pursuant to section eleven hundred two of the charter, there shall be in the department:

1. A fire bureau in the charge of the chief of the department which shall have charge of the extinguishment of fires and the necessary and incidental protection of life and property in connection therewith.

In such bureau there shall be a bureau of fire prevention and such bureau shall be in the charge of a member of the uniformed force of the department, of a rank above that of captain, to be designated by the commissioner. Such bureau shall perform the duties and exercise the powers of the commissioner in relation to (1) combustibles, chemicals, explosives, flammables, or other dangerous substances, articles, compounds or mixtures, (2) the prevention of fires or danger to life or property therefrom, excluding provisions relating to structural conditions and (3) protection against fire and panic, obstruction of aisles, passageways and means of egress, standees, fire protection and fire extinguishing appliances, and fire prevention in licensed places of assembly. In the performance of their official duties, the uniformed and civilian members of the bureau of fire prevention shall have the powers and perform the duties of peace officers, but their power to make arrests and serve process in criminal actions shall be restricted to cases arising under laws relating

to (1) the manufacture, storage, sale, transportation or use of combustibles, chemicals, explosives, flammables or other dangerous substances, articles, compounds or mixtures and the control of fire hazards, (2) the prevention of fires or danger to life or property therefrom, excluding provisions relating to structural conditions and (3) fire perils.

2. A chief and deputy chief fire marshal, appointed by the commissioner, who shall be members of the department.

c. Notwithstanding any inconsistent provision of any general, special or local law, or rule or regulation, a chief of the department shall not serve in any other capacity to the department during his or her term of office of chief. Any person violating the provisions of this section shall be deemed to have vacated the office of chief so held.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-1.0 added chap 929/1937 § 1

Sub 1 par c added LL 83/1940 § 1

Sub 2 amended LL 78/1951 § 1

Sub 1 pars a, b, c repealed and added LL 5/1957 § 1

(pars b, c omitted)

Sub 3 repealed LL 10/1958 § 1

Open par amended chap 100/1963 § 405

Sub c formerly § 487a-20.0 added chap 652/1978 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. Persons occupying position of "assistant fire marshal", **held** not to be members of the uniformed force of the New York City Fire Department, and hence not entitled to retirement rights under Greater New York Charter § 790 nor to refund of money theretofore paid by them into Employees' Retirement System. Such conclusion was supported by a review of the statutes pertaining to fire marshals, fact that Greater New York Charter § 779 specifically provided that the Chief Fire Marshal and Deputy Fire Marshal were members of the uniformed force whereas no mention was made of the Assistant Fire Marshals, and that a practical construction had been placed on the statutes by the Municipal Civil Service Commission in its grading of examinations, different examinations being provided than those required for uniformed firemen, by the City officials in making up the budget in a manner different from that for the uniformed force, by the Legislature in attempted legislation of 1919 wherein it was proposed to make Assistant Fire Marshals then in office members of the uniformed force, and by the petitioners themselves in having voluntarily accepted salaries differing from those paid uniformed firemen and having contributed for many years to the Retirement Fund.-Wildey v. McElligott, 167 Misc. 101, 3 N.Y.S. 2d 434 [1938], aff'd without opinion, 257 App. Div. 807, 12 N.Y.S. 2d 588 [1939], aff'd 283 N.Y. 586, 27 N.E. 2d 442 [1940].

¶ 2. Resolutions promulgated by the Personnel Director of the City of New York which would eliminate the need for a competitive examination to effect the promotion of any person having the title of Deputy Chief (Fire) to the position of Chief of the Department contravene this section. The legal imperatives may not be circumvented by endeavoring to abolish a title and designate an employee in a subordinate position to perform its former duties.-Joyce v.

Ortiz, 108 A.D. 2d 158 [1985].



Administrative Code of the City of New York



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

*NYC Administrative Code 15-102*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-102 Volunteer system.

a. The paid department system, as soon as practicable, shall be extended over the borough of Staten Island by the commissioner, and thereupon the present volunteer fire companies now maintained therein shall be disbanded. Any real property and any apparatus, equipment or other personal property owned or used by such volunteer forces which may be deemed useful or necessary for the use of the department, upon the extension of the paid system to the borough of Staten Island, shall be purchased by the department of general services upon the recommendation of the commissioner at the reasonable value thereof.

b. In the meantime and until the paid department shall be extended over such borough of Staten Island, such volunteer fire companies shall continue to discharge the duties for which they have been associated or incorporated, and there shall be paid on the first day of June in each year to the treasurers of such volunteer fire companies, by the comptroller, the following sums: To the treasurer of an engine company or chemical engine company twelve hundred dollars, to the treasurer of a hook and ladder company ten hundred dollars, to the treasurer of a hose company, eight hundred dollars, and to the treasurer of a patrol company, eight hundred dollars. The city, in its discretion, may appropriate such sum of money as it may deem necessary for the purchase of apparatus for the use of the several volunteer companies in the borough of Staten Island, and for the maintenance of the fire alarm system in such borough.

c. The extension of the paid department system shall not affect the rights and privileges of any volunteer benevolent association existing within the territory where such extension is made.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-2.0 added chap 929/1937 § 1

Sub b amended chap 100/1963 § 406

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-103*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-103 Qualifications of force of department.

a. To qualify for membership in the department a person shall be:

1. A citizen of the United States.

2. Able understandingly to read and write the English language.

3. Shall have passed his or her eighteenth birthday but not his or her twenty-ninth birthday on the date of the filing of his or her application for civil service examination. No person who qualifies under this requirement shall be disqualified from membership in the department because of having passed his or her twenty-ninth birthday subsequent to the filing of his or her application. However no person shall be appointed unless he or she shall have attained his or her twenty-first birthday.

b. A conviction of a felony shall disqualify all persons from membership in the department.

c. Nothing in this section is intended to repeal or supersede the provisions of section 12-138 of the code.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-3.0 added chap 929/1937 § 1

Amended LL 35/1947 § 1

Amended LL 24/1968 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. In making appointments of firemen from an eligible list, the discretion granted to the Commissioner of the Fire Department by Military Law § 246, subd. 7a, authorized him to treat as unavailable for appointment only those who were then classified as 1-A under the Selective Training and Service Act, and did not authorize him to pass over the names of eligibles upon the ground that, although they were not then classified as 1-A, their reclassification and induction into the armed forces was imminent. However, the Commissioner could not be directed to appoint forthwith each of the petitioners to the position of fireman, as such a direction would deprive the Commissioner of the power of selection granted to him as an appointing officer.-Berger v. Walsh, 291 N.Y. 220, 52 N.E. 2d 105 [1943], modifying 266 App. Div. 592, 42 N.Y.S. 2d 582 [1943].

¶ 2. The frequent and recurrent practice of the Fire Commissioner in appointing firemen to the position of lieutenant without making permanent appointments or awarding higher compensation could properly be enjoined where the purpose of such appointment was to permanently fill the position of lieutenant.-McKeon v. Cavanaugh, 135 (87) N.Y.L.J. (5-4-56) 7, Col. 5 F.

¶ 3. Disqualification of fireman was not arbitrary where he had been arrested five times, on charges including burglary, vagrancy, disorderly conduct and two assaults, had been convicted once and had been disciplined.-In re McCormack (Gregory), 150 (2) N.Y.L.J. (7-2-63) 9, Col. 5 F.

**CASE NOTES**

¶ 1. By juxtaposing Civil Service Law § 54 and Administrative Code § 15-103(a)(3) which requires a candidate to have "passed his or her eighteenth birthday . . . on the date of the filing of his or her application for civil service examination," it is clear that this inconsistent portion of the code is contrary to the language and intent of the Civil Service Law and results in excluding persons from candidacy that the legislature sought to include. Smithwick v. Levitt, 154 AD2d 240 [1989].

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-103.1*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-103.1 Chief of department.

Notwithstanding any inconsistent provision of any general, special or local law, including but not limited to section 15-110 of this chapter, to the contrary, the chief of department shall not be required to be selected by competitive examination. The chief of department shall be in the exempt class of the classified service, and shall be selected from among persons holding the title of deputy chief (fire).

**HISTORICAL NOTE**

Section added chap 712/2006 § 2, eff. Sept. 13, 2006. [See Note 1]

**NOTE**

1. Provisions of L.L. chap 712/2006:

Section 1. Legislative findings and intent. The chief of department, the highest-ranking uniformed officer of the New York city fire department, is responsible for the management of the fire and emergency medical service commands and 911 system operations, including responses to fires, hazardous substance releases and pre-hospital emergency medical care. The chief acts as principal advisor to the fire commissioner and is instrumental in the development and implementation of fire department policy relating to strategic planning, budget, labor relations, procurement and other key areas. The chief is a major participant in development and implementation of the city's plans to prepare for and respond to catastrophic events, including acts of terrorism. In this capacity the chief represents the department in highly confidential meetings with the federal department of homeland security, the central intelligence agency, the federal

bureau of investigation, the military and other federal, state and local agencies, and in the event of a crisis will be responsible for coordinating a response with these agencies. In this era following the events of September 11, 2001, the duties of the chief of department have become more sensitive and more important to the security of the city, the state and the nation than ever before. It is imperative that the fire commissioner be empowered to select for this position an individual in whom the commissioner can place complete confidence and who possesses qualities of leadership, vision, political acumen and resourcefulness which are not susceptible to testing by objective examination. The legislature therefore finds that this position should be classified in the exempt class of the civil service, and further finds that an appropriate balance of required experience with necessary appointment discretion can be struck by requiring that the chief of department be selected from among incumbent deputy chiefs. No provision of this act is intended to affect any title other than chief of department with respect to the requirements of competitive examinations or civil service status.

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-104*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-104 Probationary period.

Preliminary to a permanent appointment as firefighter there shall be a period of probation for such time as is fixed by the civil service rules, and no person shall receive a permanent appointment who has not served the required probationary period. The service during probation shall be deemed to be service in the uniformed force if succeeded by a permanent appointment, and as such shall be included and counted in determining eligibility for advancement, promotion, retirement and pension.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-4.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Petitioner, who sought an order under C.P.A. Art. 78 directing his reinstatement in the Fire Department, **held** merely to have been serving under a probationary appointment inasmuch as he had never taken the oath of office nor received a warrant of appointment and hence, where the Commissioner had exercised his discretion not to engage the petitioner within the statutory period of three months and there was nothing indicating a willful abuse of power, the court might not interfere with the Commissioner's determination.-Matter of Epstein (McElligott), 99 (144) N.Y.L.J.

(6-22-38) 3008, Col. 3 T, aff'd without opinion, 255 App. Div. 755, 7 N.Y.S. 2d 101 [1938], aff'd 280 N.Y. 636, 20 N.E. 2d 1010 [1939].

¶ 2. Where on September 8, 1942, the Civil Service Commission certified petitioner as eligible for appointment as probationary fireman but on September 15 the Fire Commissioner, purporting to act under Military Law § 246, subd. 7, refused to appoint petitioner on ground his selective service status was unsatisfactory, but this ruling was declared contrary to law by the Court of Appeals and on June 19, 1944, petitioner, who was then in military service, was appointed to the Fire Department and assigned to the military service division, petitioner **held** entitled to have his length of service and seniority measured from September 16, 1942, and not from November 21, 1945, when he took his oath of office following his honorable discharge from the service a few days earlier. Under Military Law § 246, subd. 6, petitioner might offer in substitution for actual service the time spent by him in military service from the date of his appointment, which was September 16, 1942. Furthermore, the requirement of an oath in the case of a public employee is a condition subsequent to be urged only as a bar to obtaining compensation, and petitioner's inability to take the oath because of Military Service should not serve to prejudice him.-Kelly v. Quayle, 70 N.Y.S. 2d 52 [1947].

¶ 3. A fireman who had served his six-month probationary period as required by this section and had then become a permanent member of the force was entitled to receive, during his probationary period, the salary of a fourth grade fireman at the rate theretofore fixed for such position by the Board of Estimate. This section, although providing for a period of probation preliminary to permanent appointment, expressly declares that the service during probation shall be deemed to be regular service if succeeded by permanent appointment. Resolution of Board of Estimate in 1939, establishing the position and grade of probationary fireman at a salary of $1200 a year, was ineffective, inasmuch as the Board had no authority to create new positions and grades, or to modify old ones except subject to the provisions of the Charter and the Civil Service Law.-Allen v. City of New York, 179 Misc. 539, 39 N.Y.S. 2d 962 [1943], aff'd without opinion, 266 App. Div. 987, 44 N.Y.S. 2d 958 [1943], aff'd 292 N.Y. 567, 54 N.E. 2d 688 [1944].

¶ 4. Where petitioners had been appointed as probationary firemen on December 1 and had advanced to firemen second class after completing two years' service in the Department pursuant to Administrative Code § 487a-7.0, an order denying their applications to have their promotion dates corrected to September 16, 1944, on ground they would have been appointed as probationary firemen on September 16, 1942, if the Fire Commissioner had correctly interpreted the law, was affirmed by the Court of Appeals without opinion. Defendant contended that petitioner's advancement in grade must be governed by their period of actual service in the Department.-Chikosfsky v. Walsh, 296 N.Y. 642, 69 N.E. 2d 683 [1946].

¶ 5. Persons on a Civil Service eligible list for firemen were appointed for the usual probationary period, upon the condition that they were to work for one day only and to be paid therefor, and thereafter take an indefinite leave of absence without pay until they could be assigned to active duty. They were eventually all so assigned and have been on active duty ever since. By reason of their voluntary acceptance of the appointment under these conditions, they were not entitled to compensation for the period of the leave of absence. Moreover, as the appointees were advanced in grade and pay, the periods of their leaves were properly ignored. By continuing these men in the service and granting them advancements, the City ratified their appointment and is now estopped from challenging their validity.-Aberno v. City of New York, 3 Misc. 2d 1053, 157 N.Y.S. 2d 513 [1956].

¶ 6. The petitioner had a record of four courts-martial in the army and one arrest for disorderly conduct, which record was known to the Civil Service Commissioner at the time he received his probationary period appointment as a fireman. Thereafter, he was arrested for disorderly conduct but acquitted. He was dismissed by the Fire Commissioner. **Held:** it would be presumed that the Commissioner had knowledge of the prior offenses, hence dismissal was based on recent arrest. Remanded to Commissioner for reconsideration.-Matter of Marrero (Cavanagh), 142 (107) N.Y.L.J. (12-3-59) 14, Col. 3 M.

¶ 7. Probationary fireman held properly dismissed where Fire Commissioner's determination was based upon matters subsequent to his certification and was not based solely on petitioner's arrest for disorderly conduct of which he

was acquitted. The Commissioner found that petitioner's conduct and demeanor, uncooperative attitude and obstructive conduct toward police in the performance of their duty rendered him unsatisfactory.-Matter of Marrero (Cavanagh), 143 (99) N.Y.L.J. (5-23-60) 13, Col. 3 M.

¶ 8. Defendant who had rightful possession of a violin when it was seized from him and sold by the police department's property clerk for $625 was entitled to a judgment for $4000, the value of the property at the time of the trial of an action by plaintiff alleging an unlawful taking and sale by defendant.-Muller v. Rosetti, 62 Misc. 2d 541, 309 N.Y.S. 2d 831 (1970).

¶ 9. Where the finding by the 1-B Medical Board of the pension fund was contrary to the original finding of the Fire Department Medical Board as to the permanency of petitioner's disability and there was new evidence concerning his medical condition, petitioner was afforded a further hearing and examination before the 1-B Medical Board and the decision of the Fire Commissioners and of the Trustees of the pension fund would be annulled.-Foppiano v. Lowery, 162 (78) N.Y.L.J. (10-21-69) 14, Col. 3 F.

¶10. Firemen fourth grade, whose probationary periods are properly extended, are not entitled to advancement to the third grade until they have completed their probationary periods.-Uniformed Firefighters Asso., Local 94, IAFF, AFL-CIO v. City of N.Y., 88 App. Div. 2d 809 [1982].

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-105*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-105 Oaths of office.

Each member of the uniformed force shall take an oath of office and subscribe the same before an officer of the department empowered to administer an oath.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-5.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. The length of service and seniority of the petitioner should be measured from September 15, 1942, on which day the Commissioner refused to appoint petitioner as a fireman on the ground his selective service status was unsatisfactory instead of from November 21, 1945, when he took his oath of office following his honorable discharge from the service. The requirement of an oath in the case of a public employee is a condition subsequent to be urged only as a bar to obtaining compensation, and petitioner's inability to take the oath because of military service should not serve to prejudice him.-Kelly v. Quayle, 70 N.Y.S. 2d 52 [1947].

¶ 2. This section and Civil Service Law § 30, when read with Military Law § 246, constitute a statutory scheme which permits the civil service appointment of eligibles away at war, the oath to be taken on return and before active

entrance on the duties of the position. Thus, the widow of an eligible, appointed as a fireman while in military service, was entitled to benefits from the death benefit fund when he died before resuming active duties as a fireman although he had never taken the required oath of office.-Molinari v. Quayle, 300 N.Y. 55, 88 N.E. 2d 820 [1949].

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-106*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-106 Warrants of appointment.

Every member of the uniformed force shall have issued to him or her a warrant of appointment signed by the commissioner.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-6.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-107*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-107 Grades of members of the uniformed force.

Members of the uniformed force, upon appointment, shall be assigned to the fourth grade; after one year of service in the fourth grade they shall be advanced to the third grade; after one year of service in the third grade, they shall be advanced to the second grade; after one year of service in the second grade, they shall be advanced to the first grade; and they shall in each instance receive the annual pay or compensation of the grade to which they belong.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-7.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Fireman who had served his six-month probationary period as required by Administrative Code § 487a-4.0 and had then become a permanent member of the force, **held** entitled to receive, during the six-month probationary period, the salary of a fourth grade fireman at the rate theretofore fixed for such position by the Board of Estimate pursuant to Greater New York Charter § 56 (new Charter § 67). Administrative Code § 487a-4.0, although providing for a period of probation preliminary to permanent appointment, expressly declares that the service during probation shall be deemed to be service in the uniformed force if succeeded by permanent appointment. Resolution of Board of

Estimate in 1939, establishing the position and grade of probationary fireman at a salary of $1200 per year, was ineffective, inasmuch as the Board had no authority to create new positions and grades, or to modify old ones except subject to provisions of the Charter and the Civil Service Law.-Allen v. City of N.Y., 179 Misc. 539, 39 N.Y.S. 2d 962 [1943], aff'd without opinion, 266 App. Div. 987, 44 N.Y.S. 2d 958 [1943], aff'd 292 N.Y. 567, 54 N.E. 2d 658 [1944].

¶ 2. Where petitioners had been appointed as probationary firemen in the Fire Department on either December 1 or December 16, 1942, and advanced to firemen second grade after completing two years' service in the Department pursuant to Administrative Code § 487a-7.0, an order denying their application to have their promotion date corrected to September 16, 1944, on ground they would have been appointed as probationary firemen on September 16, 1942 instead of December 1 or December 16, 1942 if the Fire Commissioner had correctly interpreted the law, **was affirmed** by the Court of Appeals without opinion. Defendants had contended that their advancement in grade must be governed by their period of actual service in the Department.-Chikofsky v. Walsh, 296 N.Y. 642, 69 N.E. 2d 683 [1946].

¶ 3. Determination of Municipal Civil Service Commission to eliminate credit for "acts of personal bravery" in determining promotions in the New York City Fire Department, was a matter within the Commission's discretion, which appeared to have been reasonably exercised.-Carey v. Grumet, 281 App. Div. 653, 117 N.Y.S. 2d 651 [1952].

¶ 4. Where petitioner was 19 years old in 1941 when he passed an examination for fireman and his name appeared on the eligible list established in December, 1941, in that month he enlisted in military service, following his discharge from service he was appointed to position of fireman on April 1, 1946, from the 1941 list, and on November 29, 1946 he took and passed a promotion examination for lieutenant which required that the applicants have served in the position of fireman for three years, petitioner, for purpose of qualifying for such examination, was deemed to have been appointed on November 4, 1943, on which date, which was his twenty-first birthday, appointments of temporary firemen were made from an emergency provisional list and petitioner would then have been appointed if he had not been prevented from appointment by his military service. His retroactive seniority date could not be fixed at a date before he was 21 years old, nor should it have been fixed as late as February 1, 1944 on theory this was the date on which the next eligible physically on the list lower than petitioner was appointed.-Cotter v. Watson, 282 App. Div. 292, 122 N.Y.S. 2d 555 [1953], aff'd, without opinion, 306 N.Y. 681, 117 N.E. 2d 356 [1954].

¶ 5. Where petitioner in 1941 entered a seminary to study to become a priest, a year later he became eligible for appointment to the Fire Department but the representative of the Department who called at his home was informed by petitioner's father that petitioner would not accept the appointment as he was a student in the seminary and subsequently the Civil Service Commission sent petitioner a notice of withdrawal of his name from further certification, petitioner, who voluntarily withdrew from the seminary in October, 1944 and later was appointed to the Fire Department in 1947, **held** not entitled to seniority rights from September, 1942, as he was deemed to have elected at the time not to accept appointment. Petitioner contended that the Fire Commissioner had followed a policy by which he refused to consider for appointment those eligibles classified as 1A under the Selective Service Act, or subject to reclassification to 1A in the near future. The Commissioner's practice had no application to students in theological seminaries.-Golden v. Grumet, 131 (71) N.Y.L.J. (4-14-54) 7, Col. 8 M.

¶ 6. If the policy of not appointing those not classified 1A in selective service but likely to be so classified in the then near future in the judgment of the appointing officer, was the reason for not appointing petitioner to position of City fireman when he was reached on the eligible list, this was not a valid defense to petitioner's claim that he should have been appointed in regular order.- O'Connell v. Grumet, 131 (90) N.Y.L.J. (5-11-54) 7, Col. 6 F.

¶ 7. Firemen fourth grade, whose probationary periods are properly extended, are not entitled to advancement to the third grade until they have completed their probationary periods.-Uniformed Firefighters Asso., Local 94, IAFF, AFL-CIO v. City of N.Y., 88 App. Div. 2d 809 [1982].

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-108*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-108 Salary during absence from duty caused by injury or sickness.

Each member of the uniformed force shall be paid full pay or compensation during absence from duty caused by injury or sickness, except as otherwise provided by law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-7.1 added LL 5/1940 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-108.1*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-108.1 Receipt of line of duty pay.

a. A member or officer of the force shall be entitled pursuant to this section to the full amount of his or her regular salary for the period of any incapacity due to illness or injury incurred in the performance and discharge of duty as a member or officer of the force, as determined by the department.

b. Nothing in this section shall be construed to affect the rights, powers and duties of the commissioner pursuant to any other provision of law, including, but not limited to, the right to discipline a member or officer of the force by termination, reduction of salary, or any other appropriate measure; the power to terminate an appointee who has not completed his or her probationary term; and the power to apply for ordinary or accident disability retirement for a member or officer of the force.

c. Nothing in this section shall be construed to require payment of salary to a member or officer of the force who has been terminated, retired, suspended or otherwise separated from service by reason of death, retirement or any other cause.

d. A decision as to eligibility for benefits pursuant to this section shall not be binding on the medical board or the board of trustees of any pension fund in the determination of eligibility for an accident disability or accidental death benefit.

e. As used in this section the term "incapacity" shall mean the inability to perform full, limited, or restricted duty.

**HISTORICAL NOTE**

Section added L.L. 78/1989 § 1.



Administrative Code of the City of New York



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

*NYC Administrative Code 15-109*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-109 Salary of first grade firefighters.

Firefighters of the first grade shall be paid a minimum of three thousand dollars per annum.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-8.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Members of the uniformed force of the fire department who had worked a total of 144 hours overtime during the months of January-April, 1944, by order of the Fire Commissioner because of the manpower shortage in the Department as a result of war conditions, were not entitled to extra compensation in excess of the $3,000 per year salary prescribed for them by this section. The performance of such extra work as a result of the potentially dangerous condition existing in the City because of the war, constituted an exception to the provision of § 487a-11.0 for an eight-hour tour of duty.-Crane v. City of New York, 185 Misc. 456, 57 N.Y.S. 2d 251 [1945], aff'd without opinion, 270 App. Div. 930, 62 N.Y.S. 2d 617 [1946], aff'd 296 N.Y. 717, 70 N.E. 2d 538 [1946].

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-110*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-110 Promotions.

Promotions of officers and members of the force shall be made by the commissioner on the basis of seniority, meritorious service in the department and superior capacity as shown by competitive examination. Individual acts of personal bravery may be treated as an element of meritorious service in such examination, the relative rating therefor to be fixed by the commissioner of citywide administrative services. The fire commissioner shall transmit to the commissioner of citywide administrative services in advance of such examination the complete record of each candidate for promotion.

**HISTORICAL NOTE**

Section amended L.L. 59/1996 § 76, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-9.0 added chap 929/1937 § 1

Amended chap 100/1963 § 407

**CASE NOTES**

¶ 1. A Fire Department resolution eliminated the titles Battalion Chief (Fire) and Deputy Chief (Fire) and replaced

them with the title of Chief Officer (Fire) subdivided into two assignment levels, Level I corresponding to the former Battalion Chief position and Level II corresponding to the former Deputy Chief position. Movement from Level II to Level I was to be made based on record and performance, and the competitive examination formerly required for promotion from Deputy Battalion Chief to Battalion Chief was to be eliminated. The stakes were high, in that the Battalion Chief position paid $10,000 more than the Deputy Chief position, and involved significantly greater responsibility. The court annulled the resolution, finding it to be a subterfuge for promotion based on criteria other than a competitive examination. In other words, the resolution was in violation of Admin. Code Sec. 15-110. Gorman v. Von Essen, 2002 WL 993563 (App.Div. 1st Dept.).

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-111*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-111 Credit for service in the police department.

a. (1) Any member of the uniformed force of the fire department, who immediately prior to his or her appointment or employment as such, has served or shall have served as a member of the police force of the police department, shall have the time served by such member in such police department counted as service in the fire department in determining his or her retirement and pension in such department as herein or otherwise provided, upon condition that he or she shall contribute to the appropriate fire department pension fund a sum equal to the amount which he or she would have been required to contribute had the time served in the police department been served in the fire department.

(2) Within one year after the fire department pension fund shall request a transfer of reserves with respect to any such person who becomes a member of the fire department pension fund on or after July first, nineteen hundred ninety-eight, who performed such prior service in the police force of the police department, and who has qualified for benefits under this subdivision, the police pension fund shall transfer to the contingent reserve fund of the fire department pension fund the reserve on the benefits of such member which is based on the contributions made by the employer (including the reserve-for-increased-take-home pay). Such reserve shall be determined by the actuary of the police pension fund in the same manner as provided in section forty-three of the retirement and social security law. No such transfer of reserves pursuant to this paragraph shall be made with respect to any person who became a member of the uniformed force of the fire department prior to July first, nineteen hundred ninety-eight.

b. Any such member who shall have been a member of the police pension fund pursuant to subchapter three of chapter three of title thirteen of the code shall become a member of the department pension fund pursuant to subchapter two of chapter three of title thirteen. The election or elections made by such member pursuant to section 13-247 or 13-253 of the code shall be deemed to be the election or elections required by section 13-350 or 13-355 of the code. In

the event that any such member shall have made an election pursuant to section 13-248 of the code, such election shall be deemed to be the election provided by subdivision b of section 13-350 of the code.

c. Notwithstanding any other provision of law to the contrary, any member of the uniformed force of the fire department, who immediately prior to his or her appointment or employment as such, has served or shall have served as a member of the police force of the police department, the New York city transit authority police department or the New York city housing authority police department, shall have the time served by such member in such police department counted as service in the fire department in determining his or her eligibility for variable supplements fund benefits payable by the firefighters' variable supplements fund pursuant to subchapter five of chapter three of title thirteen of this code or the fire officers' variable supplements fund pursuant to subchapter six of chapter three of title thirteen of this code.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended chap 645/1998 § 2, eff. Dec. 21, 1998.

Subd. a par (1) amended L.L. 4/2006 § 1, eff. Apr. 10, 2006 and shall

apply to persons who join the uniformed force of the fire department

on or after the effective date.

Subd. c added chap 500/1995 § 16, eff. Aug. 2, 1995

**DERIVATION**

Formerly § 487a-10.0 added chap 929/1937 § 1

Amended LL 53/1941 § 1

Amended chap 385/1981 § 48

**CASE NOTES FROM FORMER SECTION**

¶ 1. Petitioners who were members of the fire department were entitled to have their service in the Police Department but not their years of employment by the Port of New York Authority included as "city-service" in determining eligibility for service retirement. This section of the Administrative Code is constitutional.-Matter of Bryant (Port of N.Y. Authority), 154 (86) N.Y.L.J. (11-3-65) 18, Col. 2 F.

**CASE NOTES**

¶ 1. A police officer who transfers to the New York City Fire Department receives credit (in terms of promotion and retirement benefits) for his prior police service, but only if the officer immediately transferred to the Fire Department from the Police Department. Where, as here, the officer resigned from the Police Department and had a break in service (albeit a brief break), he does not receive the credits. DiPierro v. City of New York, N.Y.L.J., Sept. 8, 2003, at 21, col. 5 (Sup.Ct. New York Co.).

¶ 2. Where petitioner resigned from the Police Department three months before commencing his position with the Fire Department, the Police Department service was not deemed "immediately prior" to the Fire Department service, and did not count towards the pension. Blaich v. Scopetta, 12 A.D.3d 268, 784 N.Y.S.2d 543 (1st Dept. 2004), leave to appeal denied, 4 N.Y.3d 828, 796 N.Y.S.2d 583, 829 N.E.2d 676 (2005).



Administrative Code of the City of New York



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

*NYC Administrative Code 15-111.1*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-111.1 Credit for service in the uniformed transit police force or uniformed housing police force.

Any member of the uniformed force of the fire department, who immediately prior to his or her appointment or employment as such, has served or shall have served as a member of the uniformed transit police force or a member of the uniformed housing police force shall have the time served by such member in such force counted as service in the fire department in determining: (a) his or her eligibility to compete in a promotional examination; (b) his or her seniority credit for the purpose of grading a promotional examination; and (c) his or her seniority credit for the purpose of determining eligibility for transfers within the uniformed force of the fire department.

**HISTORICAL NOTE**

Section amended chap 392/1994 § 1, eff. July 20, 1994.

Section added chap 538/1991 § 1, eff. July 23, 1991.

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-112*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-112 Working hours.

a. The commissioner shall divide the deputy chiefs, battalion chiefs, captains, lieutenants, engineers and firefighters, marine engineers and pilots in boats of the department into platoons, and such divisions shall be fully completed and the provisions hereof fully effectuated. None of such platoons, or any member thereof, shall be assigned to more than one tour of duty in any twenty-four consecutive hours. The commissioner shall install a two platoon system.

The two platoon system shall consist of not more than two tours of duty of not more than nine hours each, to be followed by a rest period of at least forty-eight hours for all members. After such rest period there shall be not more than two tours of duty of not more than fifteen hours to be followed by a rest period for all members of at least seventy-two hours which shall continue in such sequence so that not more than six nine-hour tours of duty and six fifteen-hour tours of duty shall be worked in any twenty-five consecutive calendar days, except, in the event of conflagrations, riots or other similar emergencies or for the necessary time consumed in changing tours of duty, in which events such platoons or members thereof shall be continued on duty for such hours as may be necessary.

This section shall in no manner affect any provision of law providing for furlough or leave of absence of such members of the department.

b. The mayor and all other officials charged with such duty are hereby authorized, empowered and directed to carry out the provisions of this section and to provide any and all necessary funds to effectuate the purposes thereof.

c. Notwithstanding the provisions of any other section of this title, the provisions of this section, as amended, in

relation to the establishment and continuance of the platoon system and the tours of duty and the hours thereof shall not be repealed, superseded, supplemented or amended by local law, and the same may only be repealed, superseded, supplemented or amended as prescribed in section eleven of article nine of the constitution and upon the affirmative action of the qualified voters of the city of New York on a referendum submitted at a general election.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-11.0 added chap 929/1937 § 1

Amended chap 802/1948 § 1

(referendum chap 802/1948 § 2)

Amended chap 791/1961 § 1

(Tour of duty referendum chap 791/1961 § 2)

Sub b amended chap 100/1963 § 408

**CASE NOTES FROM FORMER SECTION**

¶ 1. Whether special order of Fire Commissioner requiring uniformed firemen to serve three extra eight-hour tours of "added duty" in every 20 days in interest of public safety because of the manpower shortage and the necessity of added protection in the war emergency came within the exception in Administrative Code § 487a-11.0 prohibiting the assignment of uniformed firemen to more than one tour of duty in any 24 consecutive hours except in the event of conflagrations, riots or other similar emergencies, **held** to require a full trial with complete cross-examination of witnesses. The Court or jury should inquire as to whether there is an emergency, whether the emergency should have been met by other means, whether the Commissioner acted in good faith, whether the present undermanning of the Fire Department constitutes a threat to public safety, and whether there is any danger of air raids and fire hazards.-In re Kane (Walsh), 181 Misc. 513, 48 N.Y.S. 2d 367 [1944], aff'd 268 App. Div. 763, 49 N.Y.S. 2d 279 [1944], aff'd 293 N.Y. 923, 60 N.E. 2d 131 [1944].

¶ 2. Members of the uniformed force of the Fire Department who had worked a total of 144 hours overtime during the months of January 1, 1944 to April 29, 1944 by order of the Fire Commissioner because of the manpower shortage in the Department as a result of war conditions, were not entitled to extra compensation in excess of the $3,000 per year salary prescribed for them by Administrative Code § 487a-8.0. The performance of such extra work as result of the potentially dangerous condition existing in the City because of the war, constituted an exception to the provision in § 487a-11.0 for an eight hour tour of duty.-Crane v. City of New York, 185 Misc. 456, 57 N.Y.S. 2d 251 [1945], aff'd without opinion, 270 App. Div. 930, 62 N.Y.S. 2d 617 [1946], aff'd 296 N.Y. 717, 70 N.E. 2d 538 [1946].

¶ 3. Such members of the uniformed force were not entitled to extra compensation on theory of an implied contract or on theory of unjust enrichment, as, in the absence of an express statutory provision requiring the City to pay for overtime, the members were restricted to the compensation fixed for them in the budget.-Id.

¶ 4. Special order of Fire Commissioner requiring uniformed firemen to serve three extra eight-hour tours of "added duty" in every 20 days in interest of public safety because of the manpower shortage and the necessity of added protection in the war emergency, **held** to come within the exception in Administrative Code § 487a-11.0 prohibiting the assignment of uniformed firemen to more than one tour of duty in any 24 consecutive hours except in the event of conflagrations, riots or other similar emergencies. The mere possibility or threat of a conflagration or riot was an

emergency similar to that of an existing conflagration or riot.-In re Kane (Walsh), 181 Misc. 594, 48 N.Y.S. 2d 370 [1944], aff'd 268 App. Div. 763, 49 N.Y.S. 2d 279 [1944], aff'd 293 N.Y. 923, 60 N.E. 2d 131 [1944].

¶ 5. Concurrent two platoon system in fire department proposed by Fire Commissioner was violative of this section which requires a two platoon system because such a system has operated consecutively for over fifty years and accordingly statute "must be accorded special meaning consonant with its historically long-standing character."-Matter of McCormack v. Lowery, 39 N.Y. 2d 1024 [1976].

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-113*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-113 Discipline of members; removal from force.

The commissioner shall have power, in his or her discretion on conviction of a member of the force of any legal offense or neglect of duty, or violation of rules, or neglect or disobedience of orders or incapacity, or absence without leave, or any conduct injurious to the public peace or welfare, or immoral conduct, or conduct unbecoming an officer or member, or other breach of discipline, to punish the offending party by reprimand, forfeiture and withholding of pay for a specified time, or dismissal from the force; but not more than ten days' pay shall be forfeited and withheld for any offense. Officers and members of the uniformed force shall be removable only after written charges shall have been preferred against them, and after the charges shall have been publicly examined into, upon such reasonable notice of not less than forty-eight hours to the person charged, and in such manner of examination as the rules and regulations of the commissioner may prescribe. The examination into such charges and trial shall be conducted by the commissioner, a deputy commissioner or other person designated by the commissioner in writing for that purpose; but no decision shall be final or be enforced until approved by the commissioner. The rules and regulations for the uniformed force of the department, as established from time to time by the commissioner, shall be printed, published and circulated among the officers and members of such department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-12.0 added chap 929/1937 § 1

Amended LL 54/1983 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Member of Fire Department as to whom Fire Commissioner had rescinded the order dismissing him from the service and had instead suspended him without pay pending hearing and determination of charges against him, **held** entitled to salary from date of original dismissal to date of his suspension without pay.-In re Brooks (McElligott), 99 (132) N.Y.L.J. (6-8-38) 2767, Col. 4 T.

¶ 2. Determination of Fire Commissioner was modified by Appellate Division by reducing punishment of fireman from dismissal to suspension for six months on ground that punishment for procuring duplicate badges for policemen and firemen for a fee, selling fire extinguishers and exhibiting pornographic films in firehouses was excessive in view of his twenty-six years of service without charges of any kind. The Court of Appeals modified by finding the reduction to six months' suspension too substantial and reduced the measure of discipline imposed by the Fire Commissioner to suspension for two years. Matter of Bovino v. Scott, 22 N.Y. 2d 214, 239 N.E. 2d 345, 292 N.Y.S. 2d 408 [1968], modifying, 27 A.D. 2d 917, 278 N.Y.S. 2d 961 [1967].

¶ 3. Order denying petitioner's application for reinstatement to his position in the Fire Department was affirmed, with a dissent on the ground that petitioner's sanity at the time the charges were served at his residence, upon which depended the validity of the service, could not be decided without a trial, upon the conflicting affidavits.-Hines v. Walsh, 269 App. Div. 825, 55 N.Y.S. 2d 818 [1945], aff'd without opinion, 295 N.Y. 562, 64 N.E. 2d 276 [1946].

¶ 4. Administrative Code § 487a-12.0 is intended to afford a hearing to a member of the Fire Department before a penalty may be imposed in a disciplinary proceeding. The authorization in such statute for the imposition of punishment only "on conviction" of a member imports a trial or hearing as a necessary incident to a disciplinary proceeding. Accordingly, a member was entitled to a review under Civil Practice Act § 1296, subds. 6 and 7, of the proceedings leading to his conviction.-Tiernan v. Walsh, 294 N.Y. 299, 62 N.E. 2d [1945].

¶ 5. Whether the hearing granted by the Fire Commissioner to a member of the uniformed force of the Department was had as of right or by way of grace was not to be tested by the ultimate penalty imposed. In the immediate instance, the service of written charges upon which the member's dismissal could have been sustained, the notice to appear at the hearing and the hearing itself conducted with all the formalities associated with a Department trial, clearly pointed to fact that his dismissal was sought, or at any rate, that his employment was in jeopardy.-Farinella v. Walsh, 184 Misc. 131, 53 N.Y.S. 2d 291 [1945], modified on other grounds, 270 App. Div. 757, 59 N.Y.S. 2d 926 [1946].

¶ 6. Member of the uniformed force of the Fire Department who had not been charged with any dereliction of duty and who has not been lawfully retired could not be suspended from duty by the Fire Commissioner, and should be reinstated.-City of N.Y. v. Schoeck, 268 App. Div. 979, 51 N.Y.S. 2d 899 [1944], aff'd 294 N.Y. 559, 63 N.E. 2d 104 [1945].

¶ 7. Application under Civil Practice Act, Art. 78, for a review of the Fire Commissioner's determination, finding petitioner, who was a member of the uniformed force of the Fire Department, guilty upon two charges of misconduct and imposing a fine as a penalty, should have been referred to the Appellate Division in the first instance, pursuant to § 1296 of the Civil Practice Act. That petitioner was not a war veteran, was immaterial.-Farinella v. Walsh, 184 Misc. 131, 53 N.Y.S. 2d 291 [1945], modified on other grounds, 270 App. Div. 757, 59 N.Y.S. 2d 926 [1946].

¶ 8. Determination of Fire Commissioner adjudging petitioner, a uniformed member of the Fire Department, guilty of official misconduct and officially reprimanding him therefor, **held** not to constitute an abuse of discretion, where, as a committee member of a firemen's endowment association, petitioner had attended a meeting without invitation and in violation of departmental rule prohibiting members of the department from visiting headquarters of their superior officers without permission of their intermediate commanding officer, and he had also violated a rule by addressing two communications to the Fire Commissioner concerning the financial condition of the endowment

association without clearing them through regular departmental channels. Although the financial situation of the endowment association was not officially associated with administrative functions of the Fire Commissioner, petitioner was a member of the department and subject to its rules and discipline.-In re Mott (Walsh), 114 (135) N.Y.L.J. (12-12-45) 1692, Col. 5 T.

¶ 9. Fire Commissioner **held** not to have abused his discretion in dismissing fireman who admitted that on two separate occasions he was absent without leave in violation of rules of the Fire Department. In view of such admission, technical defects such as in regard to amount of notice he received of a hearing, were disregarded. However punishment of dismissal **would seem** to be rather severe inasmuch as other firemen who had been absent without leave and firemen guilty of intoxication had been punished merely by imposition of fines of a number of days' pay.-Matter of Bergbuchler (McElligott), 99 (141) N.Y.L.J. (6-18-38) 2952, Col. 6 T.

¶ 10. Dispute arising out of the Fire Commissioner's determination fining a member of the uniformed force five days' pay for absence without leave notwithstanding the member had allegedly acted in good faith in reliance upon the opinion of his own physician, involved a mere difference of opinion on a medical question, and therefore the courts were not warranted in interfering with the Commissioner's order.-Tiernan v. Walsh, 294 N.Y. 299, 62 N.E. 2d 79 [1945].

¶ 11. Section 248 of the Rules and Regulations for the Uniformed Force of the Fire Department prohibiting members from sanctioning the use of their names or photographs in connection with any written or printed article or newspaper advertisement without the written approval of the Chief of Department, **held** a valid and reasonable exercise of the Fire Commissioner's right to prescribe rules for discipline of the uniformed members. Section 248 does not deprive members of the right to appeal to the Legislature or any public officer or other body for the redress of grievances, and it permits the use of names or photographs in connection with written or printed articles and advertisements, provided the approval of the Chief of the Department is obtained.-Kane v. Walsh, 295 N.Y. 198, 66 N.E. 2d 53 [1946].

¶ 12. However, the Fire Commissioner's order directing members of the Uniformed Firemen's Association to make no further statements of any kind, either for publication or otherwise, concerning the members of the association in relation to the Fire Department, was so broad in scope and rigid in terms as to be unreasonable and contrary to Civil Rights Law § 15, which forbids any citizen to be deprived of his right to appeal to the Legislature or to any public officer or other public body for the redress of grievances on account of employment in the civil service.-Id.

¶ 13. The members of the association would not be granted judgment enjoining the Fire Commissioner and his agents from enforcing § 248 and his order issued under the purported authority of § 248, as the grant of a mandatory injunction is discretionary with the court, and the acts sought to be enjoined could be dealt with under C.P.A. Article 78.-Id.

¶ 14. Rule promulgated by Fire Commissioner prohibiting members of the Fire Department from engaging in outside employment, **held** authorized as a measure for the efficient administration of the Fire Department, as applied to member of the Department who, prior to his appointment as fireman, had received training in mechanical engineering and in an effort to aid the war effort had taken outside employment in a war plant, averaging over 100 hours a week on the two jobs, which were at distant places. Whether, in view of the controversial character of the issue and the laudable motive in accepting outside employment, the Commissioner should mitigate his penalty of dismissal from the Department, was a matter for the Commissioner's discretion.-Calfapietra v. Walsh, 183 Misc. 6, 49 N.Y.S. 2d 829 [1944], aff'd without opinion, 269 App. Div. 734, 54 N.Y.S. 2d 231 [1945], aff'd 294 N.Y. 867, 62 N.E. 2d 490 [1945].

¶ 15. A fireman could not be removed by the Commissioner because of an alleged non-service mental disability. Since he had not been retired, it was necessary for charges to be filed and a hearing granted, before he could be removed. Section B19-7.0 did not apply, since he had not served under the City for 10 years. In re Zaleski (Cavanaugh), 143 (74) N.Y.L.J. (4-18-60) 9 Col. 8 M.

¶ 16. The determination of the Fire Commissioner dismissing the petitioner after a hearing upon charges, of illegal sales of a narcotic drug, and with disobeying orders by leaving his home without the permission of a medical officer after reporting an injury, was sustained. The determination was justified by overwhelming evidence on the narcotic charge, and though the Trial Commissioner may have exceeded his authority in ordering the petitioner followed when leaving the waiting room upon suspicion that he was a malinger, nevertheless, the evidence on the narcotics charge was sufficient to justify the dismissal. Matter of Smith v. Cavanaugh, 10 A.D. 2d 682, 197 N.Y.S. 2d 837 [1960].

¶ 17. The Fire Commissioner acted in excess of his authority when he demoted a fireman from first to second grade after the fireman had been found guilty of knowingly submitting false reports and neglect of duty since this section makes no provision for imposition of such a penalty although such penalty was authorized by Civil Service Law § 75.-Weiss v. City of New York, 56 N.Y. 2d 758 [1982].

**CASE NOTES**

¶ 1. A firefighter who is disciplined under § 15-113 cannot appeal the disciplinary action to the Civil Service Commission. The reason is that under City Charter § 487, the Fire Commissioner has the exclusive power to perform all duties concerning discipline of members of the Fire Department. Although § 75 of the Civil Service Law creates a right to appeal disciplinary actions to the Civil Service Commission, that section was created after City Charter § 487 and Admin. Code § 1-113. Civil Service Law § 76(4) contains a saving clause, which indicates that the Civil Service Law should not be construed to repeal other laws. Thus, the enactment of Civil Service Law § 75 did not deprive the Fire Commissioner of the exclusive right to discipline firefighters. Thus, proper method for firefighters to appeal disciplinary action is to bring a proceeding under CPLR Article 78, not to bring a proceeding under the Civil Service Law. Von Essen v. New York City Civil Service Commission, 4 NY3d 220, 791 N.Y.S.2d 887, 825 N.E.2d 128 (2005).

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

*NYC Administrative Code 15-114*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-114 Resignations and absences.

Any member of the department who shall withdraw or resign without the permission of the commissioner shall be subject to the forfeiture of salary due to such member. Unexplained absence, without leave, of any member of the uniformed force, for five days, shall be deemed and held to be a resignation by such member, and accepted as such.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-13.0 added chap 929/1937 § 1

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

*NYC Administrative Code 15-115*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-115 Rehearing of charges; reinstatement of members of department.

a. Upon written application to the mayor by the person aggrieved, setting forth the reasons for demanding such rehearing, the commissioner may rehear the charges upon which a member or a probationary member of the uniformed force has been dismissed, or reduced from the rank theretofore held by him or her. Such person or persons shall be required to waive in writing all claim against the city for back pay and shall obtain the mayor's consent to such rehearing, such consent to be in writing and to state the reasons why such charges should be reheard.

b. Such application for a rehearing shall be made within one year from the date of the removal or reduction in rank.

c. If the commissioner shall determine that such member has been illegally or unjustly dismissed or reduced, the commissioner may reinstate such member or restore such member to the rank from which he or she was reduced, as the case may be, and allow such member the whole of his or her time since such dismissal to be applied on his or her time of service in the department, or the commissioner may grant such other or further relief as he or she may determine to be just, or may affirm the dismissal or reduction, as he or she may determine from the evidence.

d. If the applicant be a probationary member of the department, the commissioner may allow such probationary member the time already served as a probationary member to count as time served, but shall not allow the time between the date of his or her dismissal and restoration to count as service in the department.

e. Employees of the department, not entitled to a trial before dismissal, and who were given an opportunity to explain charges before they were removed, may apply to the mayor, within one year from the date of the order

separating them from the service, for a further opportunity to explain, setting forth the reasons for such action. The mayor, in his or her discretion, may grant such application. The commissioner, thereupon, shall afford a further opportunity to the dismissed employee to explain the charges filed against him or her, on which the removal was based. Thereafter the commissioner, in his or her discretion, may reinstate the dismissed employee or reaffirm the previous removal. Prior to any reinstatement hereunder, such former employee shall file a written statement waiving all claim or claims for back salary and damages of any kind whatsoever.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-14.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. An order denying petitioner's application for reinstatement to his position in the Fire Department was affirmed over contention that the petitioner's sanity at the time the charges were served at his residence, upon which depended the validity of the service, could not be decided upon conflicting affidavits but required a trial. Petitioner further contended that the right to a rehearing granted by this section upon the consent of the Mayor, if all claims against the City for back pay were waived, was not adequate.-Hines v. Walsh, 295 N.Y. 562, 64 N.E. 2d 276 [1945], aff'g 269 App. Div. 825, 55 N.Y.S. 2d 818 [1945].



Administrative Code of the City of New York



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

*NYC Administrative Code 15-116*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-116 Members of force; peace officers.

In the performance of their duties, all officers and members of the uniformed force, other than the chief marshal, deputy chief fire marshals, supervising fire marshals and fire marshals, shall have the powers and perform the duties of peace officers, but their power to make arrests and to serve process in criminal actions shall be restricted to cases arising under laws relating to fires and the extinguishment thereof, and to fire perils.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-15.0 added chap 929/1937 § 1

Amended LL 28/1983 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. In view of Inferior Criminal Courts Act § 116(h), empowering Board of City Magistrates to prepare and issue summonses in blank, attested in name of its Chief City Magistrate, to members of the police force and all other peace officers in the City, and the provision in Administrative Code § 487a-15.0 that officers and members of the Fire Department in performance of their duties shall have the powers of peace officers, fireman **held** to have been authorized to serve summons upon defendant charging him with failure to give right of way to a fire apparatus. The proceeding

against the defendant was not a criminal one, and hence construction of § 487a-15.0 relative to service of process in criminal actions was not involved. In any event, by defendant's appearance in person and by counsel, jurisdiction had attached and could not later be questioned.-People (Timmins) v. Springer, 170 Misc. 554, 10 N.Y.S. 2d 136 [1938].

¶ 2. Fire marshals were not engaged in the performance of their official duties when some days after a fire in which defendant was seen leaving a vacant building where several fires had occurred and when questioned at that time by fire marshal had grabbed his gun and ascaped, they found defendant at which time a shootout occurred and defendant was captured when the search for defendant related to robbery of fire marshal's gun and not investigation of arson.-People v. Lanzot, 67 A.D. 2d 864 [1979].



Administrative Code of the City of New York



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

*NYC Administrative Code 15-117*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-117 Members of force; police officers.

In the performance of their duties, the chief fire marshal, deputy chief fire marshals, supervising fire marshals and fire marshals shall have all the powers and perform all the duties of police officers in the state.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-15.1 added LL 28/1983 § 2



Administrative Code of the City of New York



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

*NYC Administrative Code 15-118*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-118 Exemption from civil arrest and service of subpoenas.

Any officer or uniformed member of the department shall be exempt from arrest on civil process, or, while actually on duty, from service of subpoena from civil courts.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-16.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Administrative Code § 487a-16.0, exempting officers and uniformed members of the Fire Department from "arrest on civil process", **held** to exempt uniformed member of the Fire Department from the provisional remedy of arrest only, and not to exempt him from arrest pursuant to an execution against the person after judgment. A clear distinction exists between execution against the body and a provisional order of arrest before judgment.-Family Finance Corp. v. Starke, 36 N.Y.S. 2d 858 [1942].

¶ 2. The immunity from arrest is a personal privilege available only to the person who is subject to arrest, and hence where the uniformed member of the Fire Department raised no claim of exemption a City marshal might not assert such claim.-Id.

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-119*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-119 Reimbursement for loss of property while in performance of duty.

Whenever any member of the uniformed force of the department, while in the actual performance of his or her duty, shall lose or have destroyed any of his or her personal belongings, and shall present satisfactory proof thereof to the commissioner, such member shall be reimbursed to the extent of the loss sustained, at the expense of the city.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-17.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 15-120*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-120 Uniforms and badges; unlawful use prohibited.

a. It shall be the duty of the commissioner to make suitable regulations under which the officers and members of the department shall be required to wear an appropriate uniform and badge by which the authority and relations of the officers and members in such department may be known. The commissioner shall select the grade of cloth and quality required for such uniforms, but shall not prescribe where or from whom such uniforms or uniform clothing shall be purchased, or the price to be paid therefor. It shall be unlawful for any contractor or agent or employee of any contractor for the making of uniforms for the department to have an office within any building belonging to or under the control of the department.

b. It shall be a misdemeanor, punishable by imprisonment for a period of not less than sixty days, for a person not enrolled or employed, or appointed by the department, to wear the whole or any part of the uniform or insignia prescribed to be worn by the rules or regulations of the department, or to do any act as firefighter not duly authorized by the commissioner, or to interfere with the property or apparatus of the department in any manner unless by the authority of the commissioner. Any person who shall falsely represent any member of the uniformed force of the department, or who shall maliciously, with intent to deceive, use, or imitate any of the signs, fire caps, badges, signals or devices adopted or used by the department, shall be deemed guilty of a misdemeanor and shall be subject to a fine of not less than twenty-five dollars or more than two hundred fifty dollars, and to imprisonment for a term of not less than ten days, or more than three months, such fine when collected to be paid into the general fund of the city established pursuant to section one hundred nine of the charter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended chap 500/1995 § 10, eff. Aug. 2, 1995

**DERIVATION**

Formerly § 487a-18.0 added chap 929/1937 § 1

Sub b amended LL 50/1942 § 52

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

*NYC Administrative Code 15-121*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-121 Termination of service of members of uniformed force because of superannuation.

a. Except as otherwise provided in subdivision c of this section no member of the uniformed force of the department except medical officers, who is or hereafter attains the age of sixty-five years shall continue to serve as a member of such force but shall be retired and placed on the pension rolls of the department, provided however, that any member who is not eligible for retirement at age sixty-five, shall continue to serve as a member only until such time as such member becomes eligible for such pension retirement.

b. Notwithstanding the provisions of subdivision a of this section or of any other section of law, any member who shall not have completed thirty-five years of creditable city service within the meaning of subdivision h of section 13-304 of the code, prior to attaining the age of sixty-five years may continue to serve as a member until he or she shall have completed such thirty-five years of creditable city service, provided that he or she is capable of performing duty acceptable to the commissioner. This section does not apply to chaplains or medical officers. This section shall apply only to members who are in the department on the first day of December, nineteen hundred seventy-one.

c. Any member whose retirement has become mandatory under the provisions of subdivision a of this section may, upon approval of the commissioner, request of the board of estimate that he or she be continued as a member of the uniformed force for a period not exceeding two years. The board, where advantageous to the public service, may grant such request for a period not exceeding two years. At the termination of such additional period of service, such board may in like manner permit such member to continue in the public service for successive periods each not exceeding two years. In no event shall a member be continued in public service upon attaining the age of seventy-five years.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487a-19.0 added LL 18/1958 § 1

Amended LL 58/1961 § 1

Sub c added LL 3/1972 § 1

(expires 1/18/1974)

Sub a amended LL 70/1973 § 1

Sub d added LL 70/1973 § 2



Administrative Code of the City of New York



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

*NYC Administrative Code 15-123*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-123 Limited mutual aid agreement with city of Mount Vernon.

a. Subject to the limitations contained in subdivision b of this section, the commissioner is hereby empowered to enter into a mutual aid agreement with the fire commissioner of the city of Mount Vernon. Such agreement shall authorize the dispatching of fire fighting equipment from the city of New York to the city of Mount Vernon when so requested by the commissioner of the city of Mount Vernon.

b. The scope of any agreement entered into pursuant to this section shall be limited in that fire fighting equipment dispatched from the city of New York shall only respond to fires or other emergencies occurring in that part of the city of Mount Vernon which contains the bulk oil storage installations located on the boundary line of the city of New York and within the confines of the city of Mount Vernon on either side of Eastchester creek.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 491a2-4.0 added LL 22/1980 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 15-124*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-124 Destruction of buildings to prevent spread of fire.

a. The commissioner may order any building which is on fire, or any other building near thereto which he or she deems hazardous, or likely to take fire, or to convey the fire to other buildings, to be razed, if, in his or her discretion, such action is necessary to prevent the spread of fire or to prevent the loss of life or property therefrom.

b. Whenever the razing of a building is thus ordered, it shall be the duty of any member or members of the department, under the direction of the officer in command at such fire, to level and destroy such building by the use of explosives, and it shall be lawful for them to enter and take possession of the same for such purpose. The commissioner may establish one or more depots for the storage and safekeeping of such explosives as may be required and may limit the quantity of any such explosives to be kept at any such depots.

c. Upon the application of any person interested in any building so razed, or in its contents, to the supreme court in and for the county or any adjoining county in the judicial department within which such building is situated, it shall be the duty of such court to issue a precept for a jury to inquire into and assess the damages which the owners of such building and all persons having an estate or interest therein or in the contents thereof, have respectively sustained by the razing of such building or its contents. Such precept shall be issued, directed, executed, returned and proceeded upon, and the proceedings thereon shall take effect, as nearly as may be, in such manner as is provided in chapter three of title five of the code. After the inquiry and assessment are confirmed by the court, the sums assessed by the jury shall be paid by the city to the respective persons in whose favor the jury shall have assessed the same, in full satisfaction of all demands of such persons, respectively, by reason of the razing of such building or its contents. The court before which such process shall be returnable shall have power to compel the attendance of jurors and witnesses upon any such assessment of damages.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487b-6.0 added chap 929/1937 § 1

Sub b amended LL 10/1958 § 2



Administrative Code of the City of New York



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

*NYC Administrative Code 15-125*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-125 Preventing spread of harbor fires.

The officers of the department in charge at the scene of a fire occurring on any vessel in the port of New York or in or upon any dock, wharf, pier, warehouse, building or other structure bordering upon or adjacent to such port, may prohibit the approach to such fire or to a vessel, dock, wharf, pier, warehouse or other building or structure in danger therefrom, of any tugboat or other vessel, or of any person; or may remove or cause to be removed and kept away from the vicinity of such fire all tugboats or other vessels. It shall be unlawful for any person in any way to obstruct the operations of the department in connection with any such fire, or to disobey any lawful command of the officers of such department in charge at the scene of such fire, or of the police in cooperating with them. Nothing in this section contained shall be construed to limit the authority of the master or officers of any such vessel on fire or in danger from fire, subject to the general authority of the department to control the operations in protection of the public interest.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487b-7.0 added chap 929/1937 § 1

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

*NYC Administrative Code 15-126*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-126 Fire alarm telegraph system.

a. Protection of. The fire alarm telegraph system shall be operated or used only by the commissioner, or the officers and employees of the department charged with its operation or maintenance or authorized to use it for instruction or drill. Any person, however, may freely operate the same to communicate actual alarms of fire. It shall be unlawful for any person to experiment or tamper with such system for any purpose whatever, or to have or possess any key thereof, without the authority of the commissioner. It shall be unlawful for any person to post, paint, impress, or in any way affix to any pole connected with the fire alarm telegraph, or any box, wire or other appliance connected therewith, any placard, sign, broadside, notice, or announcement of any kind; or to cut, mutilate, alter, mar, deface, cover, obstruct or interfere with the same in any manner whatsoever; or to paint, or cause to be painted, the poles of any other telegraph, or any other poles on the lines thereof, in a color or colors similar to those of poles upon which are fire alarm boxes, or in imitation thereof; or to consent, allow, or be privy to any of such things done for him or her or upon his or her behalf.

b. Kite-flying. It shall be unlawful for any kite to be flown, raised, or put in any street adjacent to the lines of such telegraph, or to be allowed to become entangled with the wires or apparatus thereof.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487e-1.0 added chap 929/1937 § 1

Sub c repealed LL 61/1954 § 1

Sub c relettered LL 61/1954 § 2

(formerly sub d)

Sub c repealed LL 80/1985 § 5

**CASE NOTES FROM FORMER SECTION**

¶ 1. Inasmuch as a general statute is not applicable to the sovereign unless expressly made so, Administrative Code § 487e-1.0, providing for compensation to the City for the use of its fire alarm telegraph system, does not permit a charge to be made against the State or its agencies for the use of that service. It may be that a particular State agency, acting within its authority, has the power to contract for such service and to agree to pay therefor.-Opinion of Atty.-Genl. (12-12-47); see 119 (40) N.Y.L.J. (3-1-48) 757, Col. 5 T.

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-127*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-127 Auxiliary fire alarm systems.

a. Fire alarm telegraph companies.

1. Compensation to be paid to city. All persons engaged in the maintenance and operation of auxiliary fire alarm telegraph systems from which rent, profit or compensation is derived, and which are connected with the fire alarm telegraph system maintained by the city, or who, for the benefit of their patrons, are permitted to make any use whatsoever of the service of such fire alarm telegraph system shall pay such reasonable compensation to the city for such privilege and for such period of time as shall be fixed by the board of estimate on the recommendation of the commissioner.

2. Acquisition by department. The commissioner is authorized and empowered to extend the department's fire alarm telegraph system whenever in his or her judgment it shall be deemed desirable, by the purchase, lease or license of the whole or a part or parts of the appliance, apparatus, equipment, patents, licenses, franchises, rights, contracts or other property of any kind, of any fire alarm telegraph or fire alarm signal company doing business in the city, at a price to be agreed upon with the persons or corporation owning the same, and every such corporation is hereby authorized to sell, lease or license the same to the city. Such purchase, lease or license shall first be approved by the board of estimate, and if so approved, shall be made through the department of general services.

b. Private connection with fire alarm telegraph system.

1. May be required by commissioner. The owners and proprietors of all multiple dwellings, factories, office buildings, warehouses, stores and offices, theatres and music halls, and the authorities or persons having charge of all

hospitals and asylums, and of the public schools and other public buildings, churches and other places where large numbers of persons are congregated for purposes of worship, instruction or amusement, and of all piers, bulkheads, wharves, pier sheds, bulkhead sheds or other waterfront structures, shall provide such means of communicating alarms of fire to the department as the commissioner may prescribe. Any person who shall violate, or refuse, or neglect to comply with this provision shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars, or by imprisonment not exceeding six months, or by both; and any such person shall, also, for each offense, be subject to the payment of a penalty in the sum of two hundred fifty dollars, to be recovered in a civil action brought in the name of the commissioner.

2. Inspection and maintenance. The commissioner shall have the power to enter in person or by his or her duly authorized employees, the buildings or premises which are provided, upon the application of the owners or agents thereof, or which are directed by the commissioner to be provided, with the means of communicating alarms of fire directly to the department, for the purpose of maintaining, repairing, examining or installing the same. The commissioner is authorized to fix and collect reasonable charges for the maintenance and equipment of such special fire alarm service thus provided, and such moneys when collected by the commissioner shall be paid into the general fund.

c. Interior fire alarms.

1. Automatic fire alarms. In every hotel, lodging house, public or private hospital or asylum, department store, and public school, there shall be placed and provided, when required by the commissioner, an adequate and reliable electrical or other interior alarm system, to be approved by the commissioner, by means of which alarms of fire or other danger may be instantly communicated to every portion of the building. The fire alarm apparatus and all other appliances placed or kept within any of such buildings for the purpose of preventing or extinguishing fires, or for affording means of escape therefrom in case of fire, shall be kept at all times in good working order and proper condition for immediate use, and any member of the uniformed force or authorized representative of the department may enter any of such buildings, at any time, for the purpose of inspecting such apparatus or appliances.

2. Building attendants. In every building used or occupied as a hotel, lodging house or public or private hospital or asylum, there shall be employed by the owner or proprietor, or other person having the charge or management thereof, one or more building attendants, whose exclusive duty it shall be to visit every portion of such building at regular and frequent intervals, under rules and regulations to be established by the commissioner, for the purpose of detecting fire, or other sources of danger, and giving timely warning thereof to the inmates of the building. There shall be provided a clock or other device, to be approved by the commissioner, by means of which the movements of such building attendant may be recorded. The commissioner may, however, in his or her discretion, accept an automatic fire alarm system in lieu of such building attendants and time detectors.

3. Diagrams of means of exit. In any of the buildings referred to in paragraphs one and two of this subdivision, there shall be posted such cards as the commissioner shall direct upon which shall be printed a diagram showing the exits, halls, stairways, elevators and fire escapes of the building, and, in the halls and passageways, such signs as the commissioner shall direct shall be posted indicating the location of the stairs and fire escapes.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487e-2.0 added chap 929/1937 § 1

Sub d repealed LL 80/1985 § 6

**CASE NOTES FROM FORMER SECTION**

¶ 1. In proceeding brought under Admin. Code § 487e-2.0(d) for prosecution of defendant for failure to comply with Fire Commissioner's direction for installation of an interior fire alarm system and a watchman time detector system in its hotel, Court was without jurisdiction to review the facts for purpose of determining whether the Commissioner's order was reasonable or necessary. Defendant's remedy was to seek review of the order by the Board of Standards and Appeals, pursuant to Charter § 666, subd. 6. Court could only consider whether defendant had in fact complied with the Fire Commissioner's direction.-People (Pellegrino) v. 70 Realty Corp., 78 N.Y.S. 2d 265 [1948].

¶ 2. In appealing to Board of Standards and Appeals from decision of Fire Commissioner denying plaintiff's application for permission to use a basement room in a building for a non-profit nursery, there was a necessary assumption by petitioner of the validity of the Board's rule requiring installation of an interior fire alarm system, and accordingly, assuming validity of the rules, the Board could not be said to have acted arbitrarily in refusing permission for use of the room as a nursery.-Weinstein v. Murdock, 120 (97) N.Y.L.J. (11-19-48) 1218, Col. 6 F.

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

*NYC Administrative Code 15-128*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 1 FIRE DEPARTMENT

§ 15-128 Fire drills.

The commissioner, in cases where provision is not otherwise made by law, is empowered in his or her discretion to require and compel the regular and periodical performance of a fire drill, including instruction and practice in the use of means of exit, alarm systems, and fire prevention or extinguishing methods and equipment, in all buildings, structures, enclosures, vessels, places and premises where numbers of persons work, live or congregate, except multiple dwellings.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 488(3)-1.0 added chap 929/1937 § 1

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

*NYC Administrative Code 15-202*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-202 Obstruction of fire stations.

It shall be unlawful to obstruct the entrance to or exit from any fire station.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487b-1.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 15-203*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-203 Right of way of fire apparatus; obstructing.

The officers and members of the department, and the officers and members of the insurance patrol respectively, with their apparatus of all kinds, when on duty, shall have the right of way at and in proceeding to any fire or other emergency in any highway, street or avenue, over any and all vehicles of any kind, except those carrying the United States mail. It shall be unlawful for any person in or upon any vehicle to refuse the right of way, or in any way obstruct any fire apparatus, or any apparatus of the insurance patrol, or any of such officers while in the performance of duty.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Section amended LL 80/1985 § 1

**DERIVATION**

Formerly § 487b-2.0 added chap 929/1937 § 1

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

*NYC Administrative Code 15-204*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-204 Motor vehicles having the appearance of apparatus and vehicles of the department and fire patrol prohibited.

It shall be unlawful for any person to use or possess a motor vehicle which is designed, designated, painted, colored or provided with insignia to have the appearance or take on the form of the apparatus and vehicles of the department or fire patrol, excepting emergency vehicles of public service corporations or companies doing construction or excavation work under franchises, without an authorization in writing issued by the commissioner, in his or her discretion, and in accordance with such regulations as he or she may prescribe. Such authorization shall be valid until revoked by the commissioner, and shall not be transferable.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Section amended LL 80/1985 § 2

**DERIVATION**

Formerly § 487b-2.1 added LL 16/1939 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Administrative Code § 487b-2.1, prohibiting motor vehicles having the appearance of Fire Department vehicles, **held** unconstitutional, at least to extent that it banned use of the City's streets to operators of motor vehicles which were painted red, since such law was not a traffic regulation to extent it dealt with the color and appearance of the

vehicle and consequently it violated Vehicle and Traffic Law §§ 10 and 54, prohibiting, with certain exceptions, local legislation with respect to motor vehicles, and furthermore it violated State Constitution Art. IX, § 12, providing that cities should have power to adopt only such local laws as were not inconsistent with the Constitution and laws of the state.-Great A. & P. Tea Co. v. City of N.Y., 173 Misc. 470, 17 N.Y.S. 2d 270 [1940].



Administrative Code of the City of New York



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

*NYC Administrative Code 15-205*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-205 Obstruction of fire hydrants.

It shall be unlawful in any manner to obstruct the use of any fire hydrant, or to allow any snow or ice to be thrown or piled upon or around the same, or to place, or allow to be placed, any material or thing in front thereof, from the curb line to the center of the street and to within ten feet from either side thereof. All snow and ice accumulating in the street, within such space, shall be removed by the owner, lessee, or tenant of the premises fronting such space. All material or things found obstructing any fire hydrant may be forthwith removed by the officers or employees of the department, at the risk, cost and expense, of the owner or claimant. The provision of this section requiring that no thing shall be placed within ten feet from either side of a fire hydrant shall not apply to any newsstand which was first licensed by the department of consumer affairs prior to the first day of August, nineteen hundred seventy-nine where the person who held the license for such newsstand on the first day of August, nineteen hundred ninety-one continues to be the licensee for such newsstand; provided, however, that where a newsstand which was first licensed prior to the first day of August, nineteen hundred seventy-nine is reconstructed in its entirety or in substantial part, which reconstruction was commenced on or after the first day of August, nineteen hundred ninety-one, such newsstand shall be subject to such requirement that no thing be placed within ten feet from either side of a fire hydrant.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Section amended LL 66/1991 § 2, eff. July18, 1991

**DERIVATION**

Formerly § 487b-3.0 added chap 929/1937 § 1

Amended LL 166/1952 § 1

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

*NYC Administrative Code 15-206*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-206 Fire hose.

It shall be unlawful for the operator of any vehicle to drive over or across any hose in use, or about to be used, or while lying in the street after being used by the department. The provisions of this section shall not apply to drivers of wagons carrying the United States mail, nor to drivers of ambulances when conveying any patient or injured person to any hospital, or when proceeding to the scene of any accident by which any person or persons have been injured, nor to the operator of any vehicle directed or permitted to drive over or across any such hose by the officer of the department in command of the force operating at a fire or other emergency.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487b-4.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-207*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-207 Fire lines.

During the actual prevalence of any fire or other emergency, the officers of the police and fire departments shall remove, or cause to be removed and kept away from the vicinity of such fire or other emergency, all idle and suspicious persons, and all persons unfit to be employed, or not actually and usefully employed, in aiding the extinguishment and termination of such fire or other emergency or in the preservation of property in the vicinity thereof.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487b-5.0 added chap 929/1937 § 1

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

*NYC Administrative Code 15-208*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-208 Interfering with or obstructing officials, officers and members of department.

It shall be unlawful for any person to disobey the lawful orders of a department official, fire officer or firefighter or to offer resistance or interfere with the lawful activities of said officials and members while engaged in the performance of fire fighting duties or to commit any act likely to prevent a fire from being extinguished.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Section amended LL 80/1985 § 3

**DERIVATION**

Formerly § 487b-5.1 Added LL 4/1964 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-211*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-211 Violations. [Repealed]

**HISTORICAL NOTE**

Section repealed L.L. 80/1985 § 4.

Section added chap 907/1985 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-214*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-214 False alarms.

a. Any person who shall wilfully or designedly give, raise, create or continue a false alarm of fire, or who shall wilfully tamper, meddle or interfere with any station or signal box of any fire alarm telegraph system, or any auxiliary fire appliance, or who shall wilfully break, injure, deface or remove any such box or station, or who shall wilfully break, injure, deface or remove any of the wires, poles or other supports and appliances connected with or forming a part of any fire alarm telegraph system, shall be punished by imprisonment not exceeding one year or a fine not exceeding ten thousand dollars, or both, for each offense.

b. Aiding or abetting in giving false fire alarms. Any person aiding or abetting or assisting in the commission of any of the acts described in subdivision a of this section, shall be punished by imprisonment not exceeding one year or a fine not exceeding ten thousand dollars, or both, for each offense.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subds. a, b amended LL 80/1985 § 22

**DERIVATION**

Formerly § 487e-1.1 added LL 61/1954 § 3

**NOTE**

Provisions of L.L. 73/1995, eff. Sept. 21, 1995:

A LOCAL LAW

In relation to fire department street alarm boxes.

**Be it enacted by the Council as follows:**

Section 1. Pursuant to the provisions of Local Law 20 for the year 1995, as amended, the council hereby approves the pilot program for deactivation of fire department street alarm boxes, as set forth in the proposal of the fire department entitled "Planned Removal of Street Alarm Boxes & Notification Alternatives", dated June 21, 1995, as amended and modified by the document entitled "Modification to Planned Removal of Street Alarm Boxes & Notification Alternatives", dated August 17, 1995 and presented to the council pursuant to such local law.

§ 2. Upon completion of the pilot program, the fire department shall, as soon as practicable thereafter, submit to the mayor and the city council a report on such pilot program. Such report shall contain statistics on the pilot program, as set forth in the proposal of the fire department entitled "Planned Removal of Street Alarm Boxes & Notification Alternatives", dated June 21, 1995, as amended and modified by the document entitled "Modification to Planned Removal of Street Alarm Boxes & Notification Alternatives", dated August 17, 1995, and shall assess the results of such pilot program.

§ 3. a. Notwithstanding any inconsistent provision of law, if the city council does not act by means of appropriate legislative action within sixty days after the first stated meeting of the council following the receipt of the report provided for by section two of this local law, the fire department may thereafter deactivate and remove alarm boxes in the city of New York in a manner consistent with such report and the proposal of the fire department entitled "Planned Removal of Street Alarm Boxes & Notification Alternatives", dated June 21, 1995, as amended and modified by the document entitled "Modification to Planned Removal of Street Alarm Boxes & Notification Alternatives", dated August 17, 1995. Unless the city council so authorizes by appropriate legislative action, the fire department shall not deactivate and/or remove any alarm box, other than those alarm boxes deactivated pursuant to the pilot program authorized by section one of this local law, prior to (i) the submission of the report required by section two of this local law; and (ii) the conclusion of such sixty-day period, provided that alarm boxes deactivated pursuant to the pilot program authorized by section one of this local law may remain deactivated during such sixty-day period.

b. Consistent with the report required by section two of this local law and the proposal of the fire department entitled "Planned Removal of Street Alarm Boxes & Notification Alternatives", dated June 21, 1995, as amended and modified by the document entitled "Modification to Planned Removal of Street Alarm Boxes & Notification Alternatives", dated August 17, 1995, if the fire department determines that a public pay telephone or cellular telephone is necessary at a location, the alarm box at such location shall not be deactivated until such telephone is in service at such location.

§ 4. This local law shall take effect immediately.

**CASE NOTES FROM FORMER SECTION**

¶ 1. Court should have advised defendant before accepting guilty plea that evidence of intoxication could be offered to negative an element of the crime charged, namely that he "wilfully or designedly" gave a false alarm of fire upon ascertaining that defendant claimed to have been intoxicated when he turned in the false alarm and was under hospital care for this condition.-People v. Bell, 165 (26) N.Y.L.J. (2-8-71) 17, Col. 7 F.



Administrative Code of the City of New York



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

*NYC Administrative Code 15-215*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-215 Tampering with automatic sprinkler systems.

a. It shall be unlawful for any person to tamper with a system of automatic sprinklers in any building or occupancy by damaging such a system or otherwise preventing it from properly functioning.

b. It shall be unlawful for any person to tamper with a system of automatic sprinklers in any building or occupancy by causing such a system to activate or otherwise release its fire extinguishing agent when there is no fire condition or other public safety consideration requiring such activation or release.

c. Nothing contained in this section shall be construed to make unlawful any maintenance or inspection of a system of automatic sprinklers by any person acting with the authorization of the owner of the building or occupancy, when such person possesses such permits, licenses or certifications as may be required to perform such maintenance and inspection.

d. This section shall be enforceable by the department and such other agencies as the mayor may direct.

**HISTORICAL NOTE**

Section added L.L. 10/1999 § 1, eff. Mar. 24, 1999.

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

*NYC Administrative Code 15-216*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-216 Fines and penalties.

a. Any person who shall violate or fail to comply with any laws, rules, or regulations enforceable by the department, unless a different penalty is specifically provided, shall be guilty of a violation and upon conviction thereof shall be punished by a fine of not more than five thousand dollars for each offence. Such person shall also be subject to the payment of a civil penalty of not more than five thousand dollars which may be recovered in a civil action brought in the name of the commis- sioner.

b. Any person who shall knowingly violate or fail to comply with any laws, rules, or regulations enforceable by the department, unless a different penalty is specifically provided, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars or imprisonment for not more than six months or both for each offense. Such person shall also be liable for a civil penalty of not more than ten thousand dollars which may be recovered in a civil action brought in the name of the commissioner.

c. The commissioner, in his or her discretion, may pay a portion of a fine or penalty when collected, not to exceed one-half thereof, to any person giving information of any such violation.

**HISTORICAL NOTE**

Section repealed and added (as § 488-1.0) LL 80/1985 § 7, 8

(Section number assigned by the Legislative Bill Drafting Commission)

Subds. a, b amended L.L. 74/1988 § 1.

**CASE NOTES FROM FORMER SECTION**

¶ 1. The conviction of the defendant for a violation of this section in failing to comply with a fire prevention order of the City Fire Commissioner, who had ordered a yard hydrant system installed in the defendant's lumber storage yard was affirmed.-People v. Beard's Erie Basin, Inc., 265 App. Div. 833, 37 N.Y.S. 2d 504 [1942].

¶ 2. Mere fact of issuance of a violation order alone and failure to comply with such order is not an offense and did not compel defendant to comply with the provisions of § C19-164.0 which require an elevator to be in readiness at all times with a competent operator available on constant duty since this would raise the act of an administrative officer to a judicial level without a trial.-People v. Austern. 75 Misc. 2d 390, 348 N.Y.S. 2d 50 [1973].

¶ 3. Defendant would be held criminally liable under this section even though title to the buildings was held in the name of corporation in which he was a stockholder where he was at times sole stockholder, an active manager and "dominant controlling force."-People v. Sakow, 45 N.Y. 2d 131, 379 N.E. 2d 1157, 408 N.Y.S. 2d 27 [1978].

¶ 4. N.Y.C. Criminal Court was not divested of jurisdiction in a proceeding against Penn Central Transportation Co. charging them with refusal to comply with orders of the N.Y.C. Fire Commissioner in violation of this section by fact that defendant was seeking a reorganization on the ground of insolvency in the federal court since bankruptcy is a civil proceeding.-People v. Penn Central Transportation Co., 95 Misc. 2d 748 [1978].

¶ 5. Where defendant's building had a fully operable sprinkler system it could not be held criminally responsible for failing to maintain a defunct deluge sprinkler system to provide suitable protection for buried oil storage tanks of Consolidated Edison located adjacent to defendant's property, and even if there were an easement requiring defendant to maintain the system for the benefit of Consolidated Edison the proper remedy would be an action at law to recover damages or a suit in equity for an injunction by Consolidated Edison.-People v. Weber, 111 Misc. 2d 417 [1981].

**CASE NOTES**

¶ 1. The managing agent responsible for maintenance of a multiple dwelling damaged by fire during which the sprinkler system failed to operate may be charged with violating the fire safety code pursuant to Ad Cd §15-216(a) in that a fire apparatus was not in good working order as required by Ad Cd §27-4265(e)(1) and the local fire company was not notified that the sprinkler system was out of order as required by §27-4265(e)(1) and 3 RCNY 37-01(b)(1). Section 15-216(a) is a strict liability statute and agent is liable even though he was not negligent or knowingly in violation. People v. Vurckio, 162 Misc. 2d 876, 619 NYS2d 510 (Crim.Ct. Kings Co. 1994).



Administrative Code of the City of New York



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

*NYC Administrative Code 15-217*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-217 Suits and actions.

The commissioner is authorized and empowered to receive and collect all license fees mentioned in this title and chapter four of title twenty-seven of the code, and may sue for, and shall have the exclusive right of recovery of any and all fees, fines and penalties imposed hereunder, together with costs. Such action may be brought in any of the courts of record of the city. The commissioner may bring any action for the enforcement of the rights and contracts of the department, and for the protection, possession and maintenance of the property under its control. All actions authorized by this title and chapter four of title twenty-seven of the code shall be brought in the name of the commissioner of the city of New York. The commissioner is authorized to settle or compromise any suit or judgment for less than the amount demanded or recovered, in case he or she is satisfied that the full amount cannot be collected. The commissioner and the corporation counsel shall pay all license fees, fines and penalties received by them pursuant to any of the provisions of this title and chapter four of title twenty-seven of the code into the general fund of the city established pursuant to section one hundred nine of the charter.

**HISTORICAL NOTE**

Section amended chap 500/1995 § 11, eff. Aug. 2, 1995

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 488-2.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 15-218*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-218 Purposes of investigations.

The commissioner, the chief and deputy chief fire marshals, the assistant fire marshals, and such other employees of the department designated by the commissioner, shall investigate, examine and inquire into the following matters:

1. The origin, detail and management of fires in the city, particularly of supposed cases of arson, incendiarism, or fires due to criminal carelessness.

2. The violation of any of the several regulations, orders, or special directions issued by the commissioner, for the purpose of discovering any delinquency in the performance of duty, or violations of discipline, on the part of any officer, agent, or employee of the department.

3. The violation, or supposed violation, of any of the provisions of this title or chapter four of title twenty-seven of the code.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 488(2)-1.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Statements by the Bureau of Investigation of the Fire Department in its report as to the place in the multiple dwelling where the fire started, made after the employees of the Department were on the scene during the fire, was properly admissible in an action to recover for fire damage.-Kibiuk v. Windsor Residences, Inc., 183 Misc. 499, 52 N.Y.S. 2d 326 [1944], modified 184 Misc. 186, 54 N.Y.S. 2d 117 [1945].

¶ 2. Where defendant's apartment was destroyed by fire testimonial evidence of observations made by fire marshals and photographs taken as to condition of his apartment after fire would not be suppressed in arson prosecution as a violation of the Fourth Amendment since defendant no longer had a reasonable expectation of privacy in the burned premises.-People v. Calhoun, 90 Misc. 2d 88 [1977].



Administrative Code of the City of New York



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

*NYC Administrative Code 15-219*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-219 Compelling attendance of witnesses.

a. Power of subpoena of commissioner.

1. The commissioner, in and about any investigation authorized by section 15-218 of this title, and touching any matter connected therewith, may subpoena and compel the attendance of any person or persons, and the production of any books, papers, archives or documents in his, her or their possession or control, which, in the judgment of the commissioner or of the chief or deputy chief fire marshal, is connected with and necessary to such investigation.

2. For such purpose, the corporation counsel, at any time, may cause subpoenas to be issued out of the supreme court, attested under the name of a justice of such court, in like form and with same effect as though issued by such justice in any action pending in a court of record, and such subpoenas may be served, and proof of service may be made, in the same manner as by law provided for the service of subpoenas out of such court. Upon proof of service of the subpoena, and proof of noncompliance therewith, or failure to attend and testify as directed therein, or failure to produce any book, paper, archive or document in the possession or control of the persons named in the subpoena, and directed to be produced therein, or failure or refusal on their part to answer any pertinent question, application may be made before any justice of the supreme court, who may thereupon cause to be arrested and punished as for a contempt of the orders of such court the person or persons named in such subpoena.

3. Any person subpoenaed under this section shall attend and testify upon such adjourned day or days and at such adjourned time and place as may be designated by the commissioner or chief or deputy chief fire marshal.

b. Power of subpoena of fire marshal.

1. A fire marshal shall have the power to issue a notice in the nature of a subpoena, in such form and subscribed in such manner as the commissioner shall prescribe, to compel the attendance of any person as a witness before such fire marshal, to testify in relation to any matter enumerated in section 15-218 of this title.

2. Upon the presentation of satisfactory proof of due service of any such notice in the nature of a subpoena upon any such witness, and of failure to obey the same, it shall be the duty of the commissioner to make an order that such witness be arrested and brought before the marshal, to testify in relation to the subject matter of the inquiry. Such order may be executed by any member of the police force or any member of the force having the power of police officers, who may arrest and bring the witness before such marshal; but such witness shall not be detained longer than is necessary to take such testimony.

c. Additional penalty for disobedience of subpoena. Any person or persons who fail to attend and testify as required by any subpoena issued under the authority of this section shall be liable to a penalty in the sum of fifty dollars.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 488(2)-2.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 15-220*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-220 Administering oaths; taking and transmitting testimony.

a. The commissioner, the chief and deputy chief fire marshals, and the assistant fire marshals, in conducting any investigation authorized by section 15-218 of this title, shall have the power to administer oaths and affirmations, and any false swearing under such oath or affirmation shall be perjury.

b. The chief fire marshal, or other person conducting such investigation shall take the testimony, under oath, of all persons supposed to be cognizant of any fact, or to have means of knowledge, in relation to the subject of the investigation, and shall cause the same to be reduced to writing and verified. All such testimony, together with the report of the investigating officer setting forth his or her opinions and conclusions in respect to the matter, shall be transmitted to the commissioner. A copy of such testimony and report may be furnished, in the discretion of the commissioner, to the police department, to the district attorney of the county in which a crime is believed to have occurred, to the New York board of fire underwriters, to the owners of the property involved, and to other persons interested in the subject matter of the investigation. In all cases of supposed arson, incendiarism, or fires due to criminal carelessness, the commissioner, or officer authorized by the commissioner, shall promptly seek the cooperation of such police department and district attorney, and shall report to such attorney, without delay, all evidence, with the addresses of probable witnesses.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 488(2)-3.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 15-220.1*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-220.1 False statements in certificates, forms, written statements, applications, reports or certifications of correction.

a. Any person who shall knowingly make a false statement or who shall knowingly falsify or allow to be falsified any certificate, form, signed statement, application, report or certification of the correction of a violation required under the provisions of any laws, rules, or regulations enforceable by the department, shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars or by imprisonment not to exceed six months, or both for each such offense.

b. Such person shall also be liable for a civil penalty of not less than one thousand dollars nor more than five thousand dollars which may be recovered in a proceeding before the environmental control board. In any such proceeding which relates to a false statement in a certification filed pursuant to section 15-230, if an inspection made within six months after the filing of the certification finds a condition constituting a violation which is the same as the condition described in the notice of violation with respect to which such certification was filed, there shall be a rebuttable presumption that the condition described in such notice of violation continued and is the same condition found in the inspection.

**HISTORICAL NOTE**

Section added (as §488(2)-3.1) LL 80/1985 § 8 (Section number assigned by the Legislative Bill Drafting Commission)

Subd. a amended L.L. 74/1988 § 2.

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

*NYC Administrative Code 15-221*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-221 Arrest of persons suspected of arson.

It shall be the duty of the chief and deputy chief fire marshals, the assistant fire marshals, or other employees authorized by the commissioner to conduct investigations, whenever they shall be of the opinion that there is sufficient evidence to charge any person with the crime of arson or attempted arson, to arrest or cause such person to be arrested and charged with such offense.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 488(2)-4.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 15-223*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-223 Issuance of orders.

Upon finding that a violation of any law, the enforcement of which is charged upon the department, exists in any vessel, premises, ground, structure, building, or underground passage, the commissioner, the chief fire marshal, or such other member of the department designated by such commissioner, may issue a printed or written order directing the owner or occupant to alter, remedy, or remove such violation in such manner and in such reasonable time as is stated therein. Such order may authorize and direct the use of such materials and appliances as may be proper and necessary.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 491a1-1.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. The Court was without the jurisdiction to apply and enforce the provisions of this section against defendant who created fire hazards and nuisance by abandoning timber barges near tidal waters. The matter was exclusively within Federal jurisdiction.-People ex rel. Ryan v. O'Boyle, Inc., 9 Misc. 2d 536, 170 N.Y.S. 2d 884 [1958].



Administrative Code of the City of New York



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

*NYC Administrative Code 15-223.1*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-223.1 Orders; penalty for noncompliance.

a. Any person who shall violate or fail to comply with an order issued by the commissioner, except an order issued pursuant to section 15-230, shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine not to exceed five thousand dollars. Such person shall also be subject to the payment of a civil penalty of not more than five thousand dollars to be recovered in a civil action brought in the name of the commissioner or in a proceeding before the environmental control board.

b. Any person who shall knowingly violate or fail to comply with any order of the commissioner, except an order issued pursuant to section 15-230, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars or imprisonment for not more than six months or both for each offense. Such person shall also be subject to a civil penalty of not more than ten thousand dollars to be recovered in a civil action brought in the name of the commissioner or in a proceeding before the environmental control board.

**HISTORICAL NOTE**

Section added (as §491a1-1.1) LL 80/1985 § 8 (Section number assigned by the Legislative Bill Drafting Commission)

**CASE NOTES**

¶ 1. Rockefeller University cannot be prosecuted for violating fire prevention directives, § 15-223.1, because fire inspectors summonses, affirmation and violation orders do not constitute simplified information or converted

informations since they fail to properly notify defendant of the statute being violated. People v. Rockefeller University, 144 Misc. 2d 278 [1989].



Administrative Code of the City of New York



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

*NYC Administrative Code 15-224*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-224 Service of orders.

Orders of the department or of the commissioner shall be addressed to the owner or owners, lessees or occupants of the building, structure, enclosure, vessel, place or premises affected thereby. It shall be unnecessary to designate such owner or owners, lessees or occupants, by name in any such order, but the premises shall be designated in the address, so that the same may be readily identified. Service of any such order may be made by delivery of a copy thereof to the owner or any one of several owners, to a lessee or any one of several lessees, or to any person of suitable age and discretion in charge or apparently in charge of the premises, or if no person be found in charge of the premises then by affixing a copy of such order prominently upon the premises.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 491a1-2.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Defendant would be held liable for failure to comply with violation of orders of fire department despite claim that a delivery of violation order did not comply with this section since this section does not constitute a service of process statute whose terms must be strictly complied with before a criminal prosecution can be begun and the

enumerated forms of service in the statute are not necessarily exclusive.-People v. Sakow, 45 N.Y. 2d 131 [1978].



Administrative Code of the City of New York



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

*NYC Administrative Code 15-225*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-225 Transmitting notice to owner.

In case any order of the department or of the commissioner shall be served upon or given to any lessee or person in possession or charge of the building, structure, enclosure, vessel, place or premises therein described, it shall be the duty of such person to give immediate notice to the owner or agent of such building, structure, enclosure, vessel, place or premises named in the order, if the same shall be known to such person personally, and such owner or agent shall be within the limits of the city, and his or her residence known to such person; and if such owner or agent be not within the city, then by depositing a copy of such order in any post office in the city, properly enclosed and addressed to such owner or agent, at his or her then place of residence, if known, and with the postage prepaid. In case any such lessee or person in possession or charge shall neglect to give such notice as herein provided, he or she shall be personally liable to the owner or owners of such building or premises for all damages he, she or they shall sustain by reason of such neglect.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 491a1-3.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 15-226*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-226 Violations; order to remove.

In case an order is not complied with within the time set forth therein, the commissioner may execute and enforce such order with employees and equipment of the department, or by the employment of such other agencies as the commissioner may direct. Nothing contained in this section, however, shall be held to authorize the commissioner to alter the construction of any building, structure, or vessel, or to supply any structural deficiency in the fire alarm, fire extinguishing, or fire escape equipment thereof. The party offending shall pay the expense of enforcing such order and, in addition thereto, shall forfeit and pay to the department the sum of fifty dollars. Where the order relates to the storage of explosive or combustible compounds or mixtures, the party offending shall pay an additional penalty of twenty-five dollars plus five dollars for each day's neglect or refusal to comply with such order.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 491a2-1.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. The Court was without jurisdiction to apply and enforce the provisions of this section against defendant who created fire hazards and nuisance by abandoning timber barges near tidal waters. The matter was exclusively within

Federal jurisdiction.-People ex rel. Ryan v. O'Boyle, Inc., 9 Misc. 2d 536, 170 N.Y.S. 2d 884 [1958].

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

*NYC Administrative Code 15-227*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-227 Violations; order to vacate building.

a. Any building, structure, enclosure, vessel, place or premises perilous to life or property in case of fire therein or adjacent thereto, by reason of the nature or condition of its contents, its use, the overcrowding of persons therein, defects in its construction, or deficiencies in fire alarm, fire extinguishing or fire escape equipment, or by reason of any condition in violation of law, or order of the commissioner, is a public nuisance within the meaning of the code and the penal law. The commissioner is empowered to abate any such public nuisance.

b. In case any order to remedy a condition imminently perilous to life or property issued by the commissioner or the department is not complied with, or the commissioner certifies in writing that an emergency exists requiring such action, he or she may order and immediately cause any building or structure or part thereof (i) to be vacated; and, also, if the commissioner determines such action is necessary to the preservation of life and safety, (ii) to be sealed, secured and closed; provided, however, that the commissioner shall not order sealed, secured, and closed any dwelling unit or other space lawfully used for residential purposes. Upon the issuance of an order to seal, secure and close, no person shall have access to such premises except as authorized by the commissioner. For the purpose of this section, "sealed, secured and closed" shall mean the use of any means available to render the building, structure or part thereof inaccessible, including but not limited to the use of a padlock or cinder blocks.

c. All orders issued pursuant to this section shall be posted upon the premises. Immediately upon the posting of an order upon the premises, officers and employees of the police department, the department, and other authorized officers and employees of the city shall immediately act upon and enforce such order. The police department shall provide all reasonable assistance to the department and other authorized officers and employees necessary to carry out the provisions of this section. If an order issued pursuant to this section is not complied with within the time designated

therein, the commissioner, in addition to or in lieu of any other remedy or power, may apply to the supreme court, at a special term thereof, without notice, for an order directing him or her to vacate and/or seal, secure and close such building or premises or so much thereof as he or she may deem necessary, and prohibiting and enjoining all persons from using or occupying the same for any purpose until such measures are taken as may be required by such order.

d. (i) Any order to seal, secure and close issued pursuant to item (ii) of subdivision b of this section shall contain notice of the opportunity for a hearing with respect to such order, to determine if the order was properly issued in accordance with the provisions of this section. Such hearing shall be conducted by the commissioner, or in the commissioner's discretion, by the office of administrative trials and hearings or the environmental control board. If the matter is referred to such office or board, the hearing officer shall submit his or her findings of fact and a recommended decision to the commissioner. The hearing shall be held within three business days after the receipt of the written request of an owner, lessor, lessee or mortgagee for such hearing and the commissioner shall render a decision within three business days after such hearing is con- cluded.

(ii) Any order issued pursuant to this section shall be served in accordance with section 15-224 of the code and, in addition, shall be mailed to the record owner of such premises and any record mortgagee of such premises at the address for such person as set forth in the recorded instrument and to the person designated as owner or agent of the building or designated to receive real property tax or water bills for the building at the address for such person contained in one of the files compiled by the department of finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the department of finance from real property transfer forms filed with the city register upon the sale or transfer of real property. A copy shall also be filed with the county clerk of the county in which such premises are located. Such filing shall be notice of the order to any subsequent owner and such owner shall be subject to such order.

e. An order issued pursuant to this section shall not be rescinded unless the owner, lessor, lessee or mortgagee seeking such rescission provides assurance, in a form satisfactory to the commissioner, that the conditions which caused the issuance of such order have been corrected and will not reoccur. If such order is rescinded, upon the request of the owner, lessor, lessee or mortgagee, the commissioner shall provide a certified copy of such rescission, which may be filed with the county clerk of the county in which such premises are located.

f. The commissioner shall give written notice of the closing of any building or structure or part thereof pursuant to this section, and any subsequent actions taken with respect thereto, as soon as practicable, to (i) the borough president of the borough within which the closing has occurred; (ii) the council member representing the district within which the closing has occurred; and (iii) the local community board. On January first of each year, the commissioner shall submit a report to the council, setting forth the number of closings made in the previous year, the locations of such closings, and the nature and use of the premises closed. The commissioner shall, in addition, as soon as practicable after a building, structure or part thereof has been closed, make and publish a report of said closing in a manner calculated to quickly notify the local community in which such closing occurred. The commissioner shall also make and publish a report of any premises reopened pursuant to his or her permission under this section. Failure to comply with this subdivision shall not invalidate any action taken by the commissioner pursuant to this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Section amended L.L. 23/1990 § 3 eff. July 7, 1990. [See Note]

**DERIVATION**

Formerly § 491a2-2.0 added chap 929/1937 § 1

**NOTE**

Provision of L.L. 23/1990 §§ 1, 2.

Section 1. Declaration of legislative intent. The council finds that the failure to comply with building code and fire prevention code requirements on the part of many establishments in the city continues to pose a serious threat to the health, safety and welfare of the city's residents and visitors and is perilous to property. The critical nature of this problem was evidenced by the recent fire at an illegal social club in the Bronx in which eighty-seven people died. The council recognizes that disregard of building and fire prevention code requirements is not limited to illegal social clubs: Factories, offices, day care and senior citizen centers and other nonresidential places used for commercial or profit-generating purposes are all equally likely to have violations that would be perilous to their occupants.

The council finds that the issuance of a vacate order against premises found to be in a condition that is dangerous to life, which has been the enforcement mechanism most often employed by the buildings and fire departments, has not been sufficient to prevent the persistence of such hazardous conditions. This was demonstrated by the fact that the social club at which the recent tragic fire occurred had been ordered vacated sixteen months earlier, and although the various building code violations on the premises had not been corrected, it continued to operate. The council finds that in order to rectify this situation, the commissioners of the department of buildings and fire department must have discretion to immediately seal, secure and close as well as vacate such premises which are found to be in a condition imminently perilous to life and property. In addition, the council finds that the owners of such premises which are padlocked must be required to certify that before such premises are again occupied, the violations in question will be cured, and any false statement in such certification must subject the owner to substantial civil penalties. In addition, the council finds that any person who reopens premises in violation of an outstanding vacate order or padlock must be subject to substantial civil and criminal penalties. The council further finds that mortgagees of premises that have been ordered vacated or padlocked must be notified of such order so that they can exercise any rights to prevent the illegal use of the premises that they may have under the mortgage agreement.

The council also finds that the sanctions available against persons who fail to comply with orders to vacate have not adequately deterred such violations. The council finds that the gravity of this problem is of sufficient magnitude to warrant a substantial increase in the amount of the civil penalty which may be imposed in the case of such failure to comply, up to a maximum of one million dollars for each person injured. The council intends that the maximum penalty be imposed only in the case of the most egregious and flagrant situations, where there is a showing of extensive and severe injuries caused by the willful or reckless conduct of the violator, a substantial history of violations by such violator, and a demonstration that such penalty is commensurate with the violator's financial resources.

It is the intention of the council to provide the fire and buildings departments with a broad array of enforcement tools to close, and keep closed, dangerous buildings and places. The enforcement tools and remedies contained in this local law are intended to be used, to the extent practicable, in conjunction with each other, and are not intended to be mutually exclusive.

The council also finds that there are many not-for-profit civic, cultural, recreational and social groups and organizations that play a vital role in the lives of this city's neighborhoods and communities. These groups are often located in buildings that fail to fully comply with building code and fire prevention code requirements. This is often due to a variety of factors such as their inability to compel landlords to make necessary repairs or a lack of understanding with respect to the city's requirements. In recognition of the importance of these organizations to the city, the council deems it appropriate to create a temporary commission to examine the problems faced by such groups and to make recommendations as to how these organizations can be assisted to enable them to comply with the law.

§ 2. Temporary commission on social clubs. a. There is hereby established a temporary commission on social clubs consisting of ten members. The mayor shall appoint five members, one of whom shall serve as chairperson, and the speaker of the council shall appoint five members. Such commission shall have a duration of nine months. The members of the commission shall be appointed within thirty days of the effective date of this section. Each member shall serve without compensation for the duration of the commission.

b. The commission may appoint an executive director to serve at its pleasure and may employ or retain such other employees and consultants as are necessary to fulfill its functions, within appropriations for such purposes.

c. Within six months of the appointment of the last member of the commission, the commission shall issue an interim report to the mayor and the council. The interim report shall make specific recommendations with respect to the areas listed below and shall include an assessment of the fiscal implications of such recommendations:

1. Methods to enable local, non-profit, civic, cultural, recreational and social groups and organizations to comply with applicable building code and fire prevention code requirements.

2. Identification of all local, non-profit, civic, cultural, recreational and social groups and organizations located in city-owned buildings; cost of bringing such premises into compliance where building code and/or fire prevention code violations exist.

3. Creation of a central city office to coordinate assistance and respond to problems experienced by local, non-profit, civic, cultural, recreational and social groups and organizations in working with city agencies, and to implement the recommendations of the temporary commission on social clubs.

4. Provision of in-depth, multi-language information, explaining licensing requirements and process, regulatory standards and penalties for failure to comply with same.

5. Methods to provide technical assistance necessary for code com- pliance.

6. Methods to relocate local, non-profit, civic, cultural, recreational and social groups and organizations to locations that are in compliance with the building code and fire prevention code.

7. The need, if any, to amend existing provisions of law to promote the continued, safe operation of local, non-profit, civic, cultural, recreational and social groups and organizations.

8. The need, if any, to explore procedures pursuant to which the city could undertake to cure building and fire prevention code violations in both city and non-city owned properties and recover the cost of such repairs from the property owner.

**CASE NOTES FROM FORMER SECTION**

¶ 1. An Article 78 proceeding would have to be dismissed where a certification that conditions in the premises were perilous to life in event of fire had not been appealed to the Board of Standards and Appeals. The certification by the deputy assistant chief in charge of fire prevention was in effect a certification by the Fire Commissioner.-Matter of Bi-Quiz, Inc. (Cavanagh), 144 (11) N.Y.L.J. (7-18-60) 4, Col. 4 F.

¶ 2. Parent of school child could not require Fire Commissioner to enforce § 491a2-2.0 dealing with unsafe buildings as there was a failure to present proper proof as to any particular school building. There was, however, proof that investigation had been made and overcrowded conditions did not exist.-Klughery v. Board of Education, 23 Misc. 2d 184, 202 N.Y.S. 2d 184 [1961].

¶ 3. Where main purpose of a barge operated as a floating restaurant was to serve food it was a building or structure within meaning of this section.-Street of Ships v. O'Hagan, 89 Misc. 2d 655 [1977].



Administrative Code of the City of New York



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

*NYC Administrative Code 15-227.1*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-227.1 Penalties for violation of order to vacate and order to seal, secure and close; access to premises.

a. Any person who violates the provisions of an order to vacate issued pursuant to section 15-227 of this code shall be liable for a civil penalty of not more than twenty-five thousand dollars and an additional civil penalty of not more than one thousand dollars for each day the violation continues.

b. Except as authorized by the commissioner, any person who removes or causes to be removed the seal from any premises sealed in accordance with an order of the commissioner or his or her designee shall be guilty of a misdemeanor punishable by imprisonment for no more than one year or a fine not to exceed fifty thousand dollars, or both such fine and imprisonment. Such person shall also be subject to a civil penalty not to exceed fifty thousand dollars.

c. The commissioner shall allow access to the premises to an owner, or a lessor, lessee or mortgagee, in accordance with the terms of the parties' lease or mortgage agreement, upon the following conditions: (i) the submission of a written affirmation, satisfactory to the commissioner, that such person or persons will commence or cause to be commenced without delay all work necessary to correct the conditions stated in the vacate order or otherwise to make the premises suitable for a lawful use and will complete such work within a period of time and in a manner to be approved by the commissioner; (ii) the submission of an affirmation or other proof satisfactory to the commissioner describing the steps that have been taken and will be taken in the future to ensure that the premises will be used or operated in a lawful manner and specifying such lawful use; (iii) if a license, permit or certificate of occupancy is necessary for such lawful use, the submission of a written affirmation or other proof, satisfactory to the commissioner, describing the steps that have been taken and will be taken in the future to ensure that such premises will be used or operated in compliance with any law requiring such license, permit or certificate of occupancy; and (iv) if the premises

are leased and the person making the affirmations described in items (i), (ii) and (iii) is not such lessee, the commissioner may also require any authorized person seeking access pursuant to this subdivision to submit an affirmation or other proof that proceedings to enable such person to take actions necessary to ensure compliance with the affirmations submitted by such authorized person pursuant to items (i), (ii) and (iii) have been commenced.

d. Any person who makes a material false statement in any document submitted pursuant to subdivision c of this section which statement he or she knows or has reason to know will be relied upon by the commissioner in determining whether he or she will allow access to the premises shall be liable for a civil penalty of not more than fifty thousand dollars.

e. Notwithstanding any other law, rule, or regulation, any person, corporation, partnership, association or any other legal entity who permits a building, structure or part thereof to be unlawfully occupied or used in contravention of an order of the commissioner pursuant to section 15-227, or who negligently fails to prevent or prohibit such unlawful occupancy or use, shall be liable for a civil penalty of not more than one million dollars, if any other person suffers serious physical injury, as defined in section ten of the penal law, or death in the building, structure or part thereof subject to such order, as a result of such unlawful occupancy or use. If more than one person suffers serious physical injury or death, such penalty shall be recoverable for each person suffering injury or death. Such penalty shall be recovered in a civil action brought by the corporation counsel in the name of the city in any court of competent jurisdiction. In determining the amount of the civil penalty to be imposed the court shall consider:

(i) the extent and severity of injury to persons and property caused by the violation;

(ii) the history of violations by the defendant at such premises, or any other premises, of laws, rules or regulations enforced by the department;

(iii) the degree of willfulness, recklessness, or negligence displayed by the defendant in committing the subject violation;

(iv) the defendant's financial resources; and

(v) the defendant's good faith efforts to cure the subject violation, including efforts to obtain entry to or possession of the premises in order to do so.

In the event that any person seriously injured or the family of any person who has died as the result of any unlawful occupancy or use described in this subdivision is unable to collect a judgment recovered in a civil action for personal injury or wrongful death against a defendant who has violated this subdivision because of the insolvency of such defendant, the city may, in its discretion, pay to such injured person or the family of such deceased person an amount, as hereinafter provided, collected from such defendant in an action relating to the same injury or death commenced by the corporation counsel against such defendant pursuant to this subdivision. Payments pursuant to this subdivision shall be made as a matter of grace and shall be in such amounts and in accordance with such standards and procedures as shall be established by the mayor, provided, however, that any payment made pursuant to this subdivision shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which such action is based; loss of earnings or support resulting from such injury; burial expenses not exceeding two thousand five hundred dollars of a person who died as a result of such unlawful occupancy or use described in this subdivision; and the unreimbursed cost of repair or replacement of articles of essential personal property lost, damaged or destroyed as a direct result of such unlawful occupancy or use. In no event shall the payment made to any person exceed the amount of such person's uncollected judgment for personal injury or wrongful death and in no event shall the total amount paid to any number of persons with such uncollected judgments against a single defendent*1 exceed the actual amount collected by the city from such defendant in an action under this subdivision.

**HISTORICAL NOTE**

Section added L.L. 23/1990 § 4 eff. July 7, 1990. [See note after § 15-227.]

**FOOTNOTES**

1

[Footnote 1]: * So in original.

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-228*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-228 Expenses of enforcing orders.

The expenses attending the execution of any and all orders duly made by the department shall respectively be a several and joint personal charge against each of the owners or part owners, and each of the lessees and occupants of the building, structure, vessel, enclosure, place or premises to which such order relates, and in respect to which such expenses were incurred; and also against every person or body who was by law or contract bound to do that in regard to such building, structure, vessel, enclosure, place or premises which such order requires. Such expenses shall also be a lien on all rent and compensation due, or to grow due, for the use of any building, structure, vessel, enclosure, place or premises, or any part thereof, to which such order relates, and in respect to which such expenses were incurred.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 491a2-3.0 added chap 929/1937 § 1

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

*NYC Administrative Code 15-229*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-229 Environmental control board; civil penalties.

a. In addition to or as an alternative to any of the remedies and penalties provided in any laws, rules, or regulations enforceable by the department, any person who shall violate or fail to comply with any such laws, rules, or regulations shall, except as otherwise specifically provided in subdivision c of section 15-230, be liable for a civil penalty which may be recovered in a proceeding before the environmental control board. Such proceeding shall be commenced by the service of a notice of violation returnable before the board. Except as otherwise specifically provided, such civil penalty shall be determined as follows: (1) The maximum penalty for the first violation shall be one thousand dollars ($1,000); (2) the maximum penalty for the second and any subsequent violation of the same provision of law, rule or regulaton shall be five thousand dollars ($5,000), provided the violation is committed by the same respondent, is for the same provision of law, rule or regulation, and occurs within eighteen months of first violation, and provided, further, that if the respondent is the owner, agent, lessee or other person in control of the premises with respect to which the violation occurred, the violation occurred at the same premises.

b. For the purposes of the multiple offense schedule, if the respondent is the owner or agent of the building or structure with respect to which the violation occurred or a lessee of the entire building or structure, the term premises shall mean the entire building or structure. If the respondent is the lessee or person in control of a part of such building or structure, the term premises shall mean that part of such building or structure leased to or under the control of the respondent.

c. Notwithstanding any other provision of this section, if the respondent is the owner or agent of the building or structure with respect to which the violation occurred or a lessee of the entire building or structure, a prior violation by the same respondent shall not serve as a predicate for purposes of the multiple offense schedule set forth in this section

if the prior violation or the violation for which penalties are to be imposed occurred within an area of the building or structure which, at the time of the violation, was leased to and under the control of a person other than the respondent except that this provision shall not apply if both the prior violation and the violation for which penalties are to be imposed occurred within areas leased to and under the control of the same lessee. In any proceeding before the board, the burden of proof with respect to this exception shall be upon the respondent.

d. The commissioner may, by rule or regulation, establish a schedule of civil penalties providing a maximum penalty for the violation of each separate provision of law, rule or regulation based on the degree of seriousness of the violation. Such maximum penalties shall not exceed the maximum penalties for such violation set forth in this section.

**HISTORICAL NOTE**

Section added (as §491a2-3.1) LL 80/1985 § 8.

(Section number assigned by the Legislative Bill Drafting Commission)

Subd. a amended L.L. 33/2004 § 1, eff. Nov. 9, 2004 except that prior

to such effective date the fire commissioner may promulgate rules or

take any other administrative actions to implement its provisions.

Subd. a amended L.L. 74/1988 § 3.

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

*NYC Administrative Code 15-230*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-230 Environmental control board proceedings; order to certify correction.

a. Except as otherwise provided in subdivision e of this section, whenever the commissioner serves a notice of violation such notice shall include an order which requires the respondent to correct the condition constituting the violation and to file a certification with the department that the condition has been corrected. Such order shall require that the condition be corrected within thirty days from the date that the order is issued and that certification of the correction of the condition shall be filed with the department in a manner and form and within such further period of time as shall be established by rule or regulation of the depart- ment.

b. If the board finds, upon good cause shown, that the respondent cannot correct the violation within the period specified in subdivision a, it may, with the concurrence of the commissioner, postpone the period for compliance with such order upon such terms and conditions and for such period of time as shall be appropriate under the circumstances.

c. For violations which are subject to the penalties for a first violation as set forth in section 15-229, if the respondent complies with the order issued pursuant to subdivision a of this section within the time set forth in such subdivision there shall be no civil penalty for such first violation. Such violation may however serve as a predicate for purposes of the multiple offense schedule set forth in section 15-229.

d. In any proceeding before the environmental control board, if the board finds that the commissioner has failed to prove the violation charged it shall notify the commissioner and the order requiring the respondent to correct the condition constituting the violation shall be deemed to be revoked.

e. Subdivisions a, b, c, and d of this section shall not apply to environmental control board proceedings to

impose penalties for violations of sections 15-220.1, 15-223.1 and 15-231 or to impose penalties for any violation which the commissioner, in his discretion, determines to be hazardous.

**HISTORICAL NOTE**

Section added (as § 491a2-4.0) LL 80/1985 § 8 (Section number assigned by the Legislative Bill Drafting Commission)



Administrative Code of the City of New York



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

*NYC Administrative Code 15-231*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-231 Civil penalty for failure to certify the correction of a violation.

a. Any person who shall fail to comply with an order of the commissioner issued pursuant to subdivision a of section 15-230 within the time specified in such subdivision or within such further period of time as may be provided by the environmental control board pursuant to subdivision b of section 15-230 shall, in addition to the penalties which may be imposed for the violation pursuant to section 15-229, be liable for a civil penalty of not more than five thousand dollars for each violation for which there has been a failure to comply with such order. Such civil penalty may be recovered in a proceeding before the environmental control board.

b. For the purposes of this section, if the environmental control board finds that a respondent has knowingly made false statements relating to the correction of a violation in a certification filed pursuant to section 15-230, such certification as to correction shall be null and void and the penalties set forth in this section may be imposed as if such false certification had not been filed with and accepted by the department.

**HISTORICAL NOTE**

Section added (as § 491a2-5.0) LL 80/1985 § 8.

(Section number assigned by the Legislative Bill Drafting Commission)



Administrative Code of the City of New York



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

*NYC Administrative Code 15-232*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 2 UNLAWFUL CONDUCT

§ 15-232 Limitations on power of commissioner to designate administrative code provisions which may be enforced by the environmental control board.

Notwithstanding any other provision of law, the commissioner may not designate the following provisions of the administrative code for enforcement by the environmental control board:

(1) Section 15-208

(2) Section 15-125

(3) Subdivision a of section 15-126

(4) Section 15-214

(5) Paragraph one of subdivision b of section 15-127

(6) Subdivision c of section 15-127

(7) Repealed.

(8) Repealed.

(9) Repealed.

(10) Repealed.

(11) Repealed.

(12) Repealed.

(13) Repealed.

(14) Repealed.

(15) Repealed.

(16) Repealed.

(17) Repealed.

(18) Repealed.

(19) Repealed.

**HISTORICAL NOTE**

Section added (as § 491a2-6.0) LL 80/1985 § 8 (Section number assigned by the Legislative Bill Drafting Commission)

Subds. (7)-(19) repealed L.L. 26/2008 § 4, eff. July 1, 2008. [See Charter § 487 Note 1]

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

*NYC Administrative Code 15-301*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 3 ARSON STRIKE FORCE

§ 15-301 Declaration of policy.

The council finds that within the past several years there have been increasing incidences of arson which have endangered life and property in some areas of the city; that deaths and serious injuries to many persons have resulted therefrom and much property has been destroyed; that extensive areas of burned-out buildings now blight parts of the city; that arson hastens the deterioration of communities; that residents are compelled to flee to other areas; that businesses and commercial enterprises are compelled to close, many never to open again; that fire insurance premiums increase; and that drastic steps are necessary to prevent the spread of this problem to other areas of the city. The council hereby declares that it is imperative that a permanent arson strike force be established that will foster greater cooperation between the various city agencies in the battle to control the arson problem that confronts the city.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § F1-1.0 added LL 23/1978 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 15-302*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 3 ARSON STRIKE FORCE

§ 15-302 Composition.

The mayor shall appoint an arson strike force which shall be chaired by a representative of the mayor's office and shall consist of representatives of the department, police department, department of human resources, department of housing preservation and development, department of finance and such supportive staff as is necessary.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § F1-2.0 added LL 23/1978 § 1

Amended LL 31/1983 § 1

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

*NYC Administrative Code 15-303*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 3 ARSON STRIKE FORCE

§ 15-303 Reports.

The strike force shall submit an annual report in September of each year to the mayor and the council. Such report shall include any findings and recommendations of the strike force.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § F1-3.0 added LL 23/1978 § 1

Amended LL 8/1985 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 15-304*

Administrative Code of the City of New York

Title 15 Fire Prevention and Control

CHAPTER 3 ARSON STRIKE FORCE

§ 15-304 Reward for information leading to arson conviction: posting notices.

a. The city hereby offers a reward of not more than one thousand dollars per conviction to any person or persons giving information leading to the detection, arrest and conviction of any person or persons guilty of arson, attempted arson or conspiracy to commit arson, or felony murder arising in connection with arson.

b. The offer made herein subject to and limited by availability of funds appropriated therefore and shall be paid only if no other reward is paid by the city for information leading to detections, arrests and convictions arising from the same incident of arson, attempted arson, conspiracy to commit arson or felony murder arising from arson.

c. The commissioner is authorized to publish the offer made by this section by means of posters or any other appropriate medium. Subject to the approval of the corporation counsel, the commissioner may determine the form in which the offer is to be published.

d. The commissioner is authorized to place posters containing the offer made by this section on public property.

e. Subject to the conditions and limitations set forth in subdivisions a and b of this section, the commissioner, in his or her discretion, shall determine the amount payable and certify to the comptroller the name of the person or persons to whom the reward shall be made payable and the amount to be paid. If a reward is to be made payable to more than one person for the same information, the certification may specify that payment is to be made jointly to the persons so named.

f. The comptroller shall pay such reward as a claim against the city from the funds appropriated therefor by

warrant to the person or persons named in such certification.

g. The offer made by this section shall not be available:

(1) to any person employed by or having auxiliary status or other membership in any police or fire department or other law enforcement agency in the state; or

(2) to any person who has obtained the information directly or indirectly from a member of any police or fire department or other law enforcement agency in the state.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 487b-9.0 added LL 84/1977 § 2

(legislative findings, arson threat to public, LL 84/1977 § 1)

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-101*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-101 Definitions.

When used in this title the following terms shall have the following meanings:

(1) "Department" shall mean the department of sanitation.

(2) "Commissioner" shall mean the commissioner of sanitation.

(3) "Street" includes street, avenue, road, alley, lane, highway, boulevard, concourse, driveway, culvert and crosswalk, and every class of road, square and place, and all parkways and through vehicular park drives except a road within any park or a wharf, pier, bulkhead, or slip by law committed to the custody, and control of the department of ports and terminals.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 751-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 551

Amended LL 35/1969 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-102*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-102 Secretary.

The commissioner shall appoint and at pleasure may remove a secretary of the department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 752-1.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 16-103*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-103 Uniformed forces.

The commissioner, from time to time, shall prescribe distinctive uniforms, badges and insignia to be worn and displayed by members of the uniformed force and prescribe and enforce penalties for the failure of any member of such force to wear and exhibit the same while engaged in the performance of his or her duties.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 752-2.0 added chap 929/1937 § 1

Amended chap 100/1963 § 552

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-104*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-104 Records.

All transactions of the commissioner and all documents and records in the possession of the department shall be matters of public record and open to public inspection, except such documents and records as shall be prepared by or for counsel for use in actions or proceedings to which the city or commissioner is a party.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 752-4.0 added chap 929/1937 § 1

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

*NYC Administrative Code 16-105*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-105 Drivers or sweepers; temporary employment of.

Any person registered or eligible to appointment as a driver, or as a sweeper, may be employed temporarily at any time as an extra driver or sweeper to replace a driver or sweeper who is suspended or temporarily absent from duty for any cause. The driver or sweeper whose place is so filled shall not receive any compensation for the time during which he or she is so absent from duty or his or her place is so filled, unless such absence results from injury or illness caused by service in the department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 752-5.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-106*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-106 Removal and suspension of employees.

a. The commissioner, in his or her discretion, shall have power to punish any member of the uniformed force who has been guilty of:

1. any legal or criminal offense,
2. neglect of duty,
3. violation of rules,
4. neglect or disobedience of orders,
5. incapacity,
6. absence without leave,
7. conduct injurious to the public peace or welfare,
8. immoral conduct, or
9. any breach of discipline,

by forfeiting or withholding pay for a specified time, not exceeding thirty days; by suspension, without pay during

such suspension, for a period not exceeding thirty days; or by dismissal from the force. The commissioner may withhold pay, salary or compensation from any member or members of the force for absence for any cause without leave.

b. All pay deducted or forfeited under the provisions of this section shall be retained by the commissioner of finance to the credit of the department, and shall be applicable, in the discretion of the commissioner, to any of the purposes of such department as if originally appropriated therefor.

c. A member of the department shall be dismissed only after he or she has been informed of the cause of the proposed dismissal and has been allowed an opportunity of making an explanation.

d. In the event of the dismissal of any member of the force, he or she shall have the right to a review of the action of the commissioner or his or her deputy by certiorari or other appropriate remedy. Upon being successful in such proceeding, he or she shall be entitled to be reinstated and to receive full pay during the time of his or her suspension or dismissal from office.

e. When and as soon as a member of the uniformed force has been fined, suspended or dismissed, the true cause for such fine, suspension or dismissal shall be entered in writing in a book to be kept for that purpose by the commissioner.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 752-6.0 added chap 929/1937 § 1

Sub b amended chap 100/1963 § 554

**CASE NOTES FROM FORMER SECTION**

¶ 1. Language of § 537 of old Charter giving Commissioner of Street Cleaning discretion to punish a member of the uniformed force who has been guilty of "incapacity" or other misconduct, referred to censurable acts and did not warrant dismissal from the service of a licensed fireman in Department of Sanitation merely because he was incapacitated from old age.-Cosgrove v. Carey, 253 App. Div. 613, 3 N.Y.S. 2d 500 [1938]; rev'd on other grounds, 278 N.Y. 350, 16 N.E. 2d 361 [1938].

¶ 2. Plaintiff who, in addition to being employed as a blacksmith in the Department of Sanitation, was also employed outside his regular working hours in such Department in a private plant manufacturing war materials, and had been advised that he would be dismissed from his position in the Department of Sanitation unless he immediately gave up his outside employment, **held** to have set forth a good cause of action for an injunction restraining the Commissioner from suspending or dismissing him on account of his outside employment, since a regulation against outside employment adopted by a City department exceeds the powers conferred upon such a department by the Charter. Plaintiff did not possess an adequate remedy at law.-Putkowski v. Carey, 182 Misc. 1023, 52 N.Y.S. 2d 42 [1944].

¶ 3. The Municipal Civil Service Commission's disqualification of petitioner from taking future examinations did not preclude disciplinary action in the Department of Sanitation of the City, in which he served. Under Administrative Code § 752-6.0, the Commissioner of the Department of Sanitation has broad power to discipline the members of the Department, and such power is wholly independent of anything done by the Municipal Civil Service Commission.-In re Heaney (Mulrain), 126 (35) N.Y.L.J. (8-20-51) 280, Col. 5 T.

¶ 4. Dismissal of employee of Department of Sanitation from the service because he had impersonated two individuals and in their names and stead successfully completed Civil Service examinations, **held** not to have been

arbitrary. Charge that the hearing officer and the Department's law assistant who attended the hearing were prejudiced against him, was not sustained, and the alleged severity of the discipline meted out was beyond the reach of the Court.-Id.

¶ 5. Where petitioner resigned from the Sanitation Department but four months later his application for reinstatement was granted with full seniority status under Civil Service but was given assignments, shifts and vacation preferences customarily given to new employees, **held,** the court would not interfere with the discretion exercised by the Department with regard to their internal administrative details. Petitioner's claim that some others were given "full seniority rights" was not enough to support a finding of arbitrary action.-Matter of Bertini (Serverave), 144 (72) N.Y.L.J. (10-13-60) 14, Col. 4 T.

**CASE NOTES**

¶ 1. Administrative law judge held that section 16-106 provided for cumulative penalties. Dep't of Sanitation v. Gasparri, OATH Index No. 1844/00 (Aug. 16, 2000), modified on penalty as per plea agreement (Oct. 19, 2000).

¶ 2. Reprimand is not a penalty provided for in this section, which governs the discipline of New York City sanitation workers. Under this section, the lowest possible penalty for misconduct by a sanitation worker is forfeiture of pay or suspension. Commissioner modifies recommended penalty of reprimand and imposes a two day suspension for violation of seat belt policy. **Dep't of Sanitation v. Scarborough**, OATH Index No. 2351/08 (Aug. 6, 2008), **modified on penalty**, Comm'r Dec. (Aug. 15, 2008).

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

*NYC Administrative Code 16-107*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-107 Leaves of absence.

a. A leave of absence to any member of the uniformed force shall not exceed twenty days in any one year, in addition to any vacation period, except upon condition that such member shall waive or release not less than one-half of all salary, pay or compensation and claim thereto, or any part thereof, during such absence.

b. Absence without leave of any member of the uniformed force for five consecutive days shall be deemed and held to be a resignation, and at the expiration of such period the member so absent shall cease to be a member of such force and may be dismissed therefrom without notice.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 752-7.0 added chap 929/1937 § 1

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

*NYC Administrative Code 16-108*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-108 Salary during absence from duty by injury or sickness.

Each person employed in the sanitation service classification of the classified civil service shall be paid full pay or compensation during absence from duty caused by injury or sickness, except as otherwise provided by law, and subject to such rules and regulations as may be adopted by the commissioner.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 752-7.1 added chap 551/1962 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. This section, unlike the Workmen's Compensation Law, does not bar a suit against a fellow employee for negligence and hence plaintiff could bring malpractice action against a fellow worker when the department of sanitation was excluded from workers' compensation coverage.-Liantonio v. Baum, 95 Misc. 2d 636, 408 N.Y.S. 2d 257 [1978].



Administrative Code of the City of New York



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

*NYC Administrative Code 16-108.1*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-108.1 Receipt of line of duty pay.

a. A member of the uniformed force of the department of sanitation shall be entitled pursuant to this section to the full amount of his or her regular salary for the period of any incapacity due to illness or injury incurred in the performance and discharge of duty as a member of the uniformed force, as determined by the department.

b. Nothing in this section shall be construed to affect the rights, powers and duties of the commissioner pursuant to any other provision of law, including, but not limited to, the right to discipline a member of the uniformed force by termination, reduction of salary, or any other appropriate measure; the power to terminate an appointee who has not completed his or her probationary term; and the power to apply for ordinary or accident disability retirement for a member of the uniformed force.

c. Nothing in this section shall be construed to require payment of salary to a member of the uniformed force who has been terminated, retired, suspended or otherwise separated from service by reason of death, retirement or any other cause.

d. A decision as to eligibility for benefits pursuant to this section shall not be binding on the medical board or the board of trustees of any pension fund in the determination of eligibility for an accident disability or accidental death benefit.

e. As used in this section the term "incapacity" shall mean the inability to perform full, limited, or light duty.

**HISTORICAL NOTE**

Section added L.L. 59/1993 § 1 eff. July 12, 1993 retroactive to Jan. 1, 1992.

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-109*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-109 Sanitation service; absence from duty because of injury or illness incurred prior to April eighteenth, nineteen hundred sixty-two.

Each person employed in the sanitation service classification of the classified civil service on October tenth, nineteen hundred sixty-two who, prior to April eighteenth, nineteen hundred sixty-two, incurred an injury or illness, and who was or is absent from duty in such employment on or after April eighteenth, nineteen hundred sixty-two, as a result of such injury or illness incurred prior to such date, shall be entitled to receive as pay or salary during such absence or absences, an amount equal to the difference between (a) the total of all payments and awards to such employee under the workers' compensation law by reason of such injury or illness, exclusive of the death benefit provided for in section sixteen of the workers' compensation law; and (b) the amount which such employee would have received in full pay or compensation for absences from such duty on or after April eighteenth, nineteen hundred sixty-two because of such injury or illness if section 16-108 of this title, as qualified by the rules and regulations adopted by the commissioner pursuant to such section, were applicable thereto; provided that the amount to which such employee would have been entitled if such section were applicable is greater than the total specified in item (a) hereof. The commissioner, with the approval of the mayor, may adopt rules and regulations in accordance with the procedure prescribed in section eleven hundred five of the charter, setting forth the manner in which the amounts required to be paid under this section shall be payable. Such rules and regulations may also provide that the amount required to be paid under this section for any period during which such employee was absent, or any part of such amount, may be paid to an employee in a lump sum or weekly installments or a combination of both prior to the date upon which the total specified in item (a) is known or determined, on condition that such employee execute an agreement, in a form approved by the corporation counsel, consenting to reimburse the city for any overpayment to him or her resulting from such prior payment, either at the time the amounts specified in item (a) hereunder are received by such employee or by salary deductions to be authorized by

such employee in such agreement. Such rules and regulations may contain such other provisions as may be necessary to carry out the purposes of this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § F51-26.0 added LL 54/1962 § 1

Renumbered and amended chap 100/1963 § 1281

(formerly § F41-26.0)

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

*NYC Administrative Code 16-110*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-110 Recommendations for amendment of health code.

The commissioner, from time to time, shall propose to the board of health such additions to or amendments of the health code as in his or her opinion will promote sanitary control in the city and conduce to the security of the comfort, life and health of its inhabitants. The commissioner shall set forth fully the reasons for the proposed changes.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 755-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 556



Administrative Code of the City of New York



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

*NYC Administrative Code 16-111*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-111 Division of streets into districts; allotment of sweepers.

The commissioner shall divide the city into a suitable number of districts, each of which shall be under the charge of a district superintendent or supervisory officer who shall be directly responsible to the commissioner for the cleanliness of his or her district. Each of such districts shall be subdivided by such commissioner into sections in charge of foremen or subordinate supervisory officers responsible to such district superintendent or supervisory officer, as well as to the commissioner, for the cleanliness of his or her section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 755(1)-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 557

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-112*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-112 Flushing or washing streets; water.

Whenever the commissioner of environmental protection shall determine that there is a sufficient supply of water for the purpose, such commissioner may permit the commissioner to use as much water as may be necessary for the flushing or washing of the public streets.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 755(1)-2.0 added chap 929/1937 § 1

Amended chap 100/1963 § 558



Administrative Code of the City of New York



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

*NYC Administrative Code 16-113*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-113 Removal of night soil and offal.

The department is hereby charged with the duty of causing the removal of dead animals, night soil and offal from the thickly populated districts daily, and as often as may be necessary elsewhere, and of keeping the city clean from all matter of nuisance of a similar kind.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 755(2)-2.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-114*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-114 Rates for collection and disposal.

The commissioner may charge for the collection and disposal of ashes, street sweepings, garbage, refuse, rubbish, dead animals, night soil and offal, and all wastes, including trade waste from business, industrial, manufacturing, or other establishments conducted for profit, at rates established by the council by local law, upon recommendation of the commissioner, and on such terms and conditions as the commissioner shall prescribe and subject to rules of the department governing such collection and disposal.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Section amended LL 41/1992 § 1, eff. June 17, 1992.

**DERIVATION**

Formerly § 755(2)-3.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. The plaintiff, who tripped over the cover of a garbage receptacle embedded in a sidewalk abutting the premises owned by the third-party defendants, sued the City of New York for damages. The City interpleaded the owners of the premises in a third-party action. **Held:** The City was liable to the plaintiff, since, for a period of three years before the accident, the City, pursuant to the provisions of this section, picked up the gar- bage from the container

and was familiar with the situation. Under these circumstances, the City knew of the existence of this garbage receptacle; that it was an unlawful obstruction in the street; that it was permanent in character and continuously maintained. The City could not recover against the third-party defendants, since they were equally liable for the injury.-Weber v. City of New York, 18 Misc. 2d 590, 186 N.Y.S. 2d 769 [1959].

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-114.1*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-114.1 Rates for collection and disposal of solid waste from home occupations, medical offices/group medical centers, and other residential offices.

a. As used in this section:

1. The term "home occupation" shall mean a dwelling unit located within a residential portion of a building that is used in part for the purpose of engaging in an occupation authorized by law to be practiced at such location in addition to residential use;

2. The term "medical office/group medical center" shall mean an office located within a residential portion of a building that is used for the purpose of practicing a medical profession authorized by law to be practiced at such location;

3. The term "other residential office" shall mean an office, other than a medical office/group medical center, located within a residential portion of a building that is authorized by law to be used as an office by virtue of such use having been established prior to December 15, 1961; and

4. The term "designated recyclable materials" shall be as defined in rules of the commissioner adopted pursuant to section 16-305 of this code.

b. The commissioner is authorized to collect the following annual fees for the collection and disposal of solid waste generated by home occupations, medical offices/group medical centers, and other residential offices, located within buildings which receive department collection and disposal service:

| Average Total Number of 20 Gallon Bags Generated Per Week, Including Designated Recyclable Materials | Annual Collection and Disposal Fee |
|---|---|
| Not more than 5 | $ 303.00 |
| 6-10 | $ 563.00 |
| 11-15 | $ 823.00 |
| 16-20 | $1,083.00 |

**HISTORICAL NOTE**

Section added L.L. 41/1992 § 2, eff. June 17, 1992.

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-115*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-115 Sale of ashes by commissioner.

Ashes collected by the department may be sold by the commissioner at rates fixed by the board of estimate.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 755(2)-3.1 added LL 39/1949 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-116*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-116 Removal of commercial waste; posting of sign, registration number.

a. Every owner, lessee or person in control of a commercial establishment shall provide for the removal of waste by a business licensed by the New York city trade waste commission as required by subdivision a of section 16-505 of this code or register and obtain a registration number from the New York city trade waste commission as required by subdivision b of section 16-505 of this code to remove its own waste except as provided in subdivision c of this section, however nothing contained herein shall preclude the commissioner from providing for the removal of waste from any commercial establishment pursuant to the authority vested in the commissioner by section seven hundred fifty-three of the charter; provided, further, that every owner, lessee or person in control of a commercial establishment that is located in a special trade waste removal district designated by the New York city trade waste commission pursuant to section 16-523 of this code, except for an owner, lessee or person in control of a commercial establishment who has registered with the New York city trade waste commission as required by subdivision b of section 16-505 of this code and except as otherwise provided by subdivision g of section 16-523 of this code, shall provide for the removal of waste by a licensee with whom such commission has entered into an agreement pursuant to subdivision b of such section.

b. Every owner, lessee or person in control of a commercial establishment shall post a sign which states clearly and legibly the trade or business name, address, telephone number and the day and time of the pickup of the trade waste removal business presently serving the establishment, or if the commercial establishment removes its own waste, a registration number issued by the New York city trade waste commission shall be posted. Such sign or registration number shall be prominently displayed by affixing it to a window near the principal entrance to the commercial establishment so as to be easily visible from outside the building. If this is not possible, such sign or permit shall be prominently displayed inside the commercial establishment near the principal entrance to the premises.

c. This section shall not apply to (i) unimproved or vacant property or premises generating infrequent waste or insignificant amounts of waste; and (ii) home occupations, medical offices/group medical centers, and other residential offices, which receive department collection and disposal service pursuant to section 16-114.1 of this code. The commissioner shall have the authority to determine what constitutes infrequent waste or insignificant amounts of waste in specific cases.

d. (i) Except as provided in paragraph (ii) of this subdivision, violation of any of the provisions of this section or any rules promulgated pursuant thereto shall be punishable by a civil penalty of not less than fifty nor more than one hundred dollars. Any notice of violation; appearance ticket or summons issued for a violation of this section shall be returnable before the environmental control board which shall impose the penalty herein provided.

(ii) A commercial establishment required by subdivision b of section 16-505 of this code to register with the New York city trade waste commission shall be subject to a penalty for the violation of such subdivision or any rule pertaining thereto as provided in subdivision c of section 16-515 of this code. Such penalty may be recoverable in the manner provided therein or may be returnable in a civil action brought in the name of the commissioner before the environmental control board which shall impose a penalty not to exceed one thousand dollars.

**HISTORICAL NOTE**

Section amended L.L. 42/1996 § 3, eff. June 3, 1996

Section added chap 907/1985 § 1

Subd. a amended L.L. 61/1988 § 1

Subds. c, d amended L.L. 41/1992 § 3, eff. June 17, 1992

**DERIVATION**

Formerly § 755(2)-4.0 added LL 14/1978 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-117*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-117 Rules and regulations governing conveyance of rubbish, waste or offensive material through the streets.

The commissioner shall have power to adopt rules and regulations:

1. Controlling persons and their servants, agents and employees and the vehicles of each engaged in removing, disposing of, conveying or transporting upon the streets, public places or bridges, or over the ferries in the city, manure, swill, ashes, street sweepings, bones, garbage, night soil, offal, fat, hides, hoofs or entrails, or other refuse parts of slaughtered animals, refuse, rubbish, bodies of dead animals, or any other offensive or noxious material, paper stock, or trade waste;

2. Rules and regulations adopted by the commissioner pursuant to this section shall be submitted to the board of estimate and, when approved by such board, shall be filed with the city clerk and published in like manner as prescribed by section eleven hundred five of the charter and shall be enforced in the same manner and to the same extent as local laws.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 755(2)-6.2 added LL 59/1938 § 2

Amended chap 100/1963 § 563

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-117.1*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-117.1 Transport, storage and disposal of waste containing asbestos.

(a) No person shall transport, store or dispose of waste containing asbestos or cause or permit any person to transport, store or dispose of such waste, except as in accordance with the provisions of this section.

(b) Waste containing asbestos shall not be presented for transport, storage or disposal unless at the site of generation such waste is:

(1) wet down in a manner sufficient to prevent all visible emissions of asbestos dust into the air;

(2) sealed while wet in leak-tight containers which shall bear either:

(i) a warning label which states:

"CAUTION Contains Asbestos-Avoid Opening or Breaking Container Breathing Asbestos is Hazardous to Your Health", or

(ii) such other warning label as may be authorized by federal law or regulation; and*8

(3) quantitatively documented on a form approved by the commissioner, expressed by either volume, weight or container (bag);

(4) kept separate from any other waste.

(c) Waste which contains asbestos shall not be stored unless prior authorization, in such form and manner as the commissioner may prescribe by regulation, is received from the department.

(d) Whenever waste containing asbestos is stored prior to disposal such waste shall be inspected not less than once in every twenty-four hour period so as to ensure that there are no visible emissions of asbestos dust into the air. If such inspection reveals visible emissions of asbestos dust into the air, the waste shall be wet down and repackaged by placing the existing container into a leak-tight container so as to prevent any further emissions into the air.

(e) (1) Waste containing asbestos shall be disposed of in the City only at sites approved by the commissioner;

(2) in cases of asbestos disposed of in City approved disposal sites, the Department of Sanitation shall indicate on the appropriate form, the quantity of asbestos received, expressed either by volume, weight or container (bag). A copy of this form shall be forwarded to the Department of Environmental Protection.

(f) The commissioner shall have the authority to adopt rules and regulations to effectuate the purposes of this section.

(g) (1) Any violation of this section or of any rule or regulation adopted pursuant to this section shall constitute an offense punishable by a fine of not less than five hundred dollars and not more than twenty-five thousand dollars, or by imprisonment not to exceed one year, or by both such fine and imprisonment.

(2) In addition to any other criminal or civil penalty authorized by law, any violation of this section or any rule or regulation adopted pursuant to this section shall be punishable by a civil penalty of not less than five hundred dollars and not more than twenty-five thousand dollars. Such penalty may be recovered in a civil action brought in the name of the commissioner or in a proceeding before the environmental control board.

**HISTORICAL NOTE**

Section added (as § 755(2)-6.3) LL 70/1985 § 1 (Section number assigned by the Legislative Bill Drafting Commission)

Subd. (b) par (3) added L.L. 21/1987 § 2.

Subd. (b) par (4) renumbered L.L. 21/1987 § 1.

Subd. (b) par (4) (former par (3))

Subd. (e) amended L.L. 21/1987 § 3.

**FOOTNOTES**

8

[Footnote 8]: * "and" should have been amended out.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-118*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-118 Littering prohibited.

1. No person shall litter, sweep, throw or cast, or direct, suffer or permit any servant, agent, employee, or other person under his or her control, to litter, sweep, throw or cast any ashes, garbage, paper, dust or other rubbish and refuse of any kind whatsoever, in or upon any street or public place, vacant lot, air shaft, areaway, backyard court or alley.

2. (a) Every owner, lessee, tenant, occupant or person in charge of any building or premises shall keep and cause to be kept the sidewalk, flagging and curbstone abutting said building or premises free from obstruction and nuisances of every kind, and shall keep said sidewalks, flagging, curbstones, and air shafts, areaways, backyards, courts and alleys free from garbage, refuse, rubbish, litter, debris and other offensive material. Such persons shall also remove garbage, refuse, rubbish, litter, debris and other offensive material between the curbstone abutting the building or premises and the roadway area extending one and one-half feet from the curbstone into the street on which the building or premises front. Such persons shall not, however, be responsible for cleaning the garbage, refuse, rubbish, litter, debris and other offensive material which accumulates at catch basins located within the one and one-half foot distance from the curbstone into the street.

(b) Every owner, lessee, tenant or person in charge of any vacant lot shall keep and cause to be kept the sidewalk, flagging and curbstone abutting said vacant lot free from obstruction and nuisances of every kind, and shall keep said sidewalks, flagging and curbstones free from garbage, refuse, rubbish, litter, debris and other offensive material. Every owner, lessee, tenant or person in charge of any vacant lot shall keep and cause to be kept said vacant lot free from garbage, refuse, rubbish, litter, debris and other offensive material. Such persons shall also remove garbage, refuse, rubbish, litter, debris and other offensive material between the curbstone abutting the vacant lot and the roadway area extending one and one-half feet from the curbstone into the street on which the vacant lot fronts. Such

persons shall not, however, be responsible for cleaning the garbage, refuse, rubbish, litter, debris and other offensive material which accumulates at catch basins located within the one and one-half foot distance from the curbstone into the street.

3. No lime, ashes, coal, dry sand, hair, waste paper, feathers, or other substance that is in a similar manner liable to be blown by the wind, shall be sieved, agitated, or exposed, nor shall any mat, carpet, or cloth be shaken or beaten, nor shall any cloth, yarn, garment, material or substance be scoured or cleaned, nor shall any rags, damaged merchandise, barrels, boxes, or broken bales of merchandise or goods be placed, kept, or exposed in any place where they or particles therefrom will pass into any street or public place, or into any occupied premises, nor shall any usual or any reasonable precautions be omitted by any person to prevent fragments or any substances from falling to the detriment or peril of life or health, or dust or light material flying into any street, place, or building, from any building or erection, while the same is being altered, repaired or demolished, or otherwise. In demolishing any building or part thereof, the material to be removed shall be properly wet in order to lay dust incident to its removal.

4. No one, being the owner, or in charge or in control of any vehicle, or of any receptacle, shall litter, drop or spill, or permit to be littered, dropped or spilled any dirt, sand, gravel, clay, loam, stone or building rubbish, hay, straw, oats, sawdust, shavings or other light materials of any sort, or manufacturing, trade or household waste, refuse, rubbish of any sort, or ashes, manure, garbage, or other organic refuse or other offensive matter, in or upon any street or public place.

5. No person shall throw, cast or distribute, or cause or permit to be thrown, cast or distributed, any handbill, circular, card, booklet, placard or other advertising matter whatsoever, in or upon any street or public place, or in a front yard or courtyard, or on any stoop, or in the vestibule of any hall in any building, or in a letter box therein; provided that nothing herein contained shall be deemed to prohibit or otherwise regulate the delivery of any such matter by the United States postal service, or prohibit the distribution of sample copies of newspapers regularly sold by the copy or by annual subscription. This section is not intended to prevent the lawful distribution of anything other than commercial and business advertising matter.

6. No swill, brine, offensive animal matter, noxious liquid, or other filthy matter of any kind, shall be allowed by any person to fall upon or run into any street, or public place, or be taken to or put therein.

7. (a) No person shall prevent or interfere with any employee of the department in the sweeping or cleaning of any street, in the removal of snow or ice, or in the collection or removal of any amount of solid waste or recyclable materials.

(b)(1) Except for an authorized employee or agent of the department, it shall be unlawful for any person to disturb, remove or transport by motor vehicle any amount of recyclable materials that have been placed by owners, tenants or occupants of residential premises, premises occupied by city agencies or institutions, or vacant lots, or by their servants, within the stoop area, adjacent to the curb line or otherwise within or adjacent to such premises or lots for collection or removal by the department unless requested by the owner of such residential premises or vacant lot or his or her agent, and such request is evidenced by a notarized written agreement that: (i) has been signed by such person and such owner or agent; (ii) has been filed with the commissioner and bears a file stamp indicating that it has been so filed; and (iii) includes the names of the parties to the agreement, the names and titles of all signatories to the agreement, the taxpayer identification number, including individual taxpayer identification number or employer identification number but not social security number of each such party, the agreed price terms, if any, the estimated quantity of recyclable materials to be removed, the agreed removal days and times, if any, the duration of the agreement, and any other information required by the commissioner by rule. The requirement to enter into and file such written agreement pursuant to this subdivision shall not apply to one, two or three-family residential premises.

(2) In addition, on or before February first and August first of every year, every person engaged in the removal of recyclable materials from residential premises or vacant lots pursuant to a written agreement shall submit to the

commissioner a report identifying the weight of each type of recyclable material removed by such person during the periods of July first to December thirty-first and January first to June thirtieth, respectively. It shall be unlawful for any person to fail to submit a report in accordance with this subparagraph or to submit a report containing false or deceptive information.

(3) Except for an authorized employee or agent of the department, it shall be unlawful for any person to disturb, remove or transport by motor vehicle any amount of solid waste that has been placed by owners, tenants or occupants of residential premises, premises occupied by city agencies or institutions, or vacant lots, or by their servants, within the stoop area, adjacent to the curb line or otherwise within or adjacent to such premises or lots for collection or removal by the department.

(c) Except for an authorized employee of an entity licensed by or registered with the business integrity commission, it shall be unlawful for any person to disturb, remove or transport by motor vehicle any amount of recyclable materials that have been placed by owners, tenants or occupants of commercial premises within the stoop area, adjacent to the curb line or otherwise within or adjacent to such premises for collection or removal by an entity licensed by or registered with the business integrity commission. It shall be presumed that a person operating a motor vehicle without plates issued by the business integrity commission is not an authorized employee of an entity licensed by or registered with the business integrity commission.

(d) No person, other than a not-for-profit corporation, shall receive recyclable materials for storage, collection or processing from any person other than an authorized employee or agent of the department, an authorized employee of an entity licensed by or registered with the business integrity commission, a not-for-profit corporation or a person who has entered into a written agreement pursuant to subparagraph one of paragraph b of this subdivision. It shall be an affirmative defense that all such recyclable materials were generated or collected outside the city of New York. This paragraph shall not apply to a redemption center, dealer or distributor as defined in section 27-1003 of the environmental conservation law.

(e) Any person who violates subparagraph one of paragraph b of this subdivision while using or operating a motor vehicle or paragraph d of this subdivision shall be punished for each violation by a criminal fine of not less than one thousand dollars nor more than two thousand dollars for each such violation or by imprisonment not to exceed ninety days, or both.

(f)(1)(i) Any person who violates subparagraph one of paragraph b or paragraph c of this subdivision while using or operating a motor vehicle shall be liable for a civil penalty of two thousand dollars for the first offense and five thousand dollars for each subsequent offense within a twelve-month period. In addition, every owner of such motor vehicle shall be liable for a civil penalty of two thousand dollars for the first offense and five thousand dollars if, within a twelve-month period, a motor vehicle owned by such person was used in violation of subparagraph one of paragraph b or paragraph c of this subdivision. The owner of a motor vehicle used in violation of subparagraph one of paragraph b or paragraph c of this subdivision shall not be liable for any civil penalty if such owner establishes that the motor vehicle was used without such owner's permission. For the purpose of imposing a civil penalty pursuant to this clause, every premises or lot from which recyclable materials have been removed unlawfully shall be deemed to be the subject of a separate violation for which a separate civil penalty may be imposed;

(ii) Any person who violates paragraph d of this subdivision shall be liable for a civil penalty of two thousand dollars for the first offense and five thousand dollars for each subsequent offense within a twelve-month period. For the purpose of imposing a civil penalty pursuant to this clause, every motor vehicle from which recyclable materials have been delivered for receipt unlawfully shall be deemed to be the subject of a separate violation for which a separate civil penalty may be imposed; and

(iii) Any person who violates subparagraph two of paragraph b of this subdivision by failing to submit a report or by submitting a report containing false or deceptive information shall be liable for a civil penalty of two thousand

dollars for the first offense and five thousand dollars for each subsequent offense within a twelve-month period.

(2) As used in this subdivision:

(i) the term "motor vehicle" shall mean every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power;

(ii) the term "not-for-profit corporation" shall mean a corporation as defined in subparagraph five or seven of subdivision (a) of section one hundred two of the New York not-for-profit corporation law;

(iii) the term "operator" shall mean any person who operates or drives or is in actual physical control of a motor vehicle;

(iv) the term "owner" shall mean a person, other than a lienholder, having the property in or title to a motor vehicle. The term includes a person entitled to the use and possession of a motor vehicle subject to a security interest in another person and also includes any lessee or bailee of a motor vehicle having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days;

(v) the term "person" shall mean any natural person or business entity, but shall not include any authorized employee of a government agency;

(vi) the term "recyclable materials" shall mean recyclable materials designated by the commissioner by rule pursuant to chapter three of title sixteen of this code; and

(vii) the term "solid waste" shall mean solid waste as defined in subdivision n of section 16-303 of this code.

(g)(1) Any motor vehicle that has been used or is being used to commit a violation of subparagraph one of paragraph b or paragraph c of this subdivision shall be impounded by the department and shall not be released until either all storage fees and the applicable fines and penalties have been paid or a bond has been posted in an amount satisfactory to the commissioner. Rules of the department related to the impoundment and release of motor vehicles in chapter five of title sixteen of the rules of the city of New York shall be applicable to the impoundment and release of motor vehicles pursuant to this paragraph. The commissioner shall have the power to promulgate amended rules concerning the impoundment and release of motor vehicles and the payment of storage fees for such motor vehicles, including the amounts and rates thereof. Where it is determined that the motor vehicle was not used to commit a violation of subparagraph one of paragraph b or paragraph c of this subdivision, such fees shall be promptly returned.

(2) In addition to any other penalties provided in this subdivision, the interest of an owner as defined in clause (iv) of subparagraph two of paragraph f of this subdivision in any motor vehicle impounded pursuant to subparagraph one of this paragraph shall be subject to forfeiture upon notice and judicial determination thereof if such owner has been convicted of or found liable for a violation of this subdivision in a criminal or civil proceeding or in a proceeding before the environmental control board three or more times, all of which violations were committed within an eighteen-month period.

(3) Except as otherwise provided in this subparagraph, the city agency having custody of a motor vehicle, after judicial determination of forfeiture, shall no sooner than thirty days after such determination upon a notice of at least five days, sell such forfeited motor vehicle at public sale. Any person, other than an owner whose interest is forfeited pursuant to this section, who establishes a right of ownership in a motor vehicle, including a part ownership or security interest, shall be entitled to delivery of the motor vehicle if such person:

(i) redeems the ownership interest which was subject to forfeiture by payment to the city of the value thereof; and

(ii) pays the reasonable expenses of the safekeeping of the motor vehicle between the time of seizure and such redemption; and

(iii) asserts a claim within thirty days after judicial determination of forfeiture. Notwithstanding the foregoing provisions, establishment of a claim shall not entitle such person to delivery of the vehicle if the city establishes that the violation for which the motor vehicle was seized was expressly or impliedly permitted by such person.

8. Except for any violation of subparagraph one of paragraph b or paragraph c of subdivision seven of this section by a person using or operating a motor vehicle, or any violation of subparagraph two of paragraph b of subdivision seven of this section, or any violation of paragraph d of subdivision seven of this section, the violation of any provision of this section shall constitute an offense punishable by a fine of not less than fifty dollars nor more than two hundred fifty dollars, or by imprisonment not to exceed ten days or both.

9. Except for any violation of subparagraph one of paragraph b or paragraph c of subdivision seven of this section by a person using or operating a motor vehicle, or any violation of subparagraph two of paragraph b of subdivision seven of this section, or any violation of paragraph d of subdivision seven of this section, any person violating the provisions of this section shall be liable for a civil penalty of not less than fifty dollars nor more than two hundred fifty dollars, except that for a second violation of subdivision one, three, four, or six of this section within any twelve-month period, such person shall be liable for a civil penalty of not less than two hundred fifty dollars nor more than three hundred fifty dollars and for a third or subsequent violation of subdivision one, three, four or six of this section within any twelve-month period such person shall be liable for a civil penalty of not less than three hundred fifty dollars nor more than four hundred fifty dollars.

10. In the instance where the notice of violation, appearance ticket or summons is issued for breach of the provisions of this section and sets forth thereon civil penalties only, such process shall be returnable to the environmental control board, which shall have the power to impose the civil penalties hereinabove provided in subdivision nine of this section.

11. In the event that a violator fails to answer such notice of violation, appearance ticket or summons within the time provided therefor by the rules and regulations of the environmental control board, he or she shall become liable for additional penalties. The additional penalties shall not exceed four hundred fifty dollars for each violation.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. 2 amended L.L. 108/2005 § 1, eff. Dec. 19, 2005.

Subd. 7 amended L.L. 50/2007 § 1, eff. Oct. 9, 2007. [See Note 1]

Subd. 8 amended L.L. 50/2007 § 1, eff. Oct. 9, 2007.

Subd. 8 amended L.L. 76/1995 § 10, eff. Sept. 28, 1995. Amendment

expires and is repealed Mar. 1, 1996, subd. reverts to previous language.

Subd. 9 amended L.L. 50/2007 § 1, eff. Oct. 9, 2007.

Subd. 9 amended L.L. 1/2003 § 1, eff. Jan. 7, 2003.

Subd. 11 amended L.L. 1/2003 § 2, eff. Jan. 7, 2003.

**DERIVATION**

Formerly § 755(2)-7.0 added LL 99/1955 § 1

Renumbered chap 100/1963 § 565

(formerly § 755(3)-2.1)

Sub 8 amended LL 41/1966 § 1

Sub 8 amended LL 13/1977 § 1

Subs 9, 10, 11 added LL 13/1977 § 2

Subs 8, 9 amended LL 67/1979 § 1

Sub 2 amended LL 83/1979 § 1

Sub 2 amended LL 48/1980 § 1

**NOTE**

1. Provisions of L.L. L.L. 50/2007:

§ 2. This local law shall take effect immediately; provided, however, that the notarized written agreement required by subparagraph one of paragraph b of subdivision 7 of § 16-118 of the administrative code of the city of New York, as added by section one of this local law, need not be filed with the commissioner of sanitation until thirty days after such effective date.

**CASE NOTES FROM FORMER SECTION**

¶ 1. Effect to be given to violation of this section is that given to an ordinance, which is merely some evidence of negligence which the jury may consider.-Nielsen v. City of N.Y., 38 A.D. 2d 592, 328 N.Y.S. 2d 698 [1971].

¶ 2. Regardless of the title of this section which is "Littering prohibited" defendants violated this section by cluttering the sidewalk with furniture and other articles in front of the store occupied by them even if in back of the stoop line when they materially obstructed the sidewalk. The sidewalk may not be used for residential purposes.-People v. Feldman, 73 Misc. 2d 824, 342 N.Y.S. 2d 956.

¶ 3. Conviction for distribution of handbills to pedestrians in front of Madison Square Garden containing advertisements as to a concert to be performed at Philharmonic Hall and containing admission prices was set aside since section as presently worded is unconstitutional.-People v. Remeny, 40 N.Y. 2d 527, 387 N.Y.S. 2d 415, 355 N.E. 2d 375 [1976].

¶ 4. Although claim of defendant who was charged with littering by placing two bags of refuse at the curb in violation of New York City Health Code § 153.01, which is almost identical with this section except that violation under the Health Code is a crime and under this section a violation, that his rights to equal protection and due process of law were denied because of the wide disparity of punishment under the two statutes and because police and prosecutor have absolute discretion as to which section should be charged was denied, the court recommended the enactment of a statutory amendment to avoid possible unconstitutional infirmities.-People v. Offen, 96 Misc. 2d 147 [1978].

¶ 5. Plaintiff as a building owner directly affected by subdivision 2 of this section has standing to bring a declaratory judgment action challenging its constitutionality whether or not it has ever been charged with or found guilty of violating its provisions.-Annbros Corp. v. City of N.Y., 83 App. Div. 2d 860, 442 N.Y.S. 2d 32 [1981].

**CASE NOTES**

¶ 1. Section 16-118(2), a sanitation provision that seeks to enlist public support in keeping sidewalks free of litter, is not a predicate for tort liability under General Municipal Law §205-a. Golden v. Barasch & McGarry, 11 A.D.3d 314, 782 N.Y.S.2d 729 (1st Dept. 2004).



Administrative Code of the City of New York



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

*NYC Administrative Code 16-118.1*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-118.1 Routing study.

[Repealed]

**HISTORICAL NOTE**

Section repealed LL 31/1990 § 2, eff. July 9, 1990

Section added LL 30/1989 § 1.



*NYC Administrative Code 16-118.1*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-118.1 Citywide routing system.

a. The department shall implement a citywide routing system for residential premises for the enforcement of subdivision two of section 16-118 of this code, as such subdivision relates to the cleaning of sidewalks, flagging, curbstones, airshafts, backyards, courts, alleys and roadway areas by owners, lessees, tenants, occupants or persons in charge of any such premises, and for commercial premises for the enforcement of such subdivision as such subdivision relates to cleaning of sidewalks, flagging, curbstones and roadway areas by owners, lessees, tenants, occupants or persons in charge of such premises. The citywide enforcement routing system shall limit the issuance of notices of violation, appearance tickets or summonses within any sub-district of a local service delivery district to predetermined periods of a total of no more than two hours each day, provided that each such predetermined period shall be one hour. The department shall establish a citywide schedule of periods for issuing notices of violation, appearance tickets or summonses for commercial premises in each district and shall give written notice to the owners, lessees, tenants, occupants or persons in charge of such premises in each district of the periods for the district in which their premises are located by the use of flyers, community meetings or such other techniques as the commissioner reasonably determines to be useful. The two one-hour predetermined periods for issuing notices of violation, appearance tickets or summonses for residential premises shall be from 8:00 a.m. until 9:00 a.m. and from 6:00 p.m. until 7:00 p.m.

b. Notwithstanding the provisions of subdivision a of this section, the commissioner may provide an additional predetermined period of one hour per day during which notices of violation, appearance tickets or summonses may be issued in any sub-district within a local service delivery district upon the commissioner's determination that the total of two hours otherwise permitted by this section is not sufficient to maintain the sidewalks, flagging, curbstones and roadways in such sub-districts in an adequately clean condition. Such determination shall be based upon a finding that

there has been a decline in the average street cleanliness ratings compiled by the mayor's office of operations for such district for the most recent three-month period as compared to the average street cleanliness ratings compiled by the mayor's office of operations for the same three-month period in fiscal year nineteen hundred ninety. Notice of any increase in the number of hours during which notices of violation, appearance tickets or summonses can be issued or of any change in such hours shall be given by letter to the community board, the owners, lessees, tenants, occupants or persons in charge of any premises in the affected sub-districts within a local service delivery district and every council member representing the local service delivery district no less than forty-five days prior to the implementation of such increase or change. Any additional notice may be given by use of letters, flyers, community meetings or such other techniques as the commissioner reasonably determines to be useful. Written notice to a council member shall be sent to the council member's district office.

c. For the purpose of this section, the following terms shall have the following meanings: (i) "local service delivery district" means a local service delivery district as described in chapter sixty-nine of the charter of the city of New York; (ii) "sub-district" means a section within a local service delivery district as described in chapter sixty-nine of the charter of the city of New York; and (iii) "commercial premises" means any premises abutting the sidewalk at which goods or services are sold directly to consumers or other businesses, and may, in appropriate instances to be determined by the commissioner, also include any other class of real property that is used for the conduct of any business, trade or profession; and (iv) "residential premises" means those portions of premises used predominantly for residential purposes, other than hotels, that abut the sidewalk and do not constitute commercial premises.

d. Within fifteen months after the effective date of this section, the commissioner shall submit to the mayor and the council a report on the results of the citywide enforcement routing system for the twelve month period commencing on the first day of the first full month after the effective date of this section.

**HISTORICAL NOTE**

Section added L.L. 31/1990 § 2 eff. July 9, 1990. [See Note.]

Subd. a amended L.L. 47/2007 § 1, eff. Dec. 25, 2007.

Subd. a amended L.L. 9/2004 § 1, eff. Aug. 17, 2004.

Subd. b amended L.L. 9/2004 § 1, eff. Aug. 17, 2004.

Subd. c amended L.L. 47/2007 § 1, eff. Dec. 25, 2007.

Subd. c amended L.L. 9/2004 § 1, eff. Aug. 17, 2004.

**NOTE**

Provisions of L.L. 31/1990 § 1.

Section one. Declaration of Legislative Findings and Intent. Local Law 30 of 1989 directed the department of sanitation to implement a pilot enforcement routing program which would provide merchants and property owners with advance notice of the times when sanitation enforcement personnel were authorized to issue summonses for dirty streets and sidewalks within a given geographic area and would be in that area to do so. Local Law 30 also directed the department to study the feasibility of implementing an enforcement routine system citywide. The Council finds that the pilot program was successful and believes that a citywide enforcement routing system would benefit all the communities of our city.

24 of 135 DOCUMENTS

Administrative Code of the City of New York



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

*NYC Administrative Code 16-119*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-119 Dumping prohibited.

a. It shall be unlawful for any person, his or her agent, employee or any person under his or her control to suffer or permit any dirt, sand, gravel, clay, loam, stone, rocks, rubble, building rubbish, sawdust, shavings or trade or household waste, refuse, ashes, manure, garbage, rubbish or debris of any sort or any other organic or inorganic material or thing or other offensive matter being transported in a dump truck or other vehicle to be dumped, deposited or otherwise disposed of in or upon any street, lot, park, public place or other area whether publicly or privately owned.

b. Any person who violates the provisions of this section shall be liable to arrest and upon conviction thereof shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one thousand five hundred dollars nor more than ten thousand dollars or by imprisonment not to exceed ninety days or by both such fine and imprisonment.

c. (1) Any person who violates the provisions of subdivision a of this section shall also be liable for a civil penalty of not less than one thousand five hundred dollars nor more than ten thousand dollars for the first offense, and not less than five thousand dollars nor more than twenty thousand dollars for each subsequent offense. In addition, every owner of a dump truck or other vehicle shall be liable for a civil penalty of not less than one thousand five hundred dollars nor more than ten thousand dollars for the first offense and not less than five thousand dollars nor more than twenty thousand dollars for each subsequent offense of unlawful dumping described in subdivision a of this section by any person using or operating the same, in the business of such owner or otherwise, with the permission, express or implied, of such owner.

(2) Any owner, owner-operator or operator who is found in violation of this section in a proceeding before the

environmental control board and who shall fail to pay the civil penalty imposed by such environmental control board shall be subject to the suspension of his or her driver's license, privilege to operate or vehicle registration or renewal thereof imposed pursuant to section twelve hundred twenty-a of the vehicle and traffic law, in addition to any other civil and criminal fines and penalties set forth in this section.

(3) As used in this subdivision, the terms "owner", "owner-operator" and "operator" shall have the meaning set forth in subdivision one of section twelve hundred twenty-a of the vehicle and traffic law.

d. In the instance where the notice of violation, appearance ticket or summons is issued for a breach of the provisions of subdivision a of this section and sets forth thereon civil penalties only, such process shall be returnable to the environmental control board, which board shall have the power to impose the civil penalties hereinabove provided in subdivision c of this section, provided further, that, notwithstanding any other provision of law, the environmental control board shall have such powers and duties as are set forth under section twelve hundred twenty-a of the vehicle and traffic law.

e. (1) Any dump truck or other vehicle that has been used or is being used to violate the provisions of this section shall be impounded by the department and shall not be released until either all removal charges and storage fees and the applicable fine have been paid or a bond has been posted in an amount satisfactory to the commissioner or as otherwise provided in paragraph (2) of this subdivision. The commissioner shall have the power to establish regulations concerning the impoundment and release of vehicles and the payment of removal charges and storage fees for such vehicles, including the amounts and rates thereof.

(2) In addition to any other penalties provided in this section, the interest of an owner as defined in subdivision c of this section in any vehicle impounded pursuant to paragraph (1) of this subdivision shall be subject to forfeiture upon notice and judicial determination thereof if such owner (i) has been convicted of or found liable for a violation of this section in a civil or criminal proceeding or in a proceeding before the environmental control board three or more times, all of which violations were committed within an eighteen month period or (ii) has been convicted of or found liable for a violation of this section in a civil or criminal proceeding or in a proceeding before the environmental control board if the material unlawfully dumped is a material identified as a hazardous waste or an acute hazardous waste in regulations promulgated pursuant to section 27-0903 of the environmental conservation law.

(3) Except as hereinafter provided, the city agency having custody of a vehicle, after judicial determination of forfeiture, shall no sooner than thirty days after such determination upon a notice of at least five days, sell such forfeited vehicle at public sale. Any person, other than an owner whose interest is forfeited pursuant to this section, who establishes a right of ownership in a vehicle, including a part ownership or security interest, shall be entitled to delivery of the vehicle if such person:

(i) redeems the ownership interest which was subject to forfeiture by payment to the city of the value thereof; and

(ii) pays the reasonable expenses of the safekeeping of the vehicle between the time of seizure and such redemption; and

(iii) asserts a claim within thirty days after judicial determination of forfeiture.

Notwithstanding the foregoing provisions establishment of a claim shall not entitle such person to delivery of the vehicle if the city establishes that the unlawful dumping for which the vehicle was seized was expressly or impliedly permitted by such person.

f. Rewards. (1) Where a notice of violation, appearance ticket or summons is issued for a violation of subdivision a of this section based upon a sworn statement by one or more individuals and where the commissioner determines, in the exercise of his or her discretion, that such sworn statement, either alone or in conjunction with

testimony at a civil or criminal proceeding or in a proceeding before the environmental control board, results in the conviction of or the imposition of a civil penalty upon any person for a violation of subdivision a of this section, the commissioner shall offer as a reward to such individual or individuals an amount that, in the aggregate, is equal to:

(i) fifty percent of any fine or civil penalty collected; or

(ii) five hundred dollars when a conviction is obtained, but no fine or civil penalty is imposed.

(2) Where a notice of violation, appearance ticket or summons is issued for a violation of subdivision a of this section based upon information furnished by an individual or individuals and where the commissioner determines, in the exercise of his or her discretion, that such information, in conjunction with enforcement activity conducted by the department or another governmental entity, results in the conviction of or the imposition of a civil penalty upon any person for a violation of subdivision a of this section, the commissioner shall offer as a reward to such individual or individuals an amount that, in the aggregate, is:

(i) up to fifty percent of any fine or civil penalty collected; or

(ii) up to five hundred dollars when a conviction is obtained, but no fine or civil penalty is imposed.

In determining the amount of the reward, the commissioner shall consider factors that include, but are not limited to: (a) the quantity and type of the material dumped, deposited or otherwise disposed of; (b) the specificity of the information provided, including, but not limited to, the license plate number, make or model or other description of the dump truck or other vehicle alleged to have been used and the location, date or time of the alleged violation; (c) whether the information provided by the individual or individuals identified one or more violations of subdivision a of this section; and (d) whether the department has knowledge that violations of subdivision a of this section have previously occurred at that location.

(3) No peace officer, employee of the department or of the environmental control board, or employee of any governmental entity that, in conjunction with the department, conducts enforcement activity relating to a violation of subdivision a of this section shall be entitled to obtain the benefit of any such reward or obtain the benefit of such reward when acting in the discharge of his or her official duties.

g. In addition to the foregoing penalties the offender shall be required to clear and clean the area upon which the offender dumped unlawfully within ten days after conviction thereof. In the event the offender fails to clear and clean the area within such time such clearing and cleaning may be done by the department or under the direction of the department by a private contractor and the cost of same shall be billed to the offender. In the event that the department has cleaned or cleared the area, or has caused the area to be cleaned or cleared by a private contractor prior to the offender's conviction, the offender shall be responsible for the cost of such clearing and or cleaning. Payment by such offender when required by this subdivision shall be made within ten days of demand by the department.

h. The commissioner shall post a sign in any area where the commissioner deems appropriate because of instances of illegal dumping. Such sign shall state the penalties for illegal dumping and the reward provisions therein.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended L.L. 29/1995 § 1, eff. Apr. 21, 1995.

Subd. c amended chap 500/1999 § 2, eff. Jan. 26, 2000.

Subd. c amended L.L. 29/1995 § 1, eff. Apr. 21, 1995.

Subd. d amended chap 500/1999 § 2, eff. Jan. 26, 2000.

Sub e amended LL 58/1985 § 2

(Legislative findings, present penalties for dumping wastes insufficient,

LL 58/1985 § 1)

Subd. f repealed and added L.L. 32/1995 § 1, eff. Apr. 21, 1995.

Subd. f repealed and added L.L. 30/1988 § 1.

**DERIVATION**

Formerly § 755(2)-7.1 added LL 6/1968 § 1

Sub b amended LL 25/1975 § 1

Sub e relettered LL 25/1975 § 2

(formerly sub c)

Subs c, d added LL 25/1975 § 2

Sub c amended LL 17/1979 § 1

Sub e added LL 17/1979 § 2

Sub f added LL 17/1979 § 3

Sub g relettered and amended LL 17/1979 § 3

(formerly sub e)

Sub h relettered and amended LL 21/1979 § 1

(formerly sub g)

Sub g added LL 21/1979 § 1

Sub h added LL 76/1979 § 1

Sub i relettered and amended LL 76/1979 § 1

(formerly sub h)

Subs b, c, e amended LL 72/1984 § 1

**CASE NOTES**

¶ 1. Two dump trucks were seized by the city for violating antidumping provisions of § 16-119. Plaintiffs claim right to trucks as lienholders and city claims right under forfeiture provisions of § 16-119(e)(2). Forfeiture enables the public interest to be served. Additionally, preforfeiture release might interfere with city's right to any surplus in value in excess of the secured debt. Santora Equipment v. City of New York, 138 Misc. 2d 631, 524 N.Y.S.2d 663 (Sup. Ct. New York Co. 1988).

¶ 2. Van from which oil drums were illegally emptied onto street was impounded. Owners were charged and found guilty of unlawful dumping under § 16-119(a) and (c). It does not matter whether oil dumped was hazardous or toxic. Collateral estoppel will not bar forfeiture action. City of New York v. Assoc. Ambulance, 149 AD2d 336 [1989].

¶ 3. The City brought a forfeiture action by reason of respondents' illegal dumping activities. The court held that a track loader was a vehicle subject to forfeiture under the law. City of New York v. Ambrosino Construction Corp., 197 A.D.2d 427, 602 N.Y.S.2d 612 (1st Dept. 1993).

¶ 4. The inadvertent and premature sale of the subject vehicles prior to the trial court's determination of the forfeiture action, while divesting the trial court of its in rem jurisdiction over the subject vehicles, did not divest the trial court of its in personam jurisdiction over the defendant owner. Thus, while insufficient to fix the status of the property as to the rest of the world, such jurisdiction was sufficient to validly adjudicate the owner's interest in the vehicles pursuant to § 16-119(e)(2). City of New York v. East New York Wrecking Corp., 161 A.D.2d 489, 555 N.Y.S.2d 755 (1st Dept. 1990).



*NYC Administrative Code 16-120*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-120 Receptacles for the removal of waste material.

a. The owner, lessee, agent, occupant or other person who manages or controls a building or dwelling shall provide and maintain in accordance with this section separate receptacles for the deposit of incinerator residue and ashes; refuse, and liquid waste. The receptacles shall be provided for the exclusive use of each building or dwelling and shall be of sufficient size and number to contain the wastes accumulated in such building or dwelling during a period of seventy-two hours. The receptacles shall be made of metal or other material of a grade and type acceptable to the department, the department of health and mental hygiene and the department of housing preservation and development. Receptacles used for liquid waste shall be constructed so as to hold their contents without leakage. Metal containers shall be provided with tight fitting metal covers.

b. Ashes and incinerators residue, refuse and liquid wastes shall be separated and placed into separate receptacles. No receptacle when filled shall weigh more than one hundred pounds.

c. Incinerator, residue, ashes, refuse and liquid waste shall be stored in the building or dwelling or at the rear of the building or dwelling as may be required by the department of health or the department of housing preservation and development until time for removal and kept in tightly covered metal receptacles or containers made of other materials of a type and grade acceptable to the department of sanitation, department of health, and the department of housing preservation and development. After the contents have been removed by the department of sanitation or other collection agency any receptacles remaining shall be removed from the front of the building or dwelling before 9:00 p.m. on the day of collection, or if such collection occurs after 4:00 p.m., then before 9:00 a.m. on the day following collection. The receptacles shall at all times be kept covered or closed and kept in a manner satisfactory to the department of sanitation, the department of health, and in the case of residential premises, the department of housing preservation and

development. No receptacles, refuse, incinerator residue or ashes, or liquid waste shall be kept so as to create a nuisance. Yard sweepings, hedge cuttings, grass, leaves, earth, stone or bricks shall not be mixed with household wastes.

d. Newspapers, wrapping paper or other light refuse or rubbish which is likely to be blown or scattered about the streets shall be securely bundled, tied or packed before being placed for collection. Such material shall be kept and placed for collection in the same manner as the receptacles.

e. No person shall deposit household or commercial refuse or liquid wastes in a public litter basket placed on the streets by the department or any other person. There shall be a rebuttable presumption that the person whose name, or other identifying information, appears on any household or commercial refuse or liquid wastes deposited in such public litter basket violated this subdivision.

f. Any person violating the provisions of this section, except subdivision e, shall be liable for a civil penalty of not less than twenty-five nor more than one hundred dollars for the first violation, not less than one hundred dollars nor more than two hundred dollars for a second violation within any twelve-month period, and not less than two hundred dollars nor more than three hundred dollars for a third or subsequent violation with any twelve-month period. Any person violating the provisions of subdivision e of this section shall be liable for a civil penalty of not less than one hundred dollars nor more than three hundred dollars for the first violation, not less than two hundred fifty dollars nor more than three hundred fifty dollars for a second violation within any twelve-month period, and not less than three hundred fifty dollars nor more than four hundred dollars for a third or subsequent violation within any twelve month period.

g. In the instance where a notice of violation is issued for breach of the provisions of this section such process shall be returnable to the environmental control board, which shall have the power to impose the civil penalties provided in subdivision f of this section.

h. In the event that a person fails to answer such notice of violation within the time provided therefor by the environmental control board, that person shall become liable for additional penalties. The additional penalties shall not exceed three hundred dollars for each violation.

i. Nothing herein contained shall be construed to supersede, substitute for or abrogate the provisions of article one hundred fifty-three of the health code or article five of subchapter two of chapter two of title twenty-seven of the code.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended L.L. 22/2002 § 16, eff. July 29, 2002 and deemed

in effect as of July 1, 2002.

Subd. c amended L.L. 6/2006 § 1, eff. May 11, 2006.

Subd. c amended L.L. 22/2002 § 16, eff. July 29, 2002 and deemed in

effect as of July 1, 2002.

Subd. e amended L.L. 42/2007 § 1, eff. Oct. 5, 2007.

Subd. f amended L.L. 42/2007 § 1, eff. Oct. 5, 2007.

Subd. f amended L.L. 1/2003 § 3, eff. Jan. 7, 2003.

Subd. h amended L.L. 1/2003 § 4, eff. Jan. 7, 2003.

**DERIVATION**

Formerly § 755(2)-7.2 added LL 55/1979 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 16-120.1*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-120.1 Storage, treatment, transportation and disposal of regulated medical waste, other medical waste and regulated household waste.

a. It shall be unlawful for any person to store, treat, transport or dispose of or to cause to be stored, treated, transported or disposed of any regulated medical waste or other medical waste except in the manner prescribed in the public health law, the environmental conservation law, or any rules or regulations promulgated pursuant thereto and the New York city health code and any regulations of the city department of health and the city department of sanitation. In addition, it shall be unlawful for any person to dispose of or to cause to be disposed of any regulated medical waste within the solid waste disposal system of the city, provided that the department may accept at its incinerators classes of regulated medical waste that were accepted at such incinerators as of June twenty-first, nineteen hundred eighty-nine if it has obtained all necessary authorizations required by law to incinerate such classes of regulated medical waste. In addition, it shall be unlawful to dispose of or to cause to be disposed of any laboratory waste or surgical waste as defined in this section, or classes of regulated medical waste that were accepted at department incinerators as of June twenty-first, nineteen hundred eighty-nine, whether or not such laboratory waste, sugical waste or other classes of regulated medical waste have been autoclaved or subjected to a similar decontamination technique other than incineration, in the landfills of the city.

b. For purposes of this section, the following terms shall have the following meanings:

1. Regulated medical waste means any waste that is generated in the diagnosis, treatment or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, when listed as follows, provided, however, that regulated medical waste shall not include any hazardous waste identified or listed pursuant to section 27-0903 of the environmental conservation law or any household waste as defined in regulations

promulgated under such section:

i. cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;

ii. human pathological wastes, including tissues, organs, body parts and body fluids that are removed during surgery or autopsy or other medical procedures, and specimens of body fluids and their containers;

iii. waste human blood and products of blood, including serum, plasma, and other blood components and their containers;

iv. sharps that have been used in animal or human patient care or in medical, research, or industrial laboratories, including hypodermic needles, syringes, pasteur pipettes, broken glassware and scalpel blades, blood vials, test tubes, needles with attached tubing, and such unused sharps that have been discarded;

v. contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals;

vi. wastes from surgery or autopsy that were in contact with infectious agents, including soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, and surgical gloves;

vii. laboratory wastes from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that were in contact with infectious agents, including slides and cover slips, disposable gloves, laboratory coats and aprons;

viii. dialysis wastes that were in contact with the blood of patients undergoing hemodialysis or renal dialysis, including contaminated disposable equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons and laboratory coats;

ix. biological waste and discarded materials contaminated with blood, excretion, exudates or secretion from human beings or animals who are isolated to protect others from highly communicable diseases;

x. any other waste material designated by the administrator of the United States environmental protection agency as a regulated medical waste under the provisions of the medical waste tracking act of 1988, 42 U.S.C. § 6992 et seq., and the regulations promulgated pursuant thereto; and

xi. any other waste material included in the list of regulated medical wastes established in regulations promulgated by the state commissioner of environmental conservation pursuant to section 27-1502 of the environmental conservation law.

For purposes of this paragraph, "infectious agents" shall be limited to those organisms that cause disease or an adverse health impact to humans.

2. Laboratory waste means all matter that is discarded from clinical, pathological or research laboratory areas at which activities are required to be conducted or supervised by persons licensed by the city or state to provide health, medical, pharmaceutical or laboratory services.

3. Other medical waste means laboratory waste and surgical waste as defined in paragraphs two and six of this subdivision.

4. Person means any individual, partnership, company, corporation, association, firm, organization, or any other

group of individuals, or any officer or employee or agent thereof, provided that person shall not mean any individual who generates regulated household waste, and provided further that where a person authorized by law to transport regulated medical waste transports waste pursuant to an agreement with a generator of regulated medical waste or other medical waste, such person shall not be considered an agent of such generator for purposes of this paragraph.

5. Regulated household waste means any item that may cause punctures or cuts that is used in the administration of medication and is disposed of with residential solid waste, including but not limited to intravenous tubing and syringes with needles attached. Regulated household waste shall not include such items generated by persons licensed by the city or state to provide health, medical, pharmaceutical or laboratory services at facilities where such services are performed, but shall include any such items generated in the course of home health care.

6. Surgical waste means all materials discarded from surgical procedures and includes, but is not limited to, disposable gowns, shoe covers, masks, headcovers, gloves and sponges.

c. No solid waste of any person required to be licensed by the city or state to provide health, medical, pharmaceutical or laboratory services shall be collected or received by the department for disposal unless such person has executed a certification that to the best of his or her knowledge or belief such waste does not contain any material for which such disposal is unlawful.

d. The commissioner in conjunction with the commissioner of health and mental hygiene shall promulgate and implement regulations, consistent with the laws of this state, governing the safe disposal of regulated household waste. Any violation of such regulations shall be punishable only by a civil penalty of not less than fifty dollars nor more than two hundred fifty dollars.

e. Any person who generates any quantity of regulated medical waste shall file with the commissioner a copy of any annual reports or additional reports required to be submitted by such person to the commissioner of environmental conservation pursuant to paragraph d of subdivision one of section 27-1510 of the environmental conservation law or paragraph (d) of subdivision two of section 1389-bb of the public health law. Such reports shall be filed with the commissioner within fifteen days of submission to the commissioner of environmental conservation.

f. Any person who generates regulated medical waste or other medical waste shall file with the department a "solid waste removal plan." Such plan shall include at a minimum:

1. the name, address and telephone number of the person or facility generating such waste;

2. the name, address, telephone number and permit number(s) of the transporter of such waste;

3. the name, address and telephone number of the disposal site(s) for such waste;

4. an estimate of the quantity of such waste produced and disposed of monthly; and

5. any other information required by regulation of the commissioner or the commissioner of health and mental hygiene.

An amended plan shall be filed within fifteen days of the time when any information in a plan that is filed with the department changes, or when the commissioner or the commissioner of health requires by regulation additional information.

g. The commissioner of sanitation or health and mental hygiene or an authorized agent of such commissioner may enter upon public or private property for the purpose of conducting inspections or investigations necessary for the exercise of the powers or the performance of the duties of such commissioners pursuant to this section, including the inspection of documents or records relating to the storage, treatment, transportation or disposal of regulated medical

waste or other medical waste required to be maintained by local, state or federal law, provided that such commissioner or agent may not inspect records containing medical information privileged under the laws of this state without all authorizations required by such laws, and that such commissioner or agent shall make reasonable efforts not to interfere with patient care activities. Such entry may be made without a warrant during regular and usual business hours upon property used for nonresidential purposes, including but not limited to the provision of health, medical, pharmaceutical or laboratory services, provided that such use is related to the generation, storage or disposal of regulated medical waste, or at other times upon such property in response to any immediate threat to the health or safety of one or more individuals, or of the public, that arises from the generation, storage or disposal of regulated medical waste upon such property. Warrantless inspection or investigation pursuant to this subdivision shall extend only to: (i) waste storage areas; (ii) documents or records relating to storage, treatment, transportation or disposal of regulated medical waste, including documents or records required to be maintained by local, state or federal law; (iii) bags and containers for the disposal of regulated medical waste; (iv) documents or records identifying the number and origin of specimens of human tissues, organs and fluids that constitute regulated medical waste, other than records containing medical information privileged under the laws of this state; and (v) any other inspection or investigation necessary to respond to an immediate threat to the health or safety of one or more individuals, or of the public, arising from generation, storage or disposal of regulated medical waste upon such property. Refusal to permit entry pursuant to this subdivision, where the commissioner of sanitation or health and mental hygiene or an authorized agent of such commissioner has obtained a warrant for such entry or is authorized by this subdivision to inspect or investigate without a warrant, shall be a misdemeanor punishable by not more than thirty days imprisonment, or by a fine of not more than one hundred dollars or both.

h. 1. In addition to any other enforcement procedures authorized by law, the commissioner, with the written approval of the commissioner of health and mental hygiene, shall be authorized to order in writing that premises on which activity in violation of this section is occurring be closed if the commissioner finds that continuing activity on such premises would result in generation, storage or disposal of regulated medical waste or other medical waste in a manner posing an imminent threat to the public health or safety, provided that no facility licensed, permitted or certificated pursuant to article twenty-eight of the public health law or part thereof or facility providing inpatient services or part thereof may be closed pursuant to this subdivision. Such premises may be opened at any time by any person otherwise lawfully entitled to enter such premises in response to an immediate threat to the health or safety of one or more individuals, or of the public. For the purpose of this subdivision, the determination whether an imminent threat to the public health or safety exists shall be based on factors that include but are not limited to: (i) the quantity of regulated medical waste, the generation, storage or disposal of which is in violation of this section; (ii) the types of such regulated medical waste; and (iii) the risk of harm to the public or the environment.

2. Issuance of an order pursuant to this subdivision may occur prior to a hearing and determination whether a violation of the provisions of this section has occurred and whether there exists an imminent threat to the public health or safety, or during such hearing, or up to two business days after the conclusion of such hearing, provided that: (i) where such issuance occurs prior to such hearing and determination, such hearing shall be held within two business days of such issuance and such determination shall be rendered within twenty-four hours of the conclusion of such hearing; (ii) where such issuance occurs during such hearing, such determination shall be rendered within twenty-four hours of the conclusion of such hearing; and (iii) where such issuance occurs after the conclusion of such hearing but prior to such determination, such determination shall be made within twenty-four hours of such issuance. Any order issued pursuant to this subdivision may continue in effect after a finding of violation and imminent threat until the commissioner permits such premises to be opened pursuant to paragraph five of this subdivision.

3. Orders of the commissioner issued pursuant to this subdivision shall be posted at the premises on which the activity in violation of this subdivision has occurred.

4. Immediately upon the posting of an order issued pursuant to this subdivision, officers and employees of the department and officers of the New York city police department shall be authorized to act upon and enforce such order.

5. Where premises have been closed by order of the commissioner issued pursuant to this subdivision, the owner or lessee of such premises, or the authorized agent thereof, may at any time submit to the commissioner: (i) a written affirmation that such owner or lessee is in compliance with the provisions of this section and will maintain such compliance; and (ii) where such premises are used in the generation of waste for transport of which a legally authorized regulated medical waste transporter is required by law, proof of legal authorization to transport such waste or proof of agreement with a legally authorized regulated medical waste transporter to have such waste transported, or proof that such waste is lawfully treated on such premises so as not to require such authorization or agreement. Upon receipt of such affirmation and proof, the commissioner shall within one business day either permit such premises to be opened or issue a written determination that such owner or lessee is not in compliance with or has not instituted procedures sufficient to remain in compliance with the provisions of this section, or that such proof of legal authorization or agreement is insufficient.

6. It shall be a misdemeanor for any person or other individual to open or cause to be opened any premises closed in accordance with an order of the commissioner, except in response to an immediate threat to the health or safety of one or more individuals, or of the public.

i. 1. For the purpose of this subdivision, the following terms shall have the following meanings:

i. "Abandonment" means the intentional relinquishment or forsaking of all possession or control of any substance.

ii. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any substance so that such substance or any related constituent thereof may enter the environment, or the abandonment of any substance.

iii. "Environment" means any water, water vapor, any land including land surface or subsurface air, fish, wildlife, biota and all other natural resources.

iv. "Intentionally, knowingly, recklessly and criminal negligence" shall have the same meanings as defined in section 15.05 of the penal law.

2. i. Any person who violates any provisions of this section other than subdivision d shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine not to exceed five thousand dollars per day of violation, or by imprisonment for a term of not more than fifteen days, or by both such fine and imprisonment.

ii. Any person who intentionally, knowingly or recklessly violates any provisions of this section other than subdivision d shall be guilty of a misdemeanor, and upon conviction thereof, shall for a first conviction be punished by a fine not to exceed fifteen thousand dollars per day of violation or by imprisonment for a term of not more than ninety days, or both such fine and imprisonment. If the conviction is for an offense committed after a first conviction of such person under this subparagraph, within the preceding five years, punishment shall be by a fine not to exceed fifty thousand dollars per day of violation, or by imprisonment for not more than one year or by both such fine and imprisonment.

3. Any person who with criminal negligence engages in conduct in violation of this section other than subdivision d which causes the release to the environment of regulated medical waste shall be guilty of a misdemeanor punishable by a fine of not more than fifteen thousand dollars or by imprisonment for not more than ninety days or by both such fine and imprisonment.

4. Any person who recklessly or knowingly engages in conduct in violation of this section other than subdivision d which causes the release to the environment of regulated medical waste shall be guilty of a misdemeanor punishable by a fine of not more than fifty thousand dollars or by imprisonment for not more than one year or both such fine and imprisonment.

5. In addition to any other penalties provided under paragraph one of this subdivision or any other provisions of law, any violation of the provisions of this section other than subdivision d shall be punishable by a civil penalty of not less than twenty-five hundred dollars nor more than ten thousand dollars for the first violation, not less than five thousand dollars nor more than ten thousand dollars for the second violation, and ten thousand dollars for the third and any subsequent violation. Civil penalties shall be recovered in a civil action brought in the name of the commissioner or in a proceeding before the environmental control board. For the purposes of this paragraph, each bag or container of solid waste with a capacity of not larger than one cubic yard shall constitute a separate violation of this section.

6. Notwithstanding paragraphs one, two, three, four and five of this subdivision, failure to file an annual or additional report pursuant to subdivision e of this section or failure to file a solid waste removal plan or an amended plan pursuant to subdivision f of this section shall be punishable only by a civil penalty of not less than fifty dollars nor more than two hundred fifty dollars if such report or plan is filed within thirty days of the filing deadlines set forth in such subdivisions.

7. Any affirmative defense available under title forty-four of article twenty-seven of the environmental conservation law shall be available in any prosecution or proceeding pursuant to this section that alleges a violation of title fifteen of article twenty-seven of the environmental conservation law or any rules or regulations promulgated pursuant thereto.

j. The commissioner shall promulgate and implement regulations providing that where an individual furnishes information that, in the opinion of the commissioner, results in a conviction or the imposition of a fine or civil penalty for a violation of any provision of this section, the commissioner shall offer as a reward to said individual, out of unexpended appropriations therefor:

i. fifty percent of any fine or penalty collected; or

ii. five hundred dollars when a prison sentence but no fine or civil penalty is imposed.

k. The commissioner shall suspend the use of the city's solid waste disposal system by any person licensed by the city or state to provide health, medical, pharmaceutical or laboratory services upon whom a notice of violation of this section has been served pending a hearing on and a finding as to liability for the violation. Such hearing shall be held within two business days after such suspension and a finding as to liability for the violation shall be made within twenty-four hours of the conclusion of such hearing. If a violation has been found, the commissioner shall continue such suspension for, in the case of a first occurrence, not less than one week, in the case of a second occurrence, committed within an eighteen month period, not less than one month and, in the case of a third and each subsequent occurrence, committed within an eighteen month period, not less than three months. In calculating such eighteen month period any period of suspension shall be excluded. For purposes of this subdivision any solid waste introduced into the solid waste disposal system of the city under one certification executed pursuant to subdivision c of this section shall constitute an occurrence.

l. In addition to the department, the department of health and mental hygiene shall enforce the provisions of this section, other than subdivisions h, j, and k of this section. This section shall not be construed to restrict in any manner the regulatory or enforcement authority conferred upon any agency of the city by any other provision of state or local law.

**HISTORICAL NOTE**

Section amended L.L. 75/1989 § 1

Section added (as 755(2)-7.3) LL 57/1985 § 1

(Section number assigned by the Legislative Bill Drafting Commission)

Sub a amended LL 90/1985 § 1

Subd. d amended L.L. 22/2002 § 17, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Subd. f par 5 amended L.L. 22/2002 § 17, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Subd. g amended L.L. 22/2002 § 17, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Subd. h par 1 amended L.L. 22/2002 § 17, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Subd. i par 2 subpar i amended L.L. 76/1995 § 11, eff. Sept. 28, 1995. Amendment expires and is repealed Mar. 1, 1996, subpar reverts to previous language.

Subd. l amended L.L. 22/2002 § 17, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

**CASE NOTES**

¶ 1. Enforcement of this section does not include "administrative search" of randomly selected laboratories which is aimed at insuring compliance. The scope of the order allowing inspection and seizure of all records is too broad, going beyond the regulation goals. "Administrative inspections" are allowed in the code, e.g., § 27-2123, but not in this case. City of NY (Anonymous Lab) 141 Misc. 2d 756 [1988].

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-121*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-121 Obstructing tracks.

a. It shall be unlawful for any person to throw, place or pile, or assist others in throwing, placing or piling any snow, ice or other impediment or obstruction to the running of cars upon the tracks of any railroad company, or in the space between the rails thereof or in the space between the tracks and a line distant three feet outside of such rails or any ashes, garbage, paper, dust, wood, metal or other rubbish, refuse, junk or other offensive material whatsoever on any part of any railroad right of way.

b. Violations. Any person who shall violate any provision of this section, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or imprisonment for ninety days or both.

**DERIVATION**

Formerly § 755(3)-5.0 added chap 929/1937 § 1

Amended LL 172/1939 § 11

Amended LL 9/1976 § 1

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-122*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-122 Vehicles and other movable property.

a. Legislative intent. The need for this legislation is indicated by the ever increasing number of abandoned cars in the city of New York. The purpose of this section is to punish those persons who abandon and/or remove component parts of motor vehicles in public streets. It is not the intent to prohibit or preclude any person in lawful possession of a vehicle from making lawful repairs or removing any component part for the purpose of making such lawful repairs to a motor vehicle on a public street.

b. It shall be unlawful for any person, such person's agent or employee to leave, or to suffer or permit to be left, any box, barrel, bale of merchandise or other movable property whether or not owned by such person, upon any marginal or public street or any public place, or to erect or cause to be erected thereon any shed, building or other obstruction.

c. It shall be unlawful for any person, such person's agent or employee to leave, or suffer or permit to be left, any motor vehicle, not otherwise lawfully parked, whether or not owned by such person, in any marginal or public street, or any public place. The owner or driver of a disabled vehicle shall be allowed a reasonable time, not exceeding three hours, in which to remove said vehicle.

d. Any person convicted of a violation of the provisions of subdivision b or c of this section shall be punished by a fine of not less than fifty dollars nor more than two hundred fifty dollars, imprisonment for not more than ten days, or both.

e. It shall be unlawful for any person, such person's agent or employee, to abandon, or to suffer or permit to be

abandoned any motor vehicle, whether or not owned by such person, in any marginal or public street, or any public place.

f. It shall be unlawful for any person to dismantle, or to remove any component part of any motor vehicle in any marginal or public street or any public area.

g. Any person convicted of a violation of the provisions of subdivision e or f of this section shall be punished by a fine of not less than one hundred dollars, or imprisonment for not more than one year.

h. Any person violating the provisions of subdivision b or c of this section shall be liable and responsible for a civil penalty of not less than twenty-five dollars nor more than one hundred dollars.

i. In the instance where the notice of violation, appearance ticket or summons is issued for breach of the provisions of this section and sets forth thereon civil penalties only, such process shall be returnable to the environmental control board, which shall have the power to impose the civil penalties hereinabove provided in subdivision h of this section.

j. In the event that a violator fails to answer such notice of violation, appearance ticket or summons within the time provided therefor by the rules and regulations of the environmental control board, he or she shall become liable for additional penalties. The additional penalties shall not exceed fifty dollars for each violation.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 755(4)-2.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 560

(formerly § 755(2)-4.0)

Amended LL 28/1969 § 1

Sub g amended LL 57/1970 § 1

Sub d amended LL 10/1977 § 1

Subs h, i, j added LL 10/1977 § 2

Title amended LL 10/1977 § 3

**CASE NOTES**

¶ 1. A homeless man, who was arrested in a public park while sleeping in a makeshift tube, which had been fashioned from a group of cardboard boxes. Although the District Attorney decided not to prosecute the case, the man brought a challenge to the statute, claiming that it was constitutionally vague. The court noted that where a challenge is based on vagueness, a two-part test is applied. First, the statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited. Second, the law must provide explicit standards for those who apply it (i.e. in this case, the police). The law must be sufficiently clear to provide notice to potential wrongdoers that the conduct in which they are engaged has the potential for civil or criminal liability. In this case, the court upheld the statute, finding that it was not constitutionally vague. Where, as here, a person's conduct fell clearly within the prohibitions of the

statute, he did not have standing to allege that the law was vague as to types of conduct which were not involved in his case. The court also rejected plaintiff's claim that the statute improperly gave the police unfettered discretion as to enforcement, pointing out that the law contained specific guidelines governing discretion (i.e. that the police were to remove boxes which were obstructing a public park). Betancourt v. Giuliani, N.Y.L.J., Jan. 3, 2001, page 30, col. 1 (U.S.Dist. Ct., S.D.N.Y.).

¶ 2. A City ordinance prohibited people from leaving bicycles unattended in a public street. A group of advocates for bicycle transportation planned to stage a mass bicycle ride. When City officials, supposedly concerned about traffic congestion, threatened to seize unattended bicycles, the group sought an injunction against the practice. The court denied the application for an injunction. Although the court recognized that a mass bicycle ride to generate support for the group's position was a First Amendment activity, the group could not demonstrate that the threatened action would have a chilling effect on potential participants in the bicycle ride, since evidence showed that the bicycle riders intended to ride despite the threat. Bray v. City of New York, 346 F.Supp.2d 480 (S.D.N.Y. 2004).

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-123*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-123 Removal of snow, ice and dirt from sidewalks; property owners' duties.

a. Every owner, lessee, tenant, occupant, or other person, having charge of any building or lot of ground in the city, abutting upon any street where the sidewalk is paved, shall, within four hours after the snow ceases to fall, or after the deposit of any dirt or other material upon such sidewalk, remove the snow or ice, dirt, or other material from the sidewalk and gutter, the time between nine post meridian and seven ante meridian not being included in the above period of four hours. Such removal shall be made before the removal of snow or ice from the roadway by the commissioner or subject to the regulations of such commissioner. In the boroughs of Queens and Staten Island, any owner, lessee, tenant or occupant or other person who has charge of any ground abutting upon any paved street or public place, for a linear distance of five hundred feet or more, shall be considered to have complied with this section, if such person shall have begun to remove the snow or ice from the sidewalk and gutter before the expiration of such four hours and shall continue and complete such removal within a reasonable time.

b. In case the snow and ice on the sidewalk shall be frozen so hard that it cannot be removed without injury to the pavement, the owner, lessee, tenant, occupant or other person having charge of any building or lot of ground as aforesaid, may, within the time specified in the preceding subdivision, cause the sidewalk abutting on such premises to be strewed with ashes, sand, sawdust, or some similar suitable material, and shall, as soon thereafter as the weather shall permit, thoroughly clean such sidewalks.

c. Any person violating any provision of, or regulation adopted pursuant to, subdivisions a and b of this section shall be punished by a fine of not less than ten dollars nor more than one hundred fifty dollars, imprisonment for not more than ten days, or both.

d. Whenever any owner, lessee, tenant, occupant, or other person having charge of any building or lot of ground, abutting upon any street or public place where the sidewalk is paved, shall fail to comply with the provisions of this section, the commissioner may cause such removal to be made.

e. The expense of such removal as to each particular lot of ground shall be ascertained and certified by the commissioner to the comptroller, who shall pay the same in the same manner as the expense of removing snow from the streets is paid. Upon the payment of such expense, the comptroller shall deliver a certificate thereof to the council and the amount of such expense shall be added to and made to form a part of the annual taxes of the next ensuing fiscal year against such property, and the same shall be collected in and with and as part of the annual taxes for such fiscal year. The corporation counsel is directed and may sue for and recover the amount of such expense.

f. This section shall not be regarded as interfering with the owner of any lots throwing into the roadway of the streets any snow or ice which may be removed from the sidewalk or gutter directly in front of such lot.

g. The term "lot" as used in this section shall include a space not to exceed twenty-five feet in width fronting the street upon which the violation is charged to have been permitted, committed or omitted.

h. Any person violating the provisions of subdivisions (a) or (b) of this section shall be liable and responsible for a civil penalty of not less than ten dollars nor more than one hundred fifty dollars for the first violation, except that for a second violation of subdivision (a) or (b) within any twelve-month period such person shall be liable for a civil penalty of not less than one hundred fifty dollars nor more than two hundred fifty dollars and for a third or subsequent violation of subdivision (a) or (b) within any twelve-month period such person shall be liable for a civil penalty of not less than two hundred fifty dollars nor more than three hundred fifty dollars.

i. In the instance where the notice of violation, appearance ticket or summons is issued for breach of the provisions of this section and sets forth thereon civil penalties only, such process shall be returnable to the environmental control board, which shall have the power to impose the civil penalties hereinabove provided in subdivision h of this section.

j. In the event that a violator fails to answer such notice of violation, appearance ticket or summons within the time provided therefor by the rules and regulations of the environmental control board, he or she shall become liable for additional penalties. The additional penalties shall not exceed three hundred fifty dollars for each violation.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. h amended L.L. 1/2003 § 5, eff. Jan. 7, 2003.

Subd. j amended L.L. 1/2003 § 6, eff. Jan. 7, 2003.

**DERIVATION**

Formerly § 755(3)-2.0 added chap 929/1937 § 1

Sub c amended LL 101/1955 § 1

Sub c repealed and added LL 9/1977 § 1

Subs h, i, j added LL 9/1977 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where 96 hours had elapsed between the time the snow had ceased to fall and time when plaintiff fell on icy sidewalk in shopping section, and other sidewalks in the vicinity had been cleaned, jury was free to find that it was not impossible to have cleaned the sidewalk where plaintiff fell, even though the temperature had been below freezing except for six hours, particularly since it is a matter of common knowledge that snow and ice may be removed during freezing weather.-Rosenberg v. City of N.Y., 256 App. Div. 927, 9 N.Y.S. 2d 653 [1939], aff'd without opinion, 280 N.Y. 815, 21 N.E. 2d 877 [1939].

¶ 2. Court found that city did all that could reasonably be expected of it in discharging its snow removal obligation when snowfall preceding accident on sidewalk on December 16, which was described as a blizzard began on December 11th and ended on December 12th about 6 or 7 P.M. leaving seventeen inches of snow on the ground and the temperature was well below freezing from December 11th until part of December 15th and on December 15th and 16th until five hours before accident there was a mixture of snow, sleet and rain. City had discretion to choose to clear certain roadways and highways in preference to others and if as a result of such discretion it elected to clear the streets before the sidewalks such choice cannot be a basis for a claim of negligence.-Keely v. City of N.Y., 157 (44) N.Y.L.J. (3-7-67) 20, Col. 4 F.

¶ 3. Plaintiff who fell when walking on pathway that had been shoveled free of snow but was covered with ice described as lumpy could not recover against the City where it was not shown that City had not done all that was reasonably possible to clear streets of snow when less than forty-eight hours had elapsed since cessation of last snowfall.-Laufer v. City of N.Y., 159 (5) N.Y.L.J. (1-8-68) 19, Col. 6 F.

¶ 4. Evidence that other sidewalks in the vicinity had been cleaned, and that 67 hours had elapsed between time when the snow had ceased to fall and time when plaintiff fell on icy sidewalk in shopping district, **held** to sustain jury's finding for plaintiff in action against City to recover for injuries sustained in the fall.-Thiel v. City of N.Y., 256 App. Div. 929, 9 N.Y.S. 2d 655 [1939].

¶ 5. Recovery for personal injuries sustained in fall upon a snow and ice covered sidewalk $36^{1}/_{2}$ hours after cessation of a two-day snowstorm, was denied on ground no actionable negligence on part of the City was shown.-Goldman v. City of N.Y., 264 App. Div. 740, 34 N.Y.S. 2d 428 [1942].

¶ 6. In action to recover for injuries sustained by plaintiff by reason of a fall upon an icy sidewalk, wherein the case was presented to the jury on theory the City would not be responsible for plaintiff's fall unless it occurred more than 48 hours after the cessation of the snowfall, the prima facie correctness of the weather bureau's meteorological survey showing that more than 48 hours had not elapsed after the snow ceased to fall and before plaintiff fell, was not overcome by any substantial evidence to the contrary.-Kwiatkowski v. City of N.Y., 268 App. Div. 1047, 52 N.Y.S. 2d 238 [1945].

¶ 7. Plaintiff was not entitled to recover against City of New York for injuries sustained in fall on snow, where less than 48 hours had elapsed between time the last snow had fallen and time when plaintiff met with her accident.-Harper v. City of New York, 63 N.Y.S. 2d 418 [1946].

¶ 8. Plaintiff might not recover from City for injuries sustained when she slipped and fell on snow and ice covering stairway connecting on elevated railroad station to the public sidewalk, where snow had fallen before and after the accident but had stopped during the period of 45 minutes immediately prior to the accident, and the temperature was below 30 degrees and there was considerable wind. Under the prevailing weather conditions, the City was not charged with the duty of removing the snow and ice from the steps by the time the accident occurred.-Greenstein v. New York City, 273 App. Div. 869, 76 N.Y.S. 2d 870 [1948].

¶ 9. Plaintiff who sustained injuries from fall upon icy sidewalk in front of church, **held** entitled to recover against City on basis of proof that the snow and ice had not been removed in front of the church for ten days after the snowfall, although the City contended that the accident was due to a subsequent snowfall which occurred one day before the

accident.-Cantone v. City of N.Y., 273 App. Div. 864, 76 N.Y.S. 2d 623 [1948].

¶ 10. The plaintiff's fall on ice on sidewalk in front of a vacant lot occurred $45^{3}/_{4}$ hours after cessation of a snowfall, which was less than the 48-hour test set by **Hawkins** v. **Mayor** (54 App. Div. 258), **held** not to require setting aside of verdict for plaintiff. In the instant case the abutting owner of the lot was the City Board of Transportation; there was a policeman near the premises who saw the condition complained of for two days before the accident; and the rule established in the **Hawkins** case was simply a rule of reasonable notice, and $45^{3}/_{4}$ hours in 1944 would easily be equivalent to 48 hours in 1900, the date of the **Hawkins** decision, with the greater facilities now available to clear the streets.-Casal v. City of N.Y., 190 Misc. 605, 75 N.Y.S. 2d 118 [1947], aff'd, 85 N.Y.S. 2d 914 [1948].

¶ 11. In action against City to recover for injuries sustained as result of fall occasioned by snow and ice upon a sidewalk, a judgment for the City was reversed and a new trial granted, on ground plaintiff had established a prima facie case.-Harris v. City of N.Y., 275 App. Div. 673, 86 N.Y.S. 2d 403 [1949].

¶ 12. Elapse of 60 hours between termination of record breaking snowstorm and plaintiff's fall on snow and ice on sidewalk abutting a vacant lot, **held,** as a matter of law, not sufficient time under the circumstances to sustain a verdict finding negligence on part of the City in failing to remove the snow and ice from the particular sidewalk. The snowfall was the greatest for any 24-hour period in the history of the weather bureau, the city had mobilized a huge force of employees and equipment to remove the snow, and the police officer on the beat had directed all property owners whom he could contact to clear the snow from their sidewalks, although he had been unsuccessful in locating the owner of the vacant lot.-Yonki v. City of New York, 276 App. Div. 407, 95 N.Y.S. 2d 80 [1950].

¶ 13. Plaintiff who sustained injuries on December 30, 1947, when she slipped on an accumulation of snow and ice on sidewalk, **held** not entitled to recover from the City, in view of the evidence that the accident had occurred less than 90 hours after termination of a record-breaking blizzard, that during the 90 hours the temperature was above freezing for only six hours, and that every effort had been made by the City to clear the roadways and sidewalks.-Rapoport v. City of N.Y., 281 App. Div. 33, 117 N.Y.S. 2d 408 [1952], aff'd, 306 N.Y. 636, 116 N.E. 2d 244 [1953].

¶ 14. Plaintiff, who sustained injuries from fall on snow and ice on sidewalk on January 25, 1948, **held** not to have established right of recovery against City, in view of fact that there had been an unprecedented 26-inch fall of snow on December 26, that snow fell on many days in January, and that it was actually snowing when plaintiff fell. Even if it were assumed the City was negligent in failing to remove the snow and ice from the storm of December 26, it was just as probable that plaintiff was caused to fall by the snow and as a result of falling on ice and snow.-Reggio v. City of N.Y., 129 (8) N.Y.L.J. (1-13-53) 126, Col. 2 M.

¶ 15. Plaintiff who sustained injuries when on February 11, 1948, she slipped on ice on sidewalk, **held** not entitled to recover from City, in view of evidence as to the record snow storm of December 26 and 27, and the snowy and cold weather subsequent thereto.-Friedman v. City of N.Y., 129 (6) N.Y.L.J. (1-9-53) 93, Col. 2 T. To similar effect, see Smith v. City of N.Y., 129 (8) N.Y.L.J. (1-13-53) 126, Col. 2 F (Sup., Kings, Stoddart, J.)

¶ 16. Plaintiff **held** not entitled to recover from City for injuries sustained in front of certain premises on January 1, 1948, at 4 P.M. where it appeared that on December 26 the City had experienced the worst snow storm in recorded history, and that from the time of the storm up to the time of the accident the City was engaged night and day with thousands of men and trucks in the task of snow removal.-Sherman v. City of N.Y., 128 (118) N.Y.L.J. (12-19-52) 1550, Col. 5 F.

¶ 17. City of New York **held** liable to plaintiff for injuries sustained in fall on an accumulation of snow on sidewalk, where the snow storm had abated five and a half days prior to the accident and the entire sidewalk had been cleared of snow except for the portion lying in front of the vacant lot in question.-Smith v. City of N.Y. 282 App. Div. 495, 125 N.Y.S. 2d 123 [1953], aff'd, 307 N.Y. 843, 122 N.E. 2d 335 [1954].

¶ 18. City of New York **held** liable to pedestrian injured in fall on slippery sidewalk where the accident occurred sixteen days after the epochal snowfall of December 26, 1947 and during this period the City had not requested the owner to remove the snow from its abutting walk, nor had the City done so itself.-Slevin v. City of N.Y., 122 N.Y.S. 2d 228 [1953].

¶ 19. Plaintiff **held** not entitled to recover for injuries sustained in fall on sidewalk covered with ice and snow, where the fall occurred nine and one-half days after termination of the snowstorm of December 26 and 27, 1947, during which 25.8 inches of snow fell, and about three days after the end of a glaze and ice storm on January 2, 1948. Temperatures were below freezing during most of the nine and one-half days, the City had exerted strenuous efforts through men and equipment to cope with the unusually severe snowstorm, and between the end of the snowstorm and the time of the accident 54 summonses were served on owners in the vicinity of the accident for snow and ice removal. Moreover, under the circumstances, the City might not be held liable for failure to enforce the ordinance requiring the property owner to remove the snow from the sidewalk.-Cockfield v. City of N.Y., 283 App. Div. 806, 128 N.Y.S. 2d 422 [1954].

¶ 20. The lapse of almost six days between the cessation of the blizzard of December 26-27, 1947 and plaintiff's fall on accumulation of snow and ice on the sidewalk on West 42nd Street, the rough and ridgy condition of the snow and ice and the prominence of the thoroughfare, **held** sufficient to sustain a finding that the City was negligent in failing to clean the sidewalk. Even if subsequent rain may have contributed to the hazard to some degree, the case was one where the accumulated snow might be found to be a concurrent cause.-Smith v. City of N.Y., 282 App. Div. 495, 125 N.Y.S. 2d 123 [1953], aff'd, 307 N.Y. 843, 122 N.E. 2d 335 [1954].

¶ 21. Pedestrian injured from fall on sidewalk covered with snow and ice **held** not to have established any actionable negligence on part of City, where the accident occurred on December 25, 1948, only five days after termination of a 16.7 inch snowfall.-Weisfeld v. City of N.Y., 282 App. Div. 739, 122 N.Y.S. 2d 426 [1953].

¶ 22. City **held** not liable for injuries sustained by plaintiff in fall on December 23, 1948, three and one-half days after termination of a snow storm during which 16.7 inches of snow fell.-Thompson v. Rose, 283 App. Div. 735, 127 N.Y.S. 2d 605 [1954].

¶ 23. Plaintiff **held** entitled to recover against City for injuries sustained in fall on icy sidewalk, where at the time of the accident there was an accumulation of ice due to a snowfall some nine days before and which had not been removed by the city.-Mangan v. City of N.Y., 130 (86) N.Y.L.J. (10-30-53) 946, Col. 7 F.

¶ 24. Verdict for plaintiff in action against City of New York to recover for injuries sustained in fall on sidewalk, was set aside on ground no negligence on part of the City was established, where the accident occurred on December 25, 1948, six days following the end of a 16.7 inch snowfall.-Love v. City of N.Y., 131 (65) N.Y.L.J. (4-6-54) 11, Col. 7 F.

¶ 25. Plaintiff who on December 18, 1951 fell on sidewalk which was covered with snow and was slippery and icy, **held** not entitled to damages from City, where there had been a snowfall four or five days before and intermittent rain and sleet on day of the accident.-Kopetz v. City of N.Y., 131 (101) N.Y.L.J. (5-26-54) 7, Col. 7 F.

¶ 26. Where evidence showed that after a 25" snow fall on December 26, 1947, the city had made no attempt to remove the snow or resulting ice accumulations from a sidewalk and that a dangerous condition existed from January 23rd, 1948 the city was liable for injuries sustained by plaintiff when he fell on February 7th, 1948. Contention that plaintiff had knowledge of condition and was therefore under a duty to leave the sidewalk or cross over to the other side and was guilty of contributory negligence for failing to do so was rejected.-Wasylshyn v. City of New York, 135 (52) N.Y.L.J. (3-16-56) 7, Col. 14.

¶ 27. The city was not liable for injuries sustained by plaintiff when she slipped on a snow covered sidewalk only $3^{1}/_{2}$ hours after the snow had stopped falling.-Cropper v. City of New York, 133 (104) N.Y.L.J. (5-27-55) 12, Col. 7 F.

¶ 28. City **held** not liable to plaintiff who fell on sidewalk, allegedly through the city's negligence in not removing snow, where official weather reports indicated that the only possible snowfall had been within the last four hours preceding the accident.-Cropper v. City of N.Y., 133 (104) N.Y.L.J. (5-27-55) 12, Col. 7 F.

¶ 29. City had no obligation to correct icy surfaces until a reasonable time after storm. Further, plaintiff was obliged to retrace her steps on seeing ice on the sidewalk unless prevented from so doing and where plaintiff gave no logical reason for continuing, the City **held** not liable in negligence.-Solomons v. City of N.Y., 113 (103) N.Y.L.J. (5-26-55) 13, Col. 8 T.

¶ 30. Plaintiff was not entitled to damages for injuries sustained by a fall on a crosswalk on January 8, 1948, where heavy snows had fallen on December 26, 1947, followed by inclement weather and the snow and ice were removed as expeditiously as possible.-Chaikofsky v. City of N.Y., 137 N.Y.S. 2d 454 [1954].

¶ 31. Judgment of Appellate Division affirming judgment entered on a verdict in favor of the City of New York in an action by husband and wife to recover for injuries sustained by wife when she slipped and fell on ice while crossing street intersection, **was affirmed** by Court of Appeals, without opinion. Plaintiff's evidence tended to show that the entire crosswalk was covered with dark, slippery, hard, thick, packed ice, full of ridges, bumpy and uneven, and that such condition had existed for $12^{1}/_{2}$ days, whereas the City's evidence tended to show that a severe snowstorm had been followed by freezing weather up to time of the accident, and that despite efforts to remove the snow the City had not had adequate time therefor.-Shyatt v. City of N.Y., 283 N.Y. 708, 28 N.E. 2d 719 [1940].

¶ 32. Where the City failed to remove a 9- to 13-inch snowfall from a crosswalk within 36 hours, it was not found negligent.-Goodman v. City of New York, 141 (83) N.Y.L.J. (4-30-59) 13, Col. 4 T.

¶ 33. Verdict for pedestrian for injuries sustained when, on a winter evening, she sought to cross street at intersection and slipped as she stepped on an embankment of snow and ice when she sought to walk around a truck which blocked the crosswalk, was set aside, since even if there was negligence in permitting the accumulation of snow and ice on the crosswalk for more than 40 days, the passage was strewn with ashes and sand and was safe for pedestrian traffic. Moreover the City's duty to clean crosswalks of snow and ice is less exacting than its obligation as to sidewalks, there was no duty on the City to clean the entire intersection, and the evidence as to the ownership of the vehicle by the City was highly speculative.-Morris v. City of N.Y., 129 (53) N.Y.L.J. (3-19-53) 920, Col. 1 F.

¶ 34. Where the complaint in plaintiff's action to recover for injuries suffered when he fell on an icy crosswalk alleged that the city improperly permitted ice to form and remain on the crosswalk the plaintiff, even after the expiration of the one year time limitation could amend his complaint to include an allegation that the icy condition was caused by the city's negligence in permitting its sewers to become clogged with the result that rain and melted snow could not drain but froze on the crosswalk. The city unsuccessfully contended that such an amendment would add a new and different cause of action and that it would be prejudiced by not having an opportunity within the statutory period to investigate the facts.-LiBasci v. City of New York, 152 N.Y.S. 2d 876 [1956].

¶ 35. Plaintiff who sustained injuries in a fall upon an icy sidewalk might not recover damages from the City, where there had been a severe three-day storm and subsequent freezing temperatures.-Leone v. City of N.Y., 264 App. Div. 743, 32 N.Y.S. 2d 431 [1942].

¶ 36. Child who sustained injuries when she slipped and fell on an icy crosswalk at a street intersection might not recover damages from the City, inasmuch as she failed to show actionable negligence of the City where nine days before the accident there was a heavy fall of snow and sleet, followed by rain and freezing weather.-Seltzer v. New York City, 292 N.Y. 560, 54 N.E. 2d 685 [1944].

¶ 37. Plaintiff failed to show actionable negligence on part of City, where it appeared that the snow and ice upon which she fell was the result of a heavy snowstorm occurring six days prior to the accident, followed by rain and freezing weather, except for short intervals, and also followed by a snowfall 24 to 48 hours before the accident.-Straub

v. City of New York, 267 App. Div. 834, 45 N.Y.S. 2d 850 [1944], aff'd, 295 N.Y. 612, 64 N.E. 2d 353 [1945].

¶ 38. Pedestrian who slipped and fell on icy crosswalk at street intersection was denied recovery against the City on ground the evidence failed to establish actionable negligence, where six days before the accident there had been a heavy fall of snow and sleet, followed by almost continuous freezing weather.-Fischetti v. City of New York, 269 App. Div. 948, 57 N.Y.S. 2d 913 [1945].

¶ 39. The setting apart by the City of New York of a safety zone in the street adjacent to street car lines, from which vehicles were excluded, did not carry with it, ipso facto, an increase in the duty of the City as to the removal of snow and ice, although where the safety zone is coterminous with a crosswalk, then the duty of the City as to crosswalks may be invoked, but even then the duty of the City as to keeping crosswalks free of unusual accumulations of snow or ice is somewhat less exacting than its duty as to sidewalks. Accordingly, a complaint in an action against the City for failure to keep free of ice a safety zone which was not co- terminous with a crosswalk, was dismissed on the ground that actionable negligence had not been established as against the City, but a motion to dismiss as to the co-defendant transit corporation was denied.-Roston v. Third Ave. Transit Corp., 184 Misc. 253, 53 N.Y.S. 2d 688 [1945].

¶ 40. A judgment for plaintiff for injuries sustained when he tripped and fell on snow and ice which accumulated during a storm on December 13, for the nonremoval of which the City was not negligent, was reversed on ground the jury could not by any possibility tell whether the prior icy condition contributed to plaintiff's fall, and the City was not negligent for nonremoval of snow and ice which accumulated during the storm of December 13.-Richman v. City of N.Y., 54 N.Y.S. 2d 148 [1945].

¶ 41. In action by wife to recover damages for injuries sustained by reason of a fall on a patch of ice formed as result of drippings of melted snow from an advertising sign which projected from a building over the sidewalk, evidence that the patch of ice existed on the sidewalk, otherwise clear, for 24 hours before the accident and that a similar condition obtained on two other occasions, was insufficient to show that the City had been afforded constructive notice of the alleged nuisance, and such alleged nuisance, so far as proved, was not of such notorious character as to charge the City with notice, and consequent liability.-McKay v. City of N.Y., 269 App. Div. 760, 54 N.Y.S. 2d 794 [1945].

¶ 42. In action by pedestrian to recover for injuries sustained in fall on icy sidewalk from which the snow had not been removed although the snowfall had ended 84 hours earlier, question whether 84 hours of constructive notice of the condition to the City constituted a reasonable time for the City to have removed the snow and ice, **held** properly left to the jury.-Gidius v. City of N.Y., 130 (96) N.Y.L.J. (11-17-53) 1123, Col. 6 F.

¶ 43. In removal of snow from roadway City was entitled to use modern equipment, including snow plows, and mere fact that some of the roadway snow was deposited on the outer portion of the wide sidewalk was not a sufficient basis for actionable negligence. Furthermore, there was no evidence of causal connection between piling of snow on outer edge of sidewalk and plaintiff's injuries from fall sustained at a time when it was still snowing.-Davis v. City of New York, 270 App. Div. 1047, 63 N.Y.S. 2d 95 [1946], aff'd without opinion, 296 N.Y. 869, 72 N.E. 2d 608 [1947].

¶ 44. City which, in clearing street of snow had cast the snow upon the edge of a 10-foot sidewalk on both sides of the street, where it remained for two weeks during a period of low temperatures, **held** not thereby rendered liable to the plaintiff who, instead of walking along the cleared portion of the sidewalk to the clean crosswalk at the corner to cross the street, had climbed over the mound of snow and ice at the curb and in so doing slipped while stepping off the mound to the sidewalk.-Borkowski v. City of N.Y., 276 App. Div. 770, 92 N.Y.S. 2d 545 [1949], aff'd without opinion, 301 N.Y. 770, 95 N.E. 2d 822 [1950].

¶ 45. City of New York, sued to recover for injuries sustained by plaintiff in fall on icy sidewalk, **held** not entitled to bring in as third party defendants abutting property owners who maintained a driveway over the sidewalk and who

allegedly were responsible for the dangerous condition which assertedly resulted from the unusual slope of the driveway and the accumulation of snow and ice which was made ridgy and uneven by the use of automobiles driven over the driveway. Even if the condition were dangerous there would have been no accident had the snow and ice been removed, and such duty to remove snow and ice devolved upon the City and no duty of indemnification rested upon the third party. The impleader of a joint tortfeasor on ground he is liable to the plaintiff jointly with defendant is excluded under the statute.-Mills v. City of N.Y., 189 Misc. 291, 71 N.Y.S. 2d 507 [1947].

¶ 46. The duty to clean the sidewalk imposed on an owner of real property by this section is enforceable only at the instance of the City. Hence, a plaintiff could not recover against an owner of real property where the plaintiff grounded his claim for negligence on the failure of the owner to clean the public sidewalk in front of his property after receiving notice that vegetable matter had been strewn thereon. The evidence showed that the condition was created by someone other than the owner.-Spector v. Puglisi, 9 Misc. 2d 250, 172 N.Y.S. 2d 524 [1957].

¶ 47. Where jury returned a verdict for $8,000 in favor of plaintiff and against both the property owner and the City of New York for injuries sustained by plaintiff when he slipped and fell on ice on sidewalks, the City of New York was entitled to indemnity against the codefendant property owner, since the condition must have been found to have been created by the affirmative act of the property owner who, having undertaken to remove the snow and ice, failed to do it in a reasonable and prudent manner.-Zysk v. City of N.Y., 76 N.Y.S. 2d 371 [1948], rev'd on ground there was no evidence that the property owner was an active tortfeasor in causing the piece of ice to be present on the sidewalk, and that the condition of the sidewalk did not constitute evidence of negligence on part of the City. 274 App. Div. 915, 83 N.Y.S. 2d 339 [1948], aff'd, 300 N.Y. 507, 89 N.E. 2d 244 [1949].

¶ 48. Where complaint alleged that owner and occupant of land abutting a sidewalk undertook to clear the sidewalk of snow and ice and in so attempting created uneven ridges of ice which they permitted to remain on the sidewalk, and also caused lumps and particles of ashes to be strewn in unequal and widely spaced patches thereby creating a dangerous condition, the defendant-City of New York would be permitted to amend its answer, which contained a cross-complaint against the owner of the premises, to include a cross-complaint against the occupant.-McDonnell v. City of N.Y., 119 (30) N.Y.L.J. (2-13-48) 564, Col. 6 F.

¶ 49. The primary duty to remove snow and ice is upon the City of New York, and though the abutting owner may also be liable to a plaintiff for any negligence on his part, he owed no duty to indemnify the City for any loss resulting from their joint tort.-Duvoisin v. City of N.Y., 120 (47) N.Y.L.J. (9-7-48) 375, Col. 2 M.

¶ 50. Where ice causing plaintiff to fall on sidewalk was formed solely from water which had accumulated as a result of the property owner's negligent maintenance of the house leader, and the City's negligence was that it failed to remove the ice so formed, the City was not in pari delicto with the owner, and hence was entitled to judgment over as against the property owner on its cross-complaint.-Selig v. Mastoloni, 283 App. Div. 741, 127 N.Y.S. 2d 724 [1954].

¶ 51. In determining whether reasonable care was used by City in clearing streets and walks after a snowfall, it was proper to consider the amount of snow required to be moved, the number of miles of sidewalk and roadway, the means and methods used to remove the snow and the condition of the sidewalks in the immediate vicinity.-Mathesen v. City of N.Y., 188 Misc. 1018, 72 N.Y.S. 2d 437 [1947].

¶ 52. Evidence that the three-inch snow storm, as result of rain and rising temperature, turned into one inch of slush which could readily have been removed within the 34-hour period from the time the rain ceased, **held** to establish negligence on part of the City. However, plaintiff, who was injured in fall on the icy sidewalk, was barred from recovery by his own contributory negligence, where he was a man with a limp and despite his knowledge of the icy condition and that other nearby surfaces were clear, had chosen to cross over the area of ice, ignoring the obvious danger and his own physical handicap.-Reid v. City of N.Y., 129 (122) N.Y.L.J. (6-24-53) 2111, Col. 5 T, aff'd, 283 A.D. 107, 131 N.Y.S. 2d 139 [1947].

¶ 53. Sixty-eight year-old plaintiff who slipped and fell on icy area of sidewalk in front of the Municipal Court Building, **held** entitled to recover from City, where a light fall of snow had been removed by flushing the sidewalk with water from a hose, and some of the water left on the sidewalk had thereafter frozen. In view of the freezing temperature at the time, removal of the snow through flushing was deemed negligence.-Marks v. City of N.Y., 130 (120) N.Y.L.J. (12-22-53) 1531, Col. 6 M.

¶ 54. City of New York **held** liable to pedestrian injured through fall on icy roadway, where the accident occurred 45 days after termination of the recordbreaking blizzard of December 26, 1947, the dangerous condition was due to City's failure to remove the snow and ice accumulating from such storm and other snow storms thereafter, and plaintiff left the sidewalk because of its icy and unsafe condition and entered the roadway which appeared to have only soft snow on its surface but which actually had ice underneath the soft snow. Such case was in effect a sidewalk case because the pedestrian was forced upon the roadway because of the dangerous condition of the sidewalk, and the City should have foreseen that people attempting to travel the sidewalk covered with a dangerous layer of ice and snow would naturally resort to the roadway.-Leiman v. City of N.Y., 131 (100) N.Y.L.J. (5-25-54) 11, Col. 7 T.

¶ 55. Plaintiff received judgment in an action to recover damages for injuries sustained from a fall on an icy sidewalk, where there was no evidence that the police or any other official of the city had called on the property owner to enforce § 755(3)-2.0 of the City of New York Administrative Code and the icy condition existed forty-five (45) hours before plaintiff's fall.-Janota v. City of New York, 297 N.Y. 942, 80 N.E. 2d 343 [1948].

¶ 56. Where the jury found for bus company and against the City when plaintiff who was standing in bus stop covered with snow slipped and fell under a moving bus on the ground that the City failed to remove the snow, City could not recover over against the bus company as its contract with the bus company only obligated the company to keep the routes along the streets and avenues free of ice and snow and not the bus stops or sidewalk areas. Flockhart v. City of N.Y., 155 (61) N.Y.L.J. (3-29-66) 17, Col. 2 M.

**CASE NOTES**

¶ 1. Ad Cd §16-123 requires landowners to remove snow and ice from abutting sidewalks but does not explicitly impose liability for personal injuries sustained when landowner fails to clear accumulated snow and ice. Norcott v. Central Iron Metal Scrapes, 214 AD2d 660, 625 NYS2d 260 (2nd Dept. 1995).

¶ 2. Although this section requires owners to remove snow and ice from an abutting public sidewalk, it does not specifically impose tort liability for a breach of that duty. Thus, the owner who does nothing at all with respect to snow removal is not liable to a person who slips and falls at the site (of course, if there is misfeasance, and the owner does something that makes the snow and ice condition more hazardous, he or she could be held liable). Booth v. City of New York, 272 A.D.2d 357, 707 N.Y.S.2d 488 (App.Div. 2d Dept. 2000).

¶ 3. Where precipitation began to fall in the form of freezing rain and ice pellets, only about two hours before plaintiff's fall on a housing complex walkway, defendant was not responsible for the accident. Prince v. New York City Housing Authority, 302 A.D.2d 285, 756 N.Y.S.2d 158 (1st Dept. 2003).

¶ 4. The statute applies to sidewalks and gutters, but not to accidents occurring on private property. Moreover, the statute does not impose tort liability for breach of its provisions. Bell v. New York City Housing Auth., 6 Misc.3d 1018(A), 2005 WL 277316 (Sup.Ct. New York Co.).

¶ 5. The New York Transit Authority was found to have acted in a proprietary capacity rather than a governmental capacity when it purportedly maintained an exterior landing. Thus, the Transit Authority was subject to Admin. Code Sec. 16-123. Echevarria v. NYC Transit Authority 2007 NY Slip Op. 9497, 45 AD3d 492, 847 NYS2d 38, 2007 NY App. Div. Lexis 12266 (App.Div. 1st Dept.).

¶ 6. Plaintiff slipped and fell on snow and ice on sidewalk in front of premises owned by the defendant. It was not

snowing at the time of the accident, but it had previously snowed. According to climatological data, there was some traces of snow during the early morning hours, and the average temperature was below freezing. A grounds supervisor testified that snow removal operations took place at 7 a.m. on the day of the accident. A municipality is not liable in negligence for injuries sustained by a pedestrian who slipped and fell on an icy sidewalk unless a reasonable time has elapsed between the end of the storm giving rise to the icy conditions and the occurrence of the accident. Pursuant to Admin. Code § 16-123(a), building owners have four hours after a snowfall stops to remove snow and ice from abutting sidewalks, excluding the hours between 9 p.m. and 7 a.m. Since the accident occurred at 8:20 a.m. and the four-hour limit had not elapsed, the defendant was not liable for the accident. Rodriguez v. NYC Housing Authority 2008 N.Y. Slip Op 533, 2008 NY App. Div. Lexis 5252 (1st Dept.).



Administrative Code of the City of New York



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

*NYC Administrative Code 16-124*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-124 Removal of snow and ice from the streets.

The commissioner, immediately after every snowfall or the formation of ice on the streets, shall forthwith cause the removal of the same, and shall keep all streets clean and free from obstruction.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 755(3)-1.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 16-125*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-125 Dumping snow and ice from piers.

The commissioner may cause or authorize snow and ice to be dumped into the waters of the port of New York, between the piers near the inshore ends.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 755(3)-6.0 added chap 929/1937 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 16-126*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-126 Snow removal; employees and equipment.

a. In case of a snowfall or other emergency, the commissioner may employ and hire temporarily as many persons, vehicles, machinery and equipment as shall be rendered necessary by such emergency, forthwith reporting, in the case of a snowfall, the number of such persons, vehicles, machinery and equipment and in the case of any other emergency such action with the full particulars thereof to the mayor, but in the case of a snowfall no such person, vehicles, machinery or equipment shall be so hired or employed for a longer period than seven days and in the case of any other emergency for a longer period than three days.

b. All such employees shall be employed directly by the department and not through contractors or other persons, unless the commissioner shall determine that this requirement must for proper action in a particular instance be dispensed with.

c. The services of any person employed, and of vehicles, machinery and equipment hired pursuant to this section, shall be paid for in full and directly by the department, at such times as may be prescribed by the commissioner.

d. In all emergency work performed by laborers in the removal of snow where workers are engaged by the hour or day by a contractor employed for the purpose, such work shall be paid for directly to those individuals employed on it, in the currency of the United States and not by check or ticket. Every contractor engaged in the removal of snow shall be required to stipulate with the commissioner or others empowered to enter into contracts for that purpose, as the case may be, to observe the provisions of this subdivision, a violation of which shall be deemed to abrogate any such contract.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 755(3)-7.0 added chap 929/1937 § 1

Subs a, d amended LL 79/1947 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 16-127*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-127 Earth, rocks and rubbish.

a. In all cases where the sidewalk or roadway of a street shall be incumbered or obstructed by the caving in or falling off of any earth, rocks or rubbish, or anything whatever, from any lot adjoining such sidewalk or roadway, the owner or occupant of such lot, or the agent of such owner or occupant, shall cause such earth, rocks, rubbish or other thing to be removed and cleaned from such sidewalk or roadway, within three days after a written or printed notice shall have been served by the commissioner or a duly designated representative, on such owner, personally, or shall have been left at the place of residence of such owner in this city; or, if such owner does not reside in the city, and such notice shall not be personally served, then within twenty days after such notice to be sent by mail, addressed to such owner at his or her place of residence, or, when such residence is unknown to such commissioner, within twenty days after such notice shall have been posted in a conspicuous place on such premises.

b. If the owner, occupant or agent fails to comply with such notice, within the time specified in this section, after notice thereof, the commissioner shall cause the same to be removed at the expense of the owner, occupant or agent, and such expense shall be sued for and recovered in the name of the city.

c. The corporation counsel shall cause a statement of such cost and expense, together with the description of the premises, to be filed in the office of the register or county clerk of the appropriate county.

d. Any person convicted of a violation of any of the provisions of this section shall be punished by a fine of not less than fifty dollars nor more than two hundred fifty dollars, imprisonment for not more than ten days, or both.

e. Any person violating the provisions of this section shall be liable and responsible for a civil penalty of not less

than twenty-five dollars nor more than one hundred dollars.

f. In the instance where the notice of violation, appearance ticket or summons is issued for a breach of the provisions of this section and sets forth thereon civil penalties only, such process shall be returnable to the environmental control board, which shall have the power to impose the civil penalties hereinabove provided in subdivision e of this section.

g. In the event that a violator fails to answer such notice of violation, appearance ticket or summons within the time provided therefor by the rules and regulations of the environmental control board, such violator shall become liable for additional penalties. The additional penalties shall not exceed fifty dollars for each violation.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 755(4)-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 70

(formerly § 82d6-2.0)

Amended LL 8/1977 § 1

Subs e, f, g added LL 8/1977 § 2



Administrative Code of the City of New York



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

*NYC Administrative Code 16-128*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-128 Removal of incumbrances from streets.

a. The commissioner shall remove, or cause to be removed, any vehicle, box, barrel, bale of merchandise or other movable property or article or thing whatsoever found upon any street, in accordance with regulations adopted by the board of estimate.

b. The board of estimate shall set forth, in such regulations, the procedures to be followed by the commissioner relating to:

1. the leasing of yards for storage of property removed under the authority of this section;

2. notification to the owner of the property removed, if such owner is ascertainable, that the property is being held by the commissioner;

3. redemption, by the owner, of the property removed;

4. reimbursement, by the owner, of the expenses of removal incurred by the commissioner;

5. the sale, by the commissioner, of the property held by him or her;

6. the keeping of records and accounts, the transmission of such records to the comptroller, and the transmission of funds collected to the commissioner of finance; and

7. such other regulations as the board of estimate may deem necessary to carry out the provisions of this section.

c. Such regulations shall not become effective until adopted by the board of estimate and filed, by the secretary of such board, with the city clerk, pursuant to section eleven hundred five of the charter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 755(4)-3.0 added chap 100/1963 § 569

Sub a amended LL 54/1977 § 68

**CASE NOTES FROM FORMER SECTION**

¶ 1. Refusal of city marshal to execute a warrant of execution issued at landlord's request was not arbitrary where landlord refused to make provision for the removal of the contents of the apartment after removal by the marshal from the apartment to the sidewalk and the department of sanitation which previously had made provision for such removal by appointment had discontinued this service.-In re 24-25 Property Corp. (Schwartz) 161 (102) N.Y.L.J. (5-26-69) 17, Col. 6 F.

¶ 2. Where petitioners had been removed from possession of a dwelling sold pursuant to a judgment of foreclosure and sale petitioners were not entitled to return of their personal property, including certain household articles and artists materials which were taken by the sheriff to the Department of Sanitation warehouse when petitioners failed to pay the storage charges within the thirty day redemption period and the property was scheduled to be sold. Although household furniture and necessary working tools are exempt from application to satisfy a money judgment the sale herein was not for that purpose but was an extra-judicial sale under the terms of the administrative code.-In re Abelson (City of N.Y. Dept. of Sanitation) 163 (108) N.Y.L.J. (6-5-70) 18, Col. 8 F.

¶ 3. Petitioner was granted a stay of sale to extent of enlarging his time to redeem his property for two months where he had been evicted and the Department of Sanitation had removed his personal property and placed it in storage and the property was to be sold when no useful purpose would be served by forcing petitioner to remove his property forthwith to a private storage facility.-Clark v. Kretchner, 164 (112) N.Y.L.J. (12-11-70) 18 Col. 8 M.

¶ 4. Where Commissioner of Sanitation came into possession of petitioner's property as a result of his eviction from his apartment and he appeared and paid a redemption fee and removed part of his property but property that was not removed was sold at auction petitioner was entitled to either have his property returned to him or be paid its reasonable value since after petitioner appeared to identify the property and redeem it the Commissioner no longer had any right to sell it and he became as to petitioner a warehouseman with the same rights and remedies thereof.-Collins v. Steisel, 89 App. Div. 2d 855 [1982].

**CASE NOTES**

¶ 1. Firefighters were called to extinguish a fire in a vehicle abandoned on a NYC street. In an action against the City for failure to remove the abandoned vehicle in violation of the Vehicle and Traffic Law § 1224, Administrative Code § 755(4)-3.0(a)[16-128] and General Order No. 5 of the NYC Sanitation Department giving power to remove abandoned vehicles without liability. Action dismissed as not related to safety of premises or risks in fire fighting generally. Kenavan v. City of New York 70 NY2d 558 [1987].

¶ 2. If a vehicle is left on a City street without license plates for more than six hours, it is deemed abandoned and title vests in the City. The Department of Sanitation is then required to remove the vehicle from the streets. Where the plaintiff allegedly was injured when her car collided with an abandoned vehicle, which vehicle was in the right lane of a

city expressway, she can recover against the City if the jury finds that the vehicle was there for more than a six hour period. Navarro v. City of New York, 136 A.D.2d 483, 523 N.Y.S.2d 514 (1st Dept. 1988).



Administrative Code of the City of New York



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

*NYC Administrative Code 16-129*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-129 Rates for the use of department disposal facilities.

The commissioner may require any person desiring to use some or all of the incinerators or other plants under his or her control to set apart for his or her use, for the disposal of manure, swill, ashes, street sweepings, bones, garbage, night soil, offal, fats, hides, hoofs or other refuse parts of slaughtered animals, refuse, rubbish, bodies of dead animals or any other offensive or noxious material, paper stock, or trade waste, to pay for the disposal of the same at rates established by the council by local law, upon recommendation of the commissioner, and on such terms and conditions as such commissioner shall prescribe and subject to rules governing the use of such incinerators or other plants, except as otherwise provided by section 16-203. The commissioner may make, adopt and promulgate rules to effectuate the purposes of this section.

**HISTORICAL NOTE**

Section amended L.L. 85/1991 § 1, eff. Oct. 18, 1991.

Section added chap 907/1985 § 1

Subd. a amended L.L. 39/1986 § 2.

**DERIVATION**

Formerly § 755(5)-1.0 added chap 929/1937 § 1

Amended LL 59/1938 § 1

Repealed and added LL 29/1956 § 2

Renumbered chap 100/1963 § 562

(formerly § 755(2)-6.0)



Administrative Code of the City of New York



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

*NYC Administrative Code 16-129.1*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-129.1 Rate for the use of department compost facilities.

The commissioner is authorized to collect a fee of ten dollars per cubic yard for the disposal of yard waste at department compost facilities. For purposes of this section, the term "yard waste" shall mean leaves, grass clippings, garden debris, vegetative residue that is recognizable as part of a plant or vegetable, small or chipped branches, and similar material, except that no material greater than eight inches in diameter and eight feet in length shall be considered yard waste; and the term "compost facilities" shall mean facilities operated by the department and used for the aerobic and thermophilic decomposition of organic constituents of solid waste to produce a stable, humus-like material.

**HISTORICAL NOTE**

Section added L.L. 93/1991 § 1, eff. Nov. 26, 1991.

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-130*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-130 Permit for operators of dumps, non-putrescible solid waste transfer stations, putrescible solid waste transfer stations and fill material operations.

a. As used in this section: 1. The term "solid waste" shall mean all putrescible and non-putrescible materials or substances, other than those materials or substances described in subparagraph (b) of this paragraph, that are discarded or rejected, including but not limited to garbage, refuse, waste collected by any person required to be licensed or registered pursuant to chapter 1 of title 16-A of this code, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles and offal. Such term shall include recyclable materials, as defined in subdivision i of section 16-303 of this title.

(a) A material is discarded or rejected if it is:

(1) spent, useless, worthless or in excess to the owners at the time of such discard or rejection;

(2) disposed of;

(3) burned or incinerated, including material burned as a fuel for the purpose of recovering useable energy; or

(4) accumulated, stored or physically, chemically or biologically treated (other than burned or incinerated) instead of or before being disposed of.

(b) The following are not solid waste for the purpose of this section:

(1) domestic sewage;

(2) any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works for treatment, except any material that is introduced into such system in order to avoid the provisions of this title or of state regulations promulgated to regulate solid waste management facilities;

(3) industrial wastewater discharges that are actual point source discharges subject to permits under article seventeen of the environmental conservation law; provided that industrial wastewaters while they are being collected, stored or treated before discharge and sludges that are generated by industrial wastewater treatment are solid wastes;

(4) irrigation return flows;

(5) radioactive materials that are source, special nuclear, or by-product material under the federal Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 et seq.;

(6) materials subject to in-situ mining techniques which are not removed from the ground as part of the extraction process;

(7) hazardous waste as defined in section 27-0901 of the environmental conservation law, including material containing hazardous waste; and

(8) regulated medical waste as defined in title fifteen of article twenty-seven of the New York state environmental conservation law, in title thirteen of article thirteen of the New York state public health law or in section 16-120.1 of the code, or any rules or regulations promulgated pursuant to such provisions of law.

2. The term "putrescible solid waste" shall mean solid waste containing organic matter having the tendency to decompose with the formation of malodorous by-products;

3. The term "non-putrescible solid waste" shall mean solid waste, whether or not contained in receptacles, that does not contain organic matter having the tendency to decompose with the formation of malodorous by-products, including but not limited to dirt, earth, plaster, concrete, rock, rubble, slag, ashes, waste timber, lumber, plexiglass, fiberglass, ceramic tiles, asphalt, sheetrock, tar paper, tree stumps, wood, window frames, metal, steel, glass, plastic pipes and tubes, rubber hoses and tubes, electric wires and cables, paper and cardboard;

4. The term "dump" shall mean any structure, building or other premises, whether improved or unimproved, at which solid waste is received for the purpose of final disposal, unless such waste is received for a fill material operation;

5. The term "non-putrescible solid waste transfer station" shall mean any structure, building or other premises, whether improved or unimproved, at which only non-putrescible solid waste is received for the purpose of subsequent transfer to another location, regardless of whether such non-putrescible solid waste is subject to any processing or reduction in volume at such structure, building or premises;

6. The term "putrescible solid waste transfer station" shall mean any structure, building or other premises, whether improved or unimproved, at which any amount of putrescible solid waste is received for the purpose of subsequent transfer to another location, regardless of whether such putrescible solid waste is mixed with non-putrescible solid waste or is subject to any processing or reduction in volume at such structure, building or premises;

7. The term "fill material" shall mean only clean material consisting of earth, ashes, dirt, concrete, asphalt millings, rock, gravel, stone or sand, provided that such material shall not contain organic matter having the tendency to decompose with the formation of malodorous by-products; and

8. The term "fill material operation" shall mean the grading, levelling, surcharging, compacting or final disposition of fill material for the purpose of land alteration or improvement, including but not limited to change of the

existing property grade, filling of lands below established grades or of lands under water to established grades, and filling of lands which requires approval by any city or state agency.

b. It shall be unlawful for any person or public agency other than the department to conduct, operate or use any pier or part thereof, or any piece or parcel of land or land under water within the city as a dump or as a non-putrescible solid waste transfer station or putrescible solid waste transfer station, or for a fill material operation without having first obtained for each pier or part thereof, or for each piece or parcel of land or of land under water, in addition to any other permit required by law, a permit from the commissioner and, where required by any law or rule, the prior written approval of the commissioner of ports and trade. The commissioner may establish by rule one or more classes of permits pursuant to this section and section 16-131 of this chapter.

c. Nothing contained in this section or in section 16-131 of this chapter shall be construed to allow the grading, levelling, surcharging, compacting or final disposition of any material other than fill material for the purpose of land alteration or improvement.

**HISTORICAL NOTE**

Section heading amended L.L. 40/1990 § 1 eff. July 12, 1990.

[See Note]

Section amended L.L. 49/1989 § 1.

Section amended LL 5/1986 § 21

Section added chap 907/1985 § 1

Subd. a amended L.L. 40/1990 § 2 eff. July 12, 1990.

Subd. a par 1 open par amended L.L. 42/1996 § 5, eff. June 3, 1996.

Subd. b amended L.L. 40/1990 § 2 eff. July 12, 1990.

Subd. a par 7 amended L.L. 45/2003 § 1, eff. July 14, 2003.

Subd. b separately amended L.L. 14/1989 § 1 and L.L. 14/1989 § 12.

**DERIVATION**

Formerly § 755(5)-200 added LL 59/1938 § 3

Renumbered and amended chap 100/1963 § 567

(formerly § 755(4)-1.0)

**NOTE**

Provisions of L.L. 40/1990.

§ 10. Notwithstanding any other provision of law, on and after the effective date of rules promulgated by the commissioner of sanitation to provide for the issuance of putrescible solid waste transfer station permits pursuant to section 16-130 of the administrative code of the city of New York, as amended by section two of this local law, no putrescible solid waste transfer station, as such term is defined in such section, shall be required to obtain a permit from the commissioner of health pursuant to article one hundred fifty-seven of the New York city health code. Nothing

contained in this section or any other provision of this local law shall be construed to affect the continued application of provisions of the health code not related to issuance of permits for putrescible solid waste transfer stations, as such term is defined in such section.

§ 11. Notwithstanding any other provision of this local law, including section 16-130 as amended by section two of this local law, any permit issued to a putrescible solid waste transfer station, as defined in section 16-130 of the administrative code of the city of New York, as amended by section two of this local law, by the commissioner of health pursuant to article one hundred fifty-seven of this article that is in full force and effect on the effective date of this local law shall continue in full force and effect on and after such date and shall, after the effective date of rules promulgated by the commissioner of sanitation to provide for the issuance of putrescible solid waste transfer station permits pursuant to such section, be deemed to constitute a permit issued by the commissioner of sanitation, provided that the holder of such permit files an application for a new permit with such commissioner within thirty days after such effective date of such rules. During the pendency of such application, such permit issued by the commissioner of health shall remain in full force and effect until such time as the commissioner of sanitation either suspends or revokes such permit pursuant to law, issues a new permit or denies the application for a new permit. If the holder of such permit fails to file an application for a new permit with the commissioner of sanitation within thirty days after such effective date of such rules, such permit issued by the commissioner of health shall be null and void and be of no further effect. Notwithstanding any other provision of law, the fee for any putrescible solid waste transfer station permit issued by the commissioner of sanitation pursuant to such section to a person who holds a permit issued by the commissioner of health pursuant to article one hundred fifty-seven of the New York city health code shall be reduced by an amount which is equal to the permit fee paid to the department of health prorated to the unexpired portion of the license term.

§ 12. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, or at the time when the commissioner of sanitation promulgates rules to provide for the issuance of putrescible solid waste transfer station permits pursuant to section 16-130 of the administrative code of the city of New York, as amended by section two of this local law, brought by or against the city, or the department of health or any officer or employee of such department shall be affected or abated by the adoption of this local law or by anything contained herein; but all such actions or proceedings may be continued notwithstanding that certain functions, powers and duties of the department of health may have by this local law been assigned or transferred to the department of sanitation; and such actions and proceedings may be prosecuted or defended by the department of sanitation or the officer or employee to which such functions, powers and duties have been assigned or transferred by this local law.

§ 13. Notwithstanding any other provision of law, except as provided in sections ten, eleven and twelve of this local law, the commissioner of sanitation may, on and after the effective date of this local law, enforce the provisions of this local law, provided that where the commissioner's authority to enforce the provisions of this local law is predicated upon a finding by the commissioner that a permit is required for premises pursuant to section 16-130 of the administrative code of the city of New York, as amended by section two of this local law, a finding by the commissioner that a permit is required pursuant to article one hundred fifty-seven of the New York city health code shall be deemed to constitute the predicate finding.

§ 14. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid, the remainder of this local law and the application thereof shall not be affected thereby.

**CASE NOTES**

¶ 1. Petitioner accepted solid waste into its facility, i.e. discarded pieces of concrete, and turned it into smaller pieces of concrete for sale to roadway and construction contractors. The court upheld an administrative determination that petitioner operated a non-putrescible solid waste transfer station, for which a permit was required. The determination was based on a finding that petitioner's transformation of discarded broken-up concrete into salable smaller pieces of concrete was processing that, while changing the size and volume, and therefore the marketability, of

the concrete it receives, did not change its nature as solid waste. In Re Amstel Recycling & Concrete Corp. v. City of New York 776 N.Y.S.2d 272 (1st Dept. 2004).

¶ 2. Clean fill operation was closed by the Department upon discovery that unacceptable material, including construction and demolition debris, was used as fill material on site. Administrative law judge rejected licensee's argument that the unacceptable material could be used, without regard to composition, because it was excavated from the site. On appeal, the Second Department found substantial evidence supported the Department's determination that the site should be sealed, secured, and closed until such time as the unacceptable fill material is removed. Dep't of Sanitation v. Enviro-Fill et seq., OATH Index No. 915/98 (Mar. 12, 1998), aff'd sub nom. Enviro-fill v. Doherty, 269 A.D.2d 529, 703 N.Y.S.2d 742 (2d Dep't 2000).



Administrative Code of the City of New York



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

*NYC Administrative Code 16-131*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-131 Rules for the operation of dumps, non-putrescible solid waste transfer stations, putrescible solid waste transfer stations and fill material operations; permits and fees.

a. The commissioner shall have power to adopt rules:

1. controlling and providing for supervision over the conduct, operation, and use by persons or public agencies of all piers or lands or lands under water used as dumps, non-putrescible solid waste transfer stations or putrescible solid waste transfer stations, or for fill material operations;

2. requiring applicants and permittees to disclose to the department information determined by the commissioner to be necessary for the department to fulfill its duties under this title. Such information may include but need not be limited to financial statements, and any annual or quarterly report required to be filed with the state department of environmental conservation pursuant to regulations promulgated by such department to regulate solid waste management facilities;

3. requiring permittees to maintain records determined by the commissioner to be necessary for the department to fulfill its duties under this chapter and to protect the public health and safety. Such records shall include, without limitation, a log of the names of prospective customers denied the use of such dump, transfer station, or fill material operation.

b. The commissioner shall, pursuant to subdivision a of this section, adopt rules:

1. establishing, in consultation with the commissioners of health and environmental protection, requirements

appropriate for protection of public health and the environment concerning siting of dumps, non-putrescible solid waste transfer stations, putrescible solid waste transfer stations and/or fill material operations in relation to other such facilities, residential premises and/or other premises for which such requirements may be appropriate. Requirements established pursuant to this paragraph shall be in addition to other applicable siting requirements;

2. limiting the hours of operation of premises required to be permitted pursuant to section 16-130 of this chapter;

3. prescribing the use of deodorants, and other odor control measures as may be needed, at putrescible solid waste transfer stations and, where appropriate, at other facilities required to be permitted pursuant to such section;

4. prescribing the use of ventilation systems in fully enclosed structures on premises required to be permitted pursuant to this section; and

5. requiring that all activities relating to the processing, tipping, sorting, storage and compaction of solid waste at putrescible solid waste transfer stations, and, in the commissioner's discretion, at other premises required to be permitted pursuant to this section, be conducted within a fully enclosed structure. If the commissioner determines that such activities would not adversely affect a residential area if not conducted within a fully enclosed structure, then the commissioner may grant an exemption from such requirement, provided that no exemption may be granted in contravention of regulations promulgated by the state department of environmental conservation to regulate solid waste management facilities or other applicable law. Any person who, on the effective date of this local law, holds a permit for, and conducts such activities on, premises where no fully enclosed structure exists, and who shall be required to conduct such activities within a fully enclosed structure, may be granted a reasonable time, to be determined by the commissioner, to construct such structure.

c. The commissioner shall issue permits to such persons or public agencies engaged in use of piers or lands or lands under water within the city as dumps, non-putrescible solid waste transfer stations or putrescible solid waste transfer stations. The commissioner shall collect an annual fee of seven thousand dollars for each permit for any such pier or part thereof, or for each piece or parcel of land or land under water used as a dump or as a non-putrescible solid waste transfer station, and an annual fee of thirteen thousand dollars for each permit for any such pier or part thereof, or for each piece or parcel of land or land under water used as a putrescible solid waste transfer station. The commissioner shall collect an annual registration fee of seven thousand dollars for an intermodal solid waste container facility. The commissioner may by rule provide for suspension or revocation of any permit or registration issued pursuant to this subdivision for cause or violation of the orders or rules of the commissioner.

d. The commissioner shall issue permits every six months to persons or public agencies engaged in use of piers or lands or lands under water for fill material operations. The commissioner shall collect a fee every six months of twelve hundred fifty dollars for each permit for any such pier or part thereof, or for each piece or parcel of land or land under water where the anticipated or actual aggregate amount of fill material for grading, levelling, surcharging, compacting or final disposition during such six-month period is equal to or greater than one thousand cubic yards, and a fee of six hundred twenty-five dollars for each permit for any such pier or part thereof, or for each piece or parcel of land or land under water where the anticipated or actual aggregate amount of fill material for grading, levelling, surcharging, compacting or final disposition during such six-month period is less than one thousand cubic yards, provided that no fee shall be charged for the first six-month permit issued in a calendar year for any pier or part thereof, or for each piece or parcel of land or land under water where the anticipated or actual aggregate amount of fill material for grading, levelling, surcharging, compacting or final disposition during such six-month period is less than three hundred cubic yards. The commissioner may by regulation provide for suspension or revocation of any permit issued pursuant to this paragraph for cause or violation of the orders or rules or regulations of the commissioner. Notwithstanding any other provision of this section or of section 16-130 of this chapter, no permit or fee shall be required of an owner or occupant of residential property engaged in a fill material operation or such property where the anticipated or actual aggregate amount of fill material for grading, levelling, surcharging, compacting or final disposition during a six-month period is less than three hundred cubic yards.

e. Rules adopted by the commissioner pursuant to this section shall become effective only after filing and publication as prescribed by chapter forty-five of the charter. In addition, notwithstanding such chapter, prior to adoption by the commissioner of a final rule pursuant to subdivision e of section one thousand forty-three of the charter, and after consideration of relevant comments presented pursuant to subdivision d of such section, the commissioner shall submit to the council the draft text of the final rule proposed to be published in the City Record; the council shall have thirty days to comment upon such text. The final rule may include revisions in response to comment from members of the council and shall not be published in the City Record before the thirty-first day after such submission, unless the speaker of the council authorizes earlier publication.

f. As used in this section:

1. the terms "dump," "non-putrescible solid waste transfer station," "putrescible solid waste transfer station," "fill material" and "fill material operation" shall have the meanings ascribed in section 16-130 of this chapter; and

2. the term "intermodal solid waste container facility" shall mean a facility or premises served by rail or vessel at which intermodal containers are transferred from transport vehicle to transport vehicle for the purpose of consolidating intermodal containers for shipment by rail or vessel to an authorized disposal or treatment facility, where the contents of each container remain in their closed containers during the transfer between transport vehicles, and storage remains incidental to transport at the location where the containers are consolidated.

**HISTORICAL NOTE**

Section heading amended L.L. 40/1990 § 3 eff. July 12, 1990.

Section amended L.L. 49/1989 § 2.

Section added chap 907/1985 § 1

Subd. a amended L.L. 40/1990 § 4 eff. July 12, 1990.

Subd. a par 2 amended L.L. 36/1987 § 1.

Subd. a par 3 amended L.L. 42/1996 § 6, eff. June 3, 1996.

Subd. b added L.L. 40/1990 § 6 eff. July 12, 1990.

Subd. c amended L.L. 18/2009 § 1, eff. Mar. 18, 2009.

Subd. c amended L.L. 40/1990 § 7 eff. July 12, 1990.

Subd. c relettered L.L. 40/1990 § 5 eff. July 12, 1990.

(formerly subd. b)

Subd. d relettered L.L. 40/1990 § 5 eff. July 12, 1990.

(read subd. c L.L. 49/1989 § 2)

Subd. e amended L.L. 40/1990 § 7 eff. July 12, 1990.

Subd. e relettered L.L. 40/1990 § 5 eff. July 12, 1990.

(formerly subd. d)

Subd. f amended L.L. 18/2009 § 1, eff. Mar. 18, 2009.

Subd. f amended L.L. 40/1990 § 7 eff. July 12, 1990.

Subd. f relettered L.L. 40/1990 § 5 eff. July 12, 1990.

(formerly subd. e)

**DERIVATION**

Formerly § 755(5)-3.0 added LL 59/1938 § 3

Sub a par 2 amended LL 67/1952 § 3

Renumbered and amended chap 100/1963 § 568

(formerly § 755(4)-1.1)



Administrative Code of the City of New York



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

*NYC Administrative Code 16-131.1*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-131.1 Issuance, renewal, suspension and revocation of permits.

The commissioner shall be responsible for the issuance, renewal, suspension and revocation of permits required by section 16-130 of this chapter. An application for such a permit shall also be presented by the department to the New York city trade waste commission for review by such commission. The commissioner shall consider the recommendations of such commission in making a determination pursuant to this section.

a. The commissioner, consistent with article twenty-three-A of the correction law, may refuse to issue or renew a permit required by section 16-130 of this chapter, or may, after notice and the opportunity to be heard, suspend or revoke such a permit when the applicant for such permit or such permittee has been denied a license required by section 16-505 of this code to operate a business for the collection, removal or disposal of trade waste or has had such a license revoked for the reason that such applicant or licensee has been found to lack good character, honesty and integrity by the trade waste commission pursuant to the provisions of title sixteen-A of this code.

b. The commissioner, consistent with article twenty-three-A of the correction law, may refuse to issue to an applicant a permit required by section 16-130 of this chapter and may, after due notice and hearing, in addition to any other penalties provided by law, refuse to renew, suspend or revoke such permit upon the occurrence of any of the following conditions:

1. the applicant or permittee has been convicted of a crime which in the judgment of the commissioner has a direct relationship to his or her fitness or ability to perform any of the activities for which a permit is required under section 16-130 of this chapter; or

2. the applicant or permittee has been found by a court or an administrative agency of competent jurisdiction to have violated:

(A) any provision of section 16-117.1, 16-119, 16-120.1, 16-130, 16-131, 16-131.2, 16-131.3 or 16-131.5 of this chapter; or

(B) any provision of article one hundred fifty-seven of the New York city health code; or

(C) any other law or rule related to the conduct, operation or use of a dump, non-putrescible solid waste transfer station, putrescible solid waste transfer station or fill material operation; or

(D) any federal or state law prohibiting unfair trade practices or conduct in restraint of competition, including but not limited to the Sherman Anti-Trust Act (15 U.S.C. §1, §2), the Clayton Act (15 U.S.C. §18), the Robinson Patman Act (15 U.S.C. §12 et seq.), the Federal Trade Commission Act (15 U.S.C. §45 et seq.), and sections 340 et seq. of the general business law or an equivalent offense under the laws of any other jurisdiction; or

3. the commissioner has determined, after consideration of the results of an investigation conducted pursuant to this section, that the applicant or permittee has operated the business for which a permit is required by section 16-130 of this chapter in a manner inconsistent with the provisions of the federal or state laws prohibiting unfair trade practices or conduct in restraint of competition set forth in subparagraph (D) of paragraph two of this subdivision; or

4. the applicant or permittee has violated or failed to comply with any of the conditions for issuance of such permit as provided in this chapter or any of the rules promulgated hereunder.

c. Where the commissioner or the New York city trade waste commission has reasonable cause to believe that a permittee or an applicant for a permit required by section 16-130 of this code may lack good character, honesty and integrity, such applicant or permittee shall, in addition to providing the information required by the rules promulgated pursuant to paragraph two of subdivision a of section 16-131 of this code, also comply with the fingerprinting and disclosure requirements set forth in subdivision b of section 16-508 of this code and pay the fee for the investigation thereof set forth in the rules of the New York city trade waste commission. The commissioner may, after consideration of the results of such investigation, refuse for the reasons set forth in section 16-509 of this code to issue a permit required by section 16-130 of this chapter and, after notice and opportunity to be heard, may revoke or suspend any such permit upon a finding that the applicant or the permittee lacks good character, honesty and integrity.

d. For the purposes of this section, "applicant" or "permittee" shall mean the business of the applicant or permittee and any principal thereof, as the term "principal" is defined in section 16-501 of this code.

e. The New York city trade waste commission or the department of investigation may, at the request of the commissioner, assist the commissioner in any investigation conducted pursuant to this section.

**HISTORICAL NOTE**

Section amended L.L. 42/1996 § 7, eff. June 3, 1996.

Section added L.L. 40/1990 § 8 eff. July 12, 1990.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-131.2*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-131.2 Additional powers of the commissioner.

In addition to any other enforcement procedures authorized by law, the commissioner shall have the powers described in this section.

a. The commissioner may order any person violating section 16-130 or 16-131 of this chapter or article one hundred fifty-seven of the New York city health code to discontinue such violation immediately.

b. 1. If the commissioner finds that premises for which a permit is required pursuant to section 16-130 of this chapter are being used either without such permit or in a manner which poses an imminent threat to the public health or safety, then the commissioner may order in writing that (a) such premises be sealed, secured and closed and/or (b) that equipment, vehicles or other personal property used on such premises be removed or sealed and secured. Upon the effective date of such order, no person shall have access to such premises and/or use such equipment except as authorized by the commissioner. Upon such effective date, authorized officers and employees of the department, the department of health and mental hygiene and the New York city police department shall act upon and enforce such order. The finding whether an imminent threat to the public health or safety exists shall be based on factors that include but are not limited to: (i) the quantity of solid waste, or of material listed in subparagraph (b) of paragraph one of subdivision a of section 16-130 of this chapter, that may pose a threat; (ii) the types of solid waste, or of such material listed in such subparagraph, that may pose a threat; and/or (iii) the risk of harm to the public or the environment. For the purpose of this paragraph: "sealed, secured and closed" or "sealed and secured" shall mean the use of any means available to render the premises or any part thereof, and/or any equipment, vehicles or other personal property contained therein, inaccessible or inoperable, including but not limited to the use of a padlock or cinder blocks.

2. Any equipment, vehicles or other personal property removed pursuant to an order issued under paragraph one of this subdivision may be stored in a garage, pound or other place of safety, and the owner or other person lawfully entitled to the possession of such equipment, vehicles or other personal property may be charged with the reasonable costs for removal and storage, payable prior to the release of such equipment, vehicles or other personal property. Equipment, vehicles or other personal property not reclaimed by such owner or other person within ninety days of the notification to such owner or other person that such order has been rescinded shall be deemed abandoned and may be disposed of by the department at a public auction, provided that vehicles deemed abandoned shall be disposed of in a manner consistent with section twelve hundred twenty-four of the vehicle and traffic law and that timely notice of any public auction shall be provided to any record holder of a security interest at the address for such holder set forth in any instrument recorded in the city of New York.

3. Any order to seal, secure and close premises pursuant to paragraph one of this subdivision, or to remove or seal and secure equipment, vehicles or other personal property issued pursuant to such paragraph, shall contain notice of the right to request a hearing within thirty days of delivery of such order and posting of such order pursuant to the first sentence of paragraph four of this subdivision. If a hearing is requested within such thirty day period, the order shall be effective as set forth in the determination of the commissioner. If no hearing is requested within such thirty day period the order shall be effective on the thirtieth day after such delivery and posting pursuant to such sentence. A hearing held pursuant to this paragraph shall be conducted by the department. The hearing officer shall submit recommended findings of fact and a recommended decision to the commissioner, who shall make the final findings of fact and the final determination. Notwithstanding the foregoing provisions of this paragraph, if such order is based upon a finding by the commissioner of an imminent threat to the public health or safety, such order may provide that it shall be effective immediately upon posting pursuant to the first sentence of paragraph four of this subdivision; in such case a hearing shall be held within three business days of a request for such hearing and a determination shall be rendered within four business days of the conclusion of such hearing.

4. Orders of the commissioner issued pursuant to this subdivision shall be served by delivery of the order to the permittee, owner or other person of suitable age and discretion in actual or apparent control of the premises, equipment, vehicles or other personal property, and shall be posted at the premises that have been sealed, secured and closed, or on or in the vicinity of the equipment, vehicles or other personal property that has been sealed and secured, or on the premises from which equipment, vehicles or other personal property has been removed. The commissioner shall ensure that notice is delivered and posted pursuant to this paragraph, and in addition shall ensure that such order is mailed to the permittee at the residence or business address for such permittee set forth in the records of the department, to the record owner of such premises, and any record mortgagee of such premises, at the address set forth in the recorded instrument and to the person designated as owner or agent of the premises or designated to receive real property tax or water bills for the premises at the address for such person contained in one of the files compiled by the department of finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the department of finance from real property transfer forms filed with the city register upon the sale or transfer of real property, to the owner of such vehicles at the address for such owner set forth in the registration record maintained by the department of motor vehicles pursuant to section four hundred one of the vehicle and traffic law or for vehicles not registered in New York state, such equivalent record in the state of registration, and to any record holder of a security interest in equipment, vehicles or other personal property at the address for such holder set forth in any instrument recorded in the city of New York, and at the address for such holder set forth in any certificate of title issued by the department of motor vehicles pursuant to title ten of the vehicle and traffic law. In addition, such order shall be mailed to the owner of equipment or personal property, other than vehicles, at any address for such owner provided by the permittee or the person to whom such order is delivered pursuant to the first sentence of this paragraph.

5. Where premises have been sealed, secured and closed or equipment, vehicles, or other personal property has been sealed and secured or removed by order of the commissioner issued pursuant to paragraph one of this subdivision, the permittee, owner or other person lawfully entitled to the possession of the premises or equipment, vehicles or other personal property, may at any time provide to the commissioner assurances that the conditions which caused the

issuance of such order have been corrected and will not reoccur and any necessary permit will be obtained. Upon receipt of such assurances, the commissioner shall within two business days either issue a written determination that such conditions have not been corrected, or are likely to reoccur, or, if such assurances are satisfactory, rescind such order; provided that no equipment, vehicles or other personal property shall be released after such rescission unless costs for removal and storage owed pursuant to paragraph two of this subdivision have been paid.

6. (a) No person shall remove or cause to be removed the seal from, or otherwise enter without the commissioner's authorization, any premises sealed by order of the commissioner issued pursuant to paragraph one of this subdivision.

(b) No person shall remove or cause to be removed the seal from, or otherwise tamper with or use, any equipment, vehicles or other personal property sealed by order of the commissioner issued pursuant to paragraph one of this subdivision.

(c) Any person who violates this paragraph shall upon conviction be guilty of a misdemeanor and be punished by a fine not to exceed twenty-five thousand dollars, or by imprisonment for a term of not more than one year, or by both such fine and imprisonment.

**HISTORICAL NOTE**

Section added L.L. 40/1990 § 8 eff. July 12, 1990.

Subd. b par 1 amended L.L. 22/2002 § 18, eff. July 29, 2002 and deemed

in effect as of July 1, 2002.

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-131.3*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-131.3 Removal or abatement of public nuisance.

a. 1. Whenever the commissioner finds that there exists, on premises required to be permitted pursuant to section 16-130 of this chapter, a condition hazardous to public health or safety, the commissioner may declare such premises to be a public nuisance and order the permittee and/or owner to remove or abate such public nuisance as such order shall specify. It shall be the duty of such permittee and/or owner upon whom such an order has been served to remove or abate such public nuisance in the manner and in the time provided by such order.

2. For the purpose of this subdivision, the finding whether a condition hazardous to the public health or safety exists shall be based on factors that include but are not limited to: (i) the quantity of solid waste, or of material listed in subparagraph (b) of paragraph one of subdivision a of section 16-130 of this chapter, that may create a condition hazardous to the public health or safety; (ii) the types of solid waste, or of such material listed in such subparagraph, that may create such a condition; and/or (iii) the risk of harm to the public or the environment.

b. 1. An order of the commissioner issued pursuant to subdivision a of this section shall specify the work to be performed and shall fix a reasonable time for compliance which shall not be less than thirty days from the date of service of such order, or twenty days after the commissioner's determination pursuant to paragraph four of this subdivision, whichever is later. Such order shall contain a statement that upon the failure of the permittee and/or owner of such premises to comply with the commissioner's order within the stated time, the department may perform the work specified in the order or the department may apply for a court order directing such permittee and/or owner to comply with the commissioner's order or directing the department to perform the work specified in the commissioner's order. Such statement shall also indicate that if any of the work specified in the commissioner's order is performed by or on behalf of the department, the expense incurred in performing such work shall be a debt recoverable from such permittee

and/or owner and a lien on the premises, including the land and buildings, with respect to which such order was issued.

2. Service of such order shall be made upon such permittee and/or owner by personal service or by certified mail addressed to the last known address of such permittee and/or owner or in any manner provided for service of process by article three of the civil practice law and rules. The commissioner may serve a copy of such order on any mortgagee or lienor of record in the same manner.

3. A copy of such order shall be filed with the office of the register in the county in which the premises with respect to which such order was issued are situated, provided, that in the county of Richmond, such copy shall be filed with the county clerk.

4. Within fifteen days after service of such order upon the permittee and/or owner, such permittee and/or owner or a mortgagee or lienor upon whom a copy of such order has been served may request a hearing. Such hearing shall be conducted by the department. The hearing officer shall submit recommended findings of fact and a recommended decision to the commissioner, who shall make the final findings of fact and the final determination.

c. If the permittee and/or owner fails to comply with the commissioner's order within the time fixed for compliance pursuant to subdivision b of this section, the department may perform the work specified in the order.

d. As an alternative to the remedy set forth in subdivision c of this section, if the permittee and/or owner fails to comply with the commissioner's order within the time fixed for compliance pursuant to subdivision b of this section, the commissioner may apply to any court of competent jurisdiction, upon such notice and in such manner as the court shall direct, for an order directing the permittee and/or owner to comply with the commissioner's order or directing the department to perform the work specified in the commissioner's order.

e. 1. Whenever the commissioner finds that there exists on premises declared to be a public nuisance pursuant to subdivision a of this section a condition that poses an imminent threat to the public health or safety which requires immediate remedial action, the commissioner may, in his or her discretion, order the permittee and/or owner to remove or abate such public nuisance, or direct the department to remove or abate such public nuisance, and, notwithstanding any provision of this section to the contrary, no hearing shall be required to be held before the time fixed in the order for compliance, or before the department removes or abates such public nuisance, and the time for compliance provided in paragraph one of subdivision b of this section shall not apply to an order issued pursuant to this subdivision. Notice of an order or direction issued pursuant to this subdivision shall be served in the manner prescribed in paragraph two of subdivision b of this section, provided, that if the commissioner determines that service in such manner would result in delay prejudicial to the public health or safety, then the commissioner may serve such order or direction by delivery of a copy thereof to a person of suitable age and discretion in actual or apparent control of the premises to which it relates, or, if service cannot be made in such manner, by copy posted upon the premises to which it relates. An order or direction served in the manner prescribed in this subdivision shall take effect when delivered or when posted. After such order or direction takes effect, the commissioner shall serve such order or direction in the manner prescribed in paragraph two of subdivision b of this section. Such additional service shall include notice of the earlier service of such order or direction.

2. Notwithstanding any other provision of this section, if an order or direction is issued pursuant to paragraph one of this subdivision, a hearing shall be held within three business days of a request for such hearing and a determination shall be rendered within four business days of the conclusion of such hearing. Such hearing shall be conducted by the department. The hearing officer shall submit recommended findings of fact and a recommended decision to the commissioner, who shall make the final findings of fact and the final determination.

3. For the purpose of this subdivision, the finding whether an imminent threat to the public health or safety exists shall be based on factors that include but are not limited to: (i) the quantity of solid waste, or of material listed in subparagraph (b) of paragraph one of subdivision a of section 16-130 of this chapter, that may pose a threat; (ii) the

types of solid waste, or of such material listed in such subparagraph, that may pose a threat; and/or (iii) the risk of harm to the public or the environment.

f. The commissioner may request the assistance of the department of health or any city, state or federal agency to perform work on its behalf pursuant to this section.

g. 1. The expense of the department with respect to any work performed by or on behalf of the department pursuant to subdivisions c, d and e of this section shall be a debt recoverable from the permittee and/or owner and a lien upon the premises, including the land and buildings, with respect to which such work was performed.

2. The department shall keep a record of all work performed by or on behalf of the department. Such records shall be accessible to the public during business hours. Within thirty days after the issuance of a purchase or work order for such work, such order shall be entered on the records of the department. Such entry shall constitute notice to all parties.

3. All such expenses shall constitute a lien upon the premises when the amount thereof shall have been definitely computed as a statement of account by the department and the department shall cause to be filed in the office of the city collector an entry of the account stated in the book in which such charges against the premises are to be entered. Such lien shall have a priority over all other liens and encumbrances on the premises except for the lien of taxes and assessments. However, no lien created pursuant to this section shall be enforced against a subsequent purchaser in good faith or mortgagee in good faith unless such transaction occurred after the date of entry of a purchase or work order on the records of the department pursuant to paragraph two of this subdivision.

4. A notice thereof stating the amount due and the nature of the charge shall be mailed by the city collector within five days after such entry to the last known address of the person whose name appears on the records in the office of the city collector as being the owner or agent or as the person designated by the owner to receive tax bills or, where no name appears, to the premises, addressed to either the owner or the agent. Such notice shall have stamped or printed thereon a reference to this section.

5. If such charge is not paid within thirty days from the date of entry, it shall be the duty of the city collector to receive interest thereon at the rate of interest applicable to such property for a delinquent tax on real property to be calculated to the date of payment from the date of entry.

6. Such charge and the interest thereon shall continue to be, until paid, a lien on the premises. Such charge and interest may be collected and the lien thereof may be foreclosed in the manner provided by law for the collection and foreclosure of taxes, sewer rents, sewer surcharges and water charges due and payable to the city and the provisions of chapter four of title eleven of the code shall apply to such charges and the interest thereon and the lien thereof.

7. (a) In any proceedings to enforce or discharge the lien, the validity of the lien shall not be subject to challenge based on (i) the lawfulness of the work done; or (ii) the propriety and accuracy of the items of expenses for which a lien is claimed, except as provided in this paragraph.

(b) No such challenge may be made except by (i) the owner of the property, or (ii) a mortgagee or lienor whose mortgage or lien would but for the provisions of this section have priority over the department's lien.

(c) An issue specified in subparagraph (a) which was decided or could have been contested in a prior court proceeding to secure a court order pursuant to subdivision d of this section shall not be open to reexamination, but if any mortgagee or lienor of record was not served with an order of the commissioner pursuant to paragraph two of subdivision b and with notice of such proceeding, his or her mortgage or lien shall have the same priority over the lien of the department that it would have had but for the provisions of this section.

8. In addition to establishing a lien, the department may recover such expenses and interest by bringing an action

against the permittee and/or owner. The institution of such action shall not suspend or bar the right to pursue any other remedy provided by law for the recovery of such debt.

h. Nothing contained in this section shall be construed to restrict authority to provide for the abatement of a public nuisance conferred upon any agency of the city by any other provision of law.

i. For purposes of this section, "owner" means a person having title to any premises or structure; a tenant, lessee or occupant; a mortgagee or vendee in possession; a trustee in bankruptcy; a receiver or any other person having legal ownership or control of any premises or structure.

**HISTORICAL NOTE**

Section added L.L. 40/1990 § 8 eff. July 12, 1990.

Subd. g par 5 amended L.L. 62/2005 § 11, eff. June 6, 2005.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-131.4*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-131.4 Impoundment and forfeiture.

a. Any equipment, vehicles or other personal property that has been used or is being used to violate the provisions of section 16-130, 16-131, 16-131.2 or 16-131.3 of this chapter or article one hundred fifty-seven of the New York city health code may be impounded by the department pending forfeiture pursuant to the provisions of this section. Such equipment, vehicles or other personal property shall be released by the end of the following business day unless the department ascertains either (i) that the owner of the premises upon which the equipment, vehicles or other personal property has been or is being used has not obtained a permit required by section 16-130 of this chapter, (ii) that the owner has been convicted of or found liable for a violation of section 16-130, 16-131, 16-131.2 or 16-131.3 of this chapter, or article one hundred fifty-seven of the New York city health code, in a civil or criminal judicial proceeding or in a proceeding before an agency of competent jurisdiction and such violation was committed within eighteen months prior to the violation of law for which such equipment, vehicles or other personal property was impounded, or (iii) that the alleged violation of such sections or article for which such equipment, vehicles or other personal property was impounded involves the unlawful handling, processing, transportation, disposal or storage of a material identified as a hazardous waste or an acute hazardous waste in regulations promulgated pursuant to section 27-0903 of the environmental conservation law.

b. Notice of impoundment and intended forfeiture shall be served together with the notice of the violation of law for which equipment, vehicles or other personal property was impounded. Such notice shall contain notice of the right to request a hearing before the department with respect to whether there is reasonable cause to believe that such equipment, vehicles or other personal property will be subject to forfeiture; a hearing shall be provided within three business days of such request, and a determination shall be rendered within four business days of the conclusion of such

hearing. The hearing officer shall submit recommended findings of fact and a recommended decision to the commissioner, who shall make the final findings of fact and the final determination. If the commissioner determines that there is not reasonable cause to believe that such equipment, vehicles or other personal property will be subject to forfeiture, the department shall release such equipment, vehicles or other personal property, and no charges or fees shall be imposed as a condition of such release. If the commissioner determines that there is reasonable cause to believe that such equipment, vehicles or other personal property will be subject to forfeiture, the department may retain such equipment, vehicles or other personal property pending forfeiture pursuant to the provisions of this section. If after adjudication of the violation of law for which such equipment, vehicles or other personal property was impounded the court or agency of competent jurisdiction finds the respondent not guilty of or not liable for such violation, such equipment, vehicles or other personal property shall be released forthwith, and no charges or fees shall be imposed as a condition of such release. If after adjudication of such violation of law, the court or agency of competent jurisdiction finds the respondent guilty of or liable for such violation, then upon demand of the respondent the department shall either release such equipment, vehicles or other personal property upon payment of all outstanding fines and civil penalties, and removal charges and storage fees, or commence a forfeiture proceeding pursuant to this section within ten days after such demand.

c. In addition to any other penalties provided in this section, the interest of an owner in any equipment, vehicles or other personal property impounded pursuant to subdivision a of this section shall be subject to forfeiture upon notice and judicial determination thereof if such owner either (i) has not obtained a permit required by section 16-130 of this chapter and has been convicted of or found liable for a violation of section 16-130, 16-131, 16-131.2, or 16-131.3 of this chapter, or article one hundred fifty-seven of the New York city health code, in a civil or criminal judicial proceeding or in a proceeding before an agency of competent jurisdiction, (ii) has been convicted of or found liable for a violation of one of such sections, or such article, two or more times, in a civil or criminal judicial proceeding or in a proceeding before such agency, both of which violations were committed within an eighteen month period, or (iii) has been convicted of or found liable for a violation of one of such sections or such article in a civil or criminal judicial proceeding or in a proceeding before such agency where such violation involved the unlawful handling, processing, transportation, disposal or storage of a material identified as a hazardous waste or an acute hazardous waste in regulations promulgated pursuant to section 27-0903 of the environmental conservation law.

d. Except as hereinafter provided, the city agency having custody of equipment, vehicles or other personal property, after judicial determination of forfeiture, shall no sooner than thirty days after such determination upon a notice of at least five days, sell such forfeited equipment, vehicles or other personal property at public sale, provided that no sooner than thirty days after judicial determination of forfeiture or the date of final determination of a claim asserted pursuant to this subdivision, whichever is later, the city may instead convert such equipment, vehicles or other personal property to its own use. Any person, other than an owner whose interest is forfeited pursuant to this section, who establishes a right of ownership in equipment, vehicles or other personal property, including a part ownership or security interest, shall be entitled to delivery of the equipment, vehicles or other personal property if such person:

1. redeems the ownership interest which was subject to forfeiture by payment to the city of the value thereof; and

2. pays the reasonable expenses of the safekeeping of the vehicle between the time of seizure and such redemption; and

3. asserts a claim within thirty days after judicial determination of forfeiture.

Notwithstanding the foregoing provisions establishment of a claim shall not entitle such person to delivery if the city establishes that the activity in violation of law for which the equipment, vehicles or other property was seized was expressly or impliedly permitted by such person.

e. For purposes of this section, "owner" means a person, other than a holder of a security interest, having the

property in or title to equipment, vehicles or other personal property, including but not limited to a person entitled to use and possession of equipment, vehicles or other personal property subject to a security interest in another person and also includes any lessee or bailee having exclusive use thereof.

**HISTORICAL NOTE**

Section added L.L. 40/1990 § 8 eff. August 11, 1990.

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

*NYC Administrative Code 16-131.5*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-131.5 Inquiries and subpoena power.

The commissioner shall have the power to conduct such inquiries as may assist him or her in the performance of the functions of the department pursuant to sections 16-117.1, 16-120.1, 16-119, 16-130, 16-131, 16-131.1, 16-131.2, 16-131.3, 16-131.4 or 16-133 of this chapter and for such purpose shall have subpoena power to compel the attendance of witnesses, to administer oaths, examine witnesses and to compel the production of books, papers and documents.

**HISTORICAL NOTE**

Section added L.L. 40/1990 § 8 eff. July 12, 1990.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-132*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-132 Lease of advertising space on litter baskets.

Notwithstanding any other provision of local law, the commissioner shall have the power, subject to the approval of the board of estimate, to lease, rent or otherwise grant advertising space to any person on any basket, container or receptacle placed in a public place by the department or its authorized agent for the public disposal of litter and to collect rentals, fees, charges or accept any other consideration for the lease, rental or other grant of such advertising space.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 755(5)-4.0 added LL 61/1972 § 1

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

*NYC Administrative Code 16-133*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-133 Enforcement.

a. 1. Any person who violates any provision of section 16-129, 16-130, 16-131, 16-131.2, 16-131.3 or 16-131.5 of this chapter, or article one hundred fifty-seven of the New York city health code, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed twenty-five thousand dollars, or by imprisonment for a term of not more than one year, or by both such fine and imprisonment.

2. In addition to any other penalties provided under paragraph one of this subdivision, any violation of section 16-129, 16-130, 16-131, 16-131.2, 16-131.3 or 16-131.5 of this chapter, or article one hundred fifty-seven of the New York city health code, shall be punishable by a civil penalty of not less than twenty-five hundred dollars nor more than ten thousand dollars for the first violation, not less than five thousand nor more than ten thousand dollars for the second violation committed in a period of three years, and ten thousand dollars for the third and any subsequent violation committed in such period. Every owner of premises or of equipment, vehicles or other personal property shall be punishable by a civil penalty of not less than twenty-five hundred dollars nor more than ten thousand dollars for the first violation, not less than five thousand nor more than ten thousand dollars for the second violation committed in a period of three years, and ten thousand dollars for the third and any subsequent violation committed in such period by any person using or operating the same, in the business of such owner or otherwise, with the permission, express or implied, of such owner. In the case of a continuing violation, every day's continuance thereof may be deemed to be a separate and distinct violation. Civil penalties shall be recovered in a civil action brought in the name of the commissioner or in a proceeding before the environmental control board, provided however that civil penalties for violations of article one hundred fifty-seven of the New York city health code may only be recovered as provided by law for violations of the New York city health code. As used in this paragraph, "owner" means a person, other than a holder of a security

interest, having the property in or title to premises or equipment, vehicles or other personal property, including but not limited to a person entitled to use and possession of premises or equipment, vehicles or other personal property subject to a security interest in another person and also includes any lessee or bailee having exclusive use thereof.

b. 1. Any person who violates any provision of section 16-117 of this chapter shall be guilty of a violation, and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars nor more than five hundred dollars, or by imprisonment for a term of not more than fifteen days, or by both such fine and imprisonment.

2. In addition to any other penalties provided under paragraph one of this subdivision, any violation of section 16-117 of this chapter shall be punishable by a civil penalty of not less than two hundred fifty dollars nor more than five hundred dollars. Civil penalties shall be recovered in a civil action brought in the name of the commissioner or in a proceeding before the environmental control board.

c. The commissioner shall have the power to issue notices of violation for violations of article one hundred fifty-seven of the New York city health code and such notices of violation shall be returnable as provided by law for violations of the New York city health code.

d. The commissioner of health shall have the power to issue notices of violation for violations of sections 16-130 and 16-131 of this chapter, and such notices of violation shall be returnable in a civil action brought in the name of the commissioner of health or in a proceeding before the environmental control board.

e. Nothing contained in this section shall be construed to restrict existing authority of any agency to enforce any other provision of law, including but not limited to any provision of the New York city health code.

**HISTORICAL NOTE**

Section repealed and added L.L. 40/1990 § 9 eff. August 11, 1990.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 759-1.0 added LL 59/1938 § 4

Section heading added LL 50/1942 § 139

Amended LL 29/1956 § 4

Amended chap 100/1963 § 570



Administrative Code of the City of New York



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

*NYC Administrative Code 16-134*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-134 Comprehensive study of commercial solid waste management system required.

a. 1. "Long haul transport vehicle" shall mean any motor vehicle used to remove solid waste or other material from a putrescible or non-putrescible solid waste transfer station for final disposal, reuse or recycling.

2. "Private carter" shall mean any individual or business entity required to obtain a license from the trade waste commission pursuant to subdivision a of section 16-505 of this title.

3. "Trade waste commission" shall mean the New York city trade waste commission as established by section 16-502 of this title.

b. The department, in consultation with the trade waste commission, shall enter into one or more contracts for the performance of a comprehensive study of the existing commercial solid waste management system within the city of New York. In performing the study, the department and/or the contractor or contractors shall solicit and consider the views of elected officials, the citywide recycling advisory board, the borough solid waste advisory boards and the public, including residents of affected communities, environmental advocacy organizations, transfer station operators, private carters, business entities and academicians, and respond to substantive issues raised. The study shall include, but need not be limited to, an analysis of the following.

1. the effectiveness of procedures employed and the criteria applied by the department for the issuance and renewal of permits for the operation of putrescible and non-putrescible solid waste transfer stations in minimizing potential adverse environmental economic and public health impacts on the communities in which such transfer stations are located by examining such issues as (i) the effectiveness of the criteria applied by the department to the siting of

putrescible and non-putrescible solid waste transfer stations, including the aggregate effect of the geographic proximity of solid waste transfer stations to each other and (ii) the scope and effectiveness of the operational restrictions imposed upon putrescible and non-putrescible solid waste transfer stations including the hours of operation and any performance standards established in the zoning resolution of the city of New York;

2. the manner in which all applicable laws, rules and regulations relating to the operation of putrescible and non-putrescible solid waste transfer stations, private carters and long haul transport vehicles are enforced, including who should be responsible for such enforcement and the effectiveness of such enforcement in obtaining compliance with such laws, rules and regulations and in minimizing potential environmental economic and public health impacts and an analysis of rules relating to routes for transporting material to or from such transfer stations;

3. the means and potential effects of limiting the number and capacity of putrescible and non-putrescible solid waste transfer stations in the city; 4. the size and type of vehicles that should be authorized to transport solid waste to or from putrescible and non-putrescible solid waste transfer stations and fuel-type requirements for such vehicles;

5. whether putrescible and non-putrescible solid waste transfer stations and city-owned marine transfer stations should receive and process both residential and commercial solid waste and the options for transporting such solid waste to and from such transfer stations, including an analysis of potential environmental, economic and public health impacts; and

6. potential environmental, economic and public health impacts on communities in which large numbers of privately-owned putrescible and non- putrescible solid waste transfer stations are located such as, but not limited to, potential impacts related to air quality, water quality, odors, traffic congestion and noise.

c. The study required by subdivision b of this section, and a report containing a detailed analysis of the findings of such study, as well as recommendations based on such analysis and findings, shall be completed no later than eighteen months after registration of the consultant contract and at least two months before the next draft comprehensive solid waste management plan is submitted to the council or the New York state department of environmental conservation. Such report shall be submitted to the mayor and the council immediately upon its completion. A preliminary report containing data necessary to perform the analyses described in subdivision b of this section shall be submitted by the department to the mayor and the council during or before the last quarter of calendar year two thousand one.

d. Such study shall be performed and such report shall be prepared in a manner designed to assist in the preparation of the next comprehensive solid waste management plan for the city of New York required by section 27-0107 of the New York state environmental conservation law.

**HISTORICAL NOTE**

Section added L.L. 74/2000 § 2, eff. Dec. 19, 2000. [See Note]

**NOTE**

Provisions of L.L. 74/2000 § 1:

Section 1. Declaration of Legislative Intent and Findings. The legislatively mandated closure of the Fresh Kills Landfill by January 1, 2002 opens a new era in solid waste management in New York City and affords an opportunity to reexamine all aspects of how solid waste is managed, including that generated by the commercial sector. Moreover, New York City must now begin development of its next Comprehensive Solid Waste Management Plan.

Until the late 1980s, private carters paid a tipping fee to dispose of solid waste in the City's Fresh Kills landfill. In 1988, the tipping fee was raised to discourage private carters from using the Fresh Kills landfill in order to extend the

landfill's useful life. This resulted in increased amounts of solid waste being sent to private transfer stations in New York City and the region.

Solid waste transfer stations and the trucks transporting waste to and from those facilities may generate such problems as dust, debris, noise, odors, air pollutants, vermin and traffic congestion. The Council is concerned that transfer stations and private carters in New York City may need more regulation in order to protect the communities in which they are located and conduct business and to ensure effective enforcement of the rules governing their operation.

The Council finds that a comprehensive study of the commercial solid waste management system within the City of New York is critical in order to enable the City to assess and plan for management of both the residential and commercial waste streams in the most efficient manner, to minimize the potential adverse impacts on the City's residential and business communities and the environment, and to assist in developing a new comprehensive solid waste management plan.

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

*NYC Administrative Code 16-140*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 1 DEPARTMENT OF SANITATION

§ 16-140 Solid Waste Management Plan.

(a) No final solid waste management plan for the city shall be submitted pursuant to article twenty-seven of the environmental conservation law unless such submission has been authorized by the council by local law, except as provided in subdivisions c, d and e of this section.

(b) A draft solid waste management plan for the city which is to be submitted pursuant to article twenty-seven of the environmental conservation law shall be presented to the council at or before the time of such submission, but in no event later than the thirty-first day of March, nineteen hundred ninety-two. Any comments by the New York State department of environmental conservation shall be transmitted to the council immediately upon their receipt.

(c) A proposed final solid waste management plan shall be presented to the council within forty-five days after the receipt of comments by the New York State department of environmental conservation but in no event later than the twenty-sixth day of June, nineteen hundred ninety-two. The council shall, not later than the thirty-first day of August, nineteen hundred ninety-two, pass a local law which either grants or denies the authority for the submission of a proposed final solid waste management plan for the city.

(d) Notwithstanding the provisions of subdivision c of this section, in the event that on or before the tenth day of July, nineteen hundred ninety-two, the council passes a local law which denies the authority for the submission of a proposed final solid waste management plan for the city pursuant to article twenty-seven of the environmental conservation law and the mayor disapproves such law, such proposed plan shall not be submitted until either two-thirds of all the members of the council have voted whether to repass such local law, or the period within which such repassing may occur has expired, pursuant to section thirty-seven of the charter. In the event that such local law is

repassed by a two-thirds vote of all the members of the council, such proposed plan shall not be submitted.

(e) Notwithstanding the provisions of subdivisions a and c of this section, in the event the council does not act in accordance with subdivision c of this section, such proposed final solid waste management plan may be submitted pursuant to article twenty-seven of the environmental conservation law.

**HISTORICAL NOTE**

Section amended L.L. 69/1992 § 1, eff. July 9, 1992.

Section added L.L. 23/1992 § 1, eff. Mar. 25, 1992.

**NOTE**

Provisions of L.L. 72/1992 eff. Sept. 9, 1992:

A LOCAL LAW

To grant the authority for the submission of a Final Solid Waste Management Plan for the City of New York.

**Be it enacted by the Council as follows:**

Section 1. Pursant to subdivision (c) of section 16-140 of the administrative code of the city of New York, the council hereby grants the authority for the submission, pursuant to article twenty-seven of the New York State environmental conservation law, of the proposed final solid waste management plan for the city of New York and any amendments thereto, presented to the council pursuant to such subdivision (c) of section 16-140.

§ 2. This local law shall take effect immediately.

**NOTE**

Provisions of L.L. 72/2000 eff. Nov. 29, 2000:

A LOCAL LAW

To grant the authority for the submission of a modification for the comprehensive solid waste management plan for the city of New York.

**Be it enacted by the Council as follows:**

Section 1. In accordance with the provisions of section 20.5 of the comprehensive solid waste management for the city of New York, as approved by the New York state department of environmental conservation on the twenty-eighth day of October, nineteen hundred ninety-two, the council hereby grants the authority for the submission of a modification for such comprehensive solid waste management plan pursuant to the requirements of section 20.4 of such plan and section 360-15.11 of title six of the official compilation of the codes, rules and regulations of the state of New York, as such modification was first presented to the council on or about the thirteenth day of October, two thousand in accordance with the provisions of section 20.5 of such plan and with any revisions to such modification as may have been made prior to passage by the council of this local law.

§ 2. Any revision to the modification referred to in section one of this local law that is proposed to be made subsequent to the passage of this local law and prior to approval by the New York state department of environmental conservation pursuant to section 360-15.10(e) may not be submitted to the New York state department of environmental conservation unless such proposed revision has been presented to the council and within thirty days from the first

regular meeting following receipt of such proposed revision the council has not passed a local law denying the authority for such submission.

§ 3. This local law shall take effect immediately and shall be deemed in full force and effect on the date of its passage by the council.

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*NYC Administrative Code 16-201*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 2 SOLID WASTE MANAGEMENT

§ 16-201 Facility assignment.

a. The commissioner is authorized and empowered to promulgate regulations and procedures for the management on a city-wide basis of all solid waste generated or disposed of within the city and to supervise and regulate the transportation and disposition of all solid waste generated or disposed of within the city pursuant to the standards established herein, provided that no regulation shall abridge, impair or restrict any bona fide firm contracts for the purchase or delivery of solid waste for resource recovery entered into between private parties prior to the date at which final notice of regulations is filed with the city clerk, and that any such regulations are accompanied by a justification of such regulations that demonstrates either:

(1) That regulating privately collected solid waste or a portion of such waste, whether by waste origin, destination, type or by any other reasonable basis will, in the opinion of the commissioner, help facilitate the construction, expansion, rehabilitation or operation, by or for the city, of a solid waste recovery and management facility, or will help the city discharge its responsibilities with respect to the management, including trasportation*5 and disposition, on a city-wide basis, of all solid waste generated or disposed of within the city, or

(2) That a declaration of imminent peril to the public health has been authorized by the board of health and such situation can be addressed or prevented by regulating the disposal of privately collected waste.

b. The commissioner may assign to persons who collect or dispose of solid waste a solid waste recovery and management facility or facilities at which such persons shall deliver such waste. The commissioner may assign days and hours when such persons shall use such facilities, and may limit or prohibit collection truck traffic on particular streets or limit such traffic to certain hours of the day.

c. The commissioner shall weigh as one critical consideration in his ultimate determination of specific site assignments for disposal, the minimization of solid waste disposal vehicle traffic and transportation cost on city streets and roadways.

d. The commissioner shall further consider the following objectives in determining facility assignments:

(1) meeting the daily operating capacity requirements of each resource recovery facility and minimizing overloading of facilities; (2) extending the useful life of existing municipal landfills;

(3) ensuring the economic viability of resource recovery facilities processing waste generated within the city;

(4) ensuring that unacceptable wastes do not enter facilities;

(5) meeting any contractual obligations required under any resolution or resolutions authorizing the issuance of bonds for solid waste recovery and management facilities, or entered into pursuant to chapter five hundred sixty of the laws of nineteen hundred eighty;

(6) achieving uniform deliveries and minimizing congestion and dumping delays at facilities.

e. The commissioner shall exercise due diligence in notifying each person assigned to a facility of a scheduled closing of such facility by certified mail at least seventy-two hours prior to such closing. Such notification shall include the expected duration of the closing and assignments to alternative facilities and days and times of such assignments.

f. The commissioner shall exercise due diligence in notifying persons assigned to a facility of an emergency closing of a facility or any emergency during which facilities are not available. Unless the commissioner provides alternative facilities persons assigned to a closed or unavailable facility may arrange alternative means of disposal during the closing or unavailability of such facilities.

**HISTORICAL NOTE**

Section added L.L. 39/1986 § 1.

**FOOTNOTES**

5

[Footnote 5]: * So in original; should read "transportation."



Administrative Code of the City of New York



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

*NYC Administrative Code 16-202*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 2 SOLID WASTE MANAGEMENT

§ 16-202 Waste acceptability.

a. The commissioner shall promulgate a list of facilities and solid wastes accepted and not accepted at each such facility.

b. Solid wastes not acceptable at certain or all facilities may include, but need not be limited to, the following:

(1) solid wastes that may adversely affect the health or safety of facility employees or damage facility equipment;

(2) wastes designated as hazardous wastes pursuant to the federal resource conservation and recovery act of 1976, as amended, and regulations promulgated pursuant thereto and titles seven and nine of article twenty-seven of the New York environmental conservation law and regulations promulgated pursuant thereto;

(3) wastes designated as hazardous air pollutants pursuant to section one hundred twelve of the federal clean air act, as amended, and regulations promulgated pursuant to such act;

(4) sewage sludge or containerized or free liquids;

(5) bulk wastes of a size or dimension too cumbersome for efficient burning at incinerators or resource recovery facilities;

(6) any or all classes of regulated medical waste or other medical waste as defined in section 16-120.1 provided that such list be consistent with such section.

**HISTORICAL NOTE**

Section added L.L. 39/1986 § 1.

Subd. b so designated L.L. 75/1989 § 2 (formerly Subd. (b)).

Subd. b par (6) amended L.L. 75/1989 § 2.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-203*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 2 SOLID WASTE MANAGEMENT

§ 16-203 Charges.

a. The rates for use of facilities provided by or for the department shall be fixed by the board of estimate upon the recommendation of the commissioner, who shall require persons assigned to such facilities to pay such rates.

b. The rates shall be sufficient, when added to other waste disposal and resource recovery revenues and to the value to the department of its proportionate use of all facilities comprising the solid waste management system of the city, as determined by the commissioner, to provide for all expenses of transportation, land acquisition, construction, equipment, operations including enforcement, administrative and insurance costs, maintenance, expansion, replacement, financing and reasonable reserves therefore and any other costs that may be required for the financing or completion of facilities, equipment or land to be used for furnishing solid waste management services. The commissioner may from time to time recommend and the board of estimate may prescribe changes in rates, provided that such changes shall be based on changes in the cost of furnishing solid waste management services.

c. The rate for each facility may be fixed so as to vary according to volume, location of facility assignment, or weight, type, character or difficulty of storing, processing or disposing of the solid waste, or other factors relating to economic efficiency or allocation of resources and may not discriminate between classes of users. The commissioner shall state the basis for establishing such varying rates in the commissioner's recommendations to the board of estimate.

d. The commissioner shall notify by mail all persons assigned to use facilities of the first meeting of the board of estimate at which any resolution fixing or changing such rates is scheduled to be considered. Such notice shall be mailed at least thirty days prior to such board of estimate meeting and shall include the proposed rates or rate changes. Failure to provide such notice shall not affect the validity of such rates.

e. The commissioner may collect charges in such manner as he determines shall minimize burdens and costs of the department, provided that the commissioner shall also consider burdens and costs of persons assigned to facilities.

**HISTORICAL NOTE**

Section added L.L. 39/1986 § 1.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-204*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 2 SOLID WASTE MANAGEMENT

§ 16-204 Recordkeeping and filing requirements.

Each person assigned to a facility or facilities shall submit to the commissioner an annual report on such date as the commissioner shall determine, in a form established by the commissioner, which provides information required by the commissioner to plan, develop, maintain and operate facilities and provide waste management services. Such information shall include but not be limited to daily solid waste volumes and general composition or character of wastes by each vehicle route to and from facilities.

**HISTORICAL NOTE**

Section added L.L. 39/1986 § 1.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-205*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 2 SOLID WASTE MANAGEMENT

§ 16-205 Variances.

a. There shall be in the department a solid waste management board consisting of the commissioner, the commissioner of consumer affairs and the executive director of the office for economic development, all of whom shall serve on the board without compensation and all of whom shall have the power to exercise or delegate any of their functions, powers and duties as members of the board. Such board may grant variances from a regulation or modify assignments or rates of the commissioner involving the transportation, storage, processing or disposal of solid waste when such board finds that such regulation or order would impose unreasonable economic hardship. The specific terms of any variance granted shall be determined by such board on a case by case basis. Any person seeking a variance shall do so by filing with such board a petition for variance in a form prescribed by such board. Such forms shall document the need for a variance.

b. Exemptions from formal variance request procedures may be made for day-to-day operational hardships such as equipment failure. The commissioner may grant temporary facility and time assignment variances to persons who report such hardships to the commissioner. Proof of hardship must be submitted to the commissioner within the time frame set by the commissioner. Subsequent exemptions may be withheld for failing to submit proof of hardship for any prior request.

**HISTORICAL NOTE**

Section added L.L. 39/1986 § 1.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-206*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 2 SOLID WASTE MANAGEMENT

§ 16-206 Enforcement proceedings.

a. The commissioner shall issue a notice of violation returnable to the environmental control board to any person violating a provision of this chapter or any regulation promulgated by the commissioner pursuant to this chapter.

b. The environmental control board shall impose penalties as provided in subdivisions c and d.

c. Each violation, whether committed on the same or a subsequent date, shall be deemed a separate violation and be punishable by a penalty.

**[See tabular material in printed version]**

d. Violations not listed in subdivision c may be punishable as determined by the environmental control board by a penalty not to exceed ten thousand dollars.

e. Any person violating a provision of this chapter or any regulation promulgated by the commissioner pursuant to this chapter shall also be liable for any costs or expenses that may be incurred by the city as a result of such violation.

**HISTORICAL NOTE**

Section added L.L. 39/1986 § 1.

Subd. c amended L.L. 75/1989 § 3.

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

*NYC Administrative Code 16-207*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 2 SOLID WASTE MANAGEMENT

§ 16-207 Regulations.

a. The commissioner, upon the recommendation of the solid waste management board and upon the approval of the board of estimate, may exempt that portion of privately collected solid waste from all or some provisions of any regulations for such period of time as is necessary and appropriate up to forty years, if the regulation of that solid waste will materially and adversely interfere with the development, financing or operation of any resource recovery facility owned or operated or being developed privately. Any person seeking an exemption shall do so by filing with the solid waste management board a petition for exemption in a form prescribed by such board. Such form shall document the need for an exemption. The effective date of any exemptions granted may be withheld until a bona fide, firm, long-term contract has been executed for delivery of such solid waste to a safe and reliable facility and copy of such contract has been received by the solid waste management board.

b. In the event that any resource recovery facility owned or operated privately fails to adequately process or dispose of solid waste and such facility does not provide for alternate storage, processing or disposal, the privately collected solid waste exempted from regulation and not disposed by the facility may be made subject to any regulation for which it had been exempted.

c. (1) Nothing herein shall be construed to prohibit or limit private collectors from extracting from the waste they collect materials that have value to such collectors for the purposes of recycling, reuse or resale.

(2) Any regulations promulgated shall not limit the amount or type of solid waste utilized by any person for the purposes of composting, materials recovery from solid waste, or operation of a recycling center.

d. Such regulations shall make reasonable accommodation to permit persons to deliver solid waste to recycling facilities or permitted transfer facilities for the sole purpose of materials reclamation or volume reduction, provided, however, that nothing contained herein shall materially impair the authority of the com- missioner to enforce the regulation of the residual solid waste resulting from such reclamation or volume reduction activities in accordance with this chapter.

**HISTORICAL NOTE**

Section added L.L. 39/1986 § 1.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-208*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 2 SOLID WASTE MANAGEMENT

§ 16-208 Publication of regulations.

Notwithstanding any inconsistent provisions of section eleven hundred five of the charter, the regulations promulgated pursuant to this chapter shall be promulgated pursuant to the procedures set forth in this section. The commissioner shall:

a. publish notice of the proposed regulations in at least two newspapers of general circulation, the city record, and at least one industry journal:

b. allow a sixty day period to receive comments on such proposed regulations and an additional ten days to review such comments before publishing a final notice of such regulations:

c. at least one hundred eighty days prior to the effective date of such regulations, submit to the city clerk final notice of such regulations, together with a set of the comments filed pursuant to this section, findings related to material substantive elements in such comments, and a justification for the necessity of such regulations; and

d. amend such regulations pursuant to section eleven hundred five of the charter.

**HISTORICAL NOTE**

Section added L.L. 39/1986 § 1.

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

*NYC Administrative Code 16-209*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 2 SOLID WASTE MANAGEMENT

§ 16-209 Definitions.

As used in this title: a. "Solid waste" means all materials or substances discarded or rejected as being spent, useless, or worthless, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris and offal, but not including sewage and other highly diluted water-carried materials or substances and those in gaseous forms.

b. "Solid waste recovery and management facility" or "facility" means any facility, plant, works, system, building, structure, improvement, machinery, equipment, fixture or other real or personal property which is to be used, occupied or employed beyond the initial solid waste collection process for the storage, processing, or disposal of solid waste or the recovery by any means of any material or energy product or resource therefrom including but not limited to recycling centers, transfer stations, baling facilities, rail haul or barge haul facilities, processing systems, resource recovery facilities or other facilities for reducing solid waste volume, sanitary landfills, plants and facilities for compacting, composting or pyrolization of solid wastes, incinerators, and other solid waste disposal, reduction or conversion facilities. For the purpose of this title, solid waste recovery and management facilities include solid waste recovery and management projects as defined in subdivision two of section 51-0903 of the environmental conservation law.

c. "Person" means any governmental body, except the city of New York, public corporation or authority, private corporation, partnership or individual engaged in the business of removing, disposing of, conveying or transporting upon the streets, public places or bridges, or over the ferries in the city of solid waste.

**HISTORICAL NOTE**

Section added L.L. 39/1986 § 1.



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

*NYC Administrative Code 16-301*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 1 SHORT TITLE, POLICY AND DEFINITIONS

§ 16-301 Short title.

This chapter shall be known and may be cited as the "New York City Recycling Law."

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**CASE NOTES**

¶ 1. Local Law #19 of 1989, §16-301 et. seq., requires the Department of Sanitation to implement a comprehensive recycling program and promulgate regulations relating thereto. The enactment coincided with a fiscal crisis where the mayor eliminated funding and the council partially restored it. The City Council never modified or repealed Local Law 19 and contention that such was accomplished implicitly by reduced funding is rejected. Natural Resources Defense Counsel v. NY City Sanit. Dept., 188 AD2d 415 [1993].

¶ 2. A mandamus proceeding seeking to compel the City to comply with the recycling law was held to present a justiciable controversy. Although the method of complying with the statute involves some discretion, it was nevertheless mandatory that the City implement a recycling plan. Matter of Natural Resources Defense Council v. New York City Department of Sanitation, 83 N.Y.2d 215, 608 N.Y.S.2d 915 (1994).

¶ 3. Construction and demolition debris is not properly includible in calculating how much solid waste is recycled. Matter of Natural Resources Defense Council, N.Y.L.J., Jan. 23, 1997, page 29, col. 1 (Sup. Ct. New York Co.).

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

Accordingly, the council finds that to achieve these goals, it would be appropriate to establish a mandatory citywide waste recovery and recycling program, to create a recycling program that provides opportunities for everyone in the city to recycle, to ensure a varied and comprehensive citywide recycling program that may include source separation, drop-off centers, buy-back centers, post-collection separation facilities and other recycling centers, to promote and increase the demand for recycled goods by all consumers including the city and its contractors, to encourage and support the use of the resources and skills of local existing and newly established recycling businesses, and local community organizations and members in effectuating a recycling program, and to create a program that provides employment opportunities for unskilled workers and handicapped persons.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-302*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 1 SHORT TITLE, POLICY AND DEFINITIONS

§ 16-302 Declaration of policy.

It is hereby declared to be the public policy of the city to reduce environmental pollution and dangers to health, to decrease the demand for scarce landfill space, to minimize the size and cost of the proposed resource recovery program, and to encourage the conservation of valuable natural resources and energy. It is the policy of the city to promote the recovery of materials from the New York city solid waste stream for the purpose of recycling such materials and returning them to the economy. This chapter shall be liberally construed in order to effectuate the purposes set forth in this section.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

Accordingly, the council finds that to achieve these goals, it would be appropriate to establish a mandatory citywide waste recovery and recycling program, to create a recycling program that provides opportunities for everyone in the city to recycle, to ensure a varied and comprehensive citywide recycling program that may include source separation, drop-off centers, buy-back centers, post-collection separation facilities and other recycling centers, to promote and increase the demand for recycled goods by all consumers including the city and its contractors, to encourage and support the use of the resources and skills of local existing and newly established recycling businesses, and local community organizations and members in effectuating a recycling program, and to create a program that provides employment opportunities for unskilled workers and handicapped persons.

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*NYC Administrative Code 16-303*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 1 SHORT TITLE, POLICY AND DEFINITIONS

§ 16-303 Definitions.

When used in this chapter:

a. "Buy-back center" means a recycling center that purchases and may otherwise accept recyclable materials from the public for the purpose of recycling such materials.

b. "Department-collected solid waste" means all solid waste that the department and its contractors collect and all solid waste that the department receives for free disposal.

c. "Department-disposed of solid waste" means all solid waste, including department-collected solid waste, disposed of at a department landfill, incinerator, resource recovery facility or other waste disposal facility owned, operated or used by the department.

d. "Drop-off center" means a recycling center that accepts and may otherwise purchase recyclable materials from the public for the purpose of recycling such materials.

e. "Household" means a single dwelling or a residential unit within a multiple dwelling, hotel, motel, campsite, ranger station, public or private recreation area, or other residence.

f. "Post-collection separation" means the dividing of solid waste into some or all of its component parts after the

point of collection.

g. "Post-consumer material" means only those products generated by a business or a consumer which have served their intended end uses, and which have been separated or diverted from solid waste for the purposes of collection, recycling and disposition.

h. "Private carter" means any person required to be licensed or permitted pursuant to subchapter eighteen of chapter two of title twenty of this code.

i. "Recyclable materials" means solid waste that may be separated, collected, processed, marketed and returned to the economy in the form of raw materials or products, including but not limited to types of metal, glass, paper, plastic, food waste, tires and yard waste.

j. "Recycled" or "recycling" means any process by which recyclable materials are separated, collected, processed, marketed and returned to the economy in the form of raw materials or products.

k. "Recycling center" means any facility operated to facilitate the separation, collection, processing or marketing of recyclable materials for reuse or sale.

l. "Recycling district" means any borough or smaller geographic area the commissioner deems appropriate for the purpose of implementing this chapter.

m. "Secondary materials" means any material recovered from or otherwise destined for the waste stream, including but not limited to, post-consumer material, industrial scrap material and overstock or obsolete inventories from distributors, wholesalers and other companies, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

n. "Solid waste" means all putrescrible and non-putrescible materials or substances, except as described in paragraph three of this subdivision, that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles and offal.

1. A material is discarded if it is abandoned by being:

i. disposed of;

ii. burned or incinerated, including being burned as a fuel for the purpose of recovering useable energy; or

iii. accumulated, stored, or physically, chemically or biologically treated (other than burned or incinerated) instead of or before being disposed of.

2. A material is disposed of if it is discharged, disposited, injected, dumped, spilled, leaked, or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into groundwater or surface water.

3. The following are not solid waste for the purpose of this chapter:

i. domestic sewage;

ii. any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works for treatment, except any material that is introduced into such system in order to avoid the provisions of this chapter or the state regulations promulgated to regulate solid waste management facilities pursuant to 6 NYCRR

Part 360;

iii. industrial wastewater discharges that are actual point source discharges subject to permits under article seventeen of the environmental conservation law; industrial wastewaters while they are being collected, stored, or treated before discharge and sludges that are generated by industrial wastewater treatment are solid wastes;

iv. irrigation return flows;

v. radioactive materials that are source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 et seq.

vi. materials subject to in-situ mining techniques which are not removed from the ground as part of the extraction process;

vii. hazardous waste as defined in section 27-0901 of the environmental conservation law; and

viii. regulated medical waste or other medical waste as described in section 16-120.1 of this title.

o. "Source separation" means the dividing of solid waste into some or all of its component parts at the point of generation.

p. "Yard waste" means leaves, grass clippings, garden debris, vegetative residue that is recognizable as part of a plant or vegetable, small or chipped branches, and similar material.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

Subd. n par. 3 subpar viii amended L.L. 75/1989 § 4.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

Accordingly, the council finds that to achieve these goals, it would be appropriate to establish a mandatory citywide waste recovery and recycling program, to create a recycling program that provides

opportunities for everyone in the city to recycle, to ensure a varied and comprehensive citywide recycling program that may include source separation, drop-off centers, buy-back centers, post-collection separation facilities and other recycling centers, to promote and increase the demand for recycled goods by all consumers including the city and its contractors, to encourage and support the use of the resources and skills of local existing and newly established recycling businesses, and local community organizations and members in effectuating a recycling program, and to create a program that provides employment opportunities for unskilled workers and handicapped persons.

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

*NYC Administrative Code 16-304*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 2 CITYWIDE RECYCLING PROGRAM

§ 16-304 Department-disposed of solid waste.

The commissioner shall within nine months of the effective date of this chapter establish and implement programs to ensure that the amount of department-disposed of solid waste is reduced or recycled by at least:

a. one thousand four hundred thirty tons per day by the end of the first year following the enactment date of this chapter and during the year thereafter;

b. two thousand eight hundred seventy tons per day by the end of the second year following the enactment date of this chapter and during the year thereafter;

c. four thousand three hundred tons per day by the end of the third year following the enactment date of this chapter and during the year thereafter;

d. five thousand seven hundred forty tons per day by the end of the fourth year following the enactment date of this chapter and during the year thereafter; and

e. seven thousand one hundred eighty tons per day by the end of the fifth year following the enactment date of this chapter and during the year thereafter.

These programs may be designed to increase private sector or residential recycling, to increase the return and

recycling of containers under the New York State returnable container law, to implement waste reduction or reuse measures, or to export waste for the purpose of recycling. The waste reduction and recycling requirements of this section shall include all the solid waste that is recycled pursuant to the recycling requirements of section 16-305 of this chapter, but shall not include the reduction or recycling of ash or residue from resource recovery facilities, or the reduction or recycling of sludges from air or water treatment facilities. For the purpose of this section, "day" shall mean each working day in a three hundred sixty-five day calendar year. Should the level of recycling exceed the minimum quantities required in this section, the council may review the original mandate and increase the minimum requirements.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

Accordingly, the council finds that to achieve these goals, it would be appropriate to establish a mandatory citywide waste recovery and recycling program, to create a recycling program that provides opportunities for everyone in the city to recycle, to ensure a varied and comprehensive citywide recycling program that may include source separation, drop-off centers, buy-back centers, post-collection separation facilities and other recycling centers, to promote and increase the demand for recycled goods by all consumers including the city and its contractors, to encourage and support the use of the resources and skills of local existing and newly established recycling businesses, and local community organizations and members in effectuating a recycling program, and to create a program that provides employment opportunities for unskilled workers and handicapped persons.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-305*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 2 CITYWIDE RECYCLING PROGRAM

§ 16-305 Department-collected solid waste.

a. The commissioner shall, within nine months of the effective date of this chapter, adopt and implement regulations designating at least six recyclable materials, including yard waste to the extent required in section 16-308 of this chapter, contained in department-collected solid waste and requiring households to source separate the designated materials to ensure that the department and its contractors recycle at least:

1. seven hundred tons per day by the end of the first year following the enactment date of this chapter and during the year thereafter;

2. one thousand four hundred tons per day by the end of the second year following the enactment date of this chapter and during the year thereafter;

3. two thousand one hundred tons per day by the end of the third year following the enactment date of this chapter and during the year thereafter;

4. three thousand four hundred tons per day by the end of the fourth year following the enactment date of this chapter and during the year thereafter; and

5. four thousand two hundred fifty tons per day by the end of the fifth year following the enactment date of this

chapter and during the year thereafter.

At the start of the second, third, fourth and fifth years following the enactment date of this chapter, the tonnage requirements of this section shall be increased by the average annual percentage increase in solid waste that the department and its contractors collected from households and institutions and solid waste that the department received for free disposal in the two previous consecutive fiscal years. The solid waste that the department and its contractors are required to recycle pursuant to this subdivision shall include department-collected solid waste recycled pursuant to this subdivision, city agency waste recycled pursuant to section 16-307, yard waste collected by the department and composted pursuant to section 16-308, Christmas trees collected by the department and composted or recycled pursuant to section 16-309, and batteries and tires collected pursuant to section 16-310 that are recycled, but shall not include containers returned pursuant to the New York State returnable container law, commercial solid waste removed and recycled by private carters, reduction or recycling of ash or residue from resource recovery facilities, or reduction or recycling of sludges from air or water treatment facilities. For the purpose of this subdivision, "day" shall mean each working day in a three hundred sixty-five day calendar year. Should the level of recycling exceed the minimum quantities required in this subdivision, the council may review the original mandate and increase the minimum requirements.

b. The commissioner shall, within nine months of the effective date of this chapter, adopt and implement regulations establishing procedures requiring the placement of the designated materials at the curbside in specialized containers, or in any other manner the commissioner determines, to facilitate the collection of such materials in a manner that enables them to be recycled.

c. The commissioner may stagger the source separation and collection of the designated recyclable materials, with the exception of yard waste, provided that the recycling of the materials that are source separated and collected shall be sufficient to achieve the recycling levels required in this section, and that all the designated materials shall be source separated and collected within four and one-half years of the effective date of this chapter.

d. In establishing the schedule by which residential source separation shall commence, the commissioner may stagger the commencement dates for different recycling districts. Any such staggered schedule shall provide that at least one-third of all households shall be subject to source separation within one year of the effective date of this chapter; at least two-thirds of all households shall be subject to source separation within three years of the effective date of this chapter; and all households shall be subject to source separation within four and one-half years of the effective date of this chapter.

e. Within any recycling district, the commissioner may exempt residential generators from the source separation requirement of this section if the department employs alternative recycling methods, including but not limited to the use of buy-back centers, drop-off centers, or post-collection separation devices, provided that participation in any alternative methods is sufficient to achieve for the recycling district a percentage of the recycling requirement in this section at least equal to the percent of the citywide department-collected solid waste that is collected within the district. The commissioner shall not exempt residential generators from the source separation requirement of this section unless he or she determines that for the recycling districts source separation cannot otherwise achieve the recycling levels required in this section.

f. Where the department provides solid waste collection services to a building containing nine or more dwelling units, the commissioner shall, within nine months of the effective date of this chapter, adopt and implement regulations requiring the owner, net lessee or person in charge of such building to:

1. provide for the residents a designated area and, where appropriate, containers in which to accumulate the source separated or other designated recyclable materials to be collected by the department;

2. notify all residents of the requirements of this chapter and the regulations promulgated pursuant thereto; and

3. remove non-designated materials from the containers of designated source separated recyclable materials before such containers are placed at the curbside for collection and ensure that the designated materials are placed at the curbside in the manner prescribed by the department.

With respect to solid waste generated by households in the aforesaid buildings, the obligations of an owner or a net lessee under this local law shall be limited to those set forth in this subdivision and subdivisions b and g of this section.

g. Eighteen months from the enactment of this chapter, the commissioner shall adopt and implement regulations for any building containing nine or more dwelling units in which the amount of designated materials placed out for collection is significantly less than what can reasonably be expected from such building. These regulations shall require residential generators, including tenants, owners, net lessees or persons in charge of such building to use transparent bags or such other means of disposal the commissioner deems appropriate to dispose of solid waste other than the designated recyclable materials. Upon request of the owner, net lessee or person in charge of such building, and if the commissioner determines that such owner, net lessee or person in charge has complied with this subdivision and subdivision f of this section and that the amount of designated materials placed out for collection remains significantly less than what can reasonably be expected from such building, the department shall develop a schedule to conduct random inspections to facilitate compliance with the provisions of this chapter by tenants of such building, provided that lawful inspections may occur at reasonable times without notice to ensure compliance by the tenants, owner, net lessee or person in charge of such building.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

Accordingly, the council finds that to achieve these goals, it would be appropriate to establish a mandatory citywide waste recovery and recycling program, to create a recycling program that provides opportunities for everyone in the city to recycle, to ensure a varied and comprehensive citywide recycling program that may include source separation, drop-off centers, buy-back centers, post-collection separation facilities and other recycling centers, to promote and increase the demand for recycled goods by all consumers including the city and its contractors, to encourage and support the use of the resources and skills of local

existing and newly established recycling businesses, and local community organizations and members in effectuating a recycling program, and to create a program that provides employment opportunities for unskilled workers and handicapped persons.

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*NYC Administrative Code 16-305.1*

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Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 2 CITYWIDE RECYCLING PROGRAM

§ 16-305.1 Weekly collection of designated recyclable materials.

a. Weekly collection of designated recyclable materials shall be maintained in all local service delivery districts.

b. Effective July first, two thousand three, and notwithstanding any inconsistent provision of this chapter, the department shall be authorized, by written order of the commissioner, to implement and maintain alternate week collection of designated recyclable materials in all local service delivery districts, provided that the department may, by written order of the commissioner, provide for more frequent collection of designated recyclable materials in designated local service delivery districts. Any such written order of the commissioner implementing alternate week collection shall expire no later than March thirty-first, two thousand four.

c. For purposes of this section "designated recyclable materials" shall mean solid waste that has been designated by the commissioner as recyclable pursuant to section 16-305 or section 16-307 of this chapter.

d. Nothing in this section shall be construed to require collection of designated recyclable materials in such parts of the city or during such times of the year that such materials are not otherwise collected.

**HISTORICAL NOTE**

Section amended L.L. 50/2003 § 1, eff. July 16, 2003 and retroactive to

July 1, 2003.

Section added L.L. 59/1998 § 1, eff. Dec. 22, 1998.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

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*NYC Administrative Code 16-306*

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Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 2 CITYWIDE RECYCLING PROGRAM

§ 16-306 Private carter-collected waste.

a. The commissioner shall adopt and implement rules designating recyclable materials that constitute in the aggregate at least one-half of all solid waste collected by private carters, and additional materials if the commissioner determines that economic markets exist for them. Pursuant to subdivision b of this section, such rules shall require generators of private carter-collected waste to source separate some or all of the designated materials and to arrange for lawful collection for recycling, reuse or sale for reuse by private carters or persons other than private carters of such source separated materials. With regard to designated materials that are not required by such rules to be source separated, generators of private carter-collected waste may source separate these designated materials and, in any event, shall arrange for their lawful collection for recycling, reuse or sale for reuse by private carters or persons other than private carters. If a generator or private carter-collected waste has source separated the designated materials in accordance with the rules and arranged for the lawful collection for recycling, reuse or sale for reuse by private carters or persons other than private carters of such source separated materials and, with regard to designated materials that are not required by such rules to be source separated, arranged for lawful collection for recycling, reuse or sale for reuse by private carters or persons other than private carters, such arrangement shall constitute an affirmative defense to any proceeding brought against the generator pursuant to section 16-324 of this chapter.

b. The rules promulgated pursuant to subdivision a of this section shall require that generators of waste collected by businesses required to be licensed pursuant to section 16-505 of this code source separate the designated materials in such manner and to such extent as the commissioner determines to be necessary to minimize contamination and

maximize the marketability of such materials. However, in promulgating such rules the commissioner shall not require source separation of a material unless the commissioner has determined that an economic market exists for such material. For the purpose of this section, the term "economic market" refers to instances in which the full avoided costs of proper collection, transportation and disposal of source separated materials are equal to or greater than the cost of collection, transportation and sale of said materials less the amount received from the sale of said materials. The New York city trade waste commission shall adopt and implement rules requiring businesses licensed to remove, collect or dispose of trade waste to provide for the collection of, and ensure the continued separation of, designated materials that have been source separated, provide for the separation of all other designated materials, and provide for recycling of all the designated materials. Rules promulgated by the trade waste commission pursuant to this subdivision shall be enforced in the manner provided in section 16-517 of this code and violations of such rules shall be subject to the penalties provided in subdivision a of section 16-515 of this code for violation of the provisions of chapter 16-A. In addition, the commissioner shall have the authority to issue notices of violation for any violation of such rule and such notices of violation shall be returnable in a civil action brought in the name of the commissioner before the environmental control board which shall impose a penalty not to exceed ten thousand dollars for each such violation.

**HISTORICAL NOTE**

Section amended L.L. 87/1992 § 1, eff. Nov. 10, 1992.

Section added L.L. 19/1989 § 2.

Subd. b amended L.L. 42/1996 § 4, eff. June 3, 1996.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

Accordingly, the council finds that to achieve these goals, it would be appropriate to establish a mandatory citywide waste recovery and recycling program, to create a recycling program that provides opportunities for everyone in the city to recycle, to ensure a varied and comprehensive citywide recycling program that may include source separation, drop-off centers, buy-back centers, post-collection separation facilities and other recycling centers, to promote and increase the demand for recycled goods by all consumers including the city and its contractors, to encourage and support the use of the resources and skills of local existing and newly established recycling businesses, and local community organizations and members in effectuating a recycling program, and to create a program that provides employment opportunities for unskilled

workers and handicapped persons.

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*NYC Administrative Code 16-307*

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Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 2 CITYWIDE RECYCLING PROGRAM

§ 16-307 City agency waste.

The commissioner shall, within six months of the effective date of this chapter, adopt and implement regulations requiring the source separation or post-collection separation, collection, processing, marketing, and sale of designated recyclable materials generated by city mayoral and non-mayoral agencies, including the council and the board of estimate.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The

recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-308*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 2 CITYWIDE RECYCLING PROGRAM

§ 16-308 Yard waste.

a. Within eighteen months of the effective date of this chapter, the commissioner shall provide for the source separation, collection and composting of department-collected yard waste, with the exception of yard waste generated by the department of parks and recreation, any other city agency that generates a substantial amount of yard waste, or any person under contact with the department of parks and recreation or any other city agency, generated within designated areas of the city in which a substantial amount of yard waste is generated from October 15 to November 30 of each year, unless the generator otherwise provides for recycling or storage for composting or mulching. The commissioner may construct and operate one or more composting facilities, or utilize the services of other facilities.

b. Within thirty-six months of the effective date of this chapter, the commissioner shall provide for the source separation, collection and composting of department-collected yard waste generated within designated areas of the city in which a substantial amount of yard waste is generated from March 1 to July 31 and September 1 to November 30 of each year, unless the generator otherwise provides for recycling or storage for composting or mulching. The commissioner may construct and operate one or more composting facilities, or utilize the services of other facilities.

c. Within eighteen months of the effective date of this chapter, the department of parks and recreation or any other city agency that generates a substantial amount of yard waste shall provide for the source separation, collection and composting of yard waste generated by the department of parks and recreation, any other city agency that generates a substantial amount of yard waste, or any person under contract with the department of parks and recreation or any

other city agency.

d. Within eighteen months of the effective date of this chapter, no landfill, incinerator or resource recovery facility owned, operated or used by the department shall accept for final disposal from October 15 to November 30 of each year truckloads primarily composed of yard waste, except that composted yard waste may be used as part of the final vegetative cover for a department landfull.

e. Within thirty-six months of the effective date of this chapter, no landfill, incinerator or resource recovery facility owned, operated or used by the department shall accept for final disposal from March 1 to July 31 and September 1 to November 30 of each year truckloads primarily composed of yard waste, except that composted yard waste may be used as part of the final vegetative cover for a department landfill.

f. All city agencies responsible for the maintenance of public lands shall to the maximum extent practicable and feasible give preference to the use of compost materials derived from the city's solid waste in all land maintenance activities.

g. Generators of yard waste, except those identified in subdivision h of this section, shall separate, tie, bundle, or place into paper bags, or rigid containers, in accordance with rules promulgated by the commissioner, any yard waste set out for collection by the department pursuant to subdivision b of this section. The commissioner shall notify all residents in districts that receive yard waste collection by the department of such pre-collection procedures, and undertake any other action necessary to effectuate the purposes of this subdivision.

h. No person engaged in a business that generates yard waste, shall leave such yard waste for collection by the department, or disperse such yard waste in or about the curb or street. Any person engaged in a business that generates yard waste shall be required to collect and dispose of such yard waste at a permitted composting facility; provided, however, that if the department, by written order of the commissioner, determines that there is insufficient capacity at permitted composting facilities within the city of New York or within ten miles of the borough in which any such person generates yard waste, then such yard waste may be disposed of at any appropriately permitted solid waste management facility.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

Subd. g added L.L. 40/2006 § 1, eff. Apr. 1, 2007. [See Note 1]

Subd. h added L.L. 40/2006 § 1, eff. Oct. 1, 2008. [See Note 1]

**NOTE**

1. Provisions of L.L. L.L. 40/2006:

§ 3. This local law shall take effect immediately [Oct. 17, 2006], except that subdivision g of section 16-308 of the administrative code of the city of New York, as added by section one of this local law, shall take effect on April 1, 2007, and subdivision h of section 16-308 of the administrative code of the city of New York, as added by section one of this local law, shall take effect on October 1, 2008.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

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CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 2 CITYWIDE RECYCLING PROGRAM

§ 16-309 Christmas trees.

Within eighteen months of the effective date of this chapter, the commissioner shall designate areas and within these designated areas establish and implement a collection system for Christmas trees during the first three weeks of January of each year and provide for the composting or recycling of the Christmas trees the department collects or receives for disposal.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The

recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

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CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 2 CITYWIDE RECYCLING PROGRAM

§ 16-310 Batteries and tires.

If within eighteen months of the effective date of this chapter, no state or federal legislation has been enacted requiring the collection of or imposing deposits on dry cell batteries or tires, the commissioner shall establish and implement citywide deposit or reclamation programs, that provide separate collection systems or convenient drop-off locations for dry cell batteries and tires to ensure that they are not incinerated or disposed of in an unlined landfill. The commissioner may establish a reasonable battery deposit charge and a reasonable tire deposit charge pursuant to this section.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

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CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 2 CITYWIDE RECYCLING PROGRAM

§ 16-311 Recycling centers.

a. The commissioner shall, within eighteen months of the effective date of this chapter, develop and establish or support the development and establishment of not less than ten recycling centers. Such recycling centers shall be strategically sited and of sufficient size and number to provide for the recycyling of all recyclable materials required to be recycled by the department and its contractors pursuant to section 16-305 of this chapter. The commissioner may utilize and include among the required number of recycling centers, recycling centers in existence before the effective date of this chapter, and where necessary the commissioner may provide for the expansion of such existing centers. The commissioner shall evaluate the feasibility of utilizing existing recycling centers in determining the need to establish city owned or operated centers. Notwithstanding the requirement for not less than ten recycling centers, the commissioner may utilize less than ten recycling centers if the recycling centers have the combined capacity to process all the material required to be recycled pursuant to section 16-305 of this chapter.

b. The commissioner shall establish or ensure that there exists at least one buy-back center in each borough. For economic development purposes, these buy-back centers shall be sited so that they are accessible to all residents, including residents of low income neighborhoods. The commissioner may include these buy-back centers among the recycling centers required under this section. The commissioner shall not include material from commercial generators which is processed for recycling at these and all other buy-back centers in the solid waste required to be reduced or recycled pursuant to section 16-305.

c. Recycling centers may be owned, operated, or funded by the city, any agency of the city, any person, or a public-private joint venture.

d. The commissioner may provide financial or other assistance to recycling centers in existence before and after the effective date of this chapter, upon a determination that such assistance will further the purposes of this chapter.

e. To the extent feasible, the commissioner shall ensure that all recycling centers established after the effective date of this chapter shall be sited to encourage the use of existing rail or shipping facilities, upon a determination that such siting will further the purposes of this chapter.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

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CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 2 CITYWIDE RECYCLING PROGRAM

§ 16-312 Processing recyclable materials.

The commissioner shall establish procedures and standards for processing recyclable materials in city owned or operated recycling centers, city owned or operated transfer stations or any city owned or operated facility that renders recyclable materials suitable for reuse or marketing and sale. The commissioner shall review the procedures and standards at least annually and make any changes necessary to conform to the requirements of the marketplace.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

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Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 2 CITYWIDE RECYCLING PROGRAM

§ 16-313 Marketing recyclable materials.

a. The department shall establish procedures, standards and strategies to market the department-collected recyclable materials designated pursuant to section 16-305 of this chapter, including but not limited to maintaining a list of prospective buyers, establishing contact with prospective buyers, entering into contracts with buyers, and reviewing and making any necessary changes in collecting or processing the materials to improve their marketability.

b. Within eighteen months of the effective date of this chapter, the commissioner in conjunction with the office for economic development shall submit to the mayor, the council, the board of estimate, each citizens' board created under section 16-317 of this chapter and the citywide board created under section 16-319 of this chapter a study of existing markets for processing and purchasing recyclable materials, and the potential and the steps necessary to expand these markets. Such study shall also include a proposal developed in conjunction with the department of finance to use, where feasible, the city's tax and finance authority to stimulate recycling and the demand for recycled materials.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

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Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 2 CITYWIDE RECYCLING PROGRAM

§ 16-314 Recycling program revisions.

a. The commissioner shall annually review the recycling program and all rules and regulations promulgated therefor, and shall make the necessary revisions to improve the efficiency of collecting, processing, marketing and selling the materials recycled pursuant to this chapter. These revisions may include designating additional recyclable materials. The commissioner shall not delete designated materials without designating additional materials so that the total quantity, by weight, of all designated recyclable materials collected, processed, marketed and sold does not decrease.

b. By the end of the fifth year following the enactment date of this chapter, the commissioner shall designate two additional recyclable materials contained in residential or commercial solid waste and provide for the recycling of these materials in accordance with the provisions of this chapter.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

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Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 2 CITYWIDE RECYCLING PROGRAM

§ 16-315 Notice, education and research programs.

a. In addition to the notice requirements of section one thousand forty-three of chapter forty-five of the charter, within thirty days of the effective date of any regulations promulgated pursuant to this chapter, and as frequently thereafter as the commissioner deems necessary, the department shall notify all community boards and persons occupying residential, commercial and industrial premises affected by the regulations, of the requirements of the regulations, by placing advertisements in newspapers of citywide, borough-wide and community circulation, posting notices in public places where such notices are customarily placed, and, in the commissioner's discretion, employing any other means of notification deemed necessary and appropriate.

b. Within twelve months of the effective date of this chapter, the department shall develop and implement an educational program, in conjunction with the board of education, private schools, labor organizations, businesses, neighborhood organizations, community boards, and other interested and affected parties, and using flyers, print and electronic advertising, public events, promotional activities, public service announcements, and such other techniques as the commissioner determines to be useful, to assure the greatest possible level of compliance with the provisions of this chapter. The educational program shall encourage waste reduction, the reuse of materials, the purchase of recyclable products, and participation in city and private recycling activities.

c. The department shall perform such research and development activities, in cooperation with other city agencies, and public and private institutions, as the commissioner determines to be helpful in implementing the city's

recycling program. Such research shall include, but not be limited to, investigation into the use of cooperative marketing programs, material recovery facilities, recycling as an economic development tool, export promotion, tax credits and exemptions for market promotion.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

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CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 3 RECYCLING PLAN

§ 16-316 Recycling plan.

a. The commissioner shall, within twelve months of the effective date of this chapter, prepare and submit to the mayor, the council and the citywide board created under section 16-319 of this chapter a preliminary citywide recycling plan. The commissioner shall, within eighteen months of the effective date of this chapter, prepare and submit to the mayor, the council and the citywide board a citywide recycling plan and each year thereafter the commissioner shall submit to such parties an updated plan. The preliminary plan, the plan and each updated plan shall include, but need not be limited to:

1. a waste composition analysis that identifies the quantity and composition of the city's solid waste by recycling district;

2. annual recycling and reduction goals equal to or exceeding the mandatory minimum levels of sections 16-304 and 16-305, including the quantity and composition of recyclable materials to be collected, processed, marketed and sold by recycling district;

3. a five-year strategy for collecting, processing, marketing and selling the designated recyclable materials, and disposing of residual, non-recyclable solid waste, taking into account persons engaged in the business of recycling or persons otherwise providing recycling services before the effective date of this chapter. Such strategy may be based upon the results of the waste composition analysis performed pursuant to paragraph one of this subdivision or

information obtained in the course of past collection of solid waste by the department, and may include recommendations with respect to increasing the number of materials designated for recycling pursuant to sections 16-305, 16-306 or 16-307 of this chapter;

4. comprehensive and up-to-date lists of large-scale generators of recyclable materials within the city and potential purchasers of recyclable waste material both within the city and in other locations;

5. a comprehensive analysis of all appropriate department properties and facilities to determine their feasibility as recycling centers;

6. proposed methods and programs to achieve a reduction in the city's solid waste stream, including but not limited to identifying materials the use of which should be regulated or limited based upon their incompatibility with recycling;

7. recommended revisions and an evaluation of the feasibility and effectiveness of such revisions to the building code of the city of New York, chapter one of title twenty-seven of this code, prepared in conjunction with the department of buildings, requiring newly constructed buildings and buildings undergoing specified alterations to contain storage space, devices or mechanisms that facilitate source separation and storage of the recyclable materials designated pursuant to sections 16-305 and 16-306 and that enable the department efficiently to collect, process, market and sell the designated materials; in preparing such recommendations, the commissioner and the commissioner of buildings shall evaluate the feasibility and effectiveness of requiring separate chutes to facilitate source separation in multi-family dwellings, storage areas that conform to fire and safety code regulations, and specialized storage containers;

8. to the extent feasible, proposals developed in consultation with the metropolitan transportation authority, the port authority of New York and New Jersey, the department of transportation, and the department of ports, international trade and commerce, to separate, collect and recycle recyclable materials, including but not limited to newspaper, that are discarded at transportation facilities, including subway, bus, railroad and ferry stations;

9. proposals developed in consultation with the board of education, the department of correction, health and hospitals corporation and other appropriate entities to separate, collect and recycle materials that are discarded at schools, jails, hospitals and other similar institutions throughout the city;

10. recommended product labeling requirements that would facilitate source separation and recycling of recyclable materials;

11. a proposal for an incentive program, including cash incentives, to encourage recycling participation;

12. an analysis of whether providing a reduced tipping fee for the disposal of residue that results from recycling activity in the private sector will enhance or increase private sector recycling;

13. an evaluation of the economic development benefits of alternative recycling methods and strategies;

14. a comparison of the economic costs of recycling to the economic costs of other disposal and waste management strategies, including but not limited to resource recovery incineration and export; such comparison shall include but not be limited to expense, capital and external costs;

15. a review of all regulations pertaining to solid waste collection and disposal to determine their compatibility with the provisions and goals of this chapter;

16. a report on and evaluation of any pending federal and state legislation on recycling, waste reduction or any other solid waste management issues;

17. a detailed report on the recycling activities of the department during the preceding year;

18. specific and detailed objectives for the activities and programs conducted and assisted under this chapter;

19. the commissioner's conclusions as to the effectiveness of such activities and programs in achieving these objectives and the purposes of this chapter;

20. a summary of outstanding recycling problems confronting the department in the order of priority;

21. recommendations with respect to legislation the commissioner deems necessary or desirable to assist in solving these recycling problems;

22. the commissioner's plans for recycling and reduction activities and programs during the next year; and

23. all other information required to be submitted to the council pursuant to any other provision of this chapter.

b. Within four years of the effective date of this chapter, the commissioner shall prepare and submit to the mayor, the council, each citizens' board and the citywide board, a detailed and comprehensive plan to achieve for New York city the New York State goal of forty percent recycling and eight to ten percent waste reduction by 1997.

**HISTORICAL NOTE**

Section added L.L. 19/89 § 2.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

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CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 4 RECYCLING ADVISORY BOARDS

§ 16-317 Citizens' solid waste advisory boards; membership.

Within six months of the effective date of this chapter, each borough shall establish a citizens' solid waste advisory board (the "citizens' board"), consisting of no fewer than twenty members who for the first term shall be comprised of the members of the borough's citizens' advisory committee on resource recovery and other persons appointed jointly by the borough president and the council members elected from the council districts included in any part of the borough. For each subsequent term, all members shall be appointed jointly by the borough president and the council members elected from the council districts included in any part of the borough. The membership of each citizens' board shall represent community boards, recycling industries, carting industries, environmental organizations, government agencies, labor organizations, business organizations, property owners, tenant organizations and members of the general public. Members shall serve for a term of two years without compensation and shall designate one member to serve as chairperson and one as vice-chairperson.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**FOOTNOTES**

6

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Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 4 RECYCLING ADVISORY BOARDS

§ 16-318 Functions of the citizens' board.

a. The department shall submit to each borough president the recycling plans prepared pursuant to section 16-316 of this chapter simultaneous with their submission to the mayor and the council. Each borough president shall distribute copies of the plans to each member of the citizens' board in his or her borough. Within ninety days thereafter, each citizens' board shall review the plans, conduct a public hearing on the plans and make written recommendations to its borough president, the department and the council with respect to the recycling program within its borough. Each citizens' board shall also annually advise its borough president and the department with respect to the development, promotion and operation of the recycling program in its borough and pursuant to this function shall formulate and recommend:

1. annual recycling and reduction goals equal to or greater than those set forth in sections 16-304 and 16-305 of this chapter and the methods proposed to achieve such goals;

2. means to encourage community participation in the recycling program; and

3. means to promote the recycling program and educate the public with regard to the program.

b. In each borough, the citizens' board shall assume all the responsibilities and functions of the borough's citizens' advisory committee on resource recovery.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

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Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 4 RECYCLING ADVISORY BOARDS

§ 16-319 Citywide recycling advisory board; membership.

Within nine months of the effective date of this chapter, a citywide recycling advisory board (the "citywide board") shall be formed, consisting of at least one representative from each citizens' board, five members appointed by the council, and five members appointed by the mayor. The membership of the citywide board shall represent community boards, recycling industries, carting industries, environmental organizations, government agencies, labor organizations, business organizations, property owners, tenant organizations and members of the general public. Members shall serve for a term of one year without compensation and shall designate one member to serve as chairperson and one as vice-chairperson.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

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CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 4 RECYCLING ADVISORY BOARDS

§ 16-320 Functions of the citywide board.

The citywide board shall meet at least four times a year to discuss citywide recycling issues, including but not limited to budgetary issues. The citywide board shall annually review the department's recycling program and make recommendations to the mayor and the council concerning improvements to and changes in the program.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

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CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 4 RECYCLING ADVISORY BOARDS

§ 16-321 Disclosure requirements.

a. Whenever a person, other than a public servant, appointed to any advisory board created pursuant to this subchapter, engages in any business dealings with the department, or engages in business dealings with any other agency which relate to processing or disposal of solid waste or of waste described in paragraph three of subdivision m of section 16-303 of this chapter or to recycling, or has an interest in a firm which is engaged in such business dealings with the department or with such other agency, such person shall, prior to appointment, disclose the nature of such business dealings to the commissioner and to the body or officer appointing such person, and, after appointment, disclose the nature of such business dealings to the commissioner and to all other members of such board; provided that such person need not disclose the amount of such business dealings.

b. When used in this section:

1. "Advisory committee" means a committee, council, board or similar entity that is constituted to provide advice or recommendations to the city and which has no authority to take a final action on behalf of the city, to take any action that would have the effect of conditioning, limiting or requiring any final action by any other agency, or to take any action that is authorized by law.

2. "Agency" means a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation, advisory committee or other agency of government, the expenses of

which are paid in whole or in part from the city treasury, and shall include but not be limited to, the council, the offices of each elected official, the board of education, community school boards, community boards, the financial services corporation, the health and hospitals corporation, the public development corporation and the New York city housing authority, but shall not include any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility.

3. "Blind trust" means a trust in which a candidate for any advisory board created pursuant to this subchapter or a member of such board, or the spouse or unemancipated child of such candidate or member, has a beneficial interest, the holdings and sources of income of which such candidate or member and such spouse and unemancipated child have no knowledge, and the trustee of which shall have independent authority and discretion.

4. "Business dealings" means any transaction involving the sale, purchase, rental, disposition or exchange of any goods, services or property, and any performance of or litigation with respect to any of the foregoing, but shall not include any transaction involving the residence of any candidate for any advisory board created pursuant to this subchapter or of any member of such board, or any ministerial matter.

5. "City" means the city of New York and includes an agency of the city.

6. "Elected official" means a person holding office as mayor, comptroller, public advocate, borough president or member of the council.

7. "Firm" means a sole proprietorship, joint venture, partnership, corporation or any other form of enterprise, but shall not include a public benefit corporation or local development corporation.

8. "Interest" means an ownership interest in a firm or a position with a firm.

9. "Ministerial matter" means an administrative act that is carried out in a prescribed manner and which does not involve substantial personal discretion.

(10)*7 "Ownership interest" means an interest in a firm that is held by a candidate for any advisory board created pursuant to this subchapter, or by a member of such board, or by the spouse, domestic partner, or unemancipated child of such candidate or member, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when such candidate or member, or such spouse, domestic partner, or unemancipated child, exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by such candidate or member, or by such spouse, domestic partner, or unemancipated child, or in any blind trust that holds or acquires an ownership interest.

11. "Position" means a position in a firm, such as an officer, director, trustee, employee or any management position, or as an attorney, agent, broker or consultant to the firm, which does not constitute an ownership interest in the firm.

12. "Public servant" means all officials, officers and employees of the city, including members of community boards and members of advisory committees, except unpaid members of advisory committees shall not be public servants.

13. "Spouse" means a husband or wife of a candidate for any advisory board created pursuant to this subchapter or of a member of such board who is not legally separated from such candidate or member.

14. "Unemancipated child" means any son, daughter, step-son or step-daughter who is under the age of eighteen, unmarried and living in the household of a candidate for any advisory board created pursuant to this subchapter or of the

member of such board.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

Subd. b par 6 amended L.L. 68/1993 § 31, eff. Jan. 1, 1994.

Subd. b par 10 amended L.L. 27/1998 § 18, eff. Sept. 5, 1998.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

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[Footnote 7]: * So in original. ("(10)" should be "10.".)



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Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 5*11 CITY PURCHASE OF RECYCLED PRODUCTS [Repealed]

§ 16-322 City purchase of products made from secondary materials. [Repealed]

**HISTORICAL NOTE**

Section repealed L.L. 121/2005 § 3, eff. Jan. 1, 2007.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

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[Footnote 11]: * Subchapter 5 repealed L.L. 121/2005 § 3, eff. Jan. 1, 2007. Substance transferred to Title 6 Chapter 3 Subchapter 4.



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Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 6 REGULATIONS SUBMITTED TO COUNCIL AND ENFORCEMENT

§ 16-323 Regulations submitted to council.

In addition to the requirements of section one thousnd forty-three of chapter forty-five of the charter, no regulations promulgated by the commissioner pursuant to this chapter shall be effective until such regulations are submitted to the council and within thirty days of receipt thereof the council has not voted to disapprove such regulations. If the council votes to disapprove the regulations, it shall forward its reasons for such disapproval to the commissioner and the commissioner shall either amend the regulations or withdraw them from consideration. The amended regulations shall not be effective until the commissioner submits them to the council and within thirty days of receipt thereof the council has not voted to disapprove such amended regulations.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

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CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 6 REGULATIONS SUBMITTED TO COUNCIL AND ENFORCEMENT

§ 16-324 Enforcement.

a. Any person who violates this chapter, except subdivision h of section 16-308 of this chapter, or any rule or regulation promulgated pursuant thereto shall be liable for a civil penalty recoverable in a civil action brought in the name of the commissioner or in a proceeding returnable before the environmental control board in an amount of twenty-five dollars for the first violation, fifty dollars for the second violation and one hundred dollars for the third and each subsequent violation, provided that the court before which such civil action is brought or such board may waive the penalty for the first violation upon a showing of good cause. A person committing a fourth and any subsequent violation within a period of six months shall be classified as a persistent violator and shall be liable for a civil penalty of five hundred dollars for each violation. For a persistent violation only, except where such violation occurs at a building of less than nine dwelling units, each container or bag containing solid waste that has not been source separated or placed out for collection in accordance with the regulations promulgated by the commissioner pursuant to this chapter shall constitute a separate violation, provided that no more than twenty separate violations are issued on a per bag or per container basis during any twenty-four hour period. Before issuing any further notice of violations to a persistent violator after the fourth violation within a period of six months, the commissioner shall give such violator a reasonable opportunity to correct the condition constituting the violation. Any person who violates subdivision h of section 16-308 of this chapter shall be liable for a civil penalty in the amount of two hundred fifty dollars for the first violation, one thousand dollars for the second violation within a period of twelve months from the first violation, and two thousand five hundred dollars for the third or subsequent violation within a period of twelve months from the first

violation.

b. Any notice of violation or notice of hearing for a violation issued to the owner or agent of a premises at which a violation of this chapter or any regulation promulgated pursuant thereto is alleged to have occurred shall be served by delivering a copy of the notice to the owner or agent at both the address maintained in the records of the department of buildings and the department of finance. The notice of violation or notice of hearing may be served by regular mail.

**HISTORICAL NOTE**

Section added L.L. 19/1989 § 2.

Subd. a amended L.L. 40/2006 § 2, eff. Oct. 17, 2006.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

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CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 7 TEMPORARY EMERGENCY RECYCLING REQUIREMENTS*9

§ 16-325 Temporary emergency recycling requirements.

a. Notwithstanding any inconsistent provision of this chapter, the department shall be authorized, by written order of the commissioner, to suspend the collection of glass, plastic and beverage cartons as designated recyclable materials. Any such suspension with regard to glass shall take effect no earlier than July first, two thousand two and shall expire no later than March thirty-first, two thousand four. Any such suspension with regard to plastic and beverage cartons shall take effect no earlier than July first, two thousand two and shall expire no later than June thirtieth, two thousand three. During any period in which the collection of glass, plastic or beverage cartons as designated recyclable materials, is suspended pursuant to this subdivision, the department shall be authorized to collect the suspended recyclable materials with other non-recyclable solid waste.

b. Notwithstanding any inconsistent provision of this chapter, the department shall be authorized, by written order of the commissioner, to suspend the provisions of section 16-308 of this chapter. Any such suspension shall take effect no earlier than July first, two thousand three and shall expire no later than June thirtieth, two thousand four. During any period in which the provisions of section 16-308 of this chapter are suspended pursuant to this subdivision, the department shall be authorized to collect yard waste with other non-recyclable solid waste.

c. Notwithstanding any inconsistent provision of this chapter, during a period of suspension, the department shall only be required to maintain fiscal year two thousand two tonnage amounts for those recyclable materials whose collection has not been suspended. Upon expiration of any period of suspension, the department shall resume collection

of recyclable materials whose suspension has ended and shall be required to maintain fiscal year two thousand two tonnage amounts for those materials, unless other standards are agreed upon by the council and the mayor.

d. Notwithstanding any inconsistent provision of this chapter, the department shall not be required to designate additional recyclable materials during any period in which the collection of glass, plastic or beverage cartons as designated recyclable materials, or material designated pursuant to section 16-308 of this chapter, is suspended pursuant to subdivision a or b of this section.

e. The mayor and council shall create a temporary task force in order to develop a long term recycling plan in compliance with the provisions of this chapter. The task force shall be comprised of six mutually agreed upon appointees, three proposed by the mayor and three proposed by the speaker of the council. The task force shall meet on or before July fifteenth, two thousand two and monthly thereafter and issue a report to the mayor and speaker on February twenty-first, two thousand three. The task force shall examine and make recommendations that include steps necessary to improve the efficiency of source separation and collection of recyclable materials; appropriate recycling standards; the identification and development of markets for recyclable materials; the expansion of the New York State Returnable Container Act; and the development and implementation of strategies to educate residents on compliance with the recycling laws.

**HISTORICAL NOTE**

Section amended L.L. 50/2003 § 2, eff. July 16, 2003 and retroactive to

July 1, 2003.

Section added L.L. 11/2002 § 2, eff. July 1, 2002 and expiring June 30,

2004 per L.L. 11/2002 § 3.

Subd. d amended L.L. 46/2002 § 1, eff. Dec. 19, 2002 and deemed in

full force and effect as of Dec. 15, 2002.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

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[Footnote 9]: * Subchap 7 added L.L. 11/2002 eff. July 1, 2002 and expiring June 30, 2004. Note provisions of such Local Law:

Section 1. Legislative findings and intent. The Council finds that the short term suspension of glass, plastic, and beverage cartons recycling is necessary at this time on an emergency basis due to the budget deficit arising out of the September 11 tragedy and the accompanying economic downturn. This temporary suspension does not change, amend, modify or repeal the goals or purposes of Local Law 19 of 1989. The Council reaffirms and reiterates its full declaration of legislative intent and findings of Local Law 19 of 1989.

The Council finds that the City is faced with a solid waste management crisis and must find innovative ways to reduce the amount of solid waste sent to out-of-state landfills. The Council declares its unyielding commitment to provide the residents of the City with an environmentally sound, efficient and viable recycling program. During this temporary suspension period, a joint task force will be created to develop a plan to implement a more environmentally sound, effective and viable recycling program. The Council finds that the Mayor and Council must work together to ensure that the recycling program removes as much recyclable material from the solid waste stream as possible.

. . . . . § 3. This local law shall take effect immediately and shall expire on June 30, 2004.



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Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 8 SOLID WASTE AND RECYCLABLE MATERIALS AT STREET EVENTS*15

§ 16-326 Definitions.

For purposes of this subchapter, the following terms shall have the following meanings:

a. "Producer/Event Manager" means any person or entity hired by a sponsor to organize or manage a street event.

b. "Recyclable Materials" means metal cans, glass bottles and jars, plastic bottles and jugs, lightly-soiled aluminum foil and aluminum foil products, and any other material designated by the department for recycling at street events.

c. "Sponsor" means any person or entity that is required to apply for and obtain a street activity permit and that either organizes or manages a street event or hires a producer/event manager to organize or manage a street event.

d. "Street Event" means any street fair or festival on a public street where such activity may interfere with or obstruct the normal use by vehicular traffic of such street, but does not include street activities that occupy no more than one block for no more than one day where no licensed vendor participates.

**HISTORICAL NOTE**

Section added L.L. 13/2009 § 1, eff. Feb. 26, 2009.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

Accordingly, the council finds that to achieve these goals, it would be appropriate to establish a mandatory citywide waste recovery and recycling program, to create a recycling program that provides opportunities for everyone in the city to recycle, to ensure a varied and comprehensive citywide recycling program that may include source separation, drop-off centers, buy-back centers, post-collection separation facilities and other recycling centers, to promote and increase the demand for recycled goods by all consumers including the city and its contractors, to encourage and support the use of the resources and skills of local existing and newly established recycling businesses, and local community organizations and members in effectuating a recycling program, and to create a program that provides employment opportunities for unskilled workers and handicapped persons.

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[Footnote 15]: * Subchapter 8 added L.L. 13/2009 § 1, eff. Feb. 26, 2009.



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

*NYC Administrative Code 16-327*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 8 SOLID WASTE AND RECYCLABLE MATERIALS AT STREET EVENTS*15

§ 16-327 Sponsor and producer/event manager responsibilities at street events.

a. Every producer/event manager shall ensure that solid waste and recyclable materials generated at a street event are properly disposed of or recycled.

b. 1. Every producer/event manager shall provide a sufficient number of public solid waste receptacles and public recycling receptacles for street events as determined by the department, provided that the producer/event manager shall place at least two receptacles within or near each intersection within the street event area, one for solid waste and one for recyclable materials.

2. Every producer/event manager shall regularly monitor all solid waste and recycling receptacles throughout the street event area in order to prevent spillage of solid waste and recyclable materials into the street and shall remove any solid waste that has been deposited into receptacles designated for recyclable materials and remove any recyclable materials that have been deposited into receptacles designated for solid waste.

3. Every producer/event manager shall bag and bundle separately and tie securely all accumulated solid waste and recyclable materials at the end of each day of the street event.

4. Every producer/event manager shall ensure that all bagged and bundled solid waste and recyclable materials are placed at a predetermined location designated by the department for collection.

c. Every sponsor and producer/event manager shall comply with all applicable rules governing street events, including, but not limited to, rules set forth in chapter fourteen of title sixteen of the rules of the city of New York, to the extent such rules are not inconsistent with the provisions of this subchapter.

d. The provisions of subdivisions a and b of this section shall apply to the sponsor when there is no producer/event manager.

**HISTORICAL NOTE**

Section added L.L. 13/2009 § 1, eff. Feb. 26, 2009.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

Accordingly, the council finds that to achieve these goals, it would be appropriate to establish a mandatory citywide waste recovery and recycling program, to create a recycling program that provides opportunities for everyone in the city to recycle, to ensure a varied and comprehensive citywide recycling program that may include source separation, drop-off centers, buy-back centers, post-collection separation facilities and other recycling centers, to promote and increase the demand for recycled goods by all consumers including the city and its contractors, to encourage and support the use of the resources and skills of local existing and newly established recycling businesses, and local community organizations and members in effectuating a recycling program, and to create a program that provides employment opportunities for unskilled workers and handicapped persons.

15

[Footnote 15]: * Subchapter 8 added L.L. 13/2009 § 1, eff. Feb. 26, 2009.

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Title 16 Sanitation

CHAPTER 3*6 SOLID WASTE RECYCLING

SUBCHAPTER 8 SOLID WASTE AND RECYCLABLE MATERIALS AT STREET EVENTS*15

§ 16-328 Penalties.

In addition to any other applicable penalties, any producer/event manager, or any sponsor when there is no producer/event manager, who violates subdivision a or b of section 16-327 of this subchapter shall be liable for a civil penalty of one hundred dollars for each such violation, except that a sponsor or producer/event manager shall not be liable for more than five hundred dollars per day or more than two thousand dollars per street event. Such civil penalties shall be recoverable in a proceeding returnable before the environmental control board.

**HISTORICAL NOTE**

Section added L.L. 13/2009 § 1, eff. Feb. 26, 2009.

**FOOTNOTES**

6

[Footnote 6]: * Chapter added L.L. 19/89 § 2, Note L.L. 19/89 § 1.

Section one. Declaration of legislative intent and findings. The council finds that a significant amount of

recyclable material that could be removed from the solid waste stream is needlessly discarded each year. The recovery and reuse of such recyclable material will: (1) minimize environmentally unsound solid waste disposal methods; (2) reduce the consumption of and the demand for scarce landfill capacity; (3) diminish the size and cost of the prosposed resource recovery program, thereby reducing the economic and environmental burdens of this program which include the management of potentially toxic residue; (4) reduce the quantity of heavy metal, such as lead and cadmium, in the waste stream; and (5) aid in the conservation of vital natural resources and energy. The enactment by the State legislature of the Solid Waste Management Act of 1988 has created the need for the city to demonstrate its long-term commitment to effective waste management and requires the city to enact appropriate legislation. The council declares that the measures taken by the city must establish the most environmentally sound and economically desirable waste reduction, recycling and reuse programs possible and should be consistent with or surpass the reduction, recycling and reuse goals established by New York State.

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15

[Footnote 15]: * Subchapter 8 added L.L. 13/2009 § 1, eff. Feb. 26, 2009.



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

*NYC Administrative Code 16-401*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 4 [RECHARGEABLE BATTERIES; RECYCLING PROGRAM*]12

§ 16-401 Short title.

This chapter shall be known as and may be called the "New York City Rechargeable Battery Law".

**HISTORICAL NOTE**

Section added L.L. 97/2005 § 2, eff. Dec. 1, 2006. [See Chapter 4 footnote]

**FOOTNOTES**

12

[Footnote 12]: * Chapter 4 added L.L. 97/2005 § 2, eff. Dec. 1, 2006. Heading provided by Editor. Note further provisions:

Section 1. Declaration of legislative intent and findings. The Council finds and declares that the presence of toxic metals in discarded rechargeable batteries is a matter of great concern in light of their adverse effect on groundwater quality when disposed of in landfills and their presence in emissions or residual ash when incinerated at a resource recovery facility; that cadmium, lead and mercury found in rechargeable batteries, on the basis of available scientific and medical evidence, are of particular concern; that it is desirable to reduce the

toxicity of waste materials in the solid waste streams directed to resource recovery and sanitary landfill facilities; that the removal of used rechargeable batteries containing high levels of cadmium, lead or mercury from the solid waste stream can have a significant beneficial impact on the quality of the emissions and residual ash resulting from the incineration of solid waste at resource recovery facilities, and on groundwater quality in those regions where solid waste is disposed at sanitary landfill facilities; and that the most effective and appropriate method to promote the reduction of toxic metals from rechargeable battery disposal is to require the battery industry to accept the financial responsibility for the environmentally sound collection, transportation and recycling or proper disposal of discarded rechargeable batteries.

The Council therefore determines that it is in the public interest of the city of New York to maximize the removal of used rechargeable batteries from the solid waste stream by banning the disposal of used rechargeable batteries from the solid waste stream and requiring manufacturers of rechargeable batteries to take back and recycle the used rechargeable batteries that are sold or disposed of in the city of New York.

This law is purposefully structured to fit into current rechargeable battery initiatives, especially the Rechargeable Battery Recycling Corporation's call2recycle program. This program currently uses volunteer retailers, and provides them with collection boxes with pre-paid postage that can be mailed directly to existing recycling centers, to collect and recycle rechargeable batteries and cell phones of all varieties. The program also does public outreach and advertising to increase its recycling rates. The program is paid for by over 350 manufacturers and marketers of products that use rechargeable batteries and has over 37,000 participating retail partners, including approximately 350 retailers throughout the city, such as Radio Shack, Home Depot and Verizon Wireless. The Council finds that making this existing voluntary program mandatory would strengthen its effectiveness in the city of New York.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-402*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 4 [RECHARGEABLE BATTERIES; RECYCLING PROGRAM*]12

§ 16-402 Declaration of policy.

It is hereby declared to be the public policy of the city of New York to reduce environmental pollution, to reduce the toxicity of waste materials in the solid waste stream directed to resource recovery and sanitary landfill facilities, and to maximize the removal of used rechargeable batteries and products that contain rechargeable batteries and encourage their recycling by entities that manufacture rechargeable batteries by banning the disposal of used rechargeable batteries from the solid waste stream and requiring manufacturers of rechargeable batteries to take back and recycle the used rechargeable batteries sold or disposed of in the city of New York.

**HISTORICAL NOTE**

Section added L.L. 97/2005 § 2, eff. Dec. 1, 2006. [See Chapter 4 footnote]

**FOOTNOTES**

12

[Footnote 12]: * Chapter 4 added L.L. 97/2005 § 2, eff. Dec. 1, 2006. Heading provided by Editor. Note further provisions:

Section 1. Declaration of legislative intent and findings. The Council finds and declares that the presence of toxic metals in discarded rechargeable batteries is a matter of great concern in light of their adverse effect on groundwater quality when disposed of in landfills and their presence in emissions or residual ash when incinerated at a resource recovery facility; that cadmium, lead and mercury found in rechargeable batteries, on the basis of available scientific and medical evidence, are of particular concern; that it is desirable to reduce the toxicity of waste materials in the solid waste streams directed to resource recovery and sanitary landfill facilities; that the removal of used rechargeable batteries containing high levels of cadmium, lead or mercury from the solid waste stream can have a significant beneficial impact on the quality of the emissions and residual ash resulting from the incineration of solid waste at resource recovery facilities, and on groundwater quality in those regions where solid waste is disposed at sanitary landfill facilities; and that the most effective and appropriate method to promote the reduction of toxic metals from rechargeable battery disposal is to require the battery industry to accept the financial responsibility for the environmentally sound collection, transportation and recycling or proper disposal of discarded rechargeable batteries.

The Council therefore determines that it is in the public interest of the city of New York to maximize the removal of used rechargeable batteries from the solid waste stream by banning the disposal of used rechargeable batteries from the solid waste stream and requiring manufacturers of rechargeable batteries to take back and recycle the used rechargeable batteries that are sold or disposed of in the city of New York.

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-403*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 4 [RECHARGEABLE BATTERIES; RECYCLING PROGRAM*]12

§ 16-403 Definitions.

When used in this chapter:

a. "Battery manufacturer" means every person, firm or corporation that: (i) produces rechargeable batteries sold or distributed in the city of New York, or packages such batteries for sale in the city of New York, except that if such production or packaging is for a distributor having the right to produce or otherwise package that same brand of battery in the city of New York, then such distributor shall be deemed to be the battery manufacturer; or (ii) imports rechargeable batteries into the United States that are sold or distributed in the city of New York.

b. "Consumer" means any person who purchases one or more rechargeable batteries, or products containing such batteries at the time of sale, for personal use.

c. "Place of business" means the location at which a retailer sells or offers for sale to consumers, rechargeable batteries, or products containing such batteries at the time of sale.

d. "Rechargeable battery" means any rechargeable nickel-cadmium, sealed lead, lithium ion, nickel metal hydride battery, or any other such dry cell battery capable of being recharged weighing less than twenty-five pounds, or battery packs containing such batteries, but shall not include a battery used as the principal electric power source for a vehicle, such as, but not limited to, an automobile, boat, truck, tractor, golf cart or wheelchair, for storage of electricity generated by an alternative power source, such as solar or wind-driven generators, or for memory backup in an electronic device.

e. "Retailer" means a person, firm or corporation that engages in the sale of rechargeable batteries, or products containing such batteries, to a consumer in the city of New York, including, but not limited to, transactions conducted through sales outlets, catalogs, by mail, telephone or the internet. For the purposes of this section retailer shall not include a "food store".

f. "Food Store" means a store selling primarily food and food products for consumption or use off the premises that occupies less than 14,000 square feet of display space.

**HISTORICAL NOTE**

Section added L.L. 97/2005 § 2, eff. Dec. 1, 2006. [See Chapter 4

footnote]

**FOOTNOTES**

12

[Footnote 12]: * Chapter 4 added L.L. 97/2005 § 2, eff. Dec. 1, 2006. Heading provided by Editor. Note further provisions:

Section 1. Declaration of legislative intent and findings. The Council finds and declares that the presence of toxic metals in discarded rechargeable batteries is a matter of great concern in light of their adverse effect on groundwater quality when disposed of in landfills and their presence in emissions or residual ash when incinerated at a resource recovery facility; that cadmium, lead and mercury found in rechargeable batteries, on the basis of available scientific and medical evidence, are of particular concern; that it is desirable to reduce the toxicity of waste materials in the solid waste streams directed to resource recovery and sanitary landfill facilities; that the removal of used rechargeable batteries containing high levels of cadmium, lead or mercury from the solid waste stream can have a significant beneficial impact on the quality of the emissions and residual ash resulting from the incineration of solid waste at resource recovery facilities, and on groundwater quality in those regions where solid waste is disposed at sanitary landfill facilities; and that the most effective and appropriate method to promote the reduction of toxic metals from rechargeable battery disposal is to require the battery industry to accept the financial responsibility for the environmentally sound collection, transportation and recycling or proper disposal of discarded rechargeable batteries.

The Council therefore determines that it is in the public interest of the city of New York to maximize the removal of used rechargeable batteries from the solid waste stream by banning the disposal of used rechargeable batteries from the solid waste stream and requiring manufacturers of rechargeable batteries to take back and recycle the used rechargeable batteries that are sold or disposed of in the city of New York.

This law is purposefully structured to fit into current rechargeable battery initiatives, especially the Rechargeable Battery Recycling Corporation's call2recycle program. This program currently uses volunteer retailers, and provides them with collection boxes with pre-paid postage that can be mailed directly to existing recycling centers, to collect and recycle rechargeable batteries and cell phones of all varieties. The program also does public outreach and advertising to increase its recycling rates. The program is paid for by over 350 manufacturers and marketers of products that use rechargeable batteries and has over 37,000 participating retail partners, including approximately 350 retailers throughout the city, such as Radio Shack, Home Depot and Verizon Wireless. The Council finds that making this existing voluntary program mandatory would strengthen its effectiveness in the city of New York.

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*NYC Administrative Code 16-404*

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Title 16 Sanitation

CHAPTER 4 [RECHARGEABLE BATTERIES; RECYCLING PROGRAM*]12

§ 16-404 Rechargeable battery disposal ban.

a. No person shall knowingly dispose of rechargeable batteries as solid waste at any time in the city of New York.

**HISTORICAL NOTE**

Section added L.L. 97/2005 § 2, eff. Dec. 1, 2006. [See Chapter 4 footnote]

**FOOTNOTES**

12

[Footnote 12]: * Chapter 4 added L.L. 97/2005 § 2, eff. Dec. 1, 2006. Heading provided by Editor. Note further provisions:

Section 1. Declaration of legislative intent and findings. The Council finds and declares that the presence of toxic metals in discarded rechargeable batteries is a matter of great concern in light of their adverse effect on groundwater quality when disposed of in landfills and their presence in emissions or residual ash when incinerated at a resource recovery facility; that cadmium, lead and mercury found in rechargeable batteries, on the basis of available scientific and medical evidence, are of particular concern; that it is desirable to reduce the

toxicity of waste materials in the solid waste streams directed to resource recovery and sanitary landfill facilities; that the removal of used rechargeable batteries containing high levels of cadmium, lead or mercury from the solid waste stream can have a significant beneficial impact on the quality of the emissions and residual ash resulting from the incineration of solid waste at resource recovery facilities, and on groundwater quality in those regions where solid waste is disposed at sanitary landfill facilities; and that the most effective and appropriate method to promote the reduction of toxic metals from rechargeable battery disposal is to require the battery industry to accept the financial responsibility for the environmentally sound collection, transportation and recycling or proper disposal of discarded rechargeable batteries.

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This law is purposefully structured to fit into current rechargeable battery initiatives, especially the Rechargeable Battery Recycling Corporation's call2recycle program. This program currently uses volunteer retailers, and provides them with collection boxes with pre-paid postage that can be mailed directly to existing recycling centers, to collect and recycle rechargeable batteries and cell phones of all varieties. The program also does public outreach and advertising to increase its recycling rates. The program is paid for by over 350 manufacturers and marketers of products that use rechargeable batteries and has over 37,000 participating retail partners, including approximately 350 retailers throughout the city, such as Radio Shack, Home Depot and Verizon Wireless. The Council finds that making this existing voluntary program mandatory would strengthen its effectiveness in the city of New York.



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

*NYC Administrative Code 16-405*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 4 [RECHARGEABLE BATTERIES; RECYCLING PROGRAM*]12

§ 16-405 Rechargeable battery recycling program.

a. Rechargeable batteries shall be returned to a retailer that sells such batteries that are similar in shape, size and function to those to be disposed of. Rechargeable batteries contained in electronic products must be removed prior to disposal of such product.

1. Retailers having a place of business in the city of New York shall accept from consumers at any time during normal business hours rechargeable batteries of a similar size and shape as the retailer offers for sale. Retailers shall take up to ten such batteries per day from any person regardless of whether such person purchases replacement batteries, and retailers shall also accept as many such batteries as a consumer purchases from the retailer. Retailers shall conspicuously post and maintain, at or near the point of entry to the place of business, a legible sign, not less than 8 $^{1}/_{2}$ inches by 11 inches in size, stating that used rechargeable batteries of the size and shape sold or offered for sale by the retailer may not enter the solid waste stream, and that the retail establishment is a collection site for recycling such batteries. Such sign shall state the following in letters at least one-inch in height: "It is illegal to dispose of rechargeable batteries in the city of New York as solid waste. We accept used rechargeable batteries for return to the manufacturer."

2. Retailers that sell rechargeable batteries to consumers in the city of New York through non-retail outlets such as through catalogs, or by mail, telephone or the internet shall provide at the time of purchase or delivery to the consumer notice of an opportunity to return used rechargeable batteries at no cost to the consumer for reuse or reycling.

3. Retailers in the city of New York shall conspicuously maintain, at a location within the retail establishment convenient for use by consumers, collection boxes or other suitable receptacles, supplied by the manufacturer, into which consumers may deposit used rechargeable batteries.

b. Every battery manufacturer, or any combination of battery manufacturers working together, shall, at the battery manufacturer's own expense, arrange for the return of, and recycle, all used rechargeable batteries collected by retailers. Battery manufacturers shall be responsible for, at a minimum, the following:

1. Every battery manufacturer, or any combination of battery manufacturers working together, shall, within six months of the passage of this law, submit a plan to the commissioner, or any other person responsible for the city of New York's recycling programs, that identifies the methods by which battery manufacturers will collect, transport, and recycle rechargeable batteries collected by retailers at the expense of the battery manufacturer.

2. Every battery manufacturer, or any combination of battery manufacturers working together, shall submit annual reports concerning the amount of rechargeable batteries received and recycled within the city of New York, either by number or by weight; the costs of such efforts; and any other relevant information to the commissioner or any other person responsible for the city of New York's recycling programs.

3. Every battery manufacturer, or any combination of battery manufacturers working together, shall undertake efforts to educate the citizens of the city of New York regarding the appropriate ways to recycle rechargeable batteries.

c. The commissioner, or any other person responsible for the city of New York's recycling programs, shall approve or reject any battery manufacturer's collection, transportation, and recycling plans described in paragraph one of subdivision (b) of this section within thirty days of submission and, if rejected, inform the battery manufacturer in writing as to any deficiencies in the plan. Battery manufacturers shall amend and resubmit any rejected plans for reconsideration within sixty days of notification of the rejection of said plan. The commissioner or any other person responsible for the city of New York's recycling programs shall approve or reject said plan within thirty days of resubmission.

d. The commissioner, or any other person responsible for the city of New York's recycling programs, shall analyze the information provided by battery manufacturers pursuant to paragraph two of subdivision (b) of this section and report to the Mayor and the City Council every two years.

e. The commissioner, or any other person responsible for the city of New York's recycling programs, shall promulgate any rules needed to implement this law.

**HISTORICAL NOTE**

Section added L.L. 97/2005 § 2, eff. Dec. 1, 2006. [See Chapter 4

footnote]

**FOOTNOTES**

12

[Footnote 12]: * Chapter 4 added L.L. 97/2005 § 2, eff. Dec. 1, 2006. Heading provided by Editor. Note further provisions:

Section 1. Declaration of legislative intent and findings. The Council finds and declares that the presence of toxic metals in discarded rechargeable batteries is a matter of great concern in light of their adverse effect on groundwater quality when disposed of in landfills and their presence in emissions or residual ash when incinerated at a resource recovery facility; that cadmium, lead and mercury found in rechargeable batteries, on the basis of available scientific and medical evidence, are of particular concern; that it is desirable to reduce the

toxicity of waste materials in the solid waste streams directed to resource recovery and sanitary landfill facilities; that the removal of used rechargeable batteries containing high levels of cadmium, lead or mercury from the solid waste stream can have a significant beneficial impact on the quality of the emissions and residual ash resulting from the incineration of solid waste at resource recovery facilities, and on groundwater quality in those regions where solid waste is disposed at sanitary landfill facilities; and that the most effective and appropriate method to promote the reduction of toxic metals from rechargeable battery disposal is to require the battery industry to accept the financial responsibility for the environmentally sound collection, transportation and recycling or proper disposal of discarded rechargeable batteries.

The Council therefore determines that it is in the public interest of the city of New York to maximize the removal of used rechargeable batteries from the solid waste stream by banning the disposal of used rechargeable batteries from the solid waste stream and requiring manufacturers of rechargeable batteries to take back and recycle the used rechargeable batteries that are sold or disposed of in the city of New York.

This law is purposefully structured to fit into current rechargeable battery initiatives, especially the Rechargeable Battery Recycling Corporation's call2recycle program. This program currently uses volunteer retailers, and provides them with collection boxes with pre-paid postage that can be mailed directly to existing recycling centers, to collect and recycle rechargeable batteries and cell phones of all varieties. The program also does public outreach and advertising to increase its recycling rates. The program is paid for by over 350 manufacturers and marketers of products that use rechargeable batteries and has over 37,000 participating retail partners, including approximately 350 retailers throughout the city, such as Radio Shack, Home Depot and Verizon Wireless. The Council finds that making this existing voluntary program mandatory would strengthen its effectiveness in the city of New York.



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

*NYC Administrative Code 16-406*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER 4 [RECHARGEABLE BATTERIES; RECYCLING PROGRAM*]12

§ 16-406 Penalties.

a. Any person who violates section 16-404 of this chapter shall be liable for a civil penalty recoverable in a proceeding before the environmental control board in the amount of fifty dollars for the first violation, one hundred dollars for a second violation committed within twelve months of a prior violation and two hundred dollars for a third or subsequent violation committed within twelve months of any prior violation.

b. Any retailer who violates section 16-405 of this chapter shall be liable for a civil penalty in a proceeding before the environmental control board in the amount of two hundred dollars for the first violation, four hundred dollars for a second violation committed within twelve months of a prior violation, and five hundred dollars for a third or subsequent violation committed within twelve months of any prior violation.

c. Any battery manufacturer who violates section 16-405 of this chapter shall be liable for a civil penalty recoverable in a proceeding before the environmental control board in the amount of two thousand dollars for the first violation, four thousand dollars for a second violation committed within twelve months of a prior violation, and five thousand dollars for a third or subsequent violation committed within twelve months of any prior violation.

**HISTORICAL NOTE**

Section added L.L. 97/2005 § 2, eff. June 1, 2007. [See Chapter 4 footnote]

**FOOTNOTES**

12

[Footnote 12]: * Chapter 4 added L.L. 97/2005 § 2, eff. Dec. 1, 2006. Heading provided by Editor. Note further provisions:

Section 1. Declaration of legislative intent and findings. The Council finds and declares that the presence of toxic metals in discarded rechargeable batteries is a matter of great concern in light of their adverse effect on groundwater quality when disposed of in landfills and their presence in emissions or residual ash when incinerated at a resource recovery facility; that cadmium, lead and mercury found in rechargeable batteries, on the basis of available scientific and medical evidence, are of particular concern; that it is desirable to reduce the toxicity of waste materials in the solid waste streams directed to resource recovery and sanitary landfill facilities; that the removal of used rechargeable batteries containing high levels of cadmium, lead or mercury from the solid waste stream can have a significant beneficial impact on the quality of the emissions and residual ash resulting from the incineration of solid waste at resource recovery facilities, and on groundwater quality in those regions where solid waste is disposed at sanitary landfill facilities; and that the most effective and appropriate method to promote the reduction of toxic metals from rechargeable battery disposal is to require the battery industry to accept the financial responsibility for the environmentally sound collection, transportation and recycling or proper disposal of discarded rechargeable batteries.

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-420*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER CHAPTER 4-A ELECTRONIC EQUIPMENT COLLECTION, RECYCLING AND REUSE*13

§ 16-420 [Short title.]

This local law shall be known and may be cited as the "Electronic Equipment Collection, Recycling and Reuse Act".

**HISTORICAL NOTE**

Section added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See Note 1]

**NOTE**

1. Provisions of L.L. L.L. 13/2008:

Section 1. Declaration of legislative findings and intent. The Council finds that electronic waste represents one of the fastest growing and most hazardous components of the City of New York's waste stream. It is estimated that, based upon national data, less than 10% of the city's electronic waste is currently being recycled. According to the United States Environmental Protection Agency ("EPA"), more than 2.6 million tons of computers, television sets and other electronic waste were discarded in the United States during 2005. The EPA also estimates that there are hundreds of millions of pieces of electronic waste being stockpiled in homes and businesses.

Electronic waste contains many toxic substances that include known or probable human carcinogens that have been identified by the EPA, European Union and municipal and state Departments of Health throughout the country. An average television set with a traditional cathode ray tube contains as much as five to seven pounds of lead, and an

average computer terminal contains four pounds of lead as well as smaller amounts of mercury and cadmium. The improper disposal of this waste therefore poses a threat to human health and the environment. Indeed, according to the EPA, as much as 70% of heavy metals contained in landfills, including lead, mercury and cadmium, originates from electronic waste. The incineration of electronic waste can lead to increased mercury, lead and other toxic airborne emissions.

There are direct environmental and public health consequences for New York City residents and workers from the improper handling and disposal of electronic waste. For example, the regional incineration of electronic waste poses a direct threat to the city's air quality and the health of its residents.

The Council finds that there is currently no comprehensive system for managing the growing problem of electronic waste in the City of New York. The Council further finds that the establishment of a system to provide for the collection, handling and recycling or reuse of electronic equipment in this city is consistent with its duty to protect the health, safety and welfare of its citizens; enhance and maintain the quality of the environment; and help prevent air, water and land pollution. The Council further finds that such a system is consistent with New York State's overall solid waste management policy, including its intent to pursue and implement an integrated approach to solid waste management and to aggressively promote waste reduction, reuse and recycling as the preferred methods of waste management.

The purpose of this chapter is to establish an electronics recycling system that ensures the safe and environmentally sound handling, recycling, or reuse of electronic equipment. In addition, it is the purpose of this chapter to establish an electronics recycling and reuse collection system that is convenient and minimizes costs to consumers of electronic equipment and to the City. The Council further finds that by encouraging convenient and environmentally sound collection of electronic waste, this chapter would reduce the environmental and health costs associated with electronic equipment that is discarded along with ordinary waste.

The Council finds that the manufacturers of electronic equipment should reduce and, to the maximum extent feasible, ultimately phase out the use of hazardous materials in electronic products. The Council further finds that primary responsibility for the collection, handling and recycling or reuse of electronic equipment belongs to manufacturers. Currently, manufacturers of electronic equipment are required to bear none of the financial burden or responsibility for safely managing discarded electronic equipment at the end of its useful life, burdening local governments and end users with these costs and responsibilities. Manufacturers of electronic equipment, in working to achieve the goals and objectives of this chapter, should have the flexibility to act in partnership with each other, the city and businesses that provide collection and handling services to develop, implement and promote a safe and effective electronics recycling system.

**FOOTNOTES**

13

[Footnote 13]: * Chapter 4-A added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]

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§ 16-421 Definitions.

As used in this chapter:

a. "Brand name" means a manufacturer's name, brand designation, make or model name or number, or other nomenclature by which covered electronic equipment is offered for sale by a manufacturer.

b. "Cathode ray tube" means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

c. "Computer" means an electronic, magnetic, optical, electrochemical or other high-speed data processing device performing a logical, arithmetic or storage function, and may include both a computer central processing unit and a monitor; but such term shall not include an automated typewriter or typesetter, a portable hand-held calculator, a portable digital assistant, or other similar device.

d. "Covered electronic equipment" means any computer central processing unit; cathode ray tube; cathode ray tube device; keyboard; electronic mouse or similar pointing device; television; printer; computer monitor, including but not limited to a liquid crystal display and plasma screens, or similar video display device that includes a screen that is greater than four inches measured diagonally and one or more circuit boards; a laptop or other portable computer; or a portable digital music player that has memory capability and is battery-powered. "Covered electronic equipment" does not include any automobile; mobile phone; household appliances such as clothes washers, clothes dryers, refrigerators, freezers, microwave ovens, ovens, ranges or dishwashers; equipment that is functionally or physically part of a larger piece of equipment intended for use in an industrial, research and development or commercial setting; security,

anti-terrorism or medical equipment that utilizes a cathode ray tube, a cathode ray tube device or a flat panel display or similar video display device that is not separate from the larger piece of equipment; or any other device, as that term is defined in section three hundred twenty-one of title twenty-one of the United States code.

e. "Electronic recycler" means a person who 1. refurbishes or otherwise processes covered electronic equipment for reuse or resale; or 2. removes, segregates or otherwise extracts components or commodities from covered electronic equipment, either by manual or mechanical separation or by changing such equipment's physical or chemical composition, for the purpose of reusing or recycling such components or commodities.

f. "Label" means information, as required by this chapter, on the surface of covered electronic equipment, which must be permanently attached to, printed or engraved on or incorporated in any other permanent manner on such equipment, and obvious and visible to users of such equipment.

g. "Manufacturer" means a person who: 1. assembles or substantially assembles, or has assembled or substantially assembled, covered electronic equipment for sale in the city; 2. manufactures or has manufactured covered electronic equipment under its own brand name or under any other brand name for sale in the city; 3. sells or has sold, under its own brand name, covered electronic equipment produced by another person for sale in the city; 4. owns a brand name that it licenses or has licensed to another person for use on covered electronic equipment sold in the city; 5. imports or has imported covered electronic equipment for sale in the city; or 6. manufactures or has manufactured covered electronic equipment for sale in the city without affixing a brand name.

h. "Monitor" means a separate visual display component of a computer, whether sold separately or with a central processing unit and includes the cathode ray tube, liquid crystal display, or other image projection technology, and its case, interior wires and circuitry, all exterior and interior cables, and power cord.

i. "Orphan waste" means covered electronic equipment, the manufacturer of which cannot be identified or is no longer in business and for which no successor-in-interest has been identified.

j. "Person" means any individual, business entity, partnership, company, corporation, not-for-profit corporation, association, governmental entity, public benefit corporation, public authority, or firm.

k. "Recycle" means to use the materials contained in covered electronic equipment or components thereof as raw materials for new products or components, but not for energy recovery or energy generation by means of combustion, gasification, pyrolysis or other means.

l. "Reuse" means any operation by which covered electronic equipment or components thereof are used for the same purpose for which they were conceived.

m. "Sell" or "sale" means any transfer for consideration, by lease or sales contract of title to or the right to use covered electronic equipment from a manufacturer or retailer to any person, including, but not limited to, transactions conducted through retail sales outlets, catalogs, or the internet; "sell" or "sale" includes transfer of new, used or refurbished covered electronic equipment, but does not include transfers between end users of such equipment.

n. "Television" means a display system containing a cathode ray tube or any other type of display primarily intended to receive broadcast video programming, having a viewable area greater than four inches when measured diagonally.

**HISTORICAL NOTE**

Section added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420

Note 1]

**FOOTNOTES**

13

[Footnote 13]: * Chapter 4-A added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]

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§ 16-422 Responsibility of Manufacturer Collection.

a. Beginning July first, two thousand nine or one hundred eighty days after a manufacturer's electronic waste management plan is approved by the department, whichever date is later, such manufacturer must accept for collection, handling and recycling or reuse covered electronic equipment that is offered for return by any person in the city, and has been assembled, manufactured, or imported by such manufacturer, or has been sold under such manufacturer's brand name.

b. Beginning July first, two thousand nine or one hundred eighty days after a manufacturer's electronic waste management plan is approved by the department, whichever date is later, such manufacturer must accept for collection, handling and recycling or reuse on a one-to-one basis with the purchase of the same type of covered electronic equipment other than orphan waste that is offered for return by any person in the city, and has been assembled, manufactured or imported by persons other than such manufacturer, or has been sold under the brand name of a person other than such manufacturer.

c. Beginning July first, two thousand nine or one hundred eighty days after a manufacturer's electronic waste management plan is approved by the department, whichever date is later, and ending on June thirtieth, two thousand eleven, such manufacturer must accept for collection, handling, and recycling or reuse orphan waste that is offered for return by any person in the city on a one-to-one basis with the purchase of the same type of product by such person.

d. Beginning July first, two thousand eleven, each manufacturer must accept for collection, handling, and recycling or reuse orphan waste of the same type sold by such manufacturer in the city that is offered for return by any person in the city.

**HISTORICAL NOTE**

Section added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]

**FOOTNOTES**

13

[Footnote 13]: * Chapter 4-A added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]

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§ 16-423 Manufacturer Electronic Waste Management Plan.

a. No later than September first, two thousand eight, a manufacturer shall submit to the department an electronic waste management plan for the collection, handling, and recycling or reuse of covered electronic equipment and orphan waste. Any person who becomes a manufacturer on or after September first, two thousand eight shall submit to the department an electronic waste management plan for the collection, handling, and recycling or reuse of covered electronic equipment and orphan waste prior to selling any covered electronic equipment in the city.

b. A manufacturer's submission of an electronic waste management plan pursuant to subdivision a of this section shall be accompanied by a fee of one thousand five hundred dollars. A manufacturer's submission of an annual report pursuant to subdivision a of section 16-428 of this chapter shall be accompanied by a fee of one thousand two hundred fifty dollars. Any manufacturer who submits such plan or report without the requisite fee shall be deemed not to have submitted such plan or report and shall be subject to the penalties set forth in paragraph one of subdivision d of section 16-427 of this chapter for failure to submit such plan or report.

c. The manufacturer shall not impose a fee or other charge on any person for the collection, handling, and recycling or reuse of covered electronic equipment or orphan waste, except that a fee or other charge may be imposed by contractual agreement between a manufacturer and a business entity, partnership, company, corporation or firm having more than fifty full time employees other than a not-for-profit corporation as defined in subparagraph five or seven of subdivision a of section one hundred two of the New York not-for-profit corporation law, association, governmental entity, public benefit corporation or public authority.

d. An electronic waste management plan shall include, at a minimum:

1. details for the collection, handling, and recycling or reuse of covered electronic equipment and orphan waste as required by this chapter, including but not limited to the methods by which a person can return to the manufacturer such covered electronic equipment and orphan waste. Such methods shall be convenient for residents of the city;

2. how the manufacturer will inform residents and businesses of the city about the manufacturer's plan for the collection, handling, and recycling or reuse of covered electronic equipment and orphan waste, which shall include an internet website and a toll-free telephone number;

3. information on the manufacturer's plan for the disposition of covered electronic equipment and orphan waste, including any plan for the recycling or reuse of such covered electronic equipment and orphan waste. If the manufacturer provides a plan for the recycling or reuse of covered electronic equipment and orphan waste, the manufacturer shall include details about anticipated end markets and electronic recyclers expected to be utilized by the manufacturer, including but not limited to details on the methods of collection, handling and recycling or reuse of covered electronic equipment used by such electronic recyclers, details on any disassembly or physical recovery operation to be used by such electronic recyclers, the locations of any such operations, and details on the manufacturer's compliance with applicable laws and regulations relating to the disposition, recycling or reuse of covered electronic equipment;

4. a description of how the manufacturer will plan to attain the performance standards established in paragraph a of section 16-424 of this chapter;

5. annual city sales data of the manufacturer's covered electronic equipment for the previous three calendar years;

6. the method to be used to destroy all data in any covered electronic equipment and orphan waste collected, either through physical destruction of the data storage components thereof or through data wiping meeting or exceeding United States Department of Defense standard 5220.22M;

7. a list of the manufacturer's brand names, including: (i) any brand name under which the manufacturer assembles or substantially assembles, or has assembled or substantially assembled covered electronic equipment; (ii) any brand name under which the manufacturer manufactures and sells, or has manufactured and sold, covered electronic equipment; (iii) any brand name under which the manufacturer sells or has sold covered electronic equipment produced by another person under such manufacturer's own brand; (iv) any brand name that the manufacturer owns and licenses or has licensed to another person for use on covered electronic equipment; (v) any brand name under which the manufacturer imports or has imported covered electronic equipment for sale in the city; and (vi) any brand name of covered electronic equipment of which the manufacturer has become the successor-in-interest;

8. a certification that the manufacturer's collection, handling, and recycling or reuse of covered electronic equipment complies with all local, state, federal and international laws and regulations; and

9. any other information as may be required by department rules.

e. The department shall approve or disapprove a proposed electronic waste management plan submitted by a manufacturer within one hundred eighty days of its submission. The department may approve a submitted electronic waste management plan that does not conform with every one of the requirements of this chapter upon application and a showing of good cause by such manufacturer. If the department approves an electronic waste management plan, it shall expeditiously notify the manufacturer of the approval in writing. If the department disapproves an electronic waste management plan, it shall expeditiously notify the manufacturer in writing of the disapproval and specify the reasons for such disapproval. The manufacturer shall have thirty days to resubmit a revised electronic waste management plan after the department notifies the manufacturer of its disapproval. The department shall approve or disapprove a resubmitted electronic waste management plan within ninety days of resubmission.

f. Beginning on July first, two thousand nine, or one hundred eighty days after an electronic waste management plan is approved by the department, whichever date is later, a manufacturer of covered electronic equipment shall implement its approved plan for the collection, handling and recycling or reuse of covered electronic equipment and orphan waste.

g. An electronic waste management plan may provide for the sharing of resources by one or more manufacturers, provided that such plan meets the requirements of this section. Any electronic waste management plan providing for the sharing of resources must include a list of manufacturers participating in such plan.

h. 1. Proposed modifications to a previously approved manufacturer's electronic waste management plan shall be submitted to the department which shall approve or disapprove such modification within sixty days and expeditiously notify the manufacturer of its determination in writing. If the department disapproves such modification, it shall specify the reasons for such disapproval in writing and the manufacturer shall have thirty days to submit a revised modification to the department.

2. At any time, the department may require submission of a proposed modification where it determines that the manufacturer is not in compliance with the collection standards as set forth in section 16-424 of this chapter. The department shall approve or disapprove such modification in accordance with paragraph one of this subdivision.

i. Notwithstanding the provisions of section 16-423 of this chapter, any person who becomes a manufacturer of covered electronic equipment subsequent to the effective date of this section may include within a submitted electronic waste management plan a proposed schedule for compliance with the minimum collection standards set forth in section 16-424 beyond the respective compliance dates set forth in such section. The commissioner may approve such proposed schedule or may approve a modification to such proposed schedule that provides for a reasonable compliance time beyond that provided for in such section.

j. All decisions of the department pursuant to this section shall be made public.

**HISTORICAL NOTE**

Section added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]

Subd. d par 4 amended L.L. 21/2008 § 2, eff. May 14, 2008. [See § 16-424 Note 1]

Subd. h par 2 amended L.L. 21/2008 § 3, eff. May 14, 2008. [See § 16-424 Note 1]

Subd. i added L.L. 21/2008 § 4, eff. May 14, 2008. [See § 16-424 Note 1]

Subd. j so designated and amended (former subd. i) L.L. 21/2008 § 4, eff. May 14, 2008. [See § 16-424 Note 1]

**FOOTNOTES**

13

[Footnote 13]: * Chapter 4-A added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]

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§ 16-424 Performance Standards.

a. A manufacturer shall demonstrate whether, pursuant to its electronic waste management plan, it is collecting for recycling or reuse at least its share of covered electronic equipment. Such manufacturer's share of covered electronic equipment is determined by applying the following minimum collection standard percentage by the average annual sales of the manufacturer's covered electronic equipment in the city, reported by weight, during the previous three calendar years; by July 1, 2012, the minimum collection standard is twenty-five percent; by July 1, 2015, the minimum collection standard is forty-five percent; by July 1, 2018, the minimum collection standard is sixty-five percent.

b. For purposes of calculating achievement of the minimum collection standard specified in paragraph a of this subdivision, a manufacturer may count the collection of a single item of covered electronic equipment as twice its weight when that item is donated free of charge for reuse to the New York city department of education, or to any not-for-profit corporation, as defined in subparagraphs five or seven of subdivision a of section one hundred two of the New York not-for-profit corporation law, a principal mission of which is to assist low-income children or families living in city. To qualify for the donation reuse credit under this subdivision, the covered electronic equipment must be: (a) no older than three years old, (b) in full working condition, and (c) accepted as a donation by the recipient in writing.

c. The commissioner may grant an annual waiver, in whole or in part, from the minimum collection standards set forth in subdivision a of this section where a manufacturer who has an approved electronic waste management plan has demonstrated to the commissioner's satisfaction that such minimum collection standards could not be met despite the best efforts of the manufacturer because the manufacturer has substantially increased the amount of covered electronic equipment sold within the city over the three-year period during which compliance with subdivision a of this section is to be measured and it was not practicable to meet the applicable minimum collection standard.

**HISTORICAL NOTE**

Section amended L.L. 21/2008 § 5, eff. May 14, 2008. [See Note 1]

Section added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420

Note 1]

**NOTE**

1. Provisions of L.L. L.L. 21/2008:

Section 1. Declaration of legislative findings and intent. The purpose of this chapter is to require that manufacturers of covered electronic waste comply with specific electronic waste collection standards. The Council finds that the setting of performance standards is necessary to insure that electronic equipment is collected in appropriate amounts. The three-year period before penalties are imposed for failure to meet the prescribed performance standards gives the industry and the city ample time and data to evaluate, and if necessary, adjust the prescribed performance standards.

**FOOTNOTES**

13

[Footnote 13]: * Chapter 4-A added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]

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CHAPTER CHAPTER 4-A ELECTRONIC EQUIPMENT COLLECTION, RECYCLING AND REUSE*13

§ 16-425 Labeling.

a. Beginning July first, two thousand nine or one hundred eighty days after a manufacturer's electronic waste management plan is approved by the department, whichever date is later, such manufacturer may not sell or otherwise distribute for sale in the city covered electronic equipment unless such equipment has a label that identifies such manufacturer.

b. Beginning July first, two thousand nine or one hundred eighty days after a manufacturer's electronic waste management plan is approved by the department, whichever date is later, such manufacturer shall provide at the point of sale information on how a person can return covered electronic equipment pursuant to such manufacturer's electronic waste management plan. Such information shall include a toll-free telephone number or internet website address describing how covered electronic equipment can be returned pursuant to the manufacturer's electronic waste management plan.

c. Beginning July first, two thousand nine, the department shall post on its web site all information provided to it from manufacturers describing how covered electronic equipment can be returned pursuant to a specific manufacturer's electronic waste management plan.

**HISTORICAL NOTE**

Section added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420

Note 1]

**FOOTNOTES**

13

[Footnote 13]: * Chapter 4-A added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]



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§ 16-426 Disposal ban.

a. Beginning July first, two thousand ten, no person shall dispose of covered electronic equipment as solid waste in the city.

b. Beginning July first, two thousand nine, no manufacturer shall dispose of covered electronic equipment as solid waste in the city.

**HISTORICAL NOTE**

Section added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]

**FOOTNOTES**

13

[Footnote 13]: * Chapter 4-A added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]

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CHAPTER CHAPTER 4-A ELECTRONIC EQUIPMENT COLLECTION, RECYCLING AND REUSE*13

§ 16-427 Enforcement.

a. The department and the department of consumer affairs shall have the authority to enforce the provisions of this chapter. Any notice of violation charging a violation of any provision of this chapter shall be returnable to the environmental control board, which shall have the power to impose civil penalties as provided herein.

b. Any person who violates the provisions of subdivision a of section 16-426 of this chapter shall be liable for a civil penalty of one hundred dollars for each violation.

c. Any manufacturer who violates the provisions of subdivision b of section of 16-426 of this chapter shall be liable for a civil penalty of one thousand dollars for each violation.

d. 1. Beginning September first, two thousand eight, a manufacturer who fails to submit an electronic waste management plan or an annual report as required by this chapter shall be liable for a civil penalty of one thousand dollars per day for each day that an electronic waste management plan or an annual report is not submitted.

2. Beginning September first, two thousand eight, a manufacturer who submits an electronic waste management plan that has been disapproved by the department more than two times shall be liable for a civil penalty of one thousand dollars per day for each day that an electronic waste management plan is not submitted and approved by the department following the date of such second disapproval.

3. Beginning July first, two thousand nine, a manufacturer who knowingly submits an annual report as required by this chapter that contains a false or misleading statement as to a material fact or omits to state any material fact

necessary in order to make a statement therein not false or misleading shall be liable for a civil penalty of ten thousand dollars.

4. Beginning July first, two thousand nine, or one hundred eighty days after a manufacturer's electronic waste management plan is approved by the department, whichever date is later, a manufacturer who fails to accept covered electronic equipment or orphan waste offered for return by any person in the city pursuant to such manufacturer's electronic waste management plan shall be liable for a civil penalty of two thousand dollars for each piece of covered electronic equipment or orphan waste not accepted.

5. Beginning July first, two thousand twelve, a manufacturer who has not met the performance standards set forth in subdivision a of section 16-424 of this chapter shall be liable for a civil penalty of fifty thousand dollars for each percentage point that said manufacturer falls below the performance standards, and shall also submit a modified electronic waste management plan to the department with details explaining how said manufacturer intends to comply with the performance standards. The department shall review such modified electronic waste management plan as provided in subdivision h of section 16-423 of this chapter.

**HISTORICAL NOTE**

Section added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]

Subd. d par 5 added L.L. 21/2008 § 6, eff. May 14, 2008. [See § 16-424 Note 1]

**FOOTNOTES**

13

[Footnote 13]: * Chapter 4-A added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]

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CHAPTER CHAPTER 4-A ELECTRONIC EQUIPMENT COLLECTION, RECYCLING AND REUSE*13

§ 16-428 Reporting Requirements.

a. On or before July first, two thousand nine, and annually on or before July first thereafter, a manufacturer that offers any covered electronic equipment for sale in the city shall submit an annual report to the department that includes the following information for the prior calendar year: 1. any approved modification to the manufacturer's electronic waste management plan; 2. sales data for the manufacturer's covered electronic equipment sold in the city; 3. the quantity of covered electronic equipment collected for recycling or reuse in this city, expressed both in terms of the total weight of such covered electronic equipment and as a percentage of the average annual sales of the manufacturer's covered electronic equipment in the city, reported by weight, during the previous three calendar years, and categorized by the type of covered electronic equipment collected pursuant to such manufacturer's electronic waste management plan, and further categorized, to the extent possible, by the quantity of such covered electronic equipment collected from individuals and government entities; 4. the weight of orphan waste collected, categorized by the type of covered electronic equipment collected, pursuant to such manufacturer's electronic waste management plan; 5. information on the manufacturer's compliance with the performance standards established in section 16-424 of this chapter; 6. information on the end markets and electronic recyclers utilized by the manufacturer, including details on the methods of collection, handling and recycling or reuse of covered electronic equipment used by electronic recyclers, details on any disassembly or physical recovery operation to be used, the locations of any such operations, and details on the manufacturer's compliance with applicable laws and regulations relating to the disposition, recycling and reuse of covered electronic equipment and orphan waste; 7. examples of how the manufacturer has informed residents and businesses of the city about the manufacturer's plan for the collection, handling and recycling or reuse of covered electronic equipment and orphan waste; 8. the number of visits to the internet website and calls to the toll-free telephone numbers established by the manufacturer's electronic waste management plan; and 9. any other information required by

department rules.

b. The department shall submit a report on implementation of this chapter to the mayor and the city council by January fifteenth, two thousand eleven, and yearly thereafter. The report must include, at a minimum: 1. data on the amount of electronic waste collected, categorized by manufacturer; 2. an evaluation of the recycling and reuse rates in the city for covered electronic equipment and orphan waste; 3. a discussion of compliance and enforcement related to the requirements of this chapter; and 4. any recommendations for any changes to the system of collection, handling and recycling or reuse of covered electronic equipment and orphan waste in the city.

**HISTORICAL NOTE**

Section added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]

Subd. a amended L.L. 21/2008 § 7, eff. May 14, 2008. [See § 16-424 Note 1]

**FOOTNOTES**

13

[Footnote 13]: * Chapter 4-A added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]



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CHAPTER CHAPTER 4-A ELECTRONIC EQUIPMENT COLLECTION, RECYCLING AND REUSE*13

§ 16-429 Confidential Information and Trade Secrets.

Information relating to covered electronic equipment submitted to the department pursuant to this chapter may be designated by the department as confidential upon a showing of good cause by the person submitting it. Except as otherwise provided by or pursuant to law or court order, such information may be used only by the department, its agents and employees, other city agencies, and as authorized by the mayor, employees of the United States Environmental Protection Agency or the attorney general of the state of New York.

**HISTORICAL NOTE**

Section added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]

**FOOTNOTES**

13

[Footnote 13]: * Chapter 4-A added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]



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§ 16-430 Application by the department of collected covered electronic equipment toward recycling goals.

The department shall be allowed to apply the amount of covered electronic equipment and orphan waste collected by manufacturers pursuant to this chapter towards achieving its recycling goals.

**HISTORICAL NOTE**

Section added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]

**FOOTNOTES**

13

[Footnote 13]: * Chapter 4-A added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]



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CHAPTER CHAPTER 4-A ELECTRONIC EQUIPMENT COLLECTION, RECYCLING AND REUSE*13

§ 16-431 Severability.

The provisions of this chapter shall be severable, and if any provision of this chapter is declared to be void or invalid by a court of competent jurisdiction, the remaining provisions shall not be affected, and shall remain in full force and effect.

**HISTORICAL NOTE**

Section added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]

**FOOTNOTES**

13

[Footnote 13]: * Chapter 4-A added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]

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CHAPTER CHAPTER 4-A ELECTRONIC EQUIPMENT COLLECTION, RECYCLING AND REUSE*13

§ 16-432 Rulemaking authority.

The department shall be authorized to promulgate rules as necessary to implement the provisions of this chapter.

**HISTORICAL NOTE**

Section added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See Note 1]

**FOOTNOTES**

13

[Footnote 13]: * Chapter 4-A added L.L. 13/2008 § 2, eff. Apr. 1, 2008. [See § 16-420 Note 1]



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CHAPTER CHAPTER 4-B [RECYCLING PROGRAM FOR PLASTIC CARRYOUT BAGS AND FILM PLASTIC]*14

§ 16-450 Title.

This chapter shall be known as and may be cited as the "New York City Plastic Carryout Bag and Film Plastic Recycling Law".

**HISTORICAL NOTE**

Section added L.L. 1/2008 § 1, eff. June 23, 2008.

**FOOTNOTES**

14

[Footnote 14]: * Chapter 4-B added L.L. 1/2008 § 1, eff. June 23, 2008. [Heading provided by Editor.]

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CHAPTER CHAPTER 4-B [RECYCLING PROGRAM FOR PLASTIC CARRYOUT BAGS AND FILM PLASTIC]*14

§ 16-451 Declaration of policy.

It is hereby declared to be the public policy of the city of New York to reduce environmental pollution, to reduce the toxicity of waste materials in the solid waste stream directed to resource recovery and sanitary landfill facilities, and to maximize the removal of plastic carryout bags and film plastic from the waste stream in order to recycle them. Plastic carryout bags and film plastic do not biodegrade, which means that such bags and film plastic ultimately break down into smaller pieces that enter the ecosystem. These pieces of plastic cause illness, injury and death to animal and marine life by entangling them or contaminating their food supplies. The production of plastic bags and film plastic worldwide uses over 12 million barrels of oil per year, which causes significant environmental impacts.

**HISTORICAL NOTE**

Section added L.L. 1/2008 § 1, eff. June 23, 2008.

**FOOTNOTES**

14

[Footnote 14]: * Chapter 4-B added L.L. 1/2008 § 1, eff. June 23, 2008. [Heading provided by Editor.]



Administrative Code of the City of New York



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

*NYC Administrative Code 16-452*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER CHAPTER 4-B [RECYCLING PROGRAM FOR PLASTIC CARRYOUT BAGS AND FILM PLASTIC]*14

§ 16-452 Definitions.

When used in this chapter: a. "Chain of stores" means five or more stores located within the city of New York that are engaged in the same general field of business and (1) conduct business under the same business name or (2) operate under common ownership or management or pursuant to a franchise agreement with the same franchisor.

b. "Consumer" means any person who purchases a product from a store that is placed in a plastic carryout bag at the time of sale.

c. "Film plastic" means uncontaminated non-rigid film plastic packaging products composed of plastic resins that include, but are not limited to, newspaper bags, dry cleaning bags and shrink-wrap.

d. "Food service establishment" means any establishment (1) where the primary business is providing food for individual portion service directly to the consumer, whether consumption of such food occurs on or off the premises or such service is provided in a premises or from a pushcart, stand or vehicle, and (2) that is subject to the permit requirement contained in section 81.05 of the New York city health code.

e. "Manufacturer" means every person, firm or corporation that: (1) produces plastic carryout bags that are sold or distributed within the city of New York, or (2) imports plastic carryout bags into the United States that are sold or distributed within the city of New York.

f. "Operator" means a person, firm or corporation that owns or is in control of, or has responsibility for, the daily

operation of a store.

g. "Plastic carryout bag" means a plastic bag provided by a store to a consumer at the point of sale that is not a reusable bag.

h. "Reusable bag" means (1) a bag made of cloth or other machine washable fabric that has handles, or (2) a durable plastic bag, with handles, that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse.

i. "Store" means a retail or wholesale establishment, other than a food service establishment, that sells products and provides plastic carryout bags to consumers in which to place these products and (1) has over five thousand square feet of retail or wholesale space or (2) is one of a chain of stores.

**HISTORICAL NOTE**

Section added L.L. 1/2008 § 1, eff. June 23, 2008.

**FOOTNOTES**

14

[Footnote 14]: * Chapter 4-B added L.L. 1/2008 § 1, eff. June 23, 2008. [Heading provided by Editor.]



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

*NYC Administrative Code 16-453*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER CHAPTER 4-B [RECYCLING PROGRAM FOR PLASTIC CARRYOUT BAGS AND FILM PLASTIC]*14

§ 16-453 Recycling program requirements.

a. Every operator shall establish an in-store recycling program that shall include, but need not be limited to, the following:

1. every plastic carryout bag provided by a store shall have printed or displayed on the outside face of the bag (i) the words "PLEASE REUSE OR RECYCLE AT A PARTICIPATING STORE" using letters at least one-half inch in height or (ii) a similar message encouraging the reuse or recycling of plastic carryout bags that is no less than one inch in height and uses letters at least one quarter inch in height; provided, however, that such store shall be allowed, for six months from the effective date of the local law that added this subdivision, to use its existing stock of plastic carryout bags and may apply to the commissioner for a waiver, based on economic hardship, to extend such six-month period;

2. a bin for the collection of plastic carryout bags and other film plastic shall be placed in a visible location that is easily accessible to the consumer, and clearly marked as available for the purpose of collecting plastic carryout bags and other film plastic for recycling;

3. all plastic carryout bags and other film plastic returned to a store are to be collected, transported and recycled in a manner consistent with the provisions of this chapter or any rule promulgated pursuant to this chapter; 4. plastic carryout bags and other film plastic collected by a store that are free of foreign material shall not be disposed of in any solid waste or hazardous waste facility; and

5. the operator shall make available to consumers within a store at or near the place where plastic carryout bags

are dispensed, reusable bags, which may be purchased and used in lieu of a plastic carryout bag or paper bag.

b. Each operator or its designee shall maintain records indicating the weight of the plastic carryout bags and film plastic that are collected by such operator's store and transported for recycling.

c. Each operator or its designee shall submit an annual report to the department covering the preceding calendar year, beginning with a report covering calendar year two thousand nine, which shall include for all stores that it operates within the city of New York the amount of carryout plastic bags and other film plastic by weight that is collected and transported for recycling, the costs to the operator of such efforts, and any other information the commissioner shall require by rule. Such annual report shall be submitted to the department no later than February twenty-eighth following the calendar year to which the annual report relates.

d. The commissioner shall, in consultation with operators, manufacturers and recyclers, develop a system to monitor and determine the weight of all plastic carryout bags and other film plastic collected under this chapter and shall analyze the information and report to the mayor and the council every two years beginning on December thirty-first, two thousand ten, regarding the implementation and enforcement of this chapter.

**HISTORICAL NOTE**

Section added L.L. 1/2008 § 1, eff. June 23, 2008.

**FOOTNOTES**

14

[Footnote 14]: * Chapter 4-B added L.L. 1/2008 § 1, eff. June 23, 2008. [Heading provided by Editor.]



Administrative Code of the City of New York



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

*NYC Administrative Code 16-454*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER CHAPTER 4-B [RECYCLING PROGRAM FOR PLASTIC CARRYOUT BAGS AND FILM PLASTIC]*14

§ 16-454 Manufacturer responsibilities.

a. A manufacturer whose plastic carryout bags are sold or distributed to a store subject to the provisions of this chapter shall make arrangements with the operator, upon the operator's request, for the collection, transport and recycling of all plastic carryout bags and other film plastic collected consistent with the provisions of this chapter. Such arrangements may include contracts or other agreements with third parties.

b. A manufacturer that arranges with an operator for the collection, transport and recycling of plastic carryout bags and other film plastic shall report annually to such operator the total amount by weight of plastic carryout bags and other film plastic that has been collected from such operator. Such annual report shall cover the preceding calendar year, beginning with a report covering calendar year two thousand nine, and be submitted to such operator no later than January thirty-first following the calendar year to which the annual report relates.

c. A manufacturer whose plastic carryout bags are sold or distributed to a store subject to the provisions of this chapter shall make arrangements with the operator, upon the operator's request, to provide such operator, educational materials that encourage the reduction, reuse and recycling of plastic carryout bags.

**HISTORICAL NOTE**

Section added L.L. 1/2008 § 1, eff. June 23, 2008.

**FOOTNOTES**

14

[Footnote 14]: * Chapter 4-B added L.L. 1/2008 § 1, eff. June 23, 2008. [Heading provided by Editor.]

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

*NYC Administrative Code 16-455*

Administrative Code of the City of New York

Title 16 Sanitation

CHAPTER CHAPTER 4-B [RECYCLING PROGRAM FOR PLASTIC CARRYOUT BAGS AND FILM PLASTIC]*14

§ 16-455 Penalties.

a. Any operator who violates subdivision a of section 16-453 of this chapter shall be liable for a civil penalty recoverable in a proceeding before the environmental control board in the amount of three hundred dollars per day for each day that a recycling program meeting the requirements of such subdivision is not in effect. It shall be an affirmative defense to a violation of paragraph one or five of subdivision a of section 16-453 of this chapter that the operator used its best efforts to comply with such paragraph but was unable to because of circumstances beyond such operator's control.

b. Any operator who violates subdivision b of section 16-453 of this chapter shall be liable for a civil penalty recoverable in a proceeding before the environmental control board in the amount of: (1) one hundred dollars for the first violation; (2) seven hundred dollars for the second violation within a twelve-month period of the first violation; and (3) one thousand dollars for the third violation within such twelve-month period.

c. Any operator who violates subdivision c of section 16-453 of this chapter shall be liable for a civil penalty recoverable in a proceeding before the environmental control board in the amount of: (1) one hundred dollars for the first violation within twelve months of the date the report referred to in such subdivision is due; (2) seven hundred dollars for the second violation within such twelve-month period; and (3) one thousand dollars for the third violation within such twelve-month period.

d. Any manufacturer who violates subdivision a of section 16-454 of this chapter shall be liable for a civil penalty recoverable in a proceeding before the environmental control board in the amount of five hundred dollars per

day for each day that such violation continues.

e. Any manufacturer who violates subdivision b of section 16-454 of this chapter shall be liable for a civil penalty recoverable in a proceeding before the environmental control board in the amount of: (1) one hundred dollars for the first violation within twelve months of the date the report referred to in such subdivision is due; (2) one thousand dollars for the second violation within such twelve-month period; and (3) fifteen hundred dollars for the third violation within such twelve-month period.

f. Any manufacturer who violates subdivision c of section 16-454 of this chapter shall be liable for a civil penalty recoverable in a proceeding before the environmental control board in the amount of: (1) one hundred dollars for the first violation; (2) one thousand dollars for the second violation within a twelve-month period of the first violation; and (3) fifteen hundred dollars for the third violation within such twelve-month period.

g. The failure of an operator or manufacturer to provide the report or maintain the records, or of a manufacturer to provide educational materials requested by an operator, required by sections 16-453 and 16-454 of this chapter shall constitute a continuing violation that subjects such operator or manufacturer to up to three notices of violation within the twelve-month periods provided in subdivisions b, c, e and f of this section.

h. The department shall have the authority to enforce all provisions of this chapter. The department of consumer affairs also shall have the authority to enforce paragraphs one, two and five of subdivision a of section 16-453 of this chapter.

**HISTORICAL NOTE**

Section added L.L. 1/2008 § 1, eff. June 23, 2008.

TITLE 16-A

**FOOTNOTES**

14

[Footnote 14]: * Chapter 4-B added L.L. 1/2008 § 1, eff. June 23, 2008. [Heading provided by Editor.]



Administrative Code of the City of New York



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

*NYC Administrative Code 16-501*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-501 Definitions.

a. "Applicant" shall mean, if a business entity submitting an application for a license or registration pursuant to this chapter, the entity and each principal thereof.

b. "Commission" shall mean the New York city trade waste commission as established by section 16-502 of this chapter.

c. "Position" in a trade association shall mean an officer, member of the board of directors, partner, trustee, shareholder holding ten percent or more of the outstanding shares of stock in such association, or administrator, business agent or other status involving participation directly or indirectly in the management or control of such association.

d. "Principal" shall mean, of a sole proprietorship, the proprietor; of a corporation, every officer and director and every stockholder holding ten percent or more of the outstanding shares of the corporation; of a partnership, all the partners; if another type of business entity, the chief operating officer or chief executive officer, irrespective of organizational title, and all persons or entities having an ownership interest of ten percent or more; and with respect to all business entities, all other persons participating directly or indirectly in the control of such business entity. Where a partner or stockholder holding ten percent or more of the outstanding shares of a corporation is itself a partnership, or a corporation, a "principal" shall also include the partners of such partnership or the officers, directors and stockholders holding ten percent or more of the outstanding shares of such corporation, as is appropriate. For the purposes of this chapter (1) an individual shall be considered to hold stock in a corporation where such stock is owned directly or indirectly by or for (i) such individual; (ii) the spouse or domestic partner of such individual (other than a spouse who is

legally separated from such individual pursuant to a judicial decree or an agreement cognizable under the laws of the state in which such individual is domiciled); (iii) the children, grandchildren and parents of such individual; and (iv) a corporation in which any of such individual, the spouse, domestic partner, children, grandchildren or parents of such individual in the aggregate own fifty percent or more in value of the stock of such corporation; (2) a partnership shall be considered to hold stock in a corporation where such stock is owned, directly or indirectly, by or for a partner in such partnership; and (3) a corporation shall be considered to hold stock in a corporation that is an applicant as defined in this section where such corporation holds fifty percent or more in value of the stock of a third corporation that holds stock in the applicant corporation.

e. "Trade association" shall mean an entity having as a primary purpose the promotion, advancement or self-regulation of businesses that remove, collect or dispose of trade waste, including but not limited to a corporation, unincorporated association, partnership, trust or limited liability company, whether or not such entity is organized for profit, not-for-profit, business or non-business purposes.

f. "Trade waste" or "waste" shall mean: (1) all putrescible and non-putrescible materials or substances, except as described in paragraph (2) of this subdivision, that are discarded or rejected by a commercial establishment required to provide for the removal of its waste pursuant to section 16-116 of this code as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, street sweepings, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, medical waste, offal and any other offensive or noxious material. Such term shall also include recyclable materials as defined in subdivision i of section 16-303 of this code that are generated by such commercial establishments.

(2) The following are not "trade waste" or "waste" for the purposes of this chapter: sewage; industrial wastewater discharges; irrigation return flows; radioactive materials that are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 41 U.S.C. §2011 et seq.; materials subject to in-situ mining techniques which are not removed from the ground as part of the extraction process; and hazardous waste as defined in section 27-0901 of the environmental conservation law.

g. "Trade waste broker" shall mean a person or entity who, for a fee, brokers agreements between commercial establishments and providers of trade waste removal, collection or disposal services or conducts evaluations or analyses of the waste generated by such commercial establishments in order to recommend cost efficient means of waste disposal or other changes in related business practices.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

Subd. d amended L.L. 27/1998 § 19, eff. Sept. 5, 1998.

**CASE NOTES**

¶ 1. The court upheld the statute as a proper exercise of police power, i.e. as being necessary to remedy past corruption in the trade waste carting industry. The court found that the law did not violate the contracts clause of the constitution, that the law was not unconstitutionally vague, that the carters had no due process property interest in customers' contracts or their own future licenses, and that it did not infringe upon the right of association. The court rejected the "impairment of contracts" argument because the very purpose of the law was to do away with contracts which were tainted with threats of violence and anticompetitive practices. Moreover, the carters knew that they were engaging in a heavily regulated industry and were aware of the possibility that future regulations might significantly alter their businesses. Sanitation & Recycling Industry v. City of New York, 107 F.3d 985 (2d Cir. 1997), aff'g 928 F.Supp. 407 (S.D.N.Y. 1996).

¶ 2. That portion of the statute that allows customers to terminate or renegotiate theri contracts does not constitute a "taking" within the meaning of the constitution, because the customers still might choose to remain with the carter (the claim that business would be lost was speculative) and even if a particular customer decided to cancel its contract, the carter retained all its equipment and was free to seek new cusomers. Imperial Sanitation Corp v. City of New York, 1997 Westlaw 375745, U.S. Dist. Ct. E.D.N.Y.

¶ 3. The New York City Trade Waste Commission can consider membership in a trade association (which association was known for alleged corrupt activities) in deciding whether or not to grant a waiver under the statute. Id.

¶ 4. The Commission was justified in refusing to issue a waiver where the following facts were present: 1. Petitioner had purchased competitiors' routes at 40 times the gross monthly revenues, which seemed to indicate that petitioner would be able to compel the customer to continue the contract in perpetuity; 2. The contract contract provided for a severe liquidated damages penalty if a customer chose to cancel the services, and greatly limited the carter's liability for breach of contract. This showed a lack of customer bargaining power. Id.

¶ 5. The court upheld the determination of the Trade Waste Commission not to grant waivers of the 30 day contract termination provision of the law. The record showed, for example, that one of the petitioners had extensive involvement in a trade association which had been indicted for illegal activities, and another had issued contracts providing for high fees and excessive late charges, thus showing that government protection was needed for customers who had lacked bargaining power. D & D Carting Co. v. City of New York, 658 N.Y.S.2d 825 (Sup.Ct. New York Co. 1997).

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.

2

[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive

practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be

specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business

as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.

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

*NYC Administrative Code 16-502*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-502 New York city trade waste commission.

There is hereby created a New York city trade waste commission. Such commission shall consist of the commissioner of investigation, the commissioner of business services, the commissioner of consumer affairs, the commissioner of sanitation, and one member who shall be appointed by the mayor and shall serve as chair with compensation therefor; provided that if the chair holds other city office or employment, no additional compensation shall be received. The chair shall have charge of the organization of the commission and have authority to employ, assign and superintend the duties of such officers and employees as may be necessary to carry out the provisions of this chapter.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter

18 §§ 20-332-20-338, see under these sections for historical notes.
2

[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the

performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in

effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-503*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-503 Functions.

The commission shall be responsible for the licensing, registration and regulation of businesses that remove, collect or dispose of trade waste and trade waste brokers.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.

2

[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly

influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date,

whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

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§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-504*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-504 Powers and duties.

The powers and duties of the commission shall include but not be limited to:

a. To issue and establish standards for the issuance, suspension and revocation of licenses and registrations authorizing the operation of businesses engaged in the collection, removal or disposal of waste within the city and trade waste broker businesses, provided that unless otherwise provided herein, the commission may by resolution delegate to the chair the authority to make individual determinations regarding: issuance, suspension and revocation of such licenses and registrations; investigations of background and determinations of fitness in regard to employees of licensees; and the appointment of independent auditors and monitors in accordance with the provisions of this chapter;

b. To establish maximum and minimum rates for the collection, removal, or disposal of such waste;

c. To investigate any matter within the jurisdiction conferred by this chapter and to have full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation;

d. To establish standards for service and for the regulation and conduct of businesses licensed or registered pursuant to this chapter, including but not limited to requirements governing the level of service to be provided by licensees, contracts for trade waste removal, billing form and procedures, the maintenance and inspection of records, the maintenance of appropriate insurance, and compliance with safety and health measures;

e. To appoint, within the appropriations available therefor, such employees as may be required for the

performance of the duties prescribed herein. In addition to such employees appointed by the commission, the commissioners of business services, investigation, consumer affairs, transportation, sanitation, health, finance, environmental protection and police may, at the request of the chair, provide staff and other assistance to the commission in all matters under its jurisdiction;

f. To conduct studies or investigations into the needs of commercial and other enterprises for waste removal and the trade waste industry in the city and other jurisdictions in order to assist the city in formulating policies to provide for orderly and efficient trade waste removal at a fair and reasonable cost to businesses;

g. To establish programs for the education of customers, including but not limited to education of customers in the accurate assessment of the types and volume of waste and the rights of such customers in relationship to contracting, service and customer complaint procedures established pursuant to this chapter;

h. To establish special trade waste removal districts pursuant to section 16-523 of this chapter; and

i. To establish fees and promulgate rules as the commission may deem necessary and appropriate to effect the purposes and provisions of this chapter.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**CASE NOTES**

¶ 1. The Business Integrity Commission need not accept all the information contained in an application for an exemption from registration and licensing, but can investigate the accuracy of that information. Attonito v. Maldonado, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1st Dept. 2004), leave to appeal denied, 2 N.Y.3d 705, 780 N.Y.S.2d 311, 812 N.E.2d 1261 (2004), reargument denied 3 N.Y.3d 702, 785 N.Y.S.2d 29, 818 N.E.2d 671 (2004).

¶ 2. In taking disciplinary action against taxi cab drivers, potentially leading to suspension or revocation, the Taxi & Limousine Commission (TLC) is acting as a regulator, not as an "employer." Thus, the TLC is not subject to lawsuits by drivers under anti-discrimination laws relating to age, disability, race or national origin. Bonaby v. New York City Taxi & Limousine Comm., 2003 WL 21649453 (U.S. Dist.Ct. S.D.N.Y.).

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.

2

[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates

established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

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Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste

commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or

person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-505*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-505 Licenses and registration required.

a. It shall be unlawful for any person to operate a business for the purpose of the collection of trade waste from the premises of a commercial establishment required to provide for the removal of such waste pursuant to the provisions of section 16-116 of this code, or the removal or disposal of trade waste from such premises, or to engage in, conduct or cause the operation of such a business, without having first obtained a license therefor from the commission pursuant to the provisions of this chapter. Notwithstanding the provisions of this subdivision, a business solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation shall be exempt from the licensing provisions of this subdivision where, except in regard to the principals of a business solely in either or both of the class seven or the class three category of licensees as defined in rules previously promulgated by the commissioner of consumer affairs pursuant to subchapter eighteen of chapter two of title twenty of this code, no principal of such applicant is a principal of a business or a former business required to be licensed pursuant to this chapter or such former subchapter eighteen. Grant of such exemption shall be made by the commission upon its review of an exemption application, which shall be in the form and contain the information prescribed by rule of the commission and shall be accompanied by a statement by the applicant describing the nature of the applicant's business and listing all principals of such business.

b. It shall be unlawful for any person to remove, collect or dispose of trade waste that is generated in the course of operation of such person's business, or to operate as a trade waste broker, without first having registered with the commission. Nothing in this subdivision shall be construed to require registration with the commission of (i) a commercial establishment required to provide for the removal of waste pursuant to section 16-116 of this code in order for such establishment to remove recyclable materials generated in the course of its own business to a location owned or

leased by such establishment for the purpose of collecting or storing such materials for sale or further distribution; (ii) an owner or managing agent of a building in order to remove recyclable materials generated by commercial tenants within such building to a central location within such building for the purpose of collecting or storing such materials for sale or further distribution; or (iii) an owner of an establishment required to provide for the removal of waste pursuant to section 16-116 of this code in order to transport beverage containers, as such term is defined in section 27-1003 of the environmental conservation law, or any other recyclable material generated in the course of operation of its own business, to a redemption center, as such term is defined in section 27-1003 of such law, or to any other place where payment will be received by the commercial establishment for such materials. Notwithstanding any other provision of this subdivision, a business granted an exemption from the requirement for a license pursuant to subdivision a of this section shall be thereupon issued a registration pursuant to this subdivision.

c. A license or registration issued pursuant to this chapter or any rule promulgated hereunder shall not be transferred or assigned to any person or used by any person other than the licensee or registrant to whom it was issued.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**CASE NOTES FROM FORMER SECTION §§ 20-332-20-338:**

¶ 1. The City License Commissioner could not revoke the petitioners' license to carry on garbage removal without a proper notice and without giving licensees information as to the purpose of a hearing. Petitioner's license was a property right and hence, where the revocation comes about as a result of a determination by an administrative officer or body, the act is of a judicial nature and to be valid must be in accord with due process of law.-Rosetti v. O'Connell, 10 Misc. 2d 453, 172 N.Y.S. 2d 716 [1958].

¶ 2. Temporary rate adjustments made on an emergency basis should be recalculated under the formal procedures of § 20-335 (b). Minor rate adjustment in question regarded an "additional toll expense" which became a substantial amount over time. (Presidents Council of Trade Waste Assoc. v. Koch, 143 Misc.2d 607, 1989)

¶ 3. The method for fixing rates for commercial refuse carters does not require an adjudicatory hearing but only that the rates be fixed after "public hearings" at which "interested persons" have the right to appear and give evidence, §20-335(b). The NYC Dep't of Consumer Affairs acted lawfully in adopting new lower maximum rates that refuse carters may charge for commercial collection. Petitioners, private commercial carters were given the opportunity to participate in the rate making process, were not denied due process by refusal to allow discovery and cross-examination. Trade Waste Assns. v. NY City, 152 Misc. 2d 43 [1991].

¶ 4. A regulation requiring commercial rubbish collectors to make written contracts with their customers and file the same with the Department of Licenses is a reasonable one, calculated to insure the proper observance of maximum price regulations.-P. & A. Carting Co. v. City of New York, 7 Misc. 2d 815, 158 N.Y.S. 2d 296 [1956].

**CASE NOTES**

¶ 1. In DeCostole Carting, Inc. v. Maldonado, 35 A.D.3d 648, 826 NYS2d 712 (2d Dept. 2006), a waste hauler sought a judgment compelling the City to grant his application for an exemption under NYC Admin. Code 16-505(a). He also sought injunctive relief. NYC enacted Local Law 42 in 1996 to regulate the waste carting business, in order to deter the interference of organized crime. Under Local Law 42, all trade waste businesses, including those which had been previously licensed, were required to apply for a new license from the NYC trade Waste Commission, now the City of New York Business Integrity Commission (BIC). In August 2002, the BIC denied plaintiff's application for a BIC license, and that determination was upheld (Matter of DeCostole Carting v. BIC, 2 A.D.3d 225, 768 N.Y.S.2d 317

(1st Dept. 2003). The plaintiff then brought the instant action, contending that his business was now limited to hauling construction and demolition debris from residential and not-for-profit premises, and was therefore not subject to the requirements of NYC Admin. Code § 16-505(a). At the same time, plaintiff has reapplied for a license from BIC. The court held that plaintiff was not exempt from the licensing requirement. Even where the premises are residential or are owned by a non-profit organization, where a commercial business is doing the construction work, the debris is considered to be the trade waste of commercial establishments, and is subject to § 16-505(a). Therefore, plaintiff must either apply for an exemption or apply for a license. The granting of an application for an exemption is not a ministerial act and there is no clear legal right to such relief. The question of whether plaintiff's application should be granted or denied is not ripe for judicial review, since there is no determination of the application in the record. As a result, the plaintiff is subject to the requirements of the licensing laws.

¶ 2. Local Law No. 42 was enacted to regulate the waste carting business and to deter the business from being infiltrated by organized crime. Under this local law, all businesses removing trade waste from "commercial establishments," including those businesses which had been previously licensed, were required to obtain a license from the NYC Trade Waste Commission, now the defendant NY Bus. Integrity Commission (BIC). The chairman of the BIC is the defendant.

Trade waste is defined as materials or substances that are discarded or rejected by a "commercial establishment" which is required to provide for the removal of its waste pursuant to Admin. Code § 16-116. Admin. Code § 16-116 requires that every owner or person in control of a "commercial establishment" shall provide for the removal of waste by a business licensed by the BIC under Admin. Code § 16-505.

Plaintiff, EdCia Corp., applied for an exemption from the licensing provisions, stating that it was in the business of removing "demolition and construction debris" from "commercial construction and demolition sites." After initially giving EdCia temporary permission to operate, defendant revoked permission on the ground that EdCia had disclosed required information pertaining to only some of, and not all of, the corporate principals. An applicant is required to disclose the identity of its principals in order to insure that none of them are affiliated with organized crime.

Plaintiff then commenced the instant action, claiming that its business was limited to removing construction debris from public projects and other "non-commercial establishments." They contended that since their customers were not "commercial establishments" responsible for removing their waste by hiring a BIC-licensed hauler, and sought a judgment declaring that it was exempt from the licensing provisions of Local Law No. 42, including the requirements of § 16-505(a), and that it was not required to file an exemption application with the BIC. In the alternative, plaintiff sought to compel defendants to grant its application for an exemption pursuant to Admin. Code 16-505(a).

Plaintiff sought a preliminary injunction against enforcement of the statute. The court, however, denied the injunction. The court said that construction and demolition debris, even from public projects and residential sites, generated by commercial companies performing the construction work, constitutes trade waste of "commercial establishments" within the meaning of Local Law No. 42. Therefore, since EdCia is a commercial establishment, the activity of removing such waste is subject to the licensing requirement. EdCia Corp. v. McCormack 2007 NY Slip Op. 8179, 44 AD3d 991, 845 NYS2d 104, 2007 NY App.Div. Lexis 11121 (App. Div. 2nd Dept.).

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.

2

[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent

to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-506*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-506 Term and fee for license or registration.

a. A license or registration issued pursuant to this chapter shall be valid for a period of two years.

b. The commission shall promulgate rules establishing the fee for any license or registration required by this chapter. Such rules may provide for a fee to be charged for each vehicle in excess of one that will transport waste pursuant to such license and for each such vehicle operated pursuant to such registration.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

1

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The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

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Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent

to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-507*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-507 Registration application.

a. Except in the case of a business issued a registration by reason of the grant of an exemption from the requirement for a license pursuant to section 16-505 of this chapter, an applicant for registration shall submit an application on a form prescribed by the commission and containing such information as the commission determines will adequately identify the business of such applicant. An applicant for registration to remove trade waste generated in the course of such applicant's business shall identify, in a manner to be prescribed by the commission, each vehicle that will transport waste pursuant to such registration. An application for registration as a trade waste broker shall contain information regarding any financial, contractual or employment relationship between such broker and a trade waste business. Any such relationship shall be indicated on the registration issued to such broker.

b. A registrant shall, in accordance with rules promulgated by the commission pursuant to section 16-504 of this chapter, inform the commission of any changes in the ownership composition of the registrant, the addition or deletion of any principal at any time subsequent to the issuance of the registration, the arrest or criminal conviction of any principal of the business, or any other material change in the information submitted on the application for registration.

c. (i) Notwithstanding any provision of this chapter, the commission may, when there is reasonable cause to believe that a trade waste broker who is an applicant for registration lacks good character, honesty and integrity, require that such applicant be fingerprinted and provide to the commission the information set forth in subdivision b of section 16-508 of this chapter and may, after notice and the opportunity to be heard, refuse to register such applicant for the reasons set forth in paragraphs (i) through (xi) of subdivision a of section 16-509 of this chapter.

(ii) If at any time subsequent to the registration of a trade waste broker or the issuance of a registration issued by

reason of the grant of an exemption from the requirement for a license pursuant to section 16-505 of this chapter, the commission has reasonable cause to believe that any or all of the principals of such broker or such exempt business do not possess good character, honesty and integrity, the commission may require that such principal(s) be fingerprinted and provide the background information required by subdivision b of section 16-508 of this chapter and may, after notice and the opportunity to be heard, revoke the registration of such trade waste broker or such exempt business for the reasons set forth in paragraphs (i) through (x) of subdivision a of section 16-509 of this chapter.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.

2

[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste

district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee

therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-508*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-508 License application.

a. An applicant for a license pursuant to this chapter shall submit an application in the form and containing the information prescribed by the commission. An application shall include, without limitation: (i) a list of the names and addresses of all principals of the applicant business, including any manager or other person who has policy or financial decision-making authority in the business; and (ii) a list of the names and job titles of all employees and prospective employees of the applicant business who are or will be engaged in the operation of the trade waste business; and (iii) such other information as the commission shall determine by rule will properly identify such employees and prospective employees.

b. An applicant shall: (i) be fingerprinted by a person designated for such purpose by the commission and pay a fee to be submitted by the commission to the division of criminal justice services for the purposes of obtaining criminal history records; and (ii) provide to the commission, upon a form prescribed by the commission and subject to such minimum dollar thresholds and other reporting requirements established on such form, information for the purpose of enabling the commission to determine the good character, honesty and integrity of the applicant, including but not limited to: (a) a listing of the names and addresses of any person having a beneficial interest in the applicant, and the amount and nature of such interest; (b) a listing of the amounts in which such applicant is indebted, including mortgages on real property, and the names and addresses of all persons to whom such debts are owed; (c) a listing of such applicant's real property holdings or mortgage or other interest in real property held by such applicant other than a primary residence and the names and addresses of all co-owners of such interest; (d) a listing of mortgages, loans, and instruments of indebtedness held by such applicant, the amount of such debt, and the names and addresses of all such debtors; (e) the name and address of any business in which such applicant holds an equity or debt interest, excluding

any interest in publicly traded stocks or bonds; (f) the names and addresses of all persons or entities from whom such applicant has received gifts valued at more than one thousand dollars in any of the past three years, and the name of all persons or entities (excluding any organization recognized by the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code) to whom such applicant has given such gifts; (g) a listing of all criminal convictions, in any jurisdiction, of the applicant; (h) a listing of all pending civil or criminal actions to which such applicant is a party; (i) a listing of any determination by a federal, state or city regulatory agency of a violation by such applicant of laws or regulations relating to the conduct of the applicant's business where such violation has resulted in the suspension or revocation of a permit, license or other permission required in connection with the operation of such business or in a civil fine, penalty, settlement or injunctive relief in excess of threshold amounts or of a type set forth in the rules of the commission; (j) a listing of any criminal or civil investigation by a federal, state, or local prosecutorial agency, investigative agency or regulatory agency, in the five year period preceding the application, wherein such applicant has: (A) been the subject of such investigation, or (B) received a subpoena requiring the production of documents or information in connection with such investigation; (k) a certification that the applicant has paid all federal, state, and local income taxes related to the applicant's business for which the applicant is responsible for the three tax years preceding the date of the application or documentation that the applicant is contesting such taxes in a pending judicial or administrative proceeding; (l) the name of any trade association in which the applicant is or has been a member or held a position and the time period during which such membership or position was held; (m) the names and addresses of the principals of any predecessor trade waste business of the applicant; and (n) such additional information concerning good character, honesty and integrity that the commission may deem appropriate and reasonable. An applicant may submit to the commission any material or explanation which the applicant believes demonstrates that any information submitted pursuant to subparagraphs (g), (h), (i), or (j) of this paragraph does not reflect adversely upon the applicant's good character, honesty and integrity. The commission may require that such applicants pay such fees to cover the expenses of fingerprinting and background investigations provided for in this subdivision as are set forth in the rules promulgated pursuant to section 16-504 of this chapter. Notwithstanding any other provision of this chapter, for purposes of this section: (A) in the case of an applicant which is a regional subsidiary of or otherwise owned, managed by or affiliated with a business that has national or international operations: (aa) (i) fingerprinting and disclosure under this section shall also be required of any persons not employed by the applicant who has direct management supervisory responsibility for the operations or performance of the applicant; and (ii) the chief executive officer, chief operating officer and chief financial officer, or any person exercising comparable responsibilities and functions, of any regional subsidiary or similar entity of such business over which any person subject to fingerprinting and disclosure under item (i) of this clause exercises similar responsibilities shall be fingerprinted and shall submit the information required pursuant to subparagraphs (g) and (h) of this paragraph, as well as such additional information pursuant to this paragraph as the commission may find necessary; and (bb) the listing specified under subparagraph (j) of this paragraph shall also be provided for any regional subsidiary or similar entity of the national or international business for which fingerprinting and disclosure by principals thereof is made pursuant to (aa) of this paragraph; and (B) "predecessor trade waste business" shall mean any business engaged in the removal, collection or disposal of trade waste in which one or more principals of the applicant were principals in the five year period preceding the application. For purposes of determining the good character, honesty and integrity of a business that removes, collects or disposes of trade waste, a trade waste broker or a business issued a registration by reason of the grant pursuant to section 16-505 of this chapter of an exemption from the requirement for a license, the term "applicant" shall apply to the business of such trade waste business, trade waste broker or exempt business and, except as specified by the commission, all the principals thereof; for purposes of investigations of employees or agents pursuant to section 16-510 of this chapter, the term "applicant" as used herein shall be deemed to apply to employees, agents or prospective employees or agents of an applicant for a license or a licensee. Notwithstanding any provision of this subdivision, the commission may accept, in lieu of submissions required pursuant to this subdivision, information, such as copies of submissions to any federal, state or local regulatory entity, where and to the extent that the commission finds that the contents of such submissions are sufficient or comparable to that required by this subdivision.

c. A licensee shall, in accordance with rules promulgated by the commission pursuant to section 16-504 of this chapter, inform the commission of any changes in the ownership composition of the licensee, the addition or deletion of

any principal at any time subsequent to the issuance of the license, membership in a trade association in addition to an association identified in the application submitted pursuant to this section, the arrest or criminal conviction of any principal of the business, or any other material change in the information submitted on the application for a license. A licensee shall provide the commission with notice of at least ten business days of the proposed addition of a new principal to the business of such licensee. The commission may waive or shorten such period upon a showing that there exists a bona fide business requirement therefor. Except where the commission determines within such period, based upon information available to it, that the addition of such new principal may have a result inimical to the purposes of this chapter, the licensee may add such new principal pending the completion of review by the commission. The licensee shall be afforded an opportunity to demonstrate to the commission that the addition of such new principal pending completion of such review would not have a result inimical to the purposes of this chapter. If upon the completion of such review, the commission determines that such principal lacks good character, honesty and integrity, the license shall cease to be valid unless such principal divests his or her interest, or discontinues his or her involvement in the business of such license, as the case may be, within the time period prescribed by the commission.

d. Each applicant shall provide the commission with a business address in New York city where notices may be delivered and legal process served.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.

2

[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing

laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective

date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated

pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-509*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-509 Refusal to issue a license.

a. The commission may, by majority vote of its entire membership and after notice and the opportunity to be heard, refuse to issue a license to an applicant who lacks good character, honesty and integrity. Such notice shall specify the reasons for such refusal. In making such determination, the commission may consider, but is not limited to: (i) failure by such applicant to provide truthful information in connection with the application; (ii) a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending; (iii) conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license; (iv) a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought; (v) commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction; (vi) association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person; (vii) having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such

predecessor business pursuant to this subdivision; (viii) current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter; (ix) the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter; (x) failure to pay any tax, fine, penalty, fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction. For purposes of determination of the character, honesty and integrity of a trade waste broker pursuant to subdivision c or subdivision d of section 16-507 of this chapter, the term "applicant" shall refer to the business of such trade waste broker and all the principals thereof; for purposes of determining the good character, honesty and integrity of employees or agents pursuant to section 16-510 of this chapter, the term "applicant" as used herein shall be deemed to apply to employees, agents or prospective employees or agents of an applicant for a license or a licensee.

b. The commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto or who has otherwise failed to demonstrate eligibility for such license under this chapter or any rules promulgated pursuant hereto.

c. The commission may refuse to issue a license to an applicant when such applicant: (i) was previously issued a license or a trade waste permit pursuant to this chapter or former subchapter eighteen of chapter two of title twenty of this code and such license was revoked pursuant to the provisions of this chapter or revoked or not renewed pursuant to the provisions of such former subchapter eighteen or any rules promulgated thereto; or (ii) has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license pursuant to this chapter or any rules promulgated hereto.

d. The commission may refuse to issue a license pursuant to this chapter to any applicant, where such applicant or any of the principals of such applicant have been principals of a licensee whose license has been revoked pursuant to paragraph two of subdivision b of section 16-513 of this chapter.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**CASE NOTES**

¶ 1. There was a sufficient basis for denying petitioners' applications for waste carter licenses, where petitioners' principals had lied during investigative depositions both about their knowledge of the waste carter cartel and their participation in the activities of the cartel. Hollywood Carting Corp. v. City of New York, 288 A.D.2d 71, 733 N.Y.S.2d 25 (1st Dept. 2001).

¶ 2. The court held that there was a rational basis for the Commission to conclude that petitioner, by participating in the mob-controlled waste cartel's property rights system, failing to provide truthful information to the Commission, and obstructing an investigation into alleged deceptive trade practices, committed anti-competitive racketeering acts. Thus, the Commission's determination that petitioner did not have the requisite character, honesty and integrity for licensure, was not arbitrary and capricious. De Costole Carting, Inc. v. Business Integrity Commission of the City of New York, 2 A.D.3d 225, 768 N.Y.S.2d 317 (1st Dept. 2003), appeal dismissed, 2 N.Y.3d 759, leave to appeal denied, 3 N.Y.3d 605, 785 N.Y.S.2d 21, 818 N.E.2d 663 (2004).

¶ 3. In Sindone v. City of New York, 2 A.D.3d 125, 767 N.Y.S.2d 438 (1st Dept. 2003), the court upheld a

determination by the Commission that an applicant lacked the character and integrity to work as a principal or employee in the New York City waste hauling industry. The evidence showed that the applicant gave false or misleading information in connection with his former membership in a trade waste association which had been charged with antitrust violations, and that he had been a principal in a trade waste business that did business with a known organized crime figure. Thus, the Commission had a rational basis for its decision. The court further held that the applicant did not have a due process right to a hearing on his application.

¶ 4. Fitness for a license under the statute is determined on a case-by-case basis. However, in Canal Carting and Canal Sanitation v. Business Integrity Comm., 19 Misc.3d 923, 856 N.Y.S.2d 845 (Sup.Ct. NY Co. 2008), the court held that the mere filing for bankruptcy reorganization and a conviction for technical violations involving illegal dumping, were not in themselves sufficient grounds for denial of a trade waste license. The court remanded the case for further consideration by the Business Integrity Commission.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.

2

[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste

district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee

therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-510*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-510 Investigation of employees.

a. (i) Each person who is not otherwise a principal as defined in section 16-501 of this chapter and who is employed or proposed to be employed by a licensee in a managerial capacity, or in a job category specified in rules promulgated by the commission pursuant to section 16-504 of this chapter, and each person who acts or is proposed to act in such a capacity or in such a category as an agent of a licensee, shall: (i) be fingerprinted by a person designated for such purpose by the commission and pay a fee to be submitted by the commission to the division of criminal justice services for the purposes of obtaining criminal history records, and (ii) submit to the commission the information set forth in subparagraphs (b) through (n) of paragraph (ii) of subdivision b of section 16-508 of this chapter and pay the fee for the investigation of such information set forth in the rules promulgated pursuant to section 16-504 of this chapter. Where, at any time subsequent to an investigation of an employee subject to the provisions of this subdivision, the commission has reasonable cause to believe that such employee lacks good character, honesty and integrity, the commission may conduct an additional investigation of such employee and may require, if necessary, that such employee provide information updating, supplementing or explaining information previously submitted. The job categories specified in rules of the commission for purposes of such fingerprinting and disclosure shall not include personnel engaged solely in operating vehicles or handling waste or clerical personnel who have no contact with customers.

(ii) Notwithstanding any other provision of this chapter, a licensee shall provide the commission with notice of at least ten business days of the proposed addition to the business of the licensee of any person subject to the provisions of this subdivision. The commission may waive or shorten such ten day period upon a showing that there exists a bona fide business requirement therefor. Except where the commission determines within such period, based on information available to it, that the addition of such new person may have a result inimical to the purposes of this chapter, the

licensee may add such person pending the completion of an investigation by the commission. The licensee shall be afforded an opportunity to demonstrate to the commission that the addition of such new person pending completion of the investigation would not have a result inimical to the purposes of this chapter. If upon the completion of such investigation, the commission makes a final determination that such person lacks good character, honesty and integrity, the license shall cease to be valid unless the employment of such person in the business of such licensee is discontinued within the time period prescribed by the commission.

b. (i) Where the commission has reasonable cause to believe that an employee or agent or prospective employee or agent of a licensee or an applicant for a license not subject to the provisions of subdivision a of this section lacks good character, honesty and integrity, the commission shall notify such employee or agent or prospective employee or agent that he or she shall be required to be fingerprinted and submit the information required by subdivision a of this section.

c. Where, following a background investigation conducted pursuant to this section, the official designated by the commission to review the findings of such investigation concludes that an employee or agent or prospective employee or agent of a licensee lacks good character, honesty and integrity, such person shall be provided with notice of such conclusion and the reasons therefor and may contest the conclusion in person or in writing to such official. Such official shall review such response and, in the event that he or she continues to find that such person lacks good character, honesty and integrity, shall submit such final conclusion to the commission. The commission shall provide such person with notice of the conclusion of the official and an opportunity to be heard to appeal such conclusion before the commission makes a final determination.

d. A licensee shall not employ or engage as an agent any person with respect to whom the commission has made a final determination, following a background investigation conducted pursuant to this section, that such person lacks good character, honesty and integrity.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.

2

[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting

influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of

this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless

earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-511*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-511 Independent auditing or monitoring required.

a. The commission may, in the event the background investigation conducted pursuant to section 16-508 of this chapter produces adverse information, require as a condition of a license that the licensee enter into a contract with an independent auditor approved or selected by the commission. Such contract, the cost of which shall be paid by the licensee, shall provide that the auditor investigate the activities of the licensee with respect to the licensee's compliance with the provisions of this chapter, other applicable federal, state and local laws and such other matters as the commission shall determine by rule. The contract shall provide further that the auditor report the findings of such monitoring and investigation to the commission on a periodic basis, no less than four times a year.

b. In the case of an applicant or licensee who is the subject of a pending indictment or criminal action for a crime that would provide a basis for the refusal to issue a license under this chapter, the commission, in its discretion, may, in the case of an applicant, refrain from making a licensing determination until final disposition of the criminal case, and may also require as a condition of the license that an applicant or licensee enter into a contract with an independent monitor approved or selected by the commission. The cost of such contract shall be paid by the applicant or licensee, and such contract shall require that the monitor review and either approve or disapprove certain actions proposed to be taken by the licensee, where such actions fall within a category identified by rule of the commission as having a particular bearing on the fitness of an applicant or a licensee to hold a license to conduct a trade waste removal business under this chapter. Such actions shall include, without limitation, any decision to assign contracts for the removal, collection or disposal of trade waste, any decision to transfer an ownership interest or substantial assets to another person or entity where such interests or assets exceed a threshold established in such rule, any significant expenditure by the business as defined in such rule, and the initiation of any litigation against a customer or another

trade waste removal business or its customer. The monitor shall report promptly to the commission concerning the disposition of any such actions in the manner set forth in rules of the commission.

c. The commission shall be authorized to prescribe, in any contract required by the commission pursuant to this section, such reasonable terms and conditions as the commission deems necessary to effectuate the purposes hereof.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.

2

[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption,

to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the

commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application,

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-512*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-512 Investigations by the department of investigation.

In addition to any other investigation authorized pursuant to law, the commissioner of the department of investigation shall, at the request of the commission, conduct a study or investigation of any matter arising under the provisions of this chapter, including but not limited to investigation of the information required to be submitted by applicants for licenses and employees and the ongoing conduct of licensees.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.

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[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

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§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

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§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any

time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-513*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-513 Revocation or suspension of license or registration.

a. In addition to the penalties provided in section 16-515 of this chapter, the commission may, after due notice and opportunity to be heard, revoke or suspend a license or registration issued pursuant to the provisions of this chapter when the registrant or licensee and/or its principals, employees and/or agents: (i) have been found to be in violation of this chapter or any rules promulgated pursuant thereto; (ii) have been found by a court or administrative tribunal of competent jurisdiction to have violated: (A) any provision of section 16-119 of this code, or any rule promulgated pursuant thereto, relating to illegal dumping, (B) any provision of section 16-120.1 of this code, or any rule promulgated pursuant thereto, relating to the disposal of regulated medical waste and other medical waste or (C) any provision of section 16-117.1 of this code, or any rule promulgated pursuant thereto, relating to the transportation and disposal of waste containing asbestos; (iii) has repeatedly failed to obey lawful orders of any person authorized by section 16-517 of this chapter to enforce the provisions hereof; (iv) has failed to pay, within the time specified by a court, the department of consumer affairs or an administrative tribunal of competent jurisdiction, any fines or civil penalties imposed pursuant to this chapter or the rules promulgated pursuant thereto; (v) has been found in persistent or substantial violation of any rule promulgated by the commission pursuant to section 16-306 of this code or by the commissioner of consumer affairs pursuant to section 16-306 or former subchapter eighteen of title twenty of this code; (vi) has been found in persistent or substantial violation of any city, state, or federal law, rule or regulation regarding the handling of trade waste, or any laws prohibiting deceptive, unfair, or unconscionable trade practices; (vii) whenever, in relation to an investigation conducted pursuant to this chapter, the commission determines, after consideration of the factors set forth in subdivision a of section 16-509 of this code, that the licensee or registrant as a trade waste broker lacks good character, honesty and integrity; (viii) whenever there has been any false statement or any misrepresentation as to a material fact in the application or accompanying papers upon which the issuance of such license or registration

was based; or (ix) whenever the licensee or registrant has failed to notify the commission as required by subdivision b of section 16-507 or subdivision c of section 16-508 of this chapter of any change in the ownership interest of the business or other material change in the information required on the application for such license or registration, or of the arrest or criminal conviction of such licensee or registrant or any of his or her principals, employees and/or agents of which the licensee had knowledge or should have known.

b. The commission shall, in addition: (1) suspend a license issued pursuant to this chapter for thirty days following determination that the licensee, or any of its principals, employees or agents has violated subdivision a of section 16-524 of this chapter; and (2) revoke a license issued pursuant to this chapter upon determination that the licensee, or any of its principals, employees or agents has violated subdivision a of section 16-524 of this chapter two times within a period of three years.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.

2

[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission

established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the

commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-514*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-514 Emergency suspension of license or registration.

Notwithstanding any other provision of this chapter or rules promulgated thereto, the commission may, upon a determination that the operation of the business of a licensee or the removal of waste by a business required by this chapter to be registered creates an imminent danger to life or property, or upon a finding that there has likely been false or fraudulent information submitted in an application pursuant to section 16-507 or section 16-508 of this chapter, immediately suspend such license or registration without a prior hearing, provided that provision shall be made for an immediate appeal of such suspension to the chair of the commission who shall determine such appeal forthwith. In the event that the chair upholds the suspension, an opportunity for a hearing shall be provided on an expedited basis, within a period not to exceed four business days and the commission shall issue a final determination no later than four days following the conclusion of such hearing.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.
2

[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other

agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set

forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.

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

*NYC Administrative Code 16-515*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-515 Penalties.

In addition to any other penalty provided by law: a. Except as otherwise provided in subdivision b or subdivision c of this section, any person who violates any provision of this chapter or any of the rules promulgated thereto shall be liable for a civil penalty which shall not exceed ten thousand dollars for each such violation. Such civil penalty may be recovered in a civil action or may be returnable to the department of consumer affairs or other administrative tribunal of competent jurisdiction;

b. (i) Any person who violates subdivision a of section 16-505 or section 16-524 of this chapter shall, upon conviction thereof, be punished for each violation by a criminal fine of not more than ten thousand dollars for each day of such violation or by imprisonment not exceeding six months, or both; and any such person shall be subject to a civil penalty of not more than five thousand dollars for each day of such violation to be recovered in a civil action or returnable to the department of consumer affairs or other administrative tribunal of competent jurisdiction; and

c. Any person who violates subdivision b of section 16-505 of this chapter or any rule pertaining thereto shall, upon conviction thereof, be punished by a civil penalty not to exceed one thousand dollars for each such violation to be recovered in a civil action or returnable to the department of consumer affairs or other administrative tribunal of competent jurisdiction.

d. The corporation counsel is authorized to commence a civil action on behalf of the city for injunctive relief to restrain or enjoin any activity in violation of this chapter and for civil penalties.

e. (i) In addition to any other penalty prescribed in this section for the violation of subdivisions a or b of section

16-505 or subdivision a of section 16-524 of this chapter, or when there have been three or more violations within a three year period of the provisions herein, the commission shall, after notice and the opportunity to be heard, be authorized: to order any person in violation of such provisions immediately to discontinue the operation of such activity at the premises from which such activity is operated; to order that any premises from which activity in violation of such provisions is operated shall be sealed, provided that such premises are used primarily for such activity; and to order that any vehicles or other devices or instrumentalities utilized in the violation of such provisions shall be removed, sealed, or otherwise made inoperable. An order pursuant to this paragraph shall be posted at the premises from which activity in violation of such provisions occurs.

(ii) Ten days after the posting of an order issued pursuant to paragraph (i) of this subdivision, this order may be enforced by any person so authorized by section 16-517 of this chapter.

(iii) Any vehicle or other device or instrumentality removed pursuant to the provisions of this section shall be stored in a garage, pound or other place of safety and the owner or other person lawfully entitled to the possession of such item may be charged with reasonable costs for removal and storage payable prior to the release of such item.

(iv) A premise ordered sealed or a vehicle or other device or instrumentality removed pursuant to this section shall be unsealed or released upon payment of all outstanding fines and all reasonable costs for removal and storage and, where the underlying violation is for unlicensed or unregistered activity or unauthorized activity in a special trade waste district, demonstration that a license has been obtained or a business registered or proof satisfactory to the commission that such premise or item will not be used in violation of subdivision a or b of section 16-505 or subdivision a of section 16-524 of this chapter.

(v) It shall be a misdemeanor for any person to remove the seal from any premises or remove the seal from or make operable any vehicle or other device or instrumentality sealed or otherwise made inoperable in accordance with an order of the commission.

(vi) A vehicle or other device or instrumentality removed pursuant to this section that is not reclaimed within ninety days of such removal by the owner or other person lawfully entitled to reclaim such item shall be subject to forfeiture upon notice and judicial determination in accordance with provisions of law. Upon forfeiture, the commission shall, upon a public notice of at least five days, sell such item at public sale. The net proceeds of such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the city.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.

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[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly

influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date,

whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-516*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-516 Liability for violations.

A business required by this chapter to be licensed or registered shall be liable for violations of any of the provisions of this chapter or any rules promulgated pursuant hereto committed by any of its employees and/or agents.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

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The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

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Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date,

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-517*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-517 Enforcement.

Notices of violation for violations of any provision of this chapter or any rule promulgated hereunder may be issued by authorized employees or agents of the commission. In addition, such notices of violation may be issued by the police department, and, at the request of the commission and with the consent of the appropriate commissioner, by authorized employees and agents of the department of consumer affairs, the department of small business services, the department of transportation, and the department of sanitation.

**HISTORICAL NOTE**

Section amended L.L. 34/2002 § 8, eff. Nov. 7, 2002.

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

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examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative

code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-518*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-518 Hearings.

a. A hearing pursuant to this chapter may be conducted by the commission, or, in the discretion of the commission, by an administrative law judge employed by the office of administrative trials and hearings or other administrative tribunal of competent jurisdiction. Where a hearing pursuant to a provision of this chapter is conducted by an administrative law judge, such judge shall submit recommended findings of fact and a recommended decision to the commission, which shall make the final determination.

b. Notwithstanding the provisions of subdivision a of this section, the commission may provide by rule that hearings or specified categories of hearings pursuant to this chapter may be conducted by the department of consumer affairs. Where the department of consumer affairs conducts such hearings, the commissioner of consumer affairs shall make the final determination.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.
2

[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be

assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

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of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-519*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-519 Rate fixing; hearings and production of records.

The commission shall have the power to fix by rule and from time to time refix maximum and minimum rates, fixed according to weight or volume of trade waste, for the removal of waste by a licensee, which rates shall be based upon a fair and reasonable return to the licensees and shall protect those using the services of such licensees from excessive or unreasonable charges. The commission may compel the attendance at a public hearing held pursuant to a rate-fixing rule-making of licensees and other persons having information in their possession in regard to the subject matter of such hearing and may compel the production of books and records in relation thereto, and may require licensees to file with the commission schedules of rates.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter

18 §§ 20-332-20-338, see under these sections for historical notes.
2

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Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the

performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

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effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

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

*NYC Administrative Code 16-520*

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Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-520 Conduct by licensees of trade waste collection, removal or disposal.

a. Every licensee pursuant to this chapter shall provide to every recipient of its services a sign which the licensee shall obtain from the commission. In addition to the information printed on the sign by the commission, the licensee shall print the day and approximate time of pickup clearly and legibly on the sign. Such sign shall be conspicuously posted as prescribed in section 16-116(b) of this code by the owner, lessee or person in control of the commercial establishment which receives the licensee's services.

b. Except as otherwise provided in subdivision d of section 16-523, a licensee shall not charge, exact or accept rates for the collection, removal or disposal of trade waste any amount greater than any maximum rates or less than any minimum rates that the commission may fix pursuant to section 16-519 of this chapter.

c. All licensees shall maintain audited financial statements, records, ledgers, receipts, bills and such other written records as the commission determines are necessary or useful for carrying out the purposes of this chapter. Such records shall be maintained for a period of time not to exceed five years to be determined by rule by the commission, provided however, that such rule may provide that the commission may, in specific instances at its discretion, require that records be retained for a period of time exceeding five years. Such records shall be made available for inspection and audit by the commission at its request at either the licensee's place of business or at the offices of the commission.

d. A licensee shall be in compliance with all applicable state, federal and local laws, ordinances, rules and regulations pertaining to the collection, removal and disposal of trade waste.

e. (i) A contract for the collection, removal or disposal of trade waste shall not exceed two years in duration. All

such contracts shall be approved as to form by the commission.

(ii) An assignee of contracts for the removal, collection or disposal of trade waste shall notify each party to a contract so assigned of such assignment and of the right of such party to terminate such contract within three months of receiving notice of such assignment upon thirty days notice. Such notification shall be by certified mail with the receipt of delivery thereof retained by the assignee and shall be upon a form prescribed by the commission. Where no written contract exists with a customer for the removal, collection or disposal of trade waste, a company that assumes such trade waste removal from another company shall provide such customer with notice that a new company will be providing such trade waste removal and that the customer has the right to terminate such service. Such notice shall be by certified mail with the receipt of delivery thereof retained by the assignee.

f. A licensee shall bill commercial establishments for removal, collection or disposal of trade waste in a form and manner to be prescribed by the commission.

g. A licensee shall not refuse to provide service to a commercial establishment that is located within an area of ten blocks from an establishment served by such licensee unless such licensee has demonstrated to the commission a lack of capacity or other business justification for the licensee's refusal to service such establishment. For the purposes of this subdivision, the term "block" shall mean the area of a street spanning from one intersection to the next.

h. A licensee shall provide to the commission the names of any employees proposed to be hired or hired subsequent to the issuance of a license and such information regarding such employees as is required in regard to employees and prospective employees pursuant to subdivision a of section 16-508 of this chapter.

i. A licensee who provides services for a commercial establishment shall keep the sidewalk, flagging, curbstone and roadway abutting such establishment free from obstruction, garbage, refuse, litter, debris and other offensive material resulting from the removal by the licensee of trade waste.

j. (i) No licensee or principal thereof shall be a member or hold a position in any trade association: (aa) where such association, or a predecessor thereof as determined by the commission, has violated state or federal antitrust statutes or regulations, or has been convicted of a racketeering activity or similar crime, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 et seq.) or an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time; (bb) where a person holding a position in such trade association, or a predecessor thereof as determined by the commission, has violated state or federal antitrust statutes or regulations, or has been convicted of a racketeering activity or similar crime, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 et seq.) or an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time; (cc) where a person holding a position in such trade association, or a predecessor thereof as determined by the commission, is a member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency; or (dd) where the trade association has failed to cooperate fully with the commission in connection with any investigation conducted pursuant to this chapter. The commission may determine, for purposes of this subdivision, that a trade association is a predecessor of another such trade association by finding that transfers of assets have been made between them or that all or substantially all of the persons holding positions in the two associations are the same. A licensee shall be in violation of this paragraph when the licensee knows or should know of a violation, conviction, association with organized crime or failure to cooperate set forth herein.

(ii) Notwithstanding the provisions of paragraph (i) of this subdivision, the commission may permit a licensee to be a member of such a trade association upon a determination by the commission that such association does not operate in a manner inconsistent with the purposes of this chapter.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.

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[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall

not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such

subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration

issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.

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Administrative Code of the City of New York



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

*NYC Administrative Code 16-521*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-521 Conduct of trade waste brokers.

a. A trade waste broker shall not conduct an evaluation or analysis of the trade waste generated by a commercial establishment in order to recommend cost efficient means of waste disposal or other changes in related business practices, or broker a transaction between a commercial establishment which seeks trade waste removal, collection or disposal services and a trade waste business required to be licensed pursuant to this chapter, unless such broker has first presented a copy of his or her registration to such consumer.

b. A trade waste broker who conducts an evaluation or analysis of a trade waste generated by a commercial establishment in order to recommend cost efficient means of waste disposal or other changes in related business practices shall not request or accept any payment in regard to such evaluation or analysis from a party other than the commercial establishment for whom such services are performed unless such broker has first disclosed to such establishment that he or she proposes to request or accept such payment.

c. A trade waste broker who brokers a transaction between a commercial establishment seeking trade waste removal, collection or disposal services and a trade waste business required to be licensed pursuant to this chapter shall not request or accept payment from such trade waste business.

d. A trade waste broker shall not engage in the collection of fees from commercial establishments for trade waste removal by a trade waste business required to be licensed pursuant to this chapter except where: (i) the contract for such fee collection complies with standards set forth in rules promulgated by the commission; (ii) such fee collection is upon the request of the customer; and (iii) such fee collection is part of an agreement providing for other services such as periodic waste evaluation and consulting with respect to source separation, recycling or other business practices

relating to trade waste.

e. A trade waste broker shall maintain such financial statements, records, ledgers, receipts, bills and other written records as the commission determines are necessary or useful for carrying out the purposes of this chapter. Such records shall be maintained for a period of time not to exceed five years to be determined by rule by the commission, provided however, that such rule may provide that the commission may, in specific instances at its discretion, require that records be retained for a period of time exceeding five years. Such records shall be made available for inspection and audit by the commission at its request at either the place of business of the trade waste broker or at the offices of the commission.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.

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[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York

city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code

as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a

license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-522*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-522 Investigation of customer complaints.

The commission shall by rule establish a procedure for the investigation and resolution of complaints by commercial establishments regarding overcharging and other problems relating to the collection, removal or disposal of waste.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

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Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date

provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any

time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-523*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-523 Special trade waste removal districts; designation; agreement.

a. The commission shall by rule designate no more than two areas of the city in commercial areas within different boroughs to participate in a pilot project as special trade waste removal districts. In making any such designation, the commission shall consider:

1. the number and types of commercial establishments within the proposed district;

2. the amount and types of waste generated by commercial establishments within the proposed district;

3. existing service patterns within the proposed district;

4. the types and estimated amounts of recyclable materials generated by commercial establishments within the proposed district that are required to be recycled, reused or sold for reuse pursuant to section 16-306 of this code and any rules promulgated pursuant thereto;

5. the rates being charged by persons licensed pursuant to this subchapter to commercial establishments within the proposed district; and

6. the history of complaints from commercial establishments within the district regarding overcharging for the removal of trade waste or the inability to change providers of trade waste removal services.

b. For each area designated as a special trade waste removal district by the commission pursuant to subdivision a of this section, the commission shall be authorized to enter into agreements with one or more specified licensee(s)

permitting such licensee(s) to provide for the removal of trade waste within such district. The term of any such agreement, inclusive of any period by which the original term is extended at the option of the commission, shall not exceed two years. No such agreement(s) shall be entered into until a public hearing has been held with respect thereto after publication in the City Record at least thirty days in advance of such hearing and the commission has solicited as part of the record of such hearing whether there is support for the establishment of such special trade waste removal district from local business organizations or business improvement districts.

c. The commission shall issue requests for proposals to conduct trade waste removal in a special trade waste removal district and, based upon the review and evaluation of responses thereto, may negotiate and enter into such agreement(s) pursuant to subdivision b of this section, as the commission, in its discretion, determines will best provide for the efficient and orderly removal of trade waste in such district. Such request for proposals shall solicit information regarding the qualifications of proposers, the nature and frequency of the trade waste removal services to be provided, the rate or rates to be charged to establishments for such services, the nature and extent of recycling services and waste audit services, if any, to be provided, and any other information relating to performance standards, customer service and security of performance the commission deems appropriate. The commission shall enter into one or more such agreement(s) if it finds, on the basis of the proposals, that such agreement(s) will likely result in improved customer service and lower rates.

d. Any agreement(s) entered into pursuant to subdivision b of this section shall:

(1) specify the area within which services will be provided under such agreement;

(2) specify the frequency with which trade waste will be removed;

(3) specify the maximum rate or rates to be charged to establishments in such area for the removal of trade waste generated by such establishments;

(4) specify any recycling services and any waste audit programs to be provided to establishments within such area;

(5) establish a procedure to determine the type and volume of waste removed from establishments in order to ensure adequate assessment of the charges for such removal, and prescribe any other appropriate requirements relating to performance standards, customer service, security of performance, or such other matters as the commission deems necessary to effectuate the purposes of this section; and

(6) require that the licensee shall enter into a contract with an independent auditor approved or selected by the commission, and that such contract, the cost of which shall be paid by the licensee, shall provide: that the auditor shall investigate the activities of the licensee with respect to the licensee's compliance with the provisions of this chapter, other applicable federal, state and local laws and such other matters as the commission shall determine by rule; and that the auditor shall report the findings of such monitoring and investigation to the commission on a periodic basis, no less than four times a year. The commission shall be authorized to prescribe such reasonable terms and conditions in such contract as the commission deems necessary to effectuate the purposes of this section.

e. No service provided pursuant to an agreement entered into pursuant to subdivision b of this section shall be subcontracted, nor shall the right to provide service pursuant to such an agreement be assigned or otherwise delegated, whether upon an emergency or any other basis, unless the commission has provided specific written authorization therefor.

f. The commission shall be authorized, upon due notice and hearing, to terminate an agreement entered into pursuant to subdivision b of this section based upon a determination that there has been a default in the performance of the terms and conditions of such agreement. In the event of termination, if the remaining licensees authorized to remove trade waste in the special trade waste district lack the capacity to adequately service the commercial establishments in

such districts the commission may, as appropriate: (i) enter into an additional agreement with a licensee who responded to the request for proposals previously issued for the special trade waste removal district pursuant to subdivision c of this section; or (ii) issue a new request for proposals pursuant to subdivision c of such section.

g. The provisions of this section and agreements concluded pursuant to subdivision b of this section shall not apply to:

(1) the collection and disposal of recyclable materials as such term is defined in subdivision i of section 16-303 of this code where a commercial establishment wishes to contract separately for the sale of any such materials;

(2) the collection and disposal of regulated medical waste pursuant to section 16-120.1 of this code;

(3) the collection and disposal of waste containing asbestos pursuant to section 16-117.1 of this code;

(4) the collection and disposal of demolition and construction debris or waste;

(5) the collection and disposal of hazardous waste pursuant to section 27-0901 of the environmental conservation law, including material containing hazardous waste;

(6) the removal and disposal of waste by the owner, lessee or person in control of a commercial establishment;

(7) the removal and disposal of trade waste from a building with a floor area of two hundred thousand square feet or more, when the owner or managing agent of such building elects to arrange for the removal and disposal of all the trade waste from such building by a licensee other than a licensee with whom the commission has entered into agreement pursuant to subdivision b of this section; and

(8) the removal and disposal of trade waste from a building located within the special trade waste removal district owned or controlled by an individual or an entity that owns or controls a building or buildings within the city of New York which, in the aggregate, occupy a floor area of one million square feet or more, where the contract for the collection, removal or disposal of trade waste for the building located within the special trade waste removal district is with a licensee who also provides trade waste removal services for other buildings within the city of New York that are owned or controlled by such individual or entity. For the purpose of this paragraph: an entity shall be defined as a sole proprietorship, partnership, corporation, net lessee, mortgagee or vendee in possession, a trustee in bankruptcy or a receiver; and an individual shall be defined as a sole proprietor, the managing or general partner of one or more partnerships or the chief operating officer or executive officer of one or more corporations. An individual's aggregate ownership or controlling interest shall be computed by adding the square footage of all buildings within the city of New York owned by partnerships and corporations in which the individual serves as the managing or general partner of the partnerships and/or the chief operating officer or executive officer of the corporations, including those buildings where the managing or general partner is a corporation in which the individual is the chief operating officer or executive officer.

h. Except for a licensee who has entered into an agreement with the commission pursuant to subdivision b of this section, a trade waste business required to be licensed pursuant to this chapter shall notify the commission of any agreement to provide a service described in subdivision g of this section within a special trade waste district. The commission may provide by rule for the visual identification of vehicles providing such services in a special trade waste district.

i. Nothing in subdivision g of this section shall be construed to prohibit a commercial establishment in a special trade waste district from contracting for the services described in such subdivision with a licensee who has concluded an agreement pursuant to subdivision b of this section.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.

2

[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules

governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the

applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.



Administrative Code of the City of New York



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

*NYC Administrative Code 16-524*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-524 Special trade waste removal districts; violations; enforcement.

a. Upon the date of commencement of service pursuant to agreements entered into pursuant to subdivision b of section 16-523 of this chapter permitting specified licensees to provide for the removal of trade waste generated by commercial establishments within a special trade waste district designated by the commission, (i) any contract for trade waste removal, except for services set forth in subdivision g of section 16-523 of this chapter, with a business other than a licensee who has entered into an agreement pursuant to subdivision b of section 16-513 of this chapter shall be considered terminated, and (ii) it shall be unlawful for any person not party to such an agreement, other than a person who is performing a contract for services set forth in subdivision g of section 16-523, whether or not licensed pursuant to this chapter, to provide for the removal of trade waste within such district, or to solicit commercial establishments located within such district for such purpose, or to make false, falsely disparaging or misleading oral or written statements or other representations to the owners or operators of such commercial establishments which have the capacity, tendency or effect of misleading such owners or operators, for the purpose of interfering with performance of terms of such an agreement.

b. Whenever a person interferes or attempts to interfere by threats, intimidation, or coercion, or by destruction or damage of property or equipment, with performance of the terms of an agreement entered into pursuant to subdivision b of section 16-523 of this code, the corporation counsel, at the request of the commission, may bring a civil action on behalf of the city for injunctive and other appropriate relief in order to permit the uninterrupted and unimpeded delivery of such services. Violations of an order issued pursuant to this subdivision may be punished by a proceeding for contempt brought pursuant to article nineteen of the judiciary law and, in addition to any relief thereunder, a civil penalty may be imposed not exceeding ten thousand dollars for each day that the violation continues.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter 18 §§ 20-332-20-338, see under these sections for historical notes.

2

[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall

not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such

subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration

issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.



*NYC Administrative Code 16-525*

Administrative Code of the City of New York

Title 16-A Sanitation

CHAPTER 1 [Commercial Waste Removal]*1 NEW YORK CITY TRADE WASTE COMMISSION**2

§ 16-525 Displaced employee list.

The commission shall maintain a list containing the names and contact addresses or telephone numbers of persons formerly employed by a business engaged in the collection, removal or disposal of trade waste whose employment ended following the denial or revocation of a license pursuant to this chapter. The addition or deletion of information on such list shall be made only upon the request of such a former employee. A copy of such list shall be made available upon request to an applicant for a license pursuant to this chapter. The provision of such list shall in no way be construed as a recommendation by the city regarding the employment of any person on such list, nor shall the city be responsible for the accuracy of the information set forth therein.

**HISTORICAL NOTE**

Section added L.L. 42/1996 § 2, eff. June 3, 1996 with special provisions

noted in footnote to Title 1.

**FOOTNOTES**

1

[Footnote 1]: ** Heading provided by editor, Title 16-A added L.L. 42/1996 § 2, formerly Subchapter

18 §§ 20-332-20-338, see under these sections for historical notes.
2

[Footnote 2]: ** Note provisions of L.L. 42/1996:

Section 1. Legislative findings. The council hereby finds that the carting industry has been corruptly influenced by organized crime for more than four decades; that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers and in which customers are compelled to enter into long-term contracts with onerous terms, including "evergreen" clauses; that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum rates established by the department of consumer affairs effectively being the only rate available to businesses; that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove; that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms; that a situation in which New York city businesses, both large and small, must pay a "mob tax" in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.

The council further finds that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations, and that law enforcement must be coupled with new and expanded regulatory efforts on the city's part. The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct, such as the creation of a lucrative illegal landfill, and to actively discourage new firms from entering the industry.

The council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.

Enactment of this chapter is intended to enhance the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices.

§8. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance, shall be held invalid by any court of competent jurisdiction, the remainder of this local law and the application thereof shall not be affected thereby.

§9. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, and no administrative proceeding brought by the department of consumer affairs, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by this local law be assigned or transferred to another agency or officer.

§10. Whenever by or pursuant to any provision of this local law functions, powers or duties may be assigned to the New York city trade waste commission which have been heretofore exercised by any other agency or officer, any officers and employees in the classified city civil service who are engaged in the

performance of such functions, powers or duties may be transferred to such commission without further examination or qualification, and shall retain their respective civil service classifications and civil service status.

§11. Notwithstanding any other provision of this local law: (i) a contract to provide trade waste collection, removal or disposal entered into prior to the effective date of this local law shall terminate on the date provided therein or shall be deemed to terminate no later than two years following such effective date, whichever date is earlier; (ii) a contract entered into on or after the effective date of this local law shall not exceed two years in duration; and (iii) provided, further, that any contract entered into by a trade waste removal business required to be licensed pursuant to section 16-505 of the administrative code of the city of New York as added by section two of this local law, that has not received a license from the New York city trade waste commission as established by section two of this local law, whether entered into prior to or on or subsequent to the effective date of this local law, shall as of thirty days following such effective date be terminable by either party thereto upon thirty days written notice and shall, if entered into on or subsequent to the effective date of this local law, contain prominent notice of such right of termination. Notwithstanding any other provision of this section, a business may apply to the commission to waive the determination clause requirement with respect to identified contracts. Such application shall contain the information prescribed in a form issued by the commission and shall be accompanied by a statement why a waiver would not be inconsistent with the purposes of this act. In determining in its discretion whether a waiver of the termination requirement would be consistent with the purposes of this act, the commission shall consider background information concerning the business and its principals and the full circumstances surrounding the negotiation or administration of such contracts, including but not limited to the form and content thereof. Application of the termination clause requirement set forth herein in regard to a business that submits a waiver application within thirty days following the effective date of this local law, together with such additional information and compliance with requirements as may be specified by the commission, shall be suspended pending the determination by the commission whether to grant such waiver.

§12. Notwithstanding any provision of law to the contrary, the New York city trade waste commission established by section 16-502 of the administrative code of the city of New York as added by section two of this local law may enter into an agreement with the department of sanitation pursuant to section 15-523 of such code as added by section two of this local law for such department to conduct trade waste removal in a special trade waste district designated by the commission pursuant to subdivision a of such section, where the department of sanitation has responded to a request for proposals to conduct trade waste removal in a special trade waste district pursuant to such section. In the event that the department responds to such request for proposals, the commissioner of sanitation shall take no part in the process of selection of a licensee or licensees pursuant to such section. The provisions of paragraph (6) of subdivision d of such section shall not apply to an agreement with the department of sanitation to conduct trade waste removal in a special trade waste district.

§13. Subchapter 18 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED, except that the department of consumer affairs shall retain the authority provided in such subchapter in relation to: (i) the issuance of permits for the removal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business establishment until the adoption of rules governing registration therefor promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; (ii) the regulation of the removal or disposal of such waste by a business who is a permittee pursuant to such subchapter until the expiration of the permit issued pursuant to such subchapter in accordance with the provisions set forth in section fourteen of this local law; and (iii) enforcement of the provisions of such subchapter and any rules promulgated pursuant thereto regarding the conduct of businesses who possess licenses pursuant to such subchapter that are valid on the effective date of this local law until the expiration of such licenses in accordance with the provisions set forth in section fourteen of this local law; and provided further that the rates for the removal, collection or disposal of trade waste set forth in rules of the department of consumer affairs promulgated pursuant to such subchapter shall remain in

effect until the New York city trade waste commission as established by section 16-502 of the administrative code as added by section two of this local law has fixed new rates or has determined that fixed rates shall not apply. Notwithstanding any provision of this section, such trade waste commission may, at any time subsequent to the effective date of this local law, notify the department of consumer affairs that the commission is prepared to assume responsibility for the functions described in paragraphs (ii) and (iii) of this section and may, at any time thereafter, assume jurisdiction over such functions.

§14. This local law shall take effect immediately, subject to the following provisions: (i) with respect to a business other than a trade waste broker required by this local law to register with the commission: any permit for the removal and disposal of waste generated in the course of operation of a business by the owner, lessee or person in control of such business issued pursuant to the provisions of subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law or that is issued subsequent to such date pursuant to the provisions of such section thirteen shall, unless earlier revoked pursuant to the provisions of such subchapter in accordance with the authority provided in such section thirteen, remain valid and upon payment of the renewal fee or fee therefor be deemed extended as follows: (1) where the permittee has submitted an application for registration, in the form and containing the information required by the commission, until the applicant has been registered by the commission; (2) where the permittee does not submit such application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in the rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law; and (ii) with respect to trade waste brokers, no enforcement of the registration requirements of this local law shall take place for thirty days following the effective date of rules promulgated pursuant to this local law, provided that, with respect to a trade waste broker who was operating such a business as of the effective date of this local law and whom the commission has required to submit to fingerprinting and disclosure requirements pursuant to section 16-507 of the administrative code as added by section two of this local law, no enforcement shall take place unless or until such broker has failed to submit the fingerprints and the required information, in the form and manner and by the date required by the commission, or the commission has denied the application for registration; and provided further (iii) with respect to a business required by this local law to possess a license issued by the commission: (a) where such business possesses a license issued pursuant to former subchapter 18 of chapter 2 of title 20 of the administrative code as repealed by section thirteen of this local law that is valid on the effective date of this local law such license shall, unless revoked earlier pursuant to the provisions of such subchapter, remain valid and upon payment of the renewal fee therefor be deemed extended as follows: (1) where such business has submitted fingerprints and an application, in the form and containing the information required by the commission, until such application has been denied or a new license has been granted; and (2) where such business does not submit such fingerprints or application, or submits an application that is not in the form or does not contain the required information, until the date required for the submission of such application in rules promulgated by the commission pursuant to chapter 1 of title 16-A of the administrative code as added by section two of this local law. The fee paid for a license or a permit deemed extended pursuant to this section shall be applied to the fee for a new license or registration issued by the commission, or where the commission denies such new license or registration, such fee shall be prorated to the actual time the license or permit has remained valid and any remainder shall be refunded to the applicant; (b) notwithstanding any provisions to the contrary of section 16-511 of the administrative code as added by section two of this local law, the commission may, in its discretion, require such business to enter into a contract with an independent auditor or an independent monitor, in the manner set forth in such section, at the time such business submits an application to the commission or at any time thereafter; (c) upon the application of a business that has not previously been licensed pursuant to such subchapter 18, the commission may, in its discretion, permit the operation of such business pending a license determination, provided that such business has submitted an application in the form and containing the information required by the commission.

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

*NYC Administrative Code 17-101*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-101 Definitions.

Whenever used in this title the following terms shall have the following meanings:

(a) "Board" means the board of health.

(b) "Commissioner" means the commissioner of the department of health and mental hygiene.

(c) "Department" means the department of health and mental hygiene.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subds. (b), (c) amended L.L. 22/2002 § 20, eff. July 29, 2002 and deemed

in effect as of July 1, 2002.

**CASE NOTES**

¶ 1. A law firm made and its landlord made an agreement to surrender the leased space before the end of the term. The tenant was obligated to continue paying rent until the space was relet. The court held that where the tenant was no longer occupying the space but was still paying rent because the space had not been relet, commercial rent tax was due for that period. Conboy, Hewitt, O'Brien & Boardman v. Com'r of Finance, 249 A.D.2d 235, 672 N.Y.S.2d 315

(App.Div. 1st Dept. 1998).

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-102*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-102 Secretary; certification by chief clerk.

a. The secretary of the department, subject to the direction of the commissioner, shall keep and authenticate the acts, records, papers and proceedings of the department, preserve its books and papers, conduct its correspondence, and aid generally in accomplishing the purposes of the department.

b. Papers certified by the chief clerk of the department or by an assistant chief clerk shall be of the same effect as evidence and otherwise, as if certified by the secretary.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 552-1.0 added chap 929/1937 § 1 (sub a)

552-2.0 added chap 929/1937 § 1 (sub b)

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-103*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-103 Proofs and affidavits.

Proofs, affidavits and examinations as to any matter under the jurisdiction of the department may be taken by or before the board or other person as the commissioner or board shall authorize. The commissioner, the secretary and any member of the department, shall, severally have authority to administer oaths in such matters.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 556-1.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-104*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-104 Measures to prevent the spread of disease.

a. It shall be the duty of the department:

1. To cause any avenue, street, alley or other passage whatever, to be fenced up or otherwise inclosed if it shall deem the public safety requires it, and to adopt suitable measures for preventing all persons from going to any part of the city so inclosed;

2. To forbid all communication with the house or family infected with any communicable disease except by means of physicians, nurses or messengers to carry the necessary advice, medicines and provisions to the afflicted;

3. To adopt such means for preventing all communication between any part of the city infected with a disease of communicable character and all other parts of the city, as shall be prompt and effectual.

b. Failure to comply with the provisions adopted by the department pursuant to this section shall constitute a misdemeanor, punishable by a fine of not exceeding two hundred fifty dollars, or imprisonment not exceeding six months, or both.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 556-2.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-105*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-105 Commercial paper during epidemic; duties of city clerk.

a. Whenever the board of health, by public notice, shall designate any portion or district of the city as being the seat of any infectious or contagious disease, and declare communication with such portion or district to be dangerous, or shall prohibit such communication, the city clerk, during the continuance of such disease in such district, shall provide and keep in his or her office a book for the purpose of registering in alphabetical order, the names, firms and places of business of any inhabitant of the city who shall request such registry to be made.

b. All persons and firms usually resident or doing business within such infected district shall register, in the books so provided, their names or firms, with the place or places out of such infected district, but within the city to which they may have removed the transaction of their business, or to which they may desire any notices to be sent or served, or any notes, drafts, or bills to be presented for acceptance or for payment. Twenty-five cents may be claimed and received by the city clerk for every such registry; but the book in which the same shall be entered shall be open to public examination free of all charges at all times during office hours.

c. During the continuance of any such disease in such infected district, all drafts, notes and bills, which by law are required to be presented for acceptance or for payment, may be presented for such purpose at the place so designated in such registry, and all notices of nonacceptance and non-payment of any note, draft or bill, or of protest for such non-acceptance or non-payment, may be served by leaving the same at the place so designated.

d. In case any person or firm usually resident or doing business within such infected district shall neglect to make and cause to be entered in the book so provided, the registry herein required, all notes, drafts or bills which by law are required to be presented to such person or firm for acceptance or for payment, may be presented to the city clerk

during the continuance of such disease, at any time during office hours, and demand of acceptance or payment thereof may be made of such city clerk, to the same purpose and with the same effect as if the same had been presented and acceptance or payment demanded of such person or firm at their usual place of doing business.

e. In case of omission to make the registry herein required, all notices of the non-acceptance or non-payment of any note, draft, or bill, or of protest for such non-acceptance or non-payment, may be served on any person or firm usually resident or doing business within such infected district, by leaving the same at one of the post-offices in the city. Such service shall be as valid and effectual as if the notices had been served personally on such person or one of such firm at his, her or their usual place of doing business.

f. Whenever proclamation shall be made by the board of health, that an infectious or contagious disease in any infected district has subsided, it shall be deemed to have subsided for all purposes contemplated in this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 32-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 14

(formerly § 31-1.0)

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-106*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-106 Inspection of sick; reports.

Any officer or employee of the department may visit any person who shall be reported to the department as being apparently or presumably sick of any communicable disease and report his or her opinion of such sickness to it in writing.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 556-3.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-107*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-107 Inspection of vessels; removal; violation of orders, punishment for.

a. An officer or employee of the department shall visit and inspect all vessels coming to the wharves, landing places, or shores of the city, or within three hundred yards thereof, which are suspected of having on board any communicable disease, or of being likely to communicate such disease to the inhabitants of the city. Such officer or employee shall report in writing, stating the vessel so inspected and the nature, state, and situation thereof, and his or her opinion as to the probability of disease being communicated by or from the same, and shall file such report in the main office of the department.

b. If the department deem it probable that any such disease may be brought into the city or communicated to the inhabitants thereof, it may by order direct any vessel lying at a place within three hundred yards of any wharf, landing place or shore of the city to be removed at least three hundred yards therefrom within six hours after a copy of such order, certified by the secretary of the department, shall be delivered to the person or persons having command of such vessel, or to the master, owner or consignee thereof. Every person to whom such copy of such order shall be delivered shall forthwith comply with the same.

c. Failure to comply with the provisions of this section shall constitute a misdemeanor, punishable by a fine of not exceeding two hundred fifty dollars, or imprisonment not exceeding six months, or both.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 556-4.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-108*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-108 Infected places outside the city; proclamation.

a. The board may issue a proclamation declaring any place where there shall be reason to believe a communicable disease actually exists, to be an infected place within the meaning of the health laws of this state. Such proclamation shall fix the time when it shall cease to have effect but such period, from time to time, may be extended by the board if it shall judge the public health to require such extension. Notice of an extension shall be published in one or more newspapers of the city.

b. After such proclamation shall have been issued, all vessels arriving in the port of New York from such infected place shall be subject to a quarantine of at least thirty days or until the termination of the proclamation period, and together with their officers, crews, passengers and cargoes, shall be subject to all the provisions, regulations and penalties in relation to vessels subject to quarantine.

c. The board may prohibit or regulate the internal intercourse by land or water between the city and the infected place; and may direct that all persons who come into the city contrary to its prohibition or regulations shall be apprehended and conveyed to the vessel or places from where they last came, or if sick, to such place as the board shall direct.

d. Failure to comply with the provisions of this section shall constitute a misdemeanor, punishable by a fine of not exceeding two hundred fifty dollars, or imprisonment not exceeding six months, or both.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 556-5.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-109*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-109 Vaccinations.

a. The department is empowered to collect and preserve pure vaccine lymph or virus, produce diphtheria antitoxin and other vaccines and antitoxins, and add necessary additional provisions to the health code in order to most effectively prevent the spread of communicable diseases.

b. The department may take measures, and supply agents and offer inducements and facilities for general and gratuitous vaccination, disinfection, and for the use of diphtheria antitoxin and other vaccines and antitoxins.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 556-6.0 added chap 929/1937 § 1

Sub a amended chap 100/1963 § 439

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-110*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-110 Sale and exchange of lymph and antitoxin.

a. The department may authorize the sale at reasonable rates to be fixed by it, of surplus vaccine lymph, virus, diphtheria antitoxin and other vaccines and antitoxins, when the amount collected shall exceed the amount required by it in the proper performance of its duties. The avails of such sales shall be credited by the department to the general fund of the city of New York and included in its semi-monthly transmission of revenue collections to the commissioner of finance of the city of New York.

b. The bureau of laboratories of the department may also exchange, upon authority and approval of the commissioner, and upon the written approval of the mayor, a portion of its laboratory products for other and different laboratory products, manufactured by the laboratories of the United States government and of other cities and laboratories, which the department may need for the prevention of the spread of disease.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 556-7.0 added chap 929/1937 § 1

Sub a amended LL 57/1948 § 1

Sub a amended chap 100/1963 § 440

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-111*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-111 Appropriation for prevention of communicable diseases.

The city shall appropriate funds for the use of the department, for the prevention of dangers from communicable diseases found to exist in any part of the city, or for the care of persons exposed to danger from communicable diseases.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 556-8.0 added chap 929/1937 § 1

Amended chap 100/1963 § 441

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-112*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-112 Publication of reports and statistics.

The department, to promote the public good and public service, may establish reasonable regulations as to the publicity of any of its papers, files, reports, records and proceedings; and may publish such information as, in its opinion, may be useful, concerning births, deaths, marriages, sickness and the general sanitary conditions of the city, or any matter, place or thing therein.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 556-9.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-113*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-113 Repairs of buildings; removal of obstructions; regulation of public markets.

a. The powers of the department shall include the ordering and enforcing in the same manner as other orders are provided to be enforced, the repairs of buildings, houses and other structures; the regulation and control of all public markets in relation to the cleanliness, ventilation and drainage thereof and the prevention of sale or offering for sale of improper articles; the removal of any obstruction, matter or thing in or upon the public streets, sidewalks or places, which, in the opinion of the department, may lead to conditions dangerous to life or health; the prevention of accidents by which life or health may be endangered; and generally the abatement of all nuisances.

b. The department shall possess full power with reference to the ventilation, drainage and cleanliness, of the stands or stalls in or around all markets.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 556-10.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. The "Emergency Repair Program" is constitutional although it authorizes the building department to make repairs without the permission and consent of the landlord or of lienors and to collect the rent in payment therefor if the

landlord does not reimburse the city for the cost of repairs, but retention of rents in excess of the amount of the repair cost would be invalid.-300 W. 154 St. Realty Co. v. Department of Buildings, 30 A.D. 2d 351, 292 N.Y.S. 2d 25 [1968], modified, 26 N.Y. 2d 538, 311 N.Y.S. 2d 899, 260 N.E. 534 [1970].

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-114*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-114 Nuisances; abatement without suit.

The department shall have within the city all common law rights to abate any nuisance without suit, which can or does in this state belong to any person.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 556-11.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-115*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-115 Right of inspection.

It is hereby made the duty of all departments, officers, and agents, having the control, charge or custody of any public structure, work, ground, or erection, or of any plan, description, outline, drawing or charts thereof, or relating thereto, made, kept or controlled under any public authority, to permit and facilitate the examination and inspection, and the making of copies of the same by any officer or person, authorized to do so by the department of health and mental hygiene.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Section amended L.L. 22/2002 § 21, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

**DERIVATION**

Formerly § 556-12.0 added chap 929/1937 § 1

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-116*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-116 Medical examiners' returns.

The department, from time to time may make rules and regulations fixing the time of rendering, and defining the form of returns and reports to be made to it by the chief medical examiner, in all cases of death which shall be investigated by him or her. The chief medical examiner shall conform to such rules and regulations.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 556-13.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. In a death action to recover for the alleged negligent operation of a bus it was error to exclude the report of the toxicologist as to the quantity of alcohol found in the brain of the deceased where the report was made pursuant to law and in the regular course of business.-Iovino v. Green Bus Lines, Inc., 277 App. Div. 1002, 100 N.Y.S. 2d 143 [1950].

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-117*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-117 Removal of bodies.

a. It shall be the duty of the department upon receiving a certificate of death, made in accordance with its rules, to grant a permit for the removal from the city, of the body of the person described in such certificate if such body has not been buried.

b. It may grant a permit for the removal of the remains of any person interred within the city to a place without the city, on the application of a relative or friend of such person, when there shall appear to be no just objection to the same.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 556-14.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-118*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-118 Putrid cargoes, et cetera, may be destroyed.

The department, when it shall judge it necessary, may cause any cargo or part thereof, or any matter or thing within the city, that may be putrid or otherwise dangerous to the public health, to be destroyed or removed. Such removal, when ordered, shall be to such place as the department shall direct; such removal or destruction shall be made at the expense of the owner or owners of the property so removed or destroyed. Money expended for the same may be recovered from such owner or owners, in an action at law by the department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 556-15.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-119*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-119 Drainage; orders therefor; maps.

a. Whenever in its opinion the protection of the public health requires the drainage of any lands in the city, by means other than sewers, the department may make an order describing the location of such lands, and directing the proper drainage thereof, and construction of drains therefor, by the commissioner of design and construction.

b. The department after making such order, shall cause a map to be made on which shall be shown the location of such proposed drains and the lands required for the construction thereof.

c. The order shall be entered at length in the records of the department and a copy thereof shall be delivered to the commissioner of design and construction.

d. The map shall be filed in the department. A copy thereof shall be filed in the office of the register or county clerk of the county in which the lands are situated; another copy thereof shall be filed with the borough president of the borough in which the lands are situated; another copy with the copy of the order shall be filed with the commissioner of design and construction, who shall immediately thereafter have the power, and is hereby directed to make and adopt proper and suitable plans for the construction of such drains.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subds. a, c, d amended L.L. 59/1996 § 78, eff. Aug. 8, 1996

**DERIVATION**

Formerly § 556-16.0 added chap 929/1937 § 1

Amended chap 100/1963 § 442

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-120*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-120 Orders for paving, et cetera, yards and cellars; notice.

An order for the paving, filling, concreting, draining or regulating of any yards or cellars within the city shall be made by the department only upon reasonable notice to the owner or agent thereof.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 556-17.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-121*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-121 Care and treatment of physically handicapped children.

a. As used in this section, the following terms shall mean or include:

1. "Physically handicapped child." A person under twenty-one years of age who, by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury or disease, is or may be expected to be totally or partially incapacitated for education or for remunerative occupation.

2. "Legally responsible relatives." The parent or parents of a physically handicapped child or any other person or persons liable under the law for the support of such child.

3. "Legal custodian." The parent or parents of a physically handicapped child having lawful custody of such child, or any other person or persons having lawful custody of such child.

b. Whenever the commissioner shall find, after investigation, that any physically handicapped child is in need of surgical, medical or therapeutic treatment or hospital care or appliances or devices, the commissioner, upon the request or with the consent of the legal custodian of such child, may order such surgical, medical or therapeutic treatment, hospital care or appliances or devices, and after investigation as provided in subdivision c hereof, may order the legally responsible relatives to pay the cost thereof.

c. The commissioner shall investigate the financial responsibility of the legally responsible relatives of such physically handicapped child. If the commissioner shall find, after such investigation, that the legally responsible relatives of such child are able to pay the whole or any part of the cost of such treatment, care or appliances and devices,

and if such legally responsible relatives shall fail or refuse to comply with an order of the commissioner requiring them to pay the whole or any part of such cost, he or she may institute a proceeding in the family court of the state of New York within the city of New York, pursuant to the provisions of sections two hundred thirty-two through two hundred thirty-five of the family court act. Such a proceeding may likewise be instituted in the absence of an order requiring payment, where ability to pay is found.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 556-18.0 added chap 780/1945 § 1

Sub c amended chap 100/1963 § 443

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-122*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-122 Judicial notice of seal and presumptions.

All courts shall take judicial notice of the seal of the department and of the signature of its secretary, chief clerk and assistant chief clerks.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 559-1.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-123*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-123 Aliens.

The commissioner1 may send to such place as he or she may direct, all aliens and other persons in the city, not residents thereof, who shall be sick of any communicable disease. The expense of the support of such aliens or other persons shall be defrayed by the city, unless such aliens or other persons shall be entitled to support from the commissioner of immigration and naturalization of the United States.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 560-1.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

1

[Footnote 1]: * There are two sections 17-123.

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

*NYC Administrative Code 17-123*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-123 Window guards; notification to tenants.

a. All leases offered to tenants in multiple dwellings must contain a notice, conspicuously set forth therein, which advises tenants of the obligation of the owner, lessee, agent or other person who manages or controls a multiple dwelling to install window guards, and where further information regarding the procurement of such window guards is available.

b. The owner, lessee, agent or other person who manages or controls a multiple dwelling must cause to be delivered to each residential unit a notice advising occupants of the obligation of such owner, lessee, agent or other person who manages or controls a multiple dwelling to install window guards and where further information regarding the procurement of such window guards is available. Such notice must be provided on an annual basis in a form and manner approved by the department.

c. The department of health and mental hygiene shall promulgate such regulations as it deems necessary to comply with the provisions of this section, with respect to the annual notice to tenants, and the notice requirement in all multiple dwelling leases.

d. Any person who violates the provisions of this section, or the regulations promulgated hereunder, shall be guilty of a misdemeanor punishable by a fine of up to five hundred dollars or imprisonment for up to six months or both. In addition, any violation of this section shall constitute a civil violation subject to a penalty of not more than five hundred dollars per violation.*2 A civil violation under this section shall be adjudicated before the administrative tribunal of the department.

**HISTORICAL NOTE**

Section added (as § 556-19.0) L.L. 33/1986 § 2. (Section number assigned by the Legislative Bill Drafting Commission)

Subd. c amended L.L. 22/2002 § 22, eff. July 29, 2002 and deemed in

effect as of July 1, 2002.

**CASE NOTES**

¶ 1. Infant was injured falling out of a window while visiting an apartment. Negligence action against landlord for failing to erect window guard is not a violation of Health Code § 131.15 since that section requires window guards only in apartments where children reside not where children visit, however frequently. Lara v. West 109th Street Realty Corp., 139 Misc. 2d 186 [1987].

¶ 2. This section requires the installation of window guards. In conjunction with Health Code § 131.15 and NYC Charter § 558(e) the city is trying to protect the lives of young children from accidental death and injury from window falls. In enacting these requirements the City Council and Board of Health intended to create strict liability offenses, criminalizing violations. There is no presumption of guilt rebuttable or irrebutable, merely by absense of window guards. Landlord may defend on a number of grounds including receiving no response to notice provision of § 17-123(b) or false information. People v. Nemadi, 140 Misc. 2d 712, 531 N.Y.S.2d 693 (Crim. Ct. New York Co. 1988).

¶ 3. Taken with Health Code § 3.11, failure to provide acceptable window guards in building where children under the age of 11 years reside constitutes a "nuisance" and is a violation of this section. State v. Portnoy, 140 Misc. 2d 945 [1988].

¶ 4. The NYC Housing Authority was not liable for the death of a three year old visitor who fell from an eighth floor apartment maintained by the Authority. The Authority, at the time of the accident, 1980, was not required to install window guards under the Ad Code of the City of NY, section 17-123 unless an infant under 10 years of age resided and a previous request for installation had been made by a tenant. Subsequent amendment of the ordinance does not control this action. Costanzo v. NYC Housing Authority, 158 AD2d 576.

¶ 5. The section does not apply where no children under ten years of age reside in the apartment. Deer v. DiPiazza, 638 N.Y.S.2d 772 (App.Div. 2nd Dept. 1996).

¶ 6. This section creates strict liability as against landlords who fail to comply with the window guards requirement. See People v. Simon, 148 Misc.2d 845, 562 N.Y.S.2d 369 (Crim. Ct. Bronx Co. 1990).

¶ 7. An eight-year-old child fell out of a window that lacked a window guard. The court held that a violation of the statute constituted negligence per se where the following elements were established: (1) a child under the age of ten resided in a multiple dwelling; and (2) the owner, net lessee or manager knew of the presence of the child and failed to take the proper remedial steps. The owner contended while the apartment was vacant following the departure of the previous tenant, and that it did not install window guards because it believed that a new tenant would want air conditioning. The court, however, held that the failure to install the window guards when a young child was known to be in the apartment, was negligence per se, since the child was clearly within the class of persons that the statute was designed to protect. Moreover, it was held that the landlord had a responsibility to ascertain whether young children were occupying the apartment. Askar v. Karim, N.Y.L.J., Aug. 16, 1999, page 32, col. 4 (Sup.Ct. Kings Co.).

¶ 8. A police officer was injured in a fall from a window, while chasing a suspect. Since the officer was not assaulted by a person who gained unlawful access to the premises through a window, the accident could not be said to

have arisen from the failure to have window guards. Betterly v. Estate of Silver, 266 A.D.2d 30, 698 N.Y.S.2d 17 (1st Dept. 1999).

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

2

[Footnote 2]: * "Per violation" language missing from L.L. 33/1986 § 1.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-127*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-127 Oxygen in courthouses.

There shall be placed at least two resuscitation devices in every courthouse in the city which shall be maintained in a conventionally available and safe place.

The commissioner of citywide administrative services shall promulgate such rules and regulations as may be necessary for the training of department of citywide administrative services personnel in the operation and use of same and at the end of their course they shall receive a certification from the department.

**HISTORICAL NOTE**

Section amended L.L. 59/1996 § 79, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 683-2.0 added LL 24/1972 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-128*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-128 The department as party.

The department may institute and maintain all suits and proceedings which are reasonable, necessary and proper, to carry out the provisions of the laws under which it acts.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-1.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-129*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-129 Proceedings presumed legal; presumptions.

a. The actions, proceedings, authority, and orders of the department shall at all times be regarded as in their nature judicial, and be treated as prima facie just and legal.

b. In any action or proceeding the right of such department or police department to make any order or cause the execution thereof, shall be presumed.

c. All meetings of the board shall in every action and proceeding be taken to have been duly called and regularly held, and all orders and proceedings to have been duly authorized, unless the contrary be proved.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-2.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

G¶ 1. Orders of the Board of Health are to be treated as prima facie just and legal.-Silverman v. Dept. of Health, 252 App. Div. 678, 300 N.Y.S. 979 [1937].

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-130*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-130 Copies of records; authentication.

Copies of the records of the proceedings of the department or board, of the rules, regulations, by-laws and books and papers, constituting part of their archives and at any time in force in the city, when authenticated by the secretary or secretary pro tempore of the department, shall be presumptive evidence of the facts, statements and recitals therein contained, and the authentication taken as presumptively correct, in any court of justice or judicial proceeding, when they may be relevant to the point or matter in controversy.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-3.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-131*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-131 Order for examination before justice of supreme court.

a. Any justice of the supreme court of the first or second department, or who is holding court or chambers therein, upon the written application of the commissioner, may issue his or her order by him or her subscribed, for the examination without unreasonable delay by or before such justice of any person or persons, and the production of books or papers or the inspection and taking of copies of the whole or parts thereof, at a time and place within the city, and in such order to be named, provided it shall appear to the satisfaction of such justice or court that any matter or point affecting life or health is involved. It shall be the duty of such justice to take or superintend such examination, which shall be under oath, and shall be signed by the party or parties examined and be certified by the justice, and with any copies of books or papers, to be delivered to the department for the use of the department.

b. Such examination, and any proceeding connected therewith, or under such order, may wholly or in part be had, conducted or continued by or before any other of such justices, as well as that one who made the order; and in and about the same, every such justice shall have as full power and authority to punish for contempt, and enforce obedience to such or other order or direction or that of any other judge respecting the matter as any such justice of the supreme court may now have, or shall possess, to enforce obedience or punish contempt in any case or matter whatsoever. Such application shall name or describe the person or persons whose examination is sought, and so far as possible the books or papers desired to be inspected, and the matter or points affecting life or health as to which the commissioner requests the examination to take place, and the justice shall on the proceedings, decide what questions are pertinent and allowable in respect thereto, and shall require the same to be properly answered; but no answer of any person so examined shall be used in any criminal proceeding. Service of any order of any such justice may be made, and the same proved in the same manner as the service of either an injunction or a subpoena. And it shall be the duty of the justice to

facilitate the early determination of the proceedings.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-4.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-132*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-132 Appearance and examination of witnesses.

Upon the application of any party in interest in any matter pending examination before the department, by affidavit, stating the grounds of such application, to any judge of a court of record, and asking that any person or persons therein named shall appear before the department, or any person taking or about to take such examination, at some time or times and place to be stated in the affidavit, it shall be the duty of such judge, if he or she shall discover reasonable cause so to do, to issue his or her order requiring such person or persons named to appear and submit to such examination as, and to the extent such order may state, at the time and place to be in the order named; and the order, signed by such judge, may be served, and shall in all respects be obeyed as a subpoena duly issued. A refusal to submit to the proper examination may be punished by such judge or by any judge of such court as a contempt of court, upon the facts as to such refusal being brought before any such judge by affidavit.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-5.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-133*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-133 Penalties.

Every person, corporation, or body that shall violate or not conform to any provisions of the health code of the city of New York, or any rule or sanitary regulation duly made, shall be liable to pay a penalty not exceeding the maximum amount allowed by the health code of the city of New York, or any other applicable law, rule or regulation. The judge, justice, administrative law judge or hearing examiner who presided at a trial or hearing where such penalty is determined and assessed shall fix, in writing, the amount of the penalty to be recovered, and shall direct that such amount be included in the judgment or decision.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a repealed L.L. 74/2003 § 1, eff. Dec. 22, 2003.

Subd. b amended (subd. b designation removed in amendment) L.L.

74/2003 § 2, eff. Dec. 22, 2003.

**DERIVATION**

Formerly § 564-6.0 added chap 929/1937 § 1

Sub b amended chap 100/1963 § 445

**CASE NOTES FROM FORMER SECTION**

¶ 1. The Board of Health of the City of New York is invested with the power, extraordinary as to administrative agencies, to formulate standards as well as to issue orders enforcible by penal sanctions. Subdivision b of this section goes so far as to authorize the Board of Health to prescribe "fines, penalties, forfeitures and imprisonment" in the Sanitary Code for the enforcement of that code or the Board's order; and, accordingly, § 224 of the Sanitary Code makes provision for punishment of this violation. The Sanitary Code, therefore, may be taken to be the body of the administrative provisions sanctioned by a time honored exception to the principal that there is to be no transfer of the authority of the Legislature. However, § 277 of the Sanitary Code which requires a building owner to keep all gas appliances in good order was not sufficient to warrant conviction of the home owners where, without their knowledge, a gas refrigerator became defective and admitted gases which caused the death of the tenant.-People v. Weil, 286, Misc. 753, 146 N.Y.S. 2d 416 [1956].

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-133.1*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-133.1 Failure to abate rodents; penalties.

Every person, corporation, or body that shall violate or not conform to any provisions of the health code of the city of New York or any applicable law, rule or regulation pertaining to the eradication of rodents, the elimination of rodent harborages or other rodent related nuisances shall be liable to pay a civil penalty of not less than three hundred dollars for the first violation. The penalty for each subsequent violation of the same provision of law, rule or regulation, at the same premises and under the same ownership or control, within a two-year period, shall be double the amount of the previous violation; provided, however, that such penalty shall not exceed the maximum allowable penalty set forth in section 17-133 of this code. Such penalties may be sued for and recovered by and in the name of the department, with costs, before any judge, justice, administrative law judge or hearing examiner in the city having jurisdiction of such or similar actions. The judge, justice, administrative law judge or hearing examiner who presided at a trial or hearing where such penalty is determined and assessed shall fix, in writing, the amount of the penalty to be recovered, and shall direct that such amount be included in the judgment or decision.

**HISTORICAL NOTE**

Section added L.L. 74/2003 § 3, eff. Dec. 22, 2003.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-134*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-134 Joinder of defendants.

Any suit instituted by the department for the recovery of a penalty may be against one or more of those who participate in the acts, refusals or omissions complained of, and the recovery may be against one or more of those joined in the action as the justice of the court shall direct.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-7.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-135*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-135 Court fees not to be charged.

The department shall not be subject to the payment of any fees to any court, magistrate or clerk for the issuance of any paper or process or for the performance of any duty in suits brought for the recovery of a penalty.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-8.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-136*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-136 Costs.

a. If the department, in an action for a penalty, recover judgment in any amount, costs of the court in which the action is brought shall also be recovered without reference to the amount of the recovery, provided payment was demanded before suit brought, and the defendant or defendants against whom recovery is had, did not, as article thirty-two of the civil practice law and rules authorizes, offer to pay an amount equal to the recovery against him or them, except that where the recovery shall be less than fifty dollars, the amount of costs shall be ten dollars.

b. The department shall not be subject to the payment of costs unless the judge or justice, at the conclusion of the trial, shall certify in writing that there was not reasonable cause for bringing the action. In such case the costs shall not exceed ten dollars, unless the amount claimed exceeded fifty dollars.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-9.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-137*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-137 Jurisdiction; title to real estate.

If the defendant is sought by the pleadings to be charged in an action for the recovery of a penalty on any grounds other than by virtue of ownership of real estate, no court shall lose jurisdiction by reason of the plea that title to such real estate is involved.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-10.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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*NYC Administrative Code 17-138*

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Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-138 Officers to be peace officers.

Every officer and inspector of the department is hereby declared to be a peace officer, pursuant to section 2.10 of the criminal procedure law, and is hereby authorized and empowered, subject to the regulations of the department, to proceed in the same manner and with like force and effect as a police officer in respect to procuring, countersigning and serving the summons referred to therein.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-11.0 added chap 929/1937 § 1

Amended chap 100/1963 § 446

Amended chap 843/1980 § 234

**CASE NOTES FROM FORMER SECTION**

¶ 1. Holding that § 119 of N.Y.C. Criminal Courts Act is inapplicable to violations of the Health Code, the court overruled a contention that a Health Department inspector was not a peace officer and could not swear to a complaint before a city magistrate. Such inspectors are peace officers within the meaning of CCP § 154.-People v. Stein, 143 (88)

N.Y.L.J. (5-6-60) 13, Col. 5  T.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 §  19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



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

*NYC Administrative Code 17-139*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-139 Injunctions against department; undertakings.

a. A preliminary injunction shall be granted against the department or its officers, only by the supreme court at a special term thereof after service of at least five days notice of a motion for such injunction, together with copies of the papers on which the motion for such injunction is to be made.

b. Whenever the department shall seek any provisional remedy or prosecute any appeal, it shall be unnecessary to give any undertaking before obtaining or prosecuting the same.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-12.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. That cocoa beans which had been declared unfit for human consumption by New York City Department of Health had been about to be shipped from a warehouse in New York to Chicago when the City's inspector stopped the shipment, and that the owner now desired to ship them to England, did not render the beans immune to the Sanitary Code regulations of the City of New York, since the beans, being located within the City, were subject to jurisdiction of City Department of Health as states and municipalities have right to regulate sale of food products within their borders

to protect health of citizens even though they indirectly affect interstate and foreign commerce, and policy of public health officials should not be merely to ship unwholesome food to some other locality. In any event, should the City unjustly destroy the owner's property, owner had an adequate remedy by an action at law against the City for damages under Charter § 565, and hence owner was not entitled to injunction restraining interference with attempted removal of the beans.-S. H. Cranston, Inc. v. Dep't of Health, N.Y.C. 168 Misc. 749, 6 N.Y.S. 2d 275 [1938].

¶ 2. Orders of the Board of Health are to be treated as prima facie legal and just, and hence no stay of the Board's action in revoking petitioner's license would be granted pending review.-In re Jamaica Hotel Supply, Inc. (Rice), 102 (142) N.Y.L.J. (12-20-39) 2246, Col. 1 M.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-140*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-140 Officers and judges to act promptly.

It shall be the duty of all prosecuting officers of criminal courts, and judges of the New York city criminal court to act promptly upon all complaints, and in all suits or proceedings for a violation of any health law, and in all proceedings approved or promoted by the department, and to bring the same to a speedy hearing and termination and to render judgment and direct execution therein without delay.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-13.0 added chap 929/1937 § 1

Amended chap 100/1963 §447

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as

of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-141*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-141 Service of orders.

a. Service of any order of the department or board shall be deemed sufficient if made:

1. Upon a principal person interested in the business, property, matter or thing, or the nuisance or abuse to which such order relates; or

2. Upon a principal officer charged with a duty in relation thereto; or

3. Upon a person, officer or deparment, or an officer or employee of such a department, who may be most interested in or affected by its execution.

b. If such order relate to any building or the drainage, sewerage, cleaning, purification or ventilation thereof, or of any lot or ground on or in which such building stands, used for or intended to be rented as the residence or lodging place of several persons or as a multiple dwelling, service of such order on the agent of any person or persons for the renting or for the collecting of rent thereof, or of the parts thereof to which such order may relate, shall be of the same effect and validity as due service made upon the principal of such agent or upon the owners, lessees, tenants or occupants of such buildings, or parts thereof, or of the subject matter to which such order relates.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-14.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-142*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-142 Definition of nuisance.

The word "nuisance", shall be held to embrace public nuisance, as known at common law or in equity jurisprudence; whatever is dangerous to human life or detrimental to health; whatever building or erection, or part or cellar thereof, is overcrowded with occupants, or is not provided with adequate ingress and egress to and from the same or the apartments thereof, or is not sufficiently supported, ventilated, sewered, drained, cleaned or lighted in reference to its intended or actual use; and whatever renders the air or human food or drink, unwholesome. All such nuisances are hereby declared illegal.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-15.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Administrative Code § 564-15.0 and § C26-193.0, **held** applicable in action to recover for injuries sustained as result of a defective condition of the stairway in a vacant, private building, as against contention that the statutes related to public nuisances only.-McCabe v. Cohen, 268 App. Div. 1064, 52 N.Y.S. 2d 903 [1945], aff'd 294 N.Y. 522, 63 N.E. 2d 88 [1945].

¶ 2. A tenant's visitor, an infant, was injured in attempting to put out a fire started among some rubbish. The infant sued the owner and tenants of the property. One cause of action of the complaint was based on nuisance under the Administrative Code. **Held:** the mere fact that the owner or tenants of the property allowed paint cans, paper, or other rubbish to be present on their property did not sustain a basis for recovery on the theory that the owner or tenants created a nuisance.-Derdieff v. Argule, 26 Misc. 2d 142, 209 S. 2d 154 [1960].

¶ 3. The infant plaintiff was injured when he fell from an open window on the second floor of a vacant house in a state of disrepair owned by the defendant. There was evidence that the windows in the house were broken and not boarded up and that the doors were either open or missing. There was conflicting evidence that the house had been boarded up and otherwise secured prior to the accident and had been inspected and was secure on the morning of the accident. Under this section and section C26-193.0 the vacant building was a public nuisance and an inherently dangerous instrumentality. The owner was liable to anyone, including a trespasser, who was injured as a result of the negligent maintenance thereof. Judgment for the infant was reversed where Trial Judge did not properly instruct jury that they should find for the defendant if they believed its evidence concerning the security of the building.-Beauchamp v. New York City Housing Authority, 12 N.Y. 2d 400, 190 N.E. 2d 412, 240 N.Y.S. 2d 15 [1963].

¶ 4. The constitutionality of this section and of a resolution of the Board of Health pursuant to which the department of buildings promulgated an "Emergency Repair Program" was upheld as against claim by landlord that the code and program constituted a denial of equal protection of the laws, an unconstitutional impairment of the landlord's contractual rights and a deprivation of property without due process. The selection of one class of landlords for regulation because that one class "conspicuously offends" is not forbidden by the equal protection clause. And if the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end it is not unconstitutional even though it may interfere with rights established by existing contract. The state through its police power may establish regulations reasonably necessary to secure the general welfare although private property rights are curtailed.-300 West 154th St. Realty Co. v. Dept. of Buildings, 158 (76) N.Y.L.J. (10-19-67) 15 Col. 8 F.

¶ 5. Lewd exhibitions by "topless and bottomless" dancers at defendants' premises constituted illegal obscene performances and could be enjoined as a common nuisance.-Commissioner of the Dept. of Buildings v. Sidne Enterprises, Inc., 90 Misc. 2d 386, 394 N.Y.S. 2d 777 [1977].

¶ 6. Question of whether an untenanted building which had a caretaker, which was secured and boarded up and upon which repair work was being done came within the definition of "nuisance" could not be determined on a motion for summary judgment but required a trial.-Archbishopric of City of N.Y. v. City of N.Y., 63 A.D. 2d 912 [1978].

**CASE NOTES**

¶ 2. Taken with Health Code § 3.11, failure to provide acceptable window guards in building where children under the age of 11 years reside constitutes a "nuisance" and is a violation of this section. State v. Portnoy, 140 Misc. 2d 945 [1988].

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



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

*NYC Administrative Code 17-143*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-143 Nuisances; punishment.

A wilful omission or refusal of any individual, corporation or body to forthwith abate any nuisance, as ordered by the department or board, such order having been duly served upon them, shall be a misdemeanor.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-16.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



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

*NYC Administrative Code 17-144*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-144 Nuisances; who is liable.

It is hereby declared to be the duty, of which there shall be a joint and several liability, of every owner, part owner, person interested, and every lessee, tenant, and occupant, of, or in, any place, water, ground, room, stall, apartment, building, erection, vessel, vehicle, matter and thing in the city, and of every person conducting or interested in business therein or thereat, and of every person who has undertaken to clean any place, ground or street therein, and of every person, public officer and board having charge of any ground, place, building or erection therein, to keep, place and preserve the same and every part, and the sewerage, drainage and ventilation thereof in such condition, and to conduct the same in such manner that it shall not be dangerous or prejudicial to life or health, subject to the health code and orders of the department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-17.0 added chap 929/1937 § 1

Amended chap 100/1963 § 448

**CASE NOTES FROM FORMER SECTION**

¶ 1. The joint and several liability provisions of Administrative Code § 564-17.0 refer to the "owner, part owner,

person interested," etc. in the singular, and do not render the persons enumerated and related to one parcel of ground liable, jointly and severally, with the owners and others related to any other parcel.-In re Barkin 189 Misc. 358, 71 N.Y.S. 2d 267 [1947].

¶ 2. Administrative Code §§ 564-17.0, 564-18.0, and related provisions, apply to vacant land as well as lots with buildings or structures thereon.-In re Barkin, 189 Misc. 358, 71 N.Y.S. 2d 267 [1947].

¶ 3. The tenant's visitor, an infant, was injured in attempting to put out a fire started among some rubbish. The infant served the owner and tenants of the property. One cause of action of the complaint was based on nuisance under the Administrative Code. **Held:** the mere fact that the owner or tenants of the property allowed paint cans, paper, or other rubbish to be present on their property did not sustain a basis for recovery on the theory that the owner or tenants created a nuisance.-Derdieff v. Argule, 26 Misc. 2d 142, 209 S. 2d 154 [1960].

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



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

*NYC Administrative Code 17-145*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-145 Dangerous buildings, places and things; declaration as nuisance.

Whenever any building, erection, excavation, premises, business pursuit, matter or thing, or the sewerage, drainage or ventilation thereof, in the city, in the opinion of the board, whether as a whole or in any particular, shall be in a condition or in effect dangerous to life or health, and whenever there shall be growing on any property any ragweed or other species of weed, plant or growth which is noxious or detrimental to the public health, or the seed, pollen or other emanation whereof, when carried through the air or otherwise dispersed, is noxious or detrimental to the public health, the board may take and file among its records what it shall regard as sufficient proof to authorize its declaration that the same, to the extent it may specify, is a public nuisance, or dangerous to life or health; and may thereupon enter the same in its records as a nuisance, and order the same to be removed, abated, suspended, altered, or otherwise improved or purified, as such order shall specify. The borough presidents and the commissioner of transportation are authorized to furnish the department with information in writing as to properties and locations where such noxious weeds and growths may be found.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-18.0 added chap 929/1937 § 1

Amended LL 65/1947 § 1

Amended chap 100/1963 § 449

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



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

*NYC Administrative Code 17-146*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-146 Stay of execution; modification.

If any party, within three days after service or attempted service of such order upon him or her and before its execution is commenced, shall apply to the board, or the chairperson thereof, to have such order or its execution stayed or modified, it shall then be the duty of the board to temporarily suspend or modify it at the execution thereof, save in cases of imminent peril to the public health, when the board may exercise extraordinary powers, as specified in section five hundred sixty-three of the charter and to give such party or parties together, as the case in the opinion of such board may require, a reasonable and fair opportunity to be heard before it and to present facts and proofs, according to its rules and directions, against such declaration and the execution of such order, or in favor of its modification, according to the regulation of the board. Such board shall enter in its minutes such facts and proofs as it may receive and its proceedings on such hearing, and any other proof it may take; and thereafter may rescind, modify or reaffirm its declaration and order, and require execution of the original, or of a new or modified order to be made in such form and effect as it may finally determine.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-19.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-147*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-147 Execution.

If such order is not complied with, or so far complied with as the board may regard as reasonable, within five days after service or attempted service or within any shorter time, which, in case of imminent peril to the public health, the board may have designated, or is not thereafter speedily and fully executed, then such order may be executed as any of the orders of the board or department. Any agency of the city is authorized to act as agent of the department in executing such order. In the event that any agency shall so act, it shall certify and transmit to the department its expenses in the execution of such order separately in respect of each separately owned parcel of property. Such expenses shall be reimbursed to such agency and shall be chargeable and collectible as expenses of the department in connection with the execution of an order as referred to in this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-20.0 added chap 929/1937 § 1

Amended LL 65/1947 § 2

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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*NYC Administrative Code 17-148*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-148 Substituted service; posting; service by publication.

a. If personal service of any such order cannot be made by reason of absence from the district, or inability to find one or more of the owners, occupants, lessees or tenants of the subject matter to which such order relates, or one or more of the persons whose duty it was to have done what is therein required to be done, as the case may render just and proper in the opinion of the board, to be shown by the official certificates of the officer having such order to serve, then service may be made through the mail, or by copy left at the residence or place of business of the person sought to be served, with a person of suitable age and discretion.

b. In any case where personal service of any such order cannot be made for the reasons stated in subdivision a of this section and service cannot be made as provided in such subdivision through the mail or by leaving a copy with a person of suitable age and discretion, because of inability to obtain the name or address of the person sought to be served, and such inability to effect service is shown by the official certificate of the officer having such order to serve, service may be made by conspicuously posting a copy of such order upon the property to which it relates. The posting of such order shall be sufficient notice of such order and of the nuisance therein mentioned to all persons having any duty or liability in relation thereto under the provisions of this chapter.

c. Whenever the board shall have declared any condition, matter or thing to be a nuisance, including ragweed or any other species of weed, plant or growth, and has entered the same in its records as a nuisance, the board may also take and file among its records what it shall regard as sufficient proof to authorize a declaration that such nuisance is widespread throughout the city or in any area thereof, and that personal service or service pursuant to subdivision a or b of this section of an order or orders requiring the abatement, removal or correction of such nuisance would result in delay prejudicial to the public health, welfare or safety, and upon the filing of such proof and the making of such

declaration, the board may order that such nuisance be removed, abated or corrected, as prescribed by the board, by an order addressed generally, without specification of names or addresses, to all persons who, pursuant to the provisions of this chapter, have any duty or liability in relation to any such nuisance which may exist upon or in any real or personal property or place located within the area or areas specified in such order. Such order may be served by publishing the same for a period of not less than three days in the City Record and in a newspaper circulated in the area or areas mentioned in such order. Service of such order shall be complete at the expiration of the third day of such publication and such publication shall be sufficient notice of such order and of the nuisance therein mentioned to all persons having any duty or liability in relation thereto under the provisions of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-21.0 added chap 929/1937 § 1

Amended LL 65/1947 § 3

**NOTE**

Provisions of City Record March 8, 2004:

The following resolution was adopted by the Board of Health on April 18, 2000. This resolution was utilized by the Department of Health and Mental Hygiene every year since 2000. The Department suspended its use on October 31st of each year because the threat of mosquito breeding during cold weather had subsided. Beginning March 15, 2004, the Resolution will again be in full force and effect. The Department intends to again fully exercise the authority granted by the Board of Health Resolution, including the immediate abatement of standing water conditions, to prevent the breeding and proliferation of mosquitoes during the 2004 mosquito season. Therefore, in order to ensure proper public notification, the Department of Health and Mental Hygiene is republishing the Resolution in accordance with § 17-148 of the Administrative Code of the City of New York.

Resolution of the Board of Health of the

Department of Health and Mental Hygiene

of the City of New York

At a meeting of the Board of Health of the Department of Health and Mental Hygiene, held April 18, 2000, the following resolution was adopted:

Whereas, the Board of Health has taken and filed among its records reports that in areas throughout the City of New York there are sunken lots, property below grade, or other places which are insufficiently drained and where water may accumulate and stagnant water may collect; and

Whereas, upon these and other properties, there are household and other items including, but not limited to, tires, flower pots, household or other containers such as, trash, garbage and recycling containers without drainage holes, roof gutters clogged with leaves or other debris, swimming and wading pools, bird baths, swimming pool covers, outdoor plumbing fixtures and hose bibs dripping water to the ground and other materials, appurtenances and fixtures which allow the accumulation of water; and

Whereas, such accumulations of water create conditions conducive to insect life in general, and to the breeding and nurturing of mosquitoes in particular; and

Whereas, certain mosquitoes have been found to harbor viral diseases, including West Nile Virus/encephalitis, which are transmissible to and may be fatal to humans; and

Whereas, mosquitoes breed rapidly, and the potential presence of West Nile Virus is immediately dangerous to life and health; and

Whereas, the Board of Health regards the aforesaid reports as sufficient proof to authorize the declaration that any accumulations of water in which mosquitoes may breed are in a condition and in effect immediately dangerous to human life and health and constitute a public nuisance; and

Whereas, immediate abatement of such nuisances is necessary to prevent the breeding and proliferation of infectious mosquitoes; and

Whereas, personal service or service pursuant to subdivisions (a) or (b) of §17-148 of the Administrative Code of the City of New York of orders requiring the abatement of such nuisances and conditions in effect dangerous to life and health upon each of the persons who, pursuant to the provisions of Title 17 of the Administrative Code of the City of New York, has a duty or liability to abate such nuisances and conditions, would result in a delay prejudicial to the public health, welfare, and safety; now, therefore, be it

Resolved, that the Board of Health hereby declares that such places having an accumulation of water capable of breeding mosquitoes are in a condition and in effect immediately dangerous to life and health and constitute a public nuisance; and be it further

Resolved, that the Board of Health hereby declares that such nuisances are widespread throughout the City; and be it further

Resolved, that all persons who, pursuant to the provisions of Title 17 of the Administrative Code of the City of New York and such other chapters, titles, sections, laws or rules as are applicable thereto, have the duty or liability to abate such nuisances and conditions in effect dangerous to life and health, are hereby ordered to forthwith abate such nuisances and conditions in effect dangerous to life and health by eliminating such accumulations of water and the conditions conducive to further accumulation, or by otherwise eliminating the capacity of accumulated water to support mosquito breeding; and be it further

Resolved, that in the event that such persons or any of them shall fail to comply with this order within five days after service thereof pursuant to §17-148 of the Administrative Code of the City of New York, the Department of Health and Mental Hygiene is hereby authorized and directed to take all necessary steps to forthwith secure the abatement of said nuisances and conditions in effect dangerous to life and health.

Resolved further, that this resolution shall take effect immediately.

(As adopted by the Board of Health on April 18, 2000)

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-149*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-149 On what expenses to be a lien.

The expenses attending the execution of any and all orders duly made by the department shall respectively be a several and joint personal charge against each of the owners or part owners and each of the lessees and occupants of the building, business, place, property, matter or thing to which such order relates, and in respect to which such expenses were incurred; and also against every person or body who was by law or contract bound to do that in regard to such business, place, street, property, matter or thing which such order requires. Such expenses shall also be a lien on all rent and compensation due, or to grow due, for the use of any place, room, building, premises, matter or thing to which such order relates, and in respect of which such expenses were incurred, and also a lien on all compensation due, or to grow due, for the cleaning of any street, place, ground, or thing, or for the cleaning, or removal, of any matter, thing, or place, the failure to do which by the party bound so to do, or doing of the same in whole or in part by order of such department, was the cause or occasion of any such order or expense.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-22.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. The "Emergency Repair Program" is constitutional although it authorizes the building department to make repairs without the permission and consent of the landlord or of lienors and to collect the rent in payment therefor if the landlord does not reimburse the city for the cost of repairs, but retention of rents in excess of the amount of the repair costs would be invalid.-300 W. 154 St. Realty Co. v. Department of Buildings, 30 A.D. 2d 351, 292 N.Y.S. 2d 25 [1968], modified, 26 N.Y. 2d 538, 311 N.Y.S. 2d 899, 260 N.E. 2d 534 [1970].

¶ 2. Despite language of this section respondents who were former tenants of petitioner were entitled to return of rent money deposited with clerk of court upon default of landlord since respondents were not personally liable for expenditures on property made by city after they left premises for to impose liability upon them would constitute deprivation of property without due process of law and city cannot have a lien on rents not yet due.-176 East 123rd St. Corp. v. Grangen, 67 Misc. 2d 281, 323 N.Y.S. 2d 737 [1971].

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-150*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-150 Suits for expenses.

The department, in case it has incurred any expense, or has rendered service for which payment is due, and as the rules of the department may provide, may institute and maintain a suit against any one liable for such expenses, or against any person, firm, or corporation, owing or who may owe such rent or compensation, and may recover the expenses so incurred under any such order. One or more of such parties liable or interested may be made parties to such action as the department may elect; but the parties made responsible herein for such expenses shall be liable to contribute or to make payment as between themselves, in respect of such expenses, and of any sum recovered for such expenses or compensation, or by any party paid on account thereof, according to the legal or equitable obligation existing between them.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-23.0 added chap 929/1937 § 1

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-151*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-151 Lien on premises.

a. There shall be filed in the office of the department a record of all work caused to be performed by or on behalf of the department in executing any order of the board or department. Such records shall be kept on a building by building basis and shall be accessible to the public during business hours. Within thirty days after the issuance of a purchase or work order to cause such work to be done, entry of such order shall be made on the records of the department. Such entry shall constitute notice to all parties.

b. All expenses incurred by or on behalf of the department for such work, pursuant to this title or any other applicable provision of law, shall constitute a lien upon the land and buildings upon or in respect to which, or either of which, the work required by such order has been done, or expenses incurred, when the amount thereof shall have been definitely computed as a statement of account by the department and the department shall cause to be filed in the office of the city collector an entry of the account stated in the book in which such charges against the premises are to be entered. Such lien shall have a priority over all other liens and encumbrances except for the lien of taxes and assessments. However, no lien created pursuant to this title shall be enforced against a subsequent purchaser in good faith or mortgagee in good faith unless the requirements of subdivision a of this section are satisfied; this limitation shall only apply to transactions occurring after the date such record should have been entered pursuant to subdivision a and before the date such entry was made.

c. A notice thereof, stating the amount due and the nature of the charge, shall be mailed by the city collector, within five days after such entry, to the last known address of the person whose name appears on the records in the office of the city collector as being the owner or agent or as the person designated by the owner to receive tax bills or, where no name appears, to the premises, addressed to either the owner or the agent.

d. If such charge is not paid within thirty days from the date of entry, it shall be the duty of the city collector to receive interest thereon at the rate of interest applicable to such property for a delinquent tax on real property, to be calculated to the date of payment from the date of entry.

e. Such charge and the interest thereon shall continue to be, until paid, a lien on the premises. Such lien shall be a tax lien within the meaning of sections 11-319 and 11-401 of the code and may be sold, enforced or foreclosed in the manner provided in chapters three and four of title eleven of the code or may be satisfied in accordance with the provisions of section thirteen hundred fifty-four of the real property actions and proceedings law.

f. Such notice mailed by the city collector pursuant to this section shall have stamped or printed thereon a reference to this section of the code.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. d amended L.L. 62/2005 § 12, eff. June 6, 2005.

Subd. e amended L.L. 4/2004 § 2, eff. Apr. 7, 2004 and retroactive to

Nov. 1, 2003.

**DERIVATION**

Formerly § 564-24.0 added chap 929/1937 § 1

Repealed and added LL 44/1978 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Property owner whose name was omitted in blanket notice of lien filed by Department of Health in Office of County Clerk against 200 parcels of real estate for expense incurred in abating nuisance created by private sewers affecting the 200 parcels, **held** entitled to have the lien vacated insofar as it affected her property (225 N.Y. 142; Admin. Code § 564-24.0).-In re Dept. of Health (Ginsberg), 115 (28) N.Y.L.J. (2-2-46) 460, Col. 1 F.

¶ 2. Administrative Code §§ 564-18.0, 564-20.0, and related sections, defining nuisance, providing for punishment and liability with respect to abatement thereof, granting power to Board of Health to make orders with respect thereto and to execute the same itself if not complied with, and providing for collection of the expenses of such execution, **held** constitutional.-In re Barkin, 189 Misc. 358, 71 N.Y.S. 2d 267 [1947].

¶ 3. Notice of lien filed pursuant to Administrative Code §§ 564-22.0 to 24.0 was not invalid as to purchasers of certain lots who acquired title thereto before the notice of lien was filed but after the nuisance had been abated by the Department of Health, even though they had no knowledge of the nuisance and abatement at time of acquisition of title. Persons purchasing real property and desiring to protect themselves against such subsequent levies should make inquiry regarding such matters prior to purchase.-In re Barkin, 189 Misc. 358, 71 N.Y.S. 2d 267 [1947].

¶ 4. Lien of mortgagee is subordinate to liens of Department of Health and City of New York for money expended for the abatement of a public nuisance by payment of accrued charges of utility for electric and gas service to subject building.-Carver Federal Sav. & Loan Asso. v. Peters, 157 (75) N.Y.L.J. (4-19-67) 19, Col. 5 F.

¶ 5. Where the Department of Health filed a notice of lien for labor performed to abate a public nuisance and lien was discharged by deposit of money by building owner and several months later owner served notice upon lienor demanding that an action to foreclose lien be begun within thirty days and no such action was begun but over one

month later lienor commenced an action to recover for work, labor and services furnished, the application by the property owner for return of his deposit would be granted.-Matter of Dept. of Health v. East Minister Realty Corp., 53 Misc. 2d 957, 280 N.Y.S. 2d 63 [1967].

¶ 6. Title of plaintiff who purchased property upon foreclosure sale was subordinate to lien of city and of Department of Health for emergency repairs as such a lien has priority over all other liens.-Namkar Realty Corp. v. Smity, 162 (98) N.Y.L.J. (11-20-69) 15, Col. 3 F.

¶ 7. Where the city had a lien of $5,771.39 for a sum due it for emergency repairs and property owner also owed real estate, water and sewer taxes to the city amounting to over nineteen thousand dollars and property owner had $13,917.81 and city wanted to satisfy its lien for repairs and apply the balance to the unpaid taxes, sewer and water charges but the property owner wanted to have the entire amount used for back taxes and charges the property owner could not prevail under this section.-City of N.Y. v. Loremandy Realty Corp., 167 (125) N.Y.L.J. (6-28-72) 14, Col. 2 M.

¶ 8. Lien was fatally defective where it merely referred to a resolution of the Board of Health adopted on a certain date but did not state that "the expense has been incurred in pursuance of an order of the Department of Health and giving its date".-Sichel v. City of N.Y., 173 (115) N.Y.L.J. (6-16-75) 32, Col. 7 M.

**CASE NOTES**

¶ 1. A contract vendee of real property challenged the City's lien for cleaning and pest control services performed on the property, on the ground that the City had failed to produce the original record of the work done on the property. The contract vendee did not challenge the bills themselves. In analyzing the case, the court explained the workings of this type of statutory lien. If the lien is effective, it has priority second only to taxes and assessments. A purchaser or mortgagee who acquires an interest after the Department of Health actually files the lien with the City Collector, is bound by the lien. A purchaser or mortgagee who acquires the interest after the Department ordered the work but before the lien is actually filed, will still be bound if the Department records the purchaser or work order in its office. Once a lien is actually recorded, i.e. when the charges for the work have been filed with the City Collector, a subsequent purchaser is legally on notice of the lien, i.e. not considered a bona fide purchaser for purposes of this statute. In the instant case, where the petitioner was a contract vendee, the exemption for good faith purchasers contained in the statute did not apply, because the purchase contract was signed after the Department recorded the lien. In other words, this contract vendee had legal notice of the lien. Thus, petitioner was bound whether or not the original Department records were on file, and the court rejected the challenge. The court also stated that in any event, the proceeding was untimely under the four month Statute of Limitations; the statute began to run when the prior owner (contract vendor) had been billed for the work, i.e. after the lien became effective upon notification of the prior owner that the debt had become an encumbrance upon the property. 105th Street Development Corp. v. Com'r. of Health, 189 Misc.2d 342, 730 N.Y.S.2d 420 (Sup.Ct. New York Co.).

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-152*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-152 Validity of lien; grounds for challenge.

a. In any proceedings to enforce or discharge the lien, the validity of the lien shall not be subject to challenge based on:

(1) The lawfulness of the work done; or

(2) The propriety and accuracy of the items of expenses for which a lien is claimed, except as provided in this section.

b. No such challenge may be made except by (1) the owner of the property, or (2) a mortgagee or lienor whose mortgage or lien would, but for the provision of section 17-151, have priority over the department's lien.

c. With respect to any issue specified in subdivision a of this section the certificate of the department filed pursuant to section 17-153 shall be presumptive evidence of the facts stated therein.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-25.0 added chap 929/1937 § 1

Repealed and added LL 44/1978 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where notice of filing of lien was served on former owner who was not the record owner at the time, notice did not start the running of the six-month period of limitation provided by this section.-Sichel v. City of N.Y., 173 (115) N.Y.L.J. (6-16-75) 32, Col. 7 M.

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-153*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-153 Statement of expenses of executing orders.

a. When the department shall have executed, or so far executed as the department may require, any order, a certificate setting forth the expenses of such execution, itemized generally, and the date thereof shall be filed among the records of the department with the order so executed; and the department shall take care by, or through some proper officer, or otherwise, that the expenses of such execution be so stated with fairness and accuracy.

b. When it shall appear that such execution or the expenses thereof, related to several lots or buildings belonging to different persons, such certificate shall state what belongs to, or arose in respect to each lot of such several lots or buildings, as the department or its authorized officer may direct; and the department may revise the correctness of such apportionment of expenses as truth and justice may require.

c. Whenever the expenses attending the execution of any order of the department may be made the subject of a suit by it, there may be joined in the same suit a claim or claims for any penalty or penalties for violation of any health provisions, or for the violation or omission to perform or obey such order, or any prior order of the department, or for the not doing of that, or any portion of that, for the doing of which such expenses arose or were incurred; and the proper joint or several judgment may be had against one or more of the defendants in the suit, as they or either of them may be liable in respect of both such claims, or either or any of them.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-26.0 added chap 929/1937 § 1

Amended LL 44/1978 § 2

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-154*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-154 Service of order or judgment.

The department may serve a copy of the order under or by reason of which such expenses were authorized or incurred with a copy of the affidavit stating the expenses of the execution of such order, or if the claim be a judgment, may serve a transcript of such judgment, and an affidavit showing the expense of its execution if there be any, upon any person or corporation, owing, or who is about to owe any such compensation, or owing or about to owe any rent or compensation for the use or occupation of any grounds, premises or buildings or any part thereof, to which such order or judgment relates, and in respect of which such expenses embraced in such judgment related or were incurred, and may, at the time of such service, demand in writing that such rent, or any such compensation to the extent of such claim for such expenses, or for any such judgment or expenses in executing the same, when such rent or compensation becomes due and payable, be paid to the department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-27.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-155*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-155 Payments to department.

After the service of such papers and such demand, any tenant, lessee, occupant, or other person owing, or about to owe, any such rent or any such compensation when it shall mature, or become payable, shall pay the same, and from time to time pay any other amount thereof, as the same may become due and payable, or so much thereof as is sufficient to satisfy any such judgment or claim for expenses, or both, so served, to the department, and a receipt shall be given therefor, stating on account of what order or judgment and ex- penses the same has been paid and received; and the amount so received shall be deposited where other funds of the department are kept, to the special account of the department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-28.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-156*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-156 Refusal to pay department.

Any person or corporation refusing or omitting to make such payment to the department after service of such paper and demand, shall be personally liable to the department for the amount that should have been paid to it, and may by the department be sued therefor; and such persons shall not in such suit dispute or call in question the authority of the department to incur, or order such expense or the validity or correctness of such expenses of judgment in any particular, or the right of the department to have the same paid from such rent or compensation.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-29.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-157*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-157 Payment to department; effect.

The receipt of the department for any sum so paid, in all suits and proceedings, and for every purpose, shall be as effectual in favor of any person holding the same as actual payment of the amount thereof to the proper landlord, lessor, owner, or other person or persons who would, except for the provisions of section 17-155 of this title, and of such demand, have been entitled to receive the sum so paid. No tenant or occupant of any lot, building or premises, shall be dispossessed or disturbed, nor shall any lease or contract, or rights, be forfeited or impaired, nor any forfeiture or liability be incurred by reason of any omission to pay to any landlord, owner, lessor, contractor, party, or other person, the sum so paid to the department, or any part thereof.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-30.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-158*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-158 Department to retain moneys until twelve days after notice.

The department shall retain money so paid until twelve days after it shall be made to appear to it or some proper officer thereof, by satisfactory affidavit, that the party or parties, or his, her or their agent for the collection of any such rent or compensation, who, but for the provisions hereof would have been entitled to receive the same, has had written notice of such payment being made; and if at the end of such twelve days such party or parties, so notified, have not instituted suit to recover such money, then it shall, by the department be paid to the commissioner of finance.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-31.0 added chap 929/1937 § 1

Amended chap 100/1963 § 450

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-159*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-159 Infected and uninhabitable houses; vacation orders.

Whenever it shall be certified to the department by an officer or inspector of the department that any building or any part thereof in the city is infected with communicable disease, or by reason of want of repair has become dangerous to life or is unfit for human habitation because of defects in drainage, plumbing, ventilation, or the construction of the same, or because of the existence of a nuisance on the premises which is likely to cause sickness among its occupants, the department may issue an order requiring all persons therein to vacate such building or part thereof for the reasons to be stated therein. The department shall cause such order to be affixed conspicuously in such building or part thereof and to be personally served on the owner, lessee, agent, occupant, or any person having the charge or care thereof. If the owner, lessee or agent can not be found in the city or does not reside therein, or evades or resists service, then such order may be served by depositing a copy thereof in the post-office in the city, properly enclosed and addressed to such owner, lessee or agent, at his or her last known place of business and residence, and prepaying the postage thereon; such building or part thereof within ten days after such order shall have been so posted and mailed, or within such shorter time, not less than twenty-four hours, as in such order may be specified, shall be vacated, but the department whenever it shall become satisfied that the danger from such building or part thereof has ceased to exist, or that such building has been repaired so as to be habitable, may revoke such order.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-32.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-160*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-160 Proceedings for condemnation.

Whenever any building or part thereof in the city, in the opinion of the department, by reason of:

1. Age, or

2. Defects in drainage, plumbing or ventilation, or

3. Infection with communicable disease, or

4. The existence of a nuisance on the premises, which is likely to cause sickness among its occupants, or among the occupants of other property in such city, or

5. Its stopping ventilation in other buildings, or otherwise making or conducing to make them unfit for human habitation, or dangerous or injurious to health, or

6. Its preventing proper measures from being taken for remedying any nuisance injurious to health, or

7. Other sanitary evils in respect of such other buildings, is so unfit for human habitation that the evils in, or caused by such building, can not be remedied by repairs or otherwise except by the destruction of such building or a portion thereof, the department having first made an order to vacate such building, if it deem such course just and proper, may condemn the same and order it removed. The department may institute proceedings in the supreme court in the city for the condemnation of such building, provided, however, that the owner or owners of such building may demand that it be surveyed in the manner provided for in case of unsafe buildings.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-33.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-161*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-161 Institution of proceedings.

Such proceeding shall be instituted through a petition addressed to such court containing a brief statement of the reasons therefor, and shall not be required to contain further allegations of facts than those which have actuated the department in this proceeding, which shall then be carried on in the manner prescribed for a capital project proceeding by subchapter one of chapter three of title five of the code. The owner of such building or any person interested therein may in his or her answer dispute the necessity of the destruction of such building or part thereof, as the case may be. In such case, the court shall not take steps to ascertain the value of the property unless proof is made of the necessity of such destruction.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-34.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-162*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-162 Admissible evidence.

In such proceeding, evidence shall be receivable by the court without a jury to prove:

1. That the rental of the building was enhanced by reason of the same being used for illegal purposes, or being so overcrowded as to be dangerous or injurious to the health of the inmates; or

2. That the building is in a state of defective sanitation, or is not in reasonably good repair; or

3. That the building is unfit, and not reasonably capable of being made fit, for human habitation.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-35.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-163*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-163 Amount of compensation.

If the court is satisfied by such evidence, then the compensation:

1. Shall in the first case, so far as it is based on rental, be on the rental of the building, as distinct from the ground rent, which would have been obtainable if the building was occupied for legal purposes, and only by the number of persons whom the building, under all circumstances of the case, was fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates; and

2. Shall in the second case be the amount estimated as the value of the building if it had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of putting it into such condition or repair; and

3. Shall in the third case be the value of the materials of the building.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 564-36.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-164*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-164 Inspection reports; publication.

The department may make and publish a report of the sanitary condition and the result of the inspection of any place, matter or thing in the city, so far as, in the opinion of the department, such publication may be useful.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 566-1.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-165*

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Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-165 Inspection and removal of articles.

a. An officer or employee of the department shall visit and inspect all stores and places within the city which are suspected of containing putrid or unsound provisions or other articles unfit for human consumption or use or likely to communicate disease to the inhabitants, and make and sign a report in writing stating the stores, places and articles so inspected and the nature, state and situation thereof and such officer's or employee's opinion in relation thereto. Such report shall be filed in an office of the department.

b. The department may by order direct the removal, to a place to be designated by it, of all things within the city which, in its opinion are unfit for human consumption or use or which shall be infected in any manner likely to communicate disease to the inhabitants.

c. Failure to comply with the provisions of this section shall constitute a misdemeanor, punishable by a fine of not exceeding two hundred fifty dollars, or imprisonment not exceeding six months, or both.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 566-2.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-166*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-166 Record of births, fetal deaths and deaths.

a. The department shall keep a record of the births, fetal deaths and deaths filed with it, the births, fetal deaths and deaths shall be numbered separately and recorded in the order in which they are respectively received.

b. There shall be no specific statement on the record or report of birth as to whether the child is born in or out of wedlock or as to the marital name or status of the mother.

c. It shall be unlawful to demand or receive any fees by reason of the duties imposed by this section.

d. The name of the putative father of a child born out of wedlock shall not be entered on the birth certificate by the person preparing the birth certificate without the putative father's consent in writing, duly verified by him and given to the physician, midwife or person acting as midwife who was in attendance upon the birth and filed with the hospital record of the birth, or, in the case of a birth in a place other than a hospital or on an ambulance service connected therewith, filed with the records of the physician, midwife or person acting as midwife who was in attendance upon the birth. In the event the consent in writing of the putative father is not given, particulars relating to the putative father, other than his name, may be entered.

e. The certificate of induced termination of pregnancy shall not, unless requested by the woman contain the name of the woman, her social security number or any other information which would permit her to be identified except as provided in this subdivision. The department shall develop a unique, confidential identifier to be used on the certificate of induced termination of pregnancy, to be used in connection with the exercise of the commissioner's authority to monitor the quality of care provided by any individual or entity licensed to perform an abortion in this state

and to permit coordination of data concerning the medical history of the woman for purposes of conducting surveillance scientific studies and research.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. e amended chap 590/1991 § 1, eff. Apr. 1, 1993.

Subd. e added chap 589/1991 § 4, eff. Apr. 1, 1993.

**DERIVATION**

Formerly § 567-1.0 added chap 929/1937 § 1

Amended LL 122/1953 § 2

Sub d added chap 590/1955 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where the child involved was now eight years of age and had been born out of wedlock, the father was a married man, the physician attending the mother at the birth advised her that she had a cardiac condition and it would be inadvisable to take care of her child and he arranged for its foster care until such time as the father procured a divorce so that parents could marry, payments for support of the child were thereafter made by the father to the doctor and the name of the custodian was not revealed, and recently the mother died and on her death bed requested her brother to bring up the child but the doctor refused to give information as to whereabouts of the child, application now made by the brother to inspect the sealed records of the Department of Health in regard to the birth certificate would be granted to the limited extent of appointing a special guardian of the child who would be authorized to examine the records and thereafter to take such steps as were indicated.-In re Juliano (Josephson), 129 (95) N.Y.L.J. (5-18-53) 1657, Col. 7 F.

¶ 2. Application for an order directing the New York City Department of Health to record a delayed registration of petitioner's birth, was denied because there had been no final disposition, as petitioner had acted merely upon a clerk's denial without taking the matter up with the registrar of records of the department, who alone had authority to make a final disposition.-In re Greenberg, 107 (134) N.Y.L.J. (6-10-42) 2470, Col. 5 F.

¶ 3. Application for order under C.P.A. Art. 78 reviewing determination of Commissioner of Health of N.Y.C. and directing respondent to correct certain alleged errors in certificate of birth on file with the City's Bureau of Records and Statistics, was denied, as the duty to be performed was clearly one involving judgment and discretion, and nowhere did it appear in the papers that respondent's action was arbitrary or unreasonable.-Losea v. Mahoney, 128 (42) N.Y.L.J. (8-28-52) 327, Col. 2 F.

¶ 4. Rule of Board of Health directing that birth certificates be not changed except for error, is intended for officials and employees in charge of the records, and not for the courts, and if the contrary were the case an untrue statement would seem to be an error within meaning of the rule even though made deliberately instead of inadvertently.-Smith v. Mustard, 123 (52) N.Y.L.J. (3-17-50) 964, Col. 4 M.

¶ 5. A change which would eliminate from the certificate the untrue statement that the child's father was a man to whom the mother was not married, would not stigmatize the child as illegitimate. The certificate as it presently stood or as now directed to be altered was not necessarily an adjudication binding upon the child.-Id.

¶ 6. Application for order directing Department of Health, Bureau of Vital Statistics, to amend petitioner's certificate and record of birth to show that petitioner's surname was that of her putative father, was denied, where

consent of the father had not been obtained.-In re Cardona, 197 Misc. 509, 95 N.Y.S. 2d 516 [1945].

¶ 7. Although petitioners came from a country the custom of which was to give to legitimate children as their family name the name of the father followed by the maiden name of the mother, there was no reason why such a custom should be imported into this country, and accordingly a request that the names of the children be recorded in full in accordance with such custom was denied.-In re Batalla (Dept. of Health), 127 (3) N.Y.L.J. (1-4-52) 44, Col. 6 T.

¶ 8. Application by P to direct the New York City Department of Health to issue a new amended birth certificate stating that the surname of a certain infant was P instead of H, was denied, where no notice of the proceeding had been served on H, who was the mother's husband at the time, and the six-year-old infant was not represented by a special guardian. That the husband, who later divorced the mother, was now living in Pennsylvania, would not preclude the obtaining of jurisdiction over him, as the res was in New York. Moreover, although the husband was in the Army and stationed overseas, this did not conclusively establish nonaccess at the time in question. Also, the infant should be represented as his legitimacy was in issue and property rights were involved.-In re Maule (Dept. of Health), 126 (48) N.Y.L.J. (9-7-51) 406, Col. 2 T.

¶ 9. Requirement by city agencies that fetal death certificates filed in medical procedures for abortion shall include the name and address of the aborting patient was arbitrary, served no compelling purpose and denies women equal protection of the law as to their right of privacy.-In re Schulman (N.Y.C. Health and Hospitals Corps.), 168 (22) N.Y.L.J. (8-2-72) 2, Col. 3 M.

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-167*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-167 Supplemental birth records.

a. A new birth record shall be made whenever:

1. Proof is submitted to the department that the previously unwed parents of a person have intermarried subsequent to the birth of such person;

2. Notification is received by the department from the clerk of a court of competent jurisdiction or proof is submitted of a judgment, order or decree relating to the parentage of the person;

3. Notification is received by the department from the clerk of a court of competent jurisdiction or proof is submitted of a judgment, order or decree relating to the adoption of the person.

b. On every birth record made because of adoption, a notation that it is filed pursuant to paragraph three of subdivision a of this section of the code shall be entered.

c. When a new birth record is made the department shall substitute such new record for the birth record then on file. The department shall place the original birth record and the proof, notification and papers pertaining to the new birth record under seal. Seals shall not be broken except by order of a court of competent jurisdiction. Thereafter when a certified copy of the certificate of birth of such a person is issued, it shall be a copy of the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth and provided further however, that information contained in the original certificate of birth shall be divulged to the state commissioner of health pursuant to section forty-one hundred thirty-eight-c or forty-one hundred thirty-eight-d

of the public health law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. c amended ch. 559/1992 § 12, eff. July 24, 1992.

**DERIVATION**

Formerly § 567-2.0 added chap 929/1937 § 1

Subs a, b amended chap 415/1950 § 1

Sub c amended chap 898/1983 § 3

**CASE NOTES FROM FORMER SECTION**

¶ 1. Inasmuch as Public Health Law § 383 provides that the name of the putative father shall not be entered upon the records without his consent, petitioner, who had not consented to the entry of his name upon the certificate of birth as the father, **held** entitled to an order directing the Health Department to correct the birth certificate by deleting his name from the certificate.-In re Smith (Dept. of Health), 195 Misc. 409, 90 N.Y.S. 2d 305 [1949], aff'd 276 App. Div. 345, 95 N.Y.S. 2d 111 [1950], aff'd, 301 N.Y. 534, 93 N.E. 2d 344 [1950].

¶ 2. Subd. a, 1 of § 567-2.0 of the Administrative Code was deemed inapplicable in the instant case, as the respondent was not required to pass upon effect of the Mexican divorce decree on paternity of infant born some six years prior to grant of the decree. However, the disposition was without prejudice to a plenary suit in the form of an action for a declaratory judgment, or otherwise, wherein the paternity of the infant might be adjudged in a manner which would enable relief under subd. a, 2 of § 567-2.0 to be granted.-Beninnington v. Mahoney, 130 (86) N.Y.L.J. (10-30-53) 946, Col. 2 T.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-168*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-168 Certificate of registration of birth.

Within ten days after the receipt of the report of any birth, the department shall furnish, without charge, to the parents or guardian of the child or to the mother at the address designated by her for the purpose, a certificate of registration of birth. Such certificate of registration shall be issued on forms furnished by the department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 567-3.0 added chap 929/1937 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-169*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-169 Certified copies of records of birth, fetal death, and death; certificates of birth.

a. Upon request the department shall issue a certified copy of the birth record or a certification of birth under the following conditions:

1. A certified copy of the record of birth shall be issued only upon order of a court of competent jurisdiction or upon a specific request therefor by the person, if eighteen years of age or more, or by a parent or to the legal representative of the person to whom the record of birth relates or by an attorney of law authorized in writing by the person if of the age of eighteen years or over to whom the record of birth relates. The department may issue a certified copy of a birth record for official use upon the request of a department, agency, or officer of any state government or subdivision thereof or the United States government.

2. Upon request in all other cases, a certification of birth shall be issued by the department unless it does not appear to be necessary or required for a proper purpose. A certification of birth shall contain only the name, sex, date of birth and place of birth and date of filing in the department of the original certificate of birth of the person to whom it relates, and if upon request by, or on behalf of the person to whom it relates, or by a parent or legal representative of such person, the name or names of the parent or parents listed on the original certificate of birth, and none of the other data on the record of birth. Whenever a certification of birth may be issued, the department may, upon request, issue a wallet-size certification of birth, in a form and bearing a design provided by the department. Each applicant for a wallet-size certification of birth shall remit to the department with such application, a fee determined by the department.

b. A transcript of a record of fetal death, or death, upon such forms as the department shall prescribe, shall be

issued upon request unless it does not appear to be necessary or required for a proper purpose. The board may prescribe reasonable fees for searches made of records of birth, fetal death, or death, and the usual fees for copies of records to be paid for certifications of birth and for transcripts of records of birth, fetal death, or death, and in what cases the payment of fees may be waived.

c. The United States department of health and human services may obtain, without expense to the city, transcripts of records of birth, fetal deaths and deaths without payment of fees here prescribed for use solely as statistical data. Any copy of the record of a birth, fetal death, or death, or any certificate of registration of birth, or certification of birth, when properly certified by the commissioner or persons authorized to act for such commissioner, shall be prima facie evidence of the facts therein stated, in all courts, and places, and in all actions, proceedings or applications, judicial, administrative or otherwise, and any such certificate of registration of birth or certification of birth shall be accepted with the same force and effect with respect to the facts therein stated as the original birth record or a certified copy thereof.

d. Notwithstanding any other provision of law, any person born in the city of New York being released from a New York state correctional facility shall, prior to release, be provided by the department, at no cost to such person, a certified copy of his or her birth certificate to be used for any lawful purpose; provided that such person has requested a copy of his or her birth certificate at least ninety days prior to his or her release, from the (a) department, or (b) New York state department of correctional services and the New York state department of correctional services has submitted such request to the department. No person shall receive more than one birth certificate without charge pursuant to this subdivision.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par 2 amended ch. 595/1990 § 1 eff. January 14, 1991.

Subd. d added L.L. 64/2007 § 2, eff. Mar. 30, 2008.

**DERIVATION**

Formerly § 567-4.0 added chap 929/1937 § 1

Amended LL 122/1953 § 3

Sub a par 2 amended LL 27/1957 § 2

Sub a par 1 amended LL 27/1957 § 3

Amended LL 5/1963 § 2

(Amended without section heading and number)

Sub a par 2 amended LL 28/1981 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as

of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-170*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-170 Records of births, deaths and marriages on file with the department and the clerk of the county of Kings; transfer to the department of general services; certification.

a. The department and the clerk of the county of Kings are authorized to transfer to and the department of general services is authorized to receive all original records of births, deaths and marriages filed prior to the year eighteen hundred sixty-six with the department or the office of the city inspector or any such records transferred to the clerk of the county of Kings together with the indexes to such records and the department of general services shall file and maintain such records as public records.

b. Original records of births, deaths, and fetal deaths filed with the department or the office of the city inspector subsequent to the year eighteen hundred sixty-five and the indexes to such records shall be transferred by the department to the department of records and information services at such times as the board of health shall determine; said records shall be filed and maintained by the department of records and information services as public records.

c. Upon the transfer of such records the commissioner of the department of records and information services shall have the authority to issue upon request certified copies of or extracts from such records.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subds. b, c amended L.L. 59/1996 § 80, eff. Aug. 8, 1996

**DERIVATION**

Formerly § 567-5.0 added LL 27/1957 § 1

Sub b amended LL 5/1963 § 3

Amended LL 45/1970 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-171*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-171 Records of marriages on file with the department of health and mental hygiene; transfer to the city clerk; certification.

a. The department is authorized to transfer to and the city clerk of the city of New York is authorized to receive and maintain all original records of marriages filed with the department or the office of the city inspector subsequent to the year eighteen hundred sixty-six together with the indexes to such records.

b. Upon the transfer of such records the city clerk of the city of New York shall have the authority to issue upon request certified copies of or extracts from such records.

c. Any copy or extract of the record of marriage, when properly certified by the city clerk or his or her deputy duly authorized to act for such city clerk, shall be prima facie evidence of the facts therein stated, in all courts, and places, and in all actions, proceedings or applications, judicial, administrative or otherwise, and any such certificate of marriage shall be accepted with the same force and effect with respect to the facts therein stated as the original marriage record or a certified copy thereof.

**HISTORICAL NOTE**

Section amended L.L. 22/2002 § 23, eff. July 29, 2002 and deemed in

effect as of July 1, 2002.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 567-6.0 added LL 5/1963 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



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

*NYC Administrative Code 17-172*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-172 Dislodging food from person choking; poster.

a. Every establishment where food is sold and space is designated specifically as eating areas shall have posted in a conspicuous place, easily accessible to all employees and customers, a sign graphically depicting the Heimlich Maneuver or a comparable technique instructing on how to dislodge food from a choking person. Such sign shall be drafted and printed by the department.

b. No duty to act. Nothing contained in this section shall impose any duty or obligation on any proprietor, employee or other person to remove, assist in removing, or attempt to remove food from the throat of the victim of a choking emergency.

c. Fees. The department shall make signs available, and may charge a fee to cover printing, postage and handling expenses.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 568-1.0 added LL 43/1978 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-173*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-173 Dangers of consuming alcoholic beverages during pregnancy; warning sign.

a. For the purposes of this section, the following terms shall be defined and applied as follows:

1. "Alcoholic beverage" means and includes alcohol, spirits, liquor, wine and beer.

2. "Vendor" means any person who owns or operates a business establishment such as a bar or restaurant, which sells at retail any alcoholic beverages for on-premises consumption; and any person who owns or operates a liquor store, or any other business establishment which has as its primary purpose, the retail sale of alcoholic beverages.

b. All vendors of alcoholic beverages shall have posted, in a conspicuous place, a sign which clearly reads, "Warning: Drinking alcoholic beverages during pregnancy can cause birth defects."

c. The department shall make such warning signs available to vendors of alcoholic beverages, and shall promulgate regulations with respect to the posting of said signs. A fee may be charged by the department to cover printing, postage and handling expenses.

d. Any violation of the provisions of this section or any of the regulations promulgated hereunder, shall be prosecuted as a civil violation subject to a penalty of a sum ranging from zero to not more than one hundred dollars. A civil violation under this section, shall be adjudicated before the administrative tribunal of the department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 569-1.0 added LL 63/1983 § 1

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-174*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-174 Provision of interpretation services in hospitals.

The board shall require the immediate provision of interpretation services for non-English speaking residents in all hospital emergency rooms located in New York City, when such non-English speaking residents comprise at least ten percent of the patient population of the service area of a particular hospital.

**HISTORICAL NOTE**

Section added (as § 570.1.0) LL 10/1986 § 2 (Section number assigned by the Legislative Bill Drafting Commission)

**NOTE**

Provisions of L.L. 10/1986 adding legislative findings

Section one. Legislative Findings: The City Council hereby finds that New York is a multilingual city, where over two million three hundred and forty thousand residents speak a language other than English at home, and over half a million residents speak little or no English at all; that the public health and safety is threatened by language barriers which exist between health providers and residents who receive health services; that difficulties in communication delay services, cause misunderstandings and thereby endanger the health of non-English speaking residents; that the difficulties in communication could be greatly alleviated by the provision of interpretation services for non-English speaking City residents; and that it would be in the public interest to have interpreter services immediately available in the emergency rooms and medical centers in New York City.

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-175*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-175 Waste reduction study.

a. The department shall, within six months of the effective date of this section, complete a study of the feasibility of reducing the amount of medical waste and other solid waste generated by any person licensed by the city or state of New York to provide health, medical, pharmaceutical or laboratory services. The study shall include, but not to be limited to, an analysis of:

1. the feasibility of switching from the use of disposable to reusable medical equipment, laboratory equipment, clothing, food service equipment and any other product for which there is a reusable substitute;

2. availability of reusable medical equipment, laboratory equipment, clothing, food service equipment and any other product for which there is a reusable substitute;

3. the historical shift from the use of reusable to disposable products;

4. the current composition of medical and other solid waste generated by hospitals and other health care facilities;

5. the present and future cost of using reusable products compared to the cost of using disposable products, including the costs associated with substituting products and any special physical needs, such as space requirements or new equipment;

6. the effects of waste reduction on hospital costs and the city's economy;

7. the environmental impacts of an increased use of reusable products compared to the continued incineration and landfilling of disposable products, both on and off-site of the generating facility; and

8. all relevant federal, state and local legislation and regulations.

b. The study shall also include a comprehensive waste reduction plan for medical waste and other solid waste generated by any person licensed by the city or state of New York to provide health, medical, pharmaceutical or laboratory services that shall include annual waste reduction goals for the next five years, a strategy for implementing such goals, a list of reusable materials and products that can be substituted for dispoable*4 materials and products where feasible, and any revisions to the city health code that are necessary to implement the waste reduction plan.

c. The commissioner shall, within six months of the effective date of this section, submit to the council a report on the findings of such study and any recommendations as to legislation or regulations that are necessary to implement the recommendations of the study.

**HISTORICAL NOTE**

Section added L.L. 63/1988 § 1.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

4

[Footnote 4]: * So in original.

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

*NYC Administrative Code 17-176*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-176 Prohibitions on the distribution of tobacco products.

a. Definitions. For purposes of this section:

(1) "Distribute" means to give, sell, deliver, offer to give, sell or deliver, or cause or hire any person to give, sell, deliver or offer to give, sell or deliver.

(2) "Less than basic cost" means free of charge, a nominal or discount price, or any other price less than the distributor's cost, to which shall be added the full value of any stamps or taxes which may be required by law.

(3) "Person" means any natural person, corporation, partnership, firm, organization or other legal entity.

(4) "Public event" means any event to which the general public is invited or permitted, including but not limited to musical concerts or performances, athletic competitions, public fairs, carnivals, flea markets, bazaars and artistic or cultural performances or exhibitions. A private function such as a wedding, party, testimonial dinner or other similar gathering in which the seating arrangements are under the control of the organizer or sponsor of the event, and not the person who owns, manages, operates or otherwise controls the use of the place in which the function is held, is not a public event within the meaning of this paragraph.

(5) "Public place" means any area to which the general public is invited or permitted, including but not limited to parks, streets, sidewalks or pedestrian concourses, sports arenas, pavilions, gymnasiums, public malls and property owned, occupied or operated by the city of New York or an agency thereof.

(6) "Tobacco product" means any substance which contains tobacco, including but not limited to cigarettes, cigars, smoking tobacco and smokeless tobacco.

b. Distribution of tobacco products to the general public at less than basic cost prohibited in public places and at public events. No person shall distribute a tobacco product for commercial purposes at less than the basic cost of such product to members of the general public in public places or at public events.

c. Exemptions. The provisions of subdivision b shall not apply to (i) the serving of free samples of smoking tobacco or smokeless tobacco to persons of legal age in stores that sell tobacco products to the general public; or (ii) the distribution of tobacco products at less than basic cost by retailers, manufacturers or distributors of such products to any employees of such companies who are of legal age.

d. Penalties. (1) Any person found to be in violation of this section shall be guilty of a misdemeanor and liable for a civil penalty of not more than five hundred dollars for the first violation and not more than one thousand dollars for the second and each subsequent violation.

(2) A proceeding to recover any civil penalty authorized pursuant to the provisions of this section shall be commenced by the service of a notice of violation which shall be returnable to the administrative tribunal established by the board of health or to any body succeeding the administrative tribunal. Such tribunal or its successor shall have the power to impose the civil penalties prescribed by this section.

(3) The corporation counsel may make an application to the supreme court for an order restraining the continued violation of this section or enjoining the future commission of such practice.

**HISTORICAL NOTE**

Section added L.L. 27/1990 § 2 eff. July 18, 1990. [See Note.]

**NOTE**

Provisions of L.L. 27/1990 § 1

Section one. Declaration of legislative findings and intent. The council finds that the use of tobacco products such as cigarettes, cigars and smoking tobacco is harmful to the health and comfort of both users and non-users of the product. The council further finds that the distribution of tobacco products for commercial purposes in public places to members of the general public without charge or for a nominal price encourages and facilitates the use of such products. The council also finds that the distribution of free or nominally priced tobacco products to minors encourages their use by minors and such use is detrimental to the public health and in contravention of the public policy of this city and state. The council further finds enforcement of an age-related restriction on the commercial distribution of free or nominally priced tobacco samples to be impractical and ineffective. Therefore, it is the intent of this council to control the distribution of these products by prohibiting all commercial distribution of free or nominally priced tobacco products, except as allowed in this local law.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-177*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-177 Prohibition on the distribution of tobacco products through vending machines.

a. Definitions. For purposes of this section:

(1) "Distribution" means to give, sell, deliver, dispense, issue, offer to give, sell, deliver, dispense or issue, or cause or hire any person to give, sell, deliver, dispense, issue or offer to give, sell, deliver, dispense or issue.

(2) "Person" means any natural person, corporation, partnership, firm, organization or other legal entity.

(3) "Public place" means any area to which the public is invited or permitted.

(4) "Retail dealer" means "retail dealer" as defined in section 11-1301 of the administrative code.

(5) "Tavern" means an establishment where alcoholic beverages are sold and served for on-site consumption and in which the service of food, if served at all, is incidental to the sale of such beverages. Service of food shall be considered incidental if the food service generates less than forty percent of total annual gross sales. As used herein, the term "tavern" shall not be deemed to include a bar located in a public place in which the sale of alcoholic beverages is incidental to the primary purpose of the business or establishment conducted therein, except for a bar located in a public place which offers overnight accommodations. Examples of public places not deemed to be taverns within the definition of this paragraph include, but are not limited to, restaurants, catering halls, bowling alleys, billiard parlors, discotheques, theatres and arenas.

(6) "Tobacco product" means any substance which contains tobacco, including but not limited to cigarettes,

cigars, smoking tobacco and smokeless tobacco.

(7) "Wholesale dealer" means "wholesale dealer" as defined in section 11-1301 of the administrative code.

(8) "Vending machine" means any mechanical, electronic or other similar device which dispenses tobacco products.

b. Distribution of tobacco products through vending machines prohibited. No person shall permit the distribution of a tobacco product through the operation of a vending machine in a public place. This prohibition shall not apply to the distribution of tobacco products in a tavern.

c. Distribution of tobacco products in a tavern. Tobacco products may be distributed in a tavern only in the following ways:

(1) through a vending machine which must be (i) placed at a distance of a minimum of 25 feet from any entrance to the premises; and (ii) directly visible by the owner of the premises, or his or her employee or agent, during the operation of such vending machine; or

(2) directly by the owner of the permises, or his or her employee or agent.

d. Identification of vending machines. A wholesale dealer or retail dealer shall post a durable sign on any vending machine which such dealer is licensed to own, operate or maintain. Such sign shall be visible to the general public and provide the applicable cigarette license number and expiration date and the license holder's name, place of business and phone number.

e. Enforcement. The department shall enforce the provisions of this section. In addition, designated enforcement employees of the department of buildings, the department of consumer affairs, the department of environmental protection, the fire department and the department of sanitation shall have the power to enforce the provisions of this section.

f. Violations and penalties. (1) Any person found to be in violation of this section shall be liable for a civil penalty of not more than three hundred dollars for the first violation; not more than five hundred dollars for the second violation; and not more than one thousand dollars for the third and all subsequent violations. In addition, for a third and subsequent violations, any person who engages in business as a wholesale dealer or retail dealer shall be subject to the suspension of his or her cigarette license, for a period not to exceed one year, after notice and the opportunity for a hearing before the commissioner of finance or his or her designee. A wholesale dealer who owns, operates or maintains a vending machine placed in violation of subdivision b or paragraph (1) of subdivision c of this section shall be liable only if he or she has knowledge of the violation. The department shall promptly give written notice to the wholesale dealer identified on the sign required by subdivision d of this section of any such violation by an owner of the premises, or his or her employee or agent. For purposes of this section, such notice shall be prima facie evidence that the wholesale dealer has knowledge of future violations of subdivision b or paragraph (1) of subdivision c of this section.

(2) A proceeding to recover any civil penalty authorized pursuant to the provisions of this subdivision shall be commenced by the service of a notice of violation which shall be returnable to the administrative tribunal established by the board of health or to any body succeeding the administrative tribunal. Such tribunal or its successor shall have the power to impose the civil penalties prescribed by this section.

(3) The penalties provided by this subdivision shall be in addition to any other penalty imposed by any other provision of law or regulation thereunder.

g. Construction. Nothing in this section shall be construed to prohibit the following:

(1) the transfer of an existing vending machine from placement in a premises prohibited pursuant to subdivision b of this section to placement in a tavern; or

(2) the initial placement of a vending machine in a tavern.

**HISTORICAL NOTE**

Section added L.L. 67/1990 § 2, eff. Jan 31, 1992. [See Note.]

**NOTE**

Provisions of L.L. 67/1990 § 1

Section one. Declaration of legislative findings. The City Council finds that the vast majority of smokers begin smoking in their teens or pre-teens. The health hazards posed by cigarettes and other tobacco products are well documented and the sale of tobacco in any form to persons under the age of eighteen is prohibited in New York State. However, cigarette vending machines in public places have provided unsupervised minors with easy access to cigarettes, in contravention of the policy of this state. Accordingly, the City Council finds that the ability of unsupervised minors to obtain cigarettes and other tobacco products in violation of the law will be significantly reduced by prohibiting vending machines which dispense such products, except as allowed in this local law.

**CASE NOTES**

¶ 1. This local law adding § 17-177 is a valid exercise of the police power designated to protect the City's minor citizens from the documented health hazards of smoking. The mere existence of State statutes relating to cigarette sales and smoking does not preempt the local law as being inconsistent. The local law is precise and detailed and not void for vagueness. Vatore v. Consumer Commr. 154 Misc. 2d 149 [1992].

¶ 2. This section, which contains greater restrictions on placement of tobacco product vending machines than those mandated by state law, is not pre-empted by Article 13-F of the Public Health Law. Vatore v. Commissioner of Consumer Affairs of the City of New York, 83 N.Y.2d 645, 612 N.Y.S.2d 357 (1994).

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-178*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-178 Availability of resuscitation equipment in certain public places.

a. Definitions. For the purposes of this section, the following terms shall be defined as follows:

1. "Bar" means any establishment which is devoted to the sale and service of alcoholic beverages for on-premises consumption and in which the service of food, if served at all, is incidental to the consumption of such beverages.

2. "Health club" means any commercial establishment offering instruction, training or assistance or the facilities for the preservation, maintenance, encouragement or development of physical fitness or well being. "Health club" as defined herein shall include, but not be limited to health spas, sports, tennis, racquet ball, and platform tennis clubs, figure salons, health studios, gymnasiums, weight control studios, martial arts and self-defense schools or any other commercial establishment offering a similar course of physical training.

3. "Owner or operator" means the owner, manager, operator or other person having control of an establishment.

4. "Public place" means a restaurant, bar, theatre or health club.

5. "Restaurant" means any commercial eating establishment which is devoted, wholly or in part, to the sale of food for on-premises consumption.

6. "Resuscitation equipment" means (i) an adult exhaled air resuscitation mask, for which the federal food and drug administration has granted permission to market, accompanied by a pair of latex gloves and (ii) a pediatric exhaled

air resuscitation mask, for which the federal food and drug administration has granted permission to market, accompanied by a pair of latex gloves.

7. "Theatre" means a motion picture theatre, concert hall, auditorium or other building used for, or designed for the primary purpose of, exhibiting movies, stage dramas, musical recitals, dance or other similar performances.

b. Resuscitation equipment required. The owner or operator of a public place shall have available in such public place resuscitation equipment in quantities deemed adequate by the department. Such equipment shall be readily accessible for use during medical emergencies. Any information deemed necessary by the commissioner shall accompany the resuscitation equipment. Resuscitation equipment shall be discarded after a single use.

c. Notice required. The owner or operator of a public place shall provide notice to patrons, by means of signs, printed material or other means of written communication, indicating the availability of resuscitation equipment for emergency use and providing information on how to obtain cardiopulmonary resuscitation training. The type, size, style, location and language of such notice shall be determined in accordance with rules promulgated by the commissioner. In promulgating such rules, the commissioner shall take into consideration the concerns of the public places within the scope of this section. If the department shall make signs available pursuant to this subdivision, it may charge a fee to cover printing, postage and handling expenses.

d. Rescuer liability limited. Any owner or operator of a public place, his or her employee or other agent, or any other person who voluntarily and without expectation of monetary compensation renders emergency treatment using the resuscitation equipment required pursuant to this section, to a person who is unconscious, ill or injured, shall not be liable for damages for injuries alleged to have been sustained by such person or for damages for the death of such person alleged to have occurred by reason of an act or omission in the rendering of such emergency treatment unless it is established that the injuries were or death was caused by gross negligence on the part of the rescuer.

e. No duty to act. Nothing contained in this section shall impose any duty or obligation on any owner or operator of a public place, his or her employee or other agent, or any other person to provide resuscitation assistance to the victim of a medical emergency.

**HISTORICAL NOTE**

Section added L.L. 12/1992 § 2, eff. Nov. 1, 1992 as per L.L.

68/1992 § 1.

**NOTE**

Provisions of L.L. 12/1992 § 1

Section 1. Declaration of legislative findings and intent. The Council of the City of New York recognizes the need to support and develop policies which promote the good health of all New Yorkers. The Council also finds that an essential element of such policies must be the encouragement of public intervention and aid during medical emergencies.

Unfortunately, emergency medical professionals have discovered in responding to medical emergencies that many individuals, who are otherwise qualified to provide life saving assistance, such as mouth-to-mouth resuscitation, are afraid to do so because of the perceived health risks of such activities. Such hesitation can cost the lives of individuals who require prompt medical attention to insure recovery.

Therefore, the Council, in order to encourage qualified persons to provide life saving assistance while reducing their risk of potential exposure to disease, deems it necessary to the health, safety and well-being of the public to require

the availability of exhaled air resuscitation masks and latex gloves in certain public places.

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-179*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-179 Department, Screening, Diagnosis and Treatment.

a. The department shall refer to appropriate medical providers any person who requests assistance in blood lead screening, testing, diagnosis or treatment, and upon the request of a parent or guardian, arrange for blood lead screening of any child who requires screening and whose parent or guardian is unable to obtain a lead test because the child is uninsured or the child's insurance does not cover such screening.

b. The department shall develop a pamphlet explaining the hazards associated with lead-based paint and describing the procedures to be used in order for a violation of sections 27-2056.6 and 27-2056.7 of this code to be corrected. The pamphlet shall include appropriate telephone numbers to obtain lead poisoning screening, diagnosis and treatment information and to report unsafe lead-based paint work practices. Such pamphlet shall be made available in accordance with section 27-2056.9 of this code. Such pamphlet shall also be made available to any member of the public upon request.

**HISTORICAL NOTE**

Section repealed and added L.L. 1/2004 §§ 2, 7, eff. Aug. 2, 2004. [See

title 27 chap 2 subchap 2 Art 14 footnote]

Section added L.L. 38/1999 § 3, eff. Nov. 12, 1999.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-180*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-180 Training of Department Personnel.

The department, in conjunction with the department of housing preservation and development, shall provide training for lead-based paint inspection and supervisory personnel. No department personnel shall conduct an inspection for lead-based paint pursuant to the health code unless that individual has received such training. At a minimum, such training shall (1) be equivalent to the training required under regulations issued by the United States environmental protection agency for the certification of lead-based paint inspectors and supervisors, (2) include background information pertaining to applicable state and local lead-based paint laws and guidance on identifying violations in a multiple dwelling, and (3) require that the individual has successfully demonstrated knowledge of the responsibilities of a certified inspector or certified supervisor, as the case may be, and the requirements of sections 173.13 and 173.14 of the health code or successor rules. The department shall provide for the continuing education of inspection and supervisory personnel.

**HISTORICAL NOTE**

Section added L.L. 1/2004 § 7, eff. Aug. 2, 2004.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-181*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-181 Lead-based paint; dry scraping and dry sanding prohibited.

The dry scraping or dry sanding of lead-based paint or paint of unknown lead content in any dwelling, day care center or school is hereby declared to constitute a public nuisance and a condition dangerous to life and health. For the purpose of this section, dry scraping and dry sanding shall mean the removal of paint or similar surface-coating material by scraping or sanding without using water misting to reduce dust levels or other method approved by the department. The department shall promulgate such additional rules as necessary for the enforcement of this section.

**HISTORICAL NOTE**

Section repealed and added L.L. 1/2004 §§ 2, 7, eff. Aug. 2, 2004. [See

title 27 chap 2 subchap 2 Art 14 footnote]

Section added L.L. 38/1999 § 4, eff. Nov. 12, 1999.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-182*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-182 City-funded public hospitals and health facilities required to utilize peace officers.

a. Any corporation of government, the expenses of which are paid in whole or in part from the city treasury, which provides health and medical services and operates health facilities and which is authorized to employ special officers having peace officer status as defined in New York Criminal Procedure Law §2.10(40), shall utilize peace officers appointed pursuant to said subdivision to perform the duties of special officer, senior special officer and hospital security officer. The commissioner of the department of health and mental hygiene shall enforce this requirement.

b. Any person, including but not limited to any labor organization, claiming to be aggrieved by a violation of subdivision a of this section shall have a cause of action in any court of competent jurisdiction for damages, including punitive damages, and for injunctive relief and such other remedies as may be appropriate.

**HISTORICAL NOTE**

Section added L.L. 16/2001 § 1, eff. Mar. 28, 2001.

Subd. a amended L.L. 22/2002 § 24, eff. July 29, 2002 and deemed in

effect as of July 1, 2002.

**CASE NOTES**

¶ 1. This section, which requires that hospital security officers be trained as peace officers, was a valid exercise of the City Council's power to ensure the safety of patients, staff and visitors to the City's public health system, and was

not an unconstitutional interference with the alleged right of the Health and Hospitals Corporation ("HHC") to operate the hospitals free of interference from the City Council. Section 17-182 is not pre-empted by any portion of the state legislation that created the Health and Hospitals Corp. The City Council, which is responsible in large part for the budget of the City which supports HHC, as well as responsible for enacting laws regarding public safety, had the power to inquire into the adverse changes in the security situation in the public hospitals. Health and Hospitals Corp. v. Council of the City of New York, N.Y.L.J., Apr. 11, 2002, page 19, col. 4 (Sup.Ct. New York Co.).

¶ 2. The City Charter did not authorize the City Council to pass Local Law 16 of 2001 (Adm. Code §17-282), which mandated that the Health and Hospitals Corporation (HHC) utilize "peace officers" appointed pursuant to the Criminal Procedure Law. Thus, the court struck down the statute as an unconstitutional interference with the HHC's right, as established by the New York City Health and Hospitals Corporation Act (Unconsolidated Laws §7381 et seq.) to operate autonomously. The court held that the state legislation preempted the field, and that the City Council could not enact any law which conflicted with the state statute. New York City Health and Hospitals Corp. v. Council of City of New York, 303 A.D.2d 69, 752 N.Y.S.2d 665 (1st Dept. 2003).

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-183*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-183 Publication and dissemination of public health insurance program options.

a. The department shall develop a pamphlet containing information regarding the availability of public health insurance programs. At a minimum, such pamphlet shall include: (i) the name and a brief description of each public health insurance program available to New York city residents; and (ii) appropriate telephone numbers to obtain enrollment information for such programs. Such pamphlet shall be produced annually and shall be printed in multiple languages, including, but not limited to, English, Spanish, Chinese, Russian, Yiddish, Korean, and Haitian-Creole, and shall be made available to any member of the public upon request.

b. The department shall ensure that pamphlets on public health insurance program options are provided to all day care centers in sufficient quantity to enable such day care centers to satisfy the requirements of section 1069.1 of the New York city charter. For the purposes of this subdivision, "day care center" shall mean any child day care facility operating in New York city that is required to obtain a license from, or to register with, the department pursuant to section 47.05 of the New York city health code and/or the New York state department of social services pursuant to section 390 of the New York state social services law.

**HISTORICAL NOTE**

Section added L.L. 1/2002 § 2, eff. Sept. 29, 2002. [See Note]

Subd. a designated L.L. 4/2008 § 2, eff. July 1, 2008. [See Charter §1069.1 Note 1]

Subd. b added L.L. 4/2008 § 2, eff. July 1, 2008. [See Charter §1069.1

Note 1]

**NOTE**

Provisions of L.L. 1/2002 § 1:

Section 1. Declaration of legislative findings and intent. Despite the availability of public health insurance programs such as Medicaid, Child Health Plus and Family Health Plus, recent estimates suggest that close to one million low-income New Yorkers eligible to be insured under such programs remain uninsured. The Council finds that, in addition to compromising the health and well-being of uninsured individuals, lack of health insurance coverage frequently results in the unwarranted use of emergency room services, particularly in the City's public hospital system. This use of emergency rooms as a locus of essentially "primary care" services produces inflated costs for those services that are rendered-costs that are ultimately borne by taxpayers and the unnecessary use of charity pools. Therefore, in an effort to ensure the health and well-being of New Yorkers, as well as an attempt to advance a more efficient and appropriate use of resources, it is the intention of the Council to ensure that all New Yorkers eligible to receive public health insurance coverage do in fact receive such coverage. To this end, the Council is requiring that the Department of Public Health publish and that certain City agencies distribute a pamphlet describing public health insurance options. The publication and distribution of this pamphlet will help inform uninsured New Yorkers that they may be eligible for public health insurance and will facilitate their access to such coverage.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-184*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-184 Availability of emergency contraception.

The department shall make available emergency contraception at each health center, health station, health clinic or other health facility operated or maintained by the department which also offers services relating to the diagnosis and treatment of sexually transmitted diseases. For purposes of this section, the term "emergency contraception" shall mean one or more prescription drugs, used separately or in combination, to be administered to or self-administered by a patient in a dosage and manner intended to prevent pregnancy when used within a medically recommended amount of time following sexual intercourse and dispensed for that purpose in accordance with professional standards of practice, and which has been found safe and effective for such use by the United States food and drug ad- ministration.

**HISTORICAL NOTE**

Section added L.L. 19/2003 § 1, eff. July 16, 2003.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-185*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-185 Inspection6 by the Department of Unsafe Work Practices.

The department shall promulgate rules requiring the department to respond to complaints regarding unsafe lead-based paint work practices.

**HISTORICAL NOTE**

Section added L.L. 1/2004 § 7, eff. Aug. 2, 2004.

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

6

[Footnote 6]: * There are 2 sections 17-185.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-185*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-185 Electronic7 death registration system.

a. Definition. For the purposes of this section, the term "responsible person" shall mean any individual, governmental body or division thereof or corporate entity authorized by the department to use the electronic death registration system.

b. Development of an electronic death registration system. The department shall, subject to the approval of the board of health, develop an electronic death registration system. Such electronic death registration system shall include an internet based electronic method of collecting, storing, recording, transmitting, amending and authenticating information necessary to complete a death registration. Such system shall enable the department to produce certified death certificates and amended death certificates, as well as burial, transportation, cremation and disinterment permits, and any such other related documents determined by the department as capable of being produced and transmitted by such system. Such system shall, with the exception of certified death certificates and amended death certificates, be able to transmit information and documents to remote local printers or facsimile machines of responsible persons for printing. Such system shall include an electronic payment system by which all fees, including, but not limited to, those relating to data recordation and the issuance of permits and certified copies of death certificates, may be transmitted to the department. The department shall ensure that the electronic death registration system be designed in such a way so as to best facilitate convenient access by responsible persons in a manner consistent with ensuring system security.

c. Implementation. (i) By October 1, 2006, the department shall ensure that at least sixty percent of all deaths occurring within the city of New York are registered via the electronic death registration system. (ii) By October 1, 2008, the department shall ensure that the electronic death registration system is accessible to all responsible persons who seek to use such system for the registration of deaths occurring within the city of New York and that at least

seventy-five percent of all deaths occurring within the city of New York are registered via such system.

d. Emergency events; exceptions. In the event of an emergency declared by the commissioner or the mayor, or exigent circumstances declared by the commissioner or chief medical examiner on a case-by-case basis, the electronic death registration system shall not be required as the means for the registration of deaths.

e. Training and certification. By October 1, 2004, the department shall develop a training curriculum and implement a training program based on such curriculum to train all responsible persons and their designees pursuant to subdivision f of this section in the operation and use of the electronic death registration system. The department shall ensure that such training program be offered at least four times a year at various locations throughout the city of New York at a price reasonably related to the cost of providing such training. Such programs may be operated by the department or by a private entity, including, but not limited to, health care facilities and relevant professional associations and societies, pursuant to an agreement with the department. At the successful completion of such training, such responsible persons and their designees shall receive a certification from the department indicating that such training was successfully completed.

f. Access. (i) A responsible person may designate one or more employees of such responsible person to input information into the electronic death registration system under the supervision of such responsible person, but who are not authorized to authenticate such information. (ii) By November 1, 2004, the department shall provide at least two computer workstations at all burial desks operated by the office of vital statistics for the use of responsible persons to input information into the electronic death registration system.

g. Violations. Any responsible person who violates any rules promulgated pursuant to this section shall be liable to pay a penalty as provided by the health code of the city of New York, the administrative code of the city of New York or any other applicable law, rule or regulation.

h. Advisory panel. Not later than sixty days after the effective date of the local law that added this section, there shall be established within the department an advisory panel to advise the commissioner on issues relating to the design, implementation and maintenance of the electronic death registration system. Such advisory panel shall consist of the commissioner or his or her designee, the chief medical examiner or his or her designee and at least eight additional members, four of whom shall be appointed by the mayor and four of whom shall be appointed by the speaker of the city council. With respect to the mayor's appointments, one shall represent the interests of private hospitals operating within the city, one shall represent the interests of public hospitals operating within the city and two shall represent the interests of funeral directors operating within the city. With respect to the appointments by the speaker of the city council, one shall represent the interests of private hospitals operating within the city, one shall represent the interests of public hospitals operating within the city and two shall represent the interests of funeral directors operating within the city. All members of the advisory panel shall serve without compensation. The commissioner or his or her designee shall serve as the chair of such advisory panel. The advisory panel shall be convened at least four times each year and shall be disbanded on October 1, 2009.

i. Report. Not later than six months after the effective date of the local law that added this section, and every six months thereafter, the department shall submit a report to the mayor and the council reviewing the development and implementation of the electronic death registration system.

j. Rules. By November 1, 2004, the department shall promulgate rules in accordance with this section, and such other rules as may be necessary for the purpose of implementing and carrying out the provisions of this section. Such rules shall include a schedule of fees relating to the issuance of permits and certified death certificates that are reasonably related to the cost of operating and maintaining the electronic death registration system.

**HISTORICAL NOTE**

Section added L.L. 2/2004 § 2, eff. Feb. 4, 2004. [See Note 1]

**NOTE**

1. Provisions of L.L. 2/2004:

Section 1. Declaration of legislative findings and intent. Approximately 630,000 deaths occur in New York City each year. Each death must be registered and certified by the Department of Health and Mental Hygiene (DOHMH) before a burial or cremation may take place. In addition, certified death certificates are necessary to begin the probate process. Currently, DOHMH utilizes a paper-based death registration system for the filing, correction and issuance of certified copies of death certificates. This paper-based system is an inefficient and cumbersome method, which sometimes results in two to six month delays during which time families cannot commence probate, make claims on life insurance policies, commence the process of applying for social security survivor benefits or perform a host of other tasks related to the death of a family member. Such delays inflict additional pain and suffering on families who are already dealing with extreme loss. The creation and implementation of an electronic death registration system will allow doctors, authorized hospital staff and funeral directors to electronically input information necessary to complete a death certificate and send such certificate electronically to DOHMH. Errors on the death certificate may be corrected in the same manner. The electronic death registration system will hasten the collection of information necessary for the registration and certification of deaths, thereby expediting the issuance of certified death or fetal death certificatess, the burial or cremation process and settlement of estates.

. . . . . .

§3. If any subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that added this section, which remaining portions shall remain in full force and effect.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

7

[Footnote 7]: * There are 2 sections 17-185.



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

*NYC Administrative Code 17-186*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-186 Lead poisoning prevention in children.

a. The department shall develop a brochure which, at a minimum, advises all appropriate medical providers of their obligations to screen and test children for lead poisoning according to all relevant federal, state and local laws, rules and regulations. Such pamphlet shall be distributed to all appropriate medical providers on an annual basis, starting on September 15, 2004.

b. The department shall develop a pamphlet regarding lead poisoning prevention in children. Such pamphlet shall, at a minimum, be printed in English and Spanish and shall include, at a minimum: (i) the manner in which children are most likely poisoned by lead; (ii) the effects of lead poisoning on a child's health; (iii) the intervals at which a child is required by New York state law to be tested for blood lead levels; (iv) the appropriate telephone numbers to obtain lead poisoning screening, diagnosis and treatment information; (v) the steps a parent or guardian may take to protect his or her child from lead poisoning; and (vi) the requirement of landlords to inspect and repair lead-based paint hazards.

c. At a minimum, the department shall distribute the pamphlet produced pursuant to paragraph b of this section with each birth certificate furnished to the parent or guardian of a child pursuant to section 17-168 of this title. Such pamphlet shall also be made available to any member of the public upon request.

**HISTORICAL NOTE**

Section added L.L. 1/2004 § 7, eff. Aug. 2, 2004.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-187*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-187 School nurses.

a. Definitions. For purposes of this section, the following items shall have the following meanings:

(1) "Nurse" means an individual licensed as a registered professional nurse pursuant to section 6905 of the New York state education law.

(2) "Public health advisor" includes, but is not limited to, an individual who supports medical and/or professional staff in schools by performing health related duties and who has satisfied the requirements set forth by the department.

b. Primary Schools. The department shall provide on a full-time basis at least one nurse at each public and private primary school which i) had at least two hundred students enrolled on the last day of the second month of the preceding school year; ii) submits a written request to the department that such nurse be provided; and iii) maintains, pursuant to any rules promulgated by the commissioner, an appropriate medical room wherein such nurse can carry out his or her nursing duties.

c. Intermediate Schools. The department shall provide at least one nurse, provided that a nurse has not been provided pursuant to subdivision b of this section, or public health advisor or school health service aide, as appropriate, at each public and private intermediate school which i) had at least two hundred students enrolled on the last day of the second month of the preceding school year; ii) submits a written request to the department that such nurse or public health advisor or school health service aide be provided; and iii) maintains pursuant to any rules promulgated by the commissioner, an appropriate medical room wherein such nurse or public health advisor or school health service aide

can carry out his or her duties.

d. The provision of any nurses, or public health advisors when applicable, assigned to a school pursuant to this section shall be consistent with any applicable collective bargaining agreements.

e. For the purposes of this section, references to the "department" shall mean the department, either individually or jointly with the board of education as appropriate. The requirements or implementation of this section shall not be construed to cause the layoff or loss of any wages, benefits or other terms and conditions of employment of, and shall not be construed to reduce the employment opportunities of nurses, public health advisors, public health assistants, or school health services aides, as defined by the department, or any other health related position, currently employed, or to be employed by primary and intermediate schools.

f. The commissioner may promulgate any rules deemed necessary for the purposes of implementing and carrying out the provisions of this section.

**HISTORICAL NOTE**

Section added L.L. 57/2004 § 1, eff. June 5, 2005. [See Note 1]

**NOTE**

1. Provisions of L.L. L.L. 57/2004:

§ 2. If any section, subsection, sentence, clause, phrase, or other portion of this local law is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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*NYC Administrative Code 17-188*

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Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-188 Automated external defibrillators.

a. Definitions. For the purposes of this section, the following terms shall have the following meanings:

1. "Automated external defibrillator" means a medical device, approved by the United States food and drug administration, that: (i) is capable of recognizing the presence or absence in a patient of ventricular fibrillation and rapid ventricular tachycardia; (ii) is capable of determining, without intervention by an individual, whether defibrillation should be performed on a patient; (iii) upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to a patient's heart; and (iv) upon action by an individual, delivers an appropriate electrical impulse to a patient's heart to perform defibrillation.

2. "Owner or operator" means the owner, manager, operator, or other person or persons having control of a public place.

3. "Public place" means the publicly accessible areas of the following places to which the public is invited or permitted: (i) public buildings maintained by the division of facilities management and construction of the department of citywide administrative services or any successor; (ii) parks under the jurisdiction of the department of parks and recreation identified pursuant to subdivision e of this section; (iii) ferry terminals owned and operated by the city of New York served by ferry boats with a passenger capacity of one thousand or more persons; (iv) nursing homes, as defined in section 2801 of the New York state public health law; (v) senior centers, which include facilities operated by the city of New York or operated by an entity that has contracted with the city to provide services to senior citizens on a regular basis, such as meals and other on-site activities; (vi) golf courses, stadia and arenas; and (vii) health clubs that are commercial establishments offering instruction, training or assistance and/or facilities for the preservation,

maintenance, encouragement or development of physical fitness or well-being that have a membership of at least two hundred and fifty people, and which shall include, but not be limited to, health spas, health studios, gymnasiums, weight control studios, martial arts and self-defense schools or any other commercial establishment offering a similar course of physical training.

b. Automated external defibrillators required. Except as provided in subdivision j of this section, the owner or operator of a public place shall make available in such public place automated external defibrillators in quantities and locations deemed adequate in accordance with rules promulgated pursuant to subdivisions e and f of this section and in accordance with section 3000-b of the New York state public health law. Such automated external defibrillators shall be readily accessible for use during medical emergencies. Any information regarding use of automated external defibrillators deemed necessary by the department in accordance with rules promulgated pursuant to subdivision f of this section shall accompany and be kept with each automated external defibrillator. Any automated external defibrillator required pursuant to this subdivision shall be acquired, possessed and operated in accordance with the requirements of section 3000-b of the New York state public health law.

c. Notice required. The owner or operator of a public place shall provide written notice to the public, by means of signs, printed material or other form of written communication, indicating the availability of automated external defibrillators for emergency use in such public place and providing information on how to obtain automated external defibrillator training. The type, size, style, location and language of such notice shall be determined in accordance with rules promulgated by the department pursuant to subdivision f of this section. Should such rules require or allow the posting of signs made available by the department to owners or operators of a public place to serve as appropriate notice pursuant to this subdivision, the department may charge a fee to cover printing, postage and handling expenses.

d. Reports. The department shall conduct a comprehensive study and submit a report to the mayor and the council twelve months after the effective date of the local law that added this section. Such report shall include, but not be limited to, the quantities and locations of automated external defibrillators placed in public places pursuant to subdivision b of this section and the identification of any additional locations throughout the city of New York that warrant the placement of automated external defibrillators. Twenty-four months after the effective date of the local law that added this section, and annually thereafter for the next succeeding three years, the department shall submit to the mayor and the council a report indicating the quantities and locations of automated external defibrillators placed in public places pursuant to subdivision b of this section.

e. Parks. The commissioner of the department of parks and recreation shall, no later than seven calendar days after the effective date of the local law that added this section, promulgate rules identifying at least six parks in each borough under the jurisdiction of the department of parks and recreation to be considered a public place for the purposes of this section, and determining the quantity and location of automated external defibrillators to be placed in such parks; provided, however, that at least one of the parks identified in each borough must be over one hundred and seventy acres.

f. Rules. The department shall promulgate such rules as may be necessary for the purpose of implementing the provisions of this section, including, but not limited to, rules regarding the quantity and location of automated external defibrillators to be placed in a particular public place or general category of public place; the form of notice in which the availability of automated external defibrillators in a public place shall be made known to the public and any accompanying fee; and any information on the use of automated external defibrillators that must accompany and be kept with each automatic external defibrillator; provided, however, that the department of parks and recreation shall determine the quantity and location of automated external defibrillators placed in parks, pursuant to subdivision e of this section. Such rules shall also include, but not be limited to, required training in the use of automated external defibrillators.

g. Liability limited. Any person who, in accordance with the provisions of this section, voluntarily and without expectation of monetary compensation renders first aid or emergency treatment using an automated external

defibrillator that has been made available pursuant to this section, to a person who is unconscious, ill or injured, and any person, owner or operator, entity, partnership, corporation, firm or society that purchases or makes available an automated external defibrillator as required by this section, shall be entitled to the limitation of liability provided in section 3000-a of the New York state public health law.

h. No duty to act. Nothing contained in this section shall impose any duty or obligation on any owner or operator of a public place, his or her employee or other agent, or any other person to provide assistance with an automated external defibrillator to a victim of a medical emergency.

i. Standard of care. Nothing contained in this section shall be deemed to affect the obligations or liability of emergency health providers pursuant to section 3000-b of the New York state public health law.

j. Exception. During such times as an owner or operator of a public place provides, at such public place, advanced life support by a physician, registered professional nurse or advanced emergency medical technician acting within his or her lawful scope of practice, or the use of automated external defibrillators by a physician, registered professional nurse, or advanced emergency medical technician acting within his or her lawful scope of practice, such provision shall be deemed to satisfy the requirements of subdivision b of this section, subject to rules of the department promulgated pursuant to subdivision f of this section. For purposes of this subdivision, advanced emergency medical technician shall mean an advanced emergency medical technician as defined in section three thousand one of the New York state public health law.

k. Public awareness. Within ninety days of the effective date of the local law that added this section, the department shall conduct public awareness and education campaigns in English and Spanish regarding cardiopulmonary resuscitation training.

**HISTORICAL NOTE**

Section added L.L. 20/2005 § 1, eff. July 5, 2005. [See Note 1]

**NOTE**

1. Provisions of L.L. L.L. 20/2005:

§ 2. Severability. If any subdivision, sentence, clause, phrase or other portion of the local law that added this section is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that added this section, which remaining portions shall remain in full force and effect.

§ 3. Effective date. This local law shall take effect one hundred twenty days after its enactment into law. Actions necessary to prepare for the implementation of this local [law] may be taken prior to its effective date.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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*NYC Administrative Code 17-189*

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Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-189 Prohibition on sale of certain substances containing lead.

a. For purposes of this section, the following terms shall have the following meanings:

1. "Candy products containing lead" shall mean any confection containing lead which the department, pursuant to rules promulgated hereunder, determines to present a risk to public health or a nuisance as defined in § 17-142 of this code.

2. "Litargirio" shall mean any powder containing lead intended for sale for personal use, including, but not limited to, use as an anti-perspirant, deodorant, foot fungicide or as a treatment for burns and wounds.

3. "Person" shall mean any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association or other entity or business organization.

b. No person shall sell or offer for sale, or cause any person to sell or offer for sale, candy products containing lead or products containing litargirio.

c. Violations and penalties. 1. Any person who violates any provision of this section shall be liable for a civil penalty not to exceed two hundred and fifty dollars for each violation, provided that for a first such violation, such person may be issued a written warning in lieu of such civil penalty.

Notwithstanding any provision of law to the contrary, any person who intentionally or knowingly violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than two hundred and fifty

dollars for each violation and/or a prison term of not more than six months, and a civil penalty of not more than two hundred and fifty dollars for each violation.

d. Enforcement. The department and the department of consumer affairs shall enforce the provisions of this section. A proceeding to recover any civil penalty authorized pursuant to subdivision c of this section shall be commenced by the service of a notice of violation returnable to the administrative tribunal established by the board of health where the department issues such a notice or to the adjudication division of the department of consumer affairs where such department issues such a notice. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged. The administrative tribunal of the board of health and the adjudication division of the department of consumer affairs shall have the power to render decisions and to impose the remedies and penalties provided for in subdivision c of this section, in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

e. Rules. The commissioner shall promulgate any rules as may be necessary for the purposes of carrying out the provisions of this section.

**HISTORICAL NOTE**

Section added L.L. 49/2005 § 2, eff. Nov. 15, 2005. [See Note 1]

**NOTE**

1. Provisions of L.L. L.L. 49/2005:

Section 1. Legislative findings and intent. Lead is a highly toxic substance that has been found to cause permanent neurological damage in children. Lead poisoning is linked to many adverse health effects among children, including learning disabilities, behavioral problems, seizures, coma and sometimes death.

According to the Food and Drug Administration ("FDA"), litargirio is a yellow or peach colored powder, manufactured by certain laboratories outside of the United States, that has no proven health benefits and, because of its high lead content, poses health risks, especially for children, when used in contact with the skin or ingested. This powder has been used, among other things, as a deodorant, a foot fungicide and a treatment for burns and wounds. Because of the serious health risks associated with this powder, the FDA has issued a warning to the public not to use litargirio for any health-related or personal purposes.

In addition, certain candy products have been discovered to contain dangerously high levels of lead. For example, the FDA has warned consumers to avoid purchasing or consuming certain candies and snack products containing chili or products such as tamarind candies sold in clay pots and often manufactured outside of the United States. Some of these products have been found to contain high levels of lead and can increase the chances of lead poisoning in children. In addition, the risk of lead poisoning may also arise from the use of certain candy wrappers.

Accordingly, as a result of the proven toxicity of lead and the above-mentioned FDA warnings, the Council finds that litargirio and certain candy products containing lead are dangerous substances, the sale of which should be prohibited in order to protect the public health.

. . . . . § 3. Severability. If any subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall remain in full force and effect.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-190*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-190 [Deaths of homeless persons and homeless shelter residents; track; report.]*

a. Definitions.8 For the purposes of this section, the following terms shall be defined as follows:

1. "Homeless person" means a person who at the time of death did not have a known street address of a residence at which he or she was known or reasonably believed to have resided.

2. "Homeless shelter resident" means a person who at the time of death lived in a homeless shelter as defined in paragraph 3 of this subdivision.

3. "Homeless shelter" means (i) a residence operated by or on behalf of the department of homeless services; (ii) an emergency residence operated by or on behalf of the department of social services/human resources administration which is available primarily for homeless persons with HIV or AIDS related illness; or (iii) a residence operated by or on behalf of the department of housing preservation and development to the extent that such residence houses clients of the department of homeless services; provided, however, that such term shall not include any residence that is available primarily for battered women.

b. Reports regarding deaths of homeless persons and homeless shelter residents. 1. The department shall, on January first, April first, July first and October first of each year, beginning on January first, two thousand six, submit a report to the council indicating the incidence of deaths of homeless persons and homeless shelter residents during the quarter year which began on the first day of the sixth month preceding the month in which the report is required to be filed. Subject to paragraph 3 of this subdivision, such quarterly report shall include, at a minimum, (i) the number of homeless persons who died during the reporting quarter for whom there was an investigation by the office of the chief

medical examiner as required pursuant to section 557 of the charter, the number of homeless shelter residents who died during such quarter and, to the extent such information is readily available, the number of other homeless persons who died during such quarter; (ii) the community board district where each such decedent died, disaggregated within each such district by whether the death occurred outdoors, in a hospital, in a nursing home and/or other residential health care facility, in a homeless shelter, or, to the extent such information is available, in another facility, residence or other type of location, provided, however, that the location of decedents who died in a residence operated by or on behalf of the department of social services/human resources administration which is available primarily for homeless persons with HIV or AIDS related illness shall be provided by borough; (iii) an indication as to whether the decedent was known to be living in a homeless shelter at the time of death and the community board district in which such homeless shelter is located, provided however, that the location of the residence of decedents known to be living in a homeless shelter operated by or on behalf of the department of social services/human resources administration which is available primarily for homeless persons with HIV or AIDS related illness shall be provided by borough; and (iv) the age or approximate age and gender of each such decedent; provided, however, that in cases where the identity of a decedent is unknown or in cases where it is unknown whether such decedent was a homeless person or a homeless shelter resident, the department shall provide the information required by this paragraph during the quarter that such information becomes available, as well as the date or approximate date such death occurred.

2. In addition to the quarterly reports required pursuant to this subdivision, the department shall, subject to paragraph 3 of this subdivision, submit an annual report to the council and the mayor by January fifteenth of each year, (i) summarizing and aggregating, as well as updating and amending if necessary, the information provided in the immediately preceding four quarterly reports; and (ii) indicating the causes of death for all deaths in such report disaggregated by cause, including, but not limited to, how many such deaths were related to exposure to outdoor conditions.

3. The department may withhold information from a quarterly or annual report about an individual decedent otherwise required pursuant to this subdivision to the extent that such withholding is necessary to avoid disclosing the identity of such decedent, provided that the department shall specify when such information is withheld and shall report all other information about such decedent that will not reveal the identity of such decedent.

4. In each quarterly and annual report required pursuant to this subdivision, the department shall describe the methodologies used to identify homeless persons and homeless shelter residents and provide an analysis of the reliability and validity of such methodologies.

5. The quarterly and annual reports required pursuant to this subdivision shall be made available to any member of the public upon request.

c. Rules. By December fifteenth, 2005, the department after public hearings shall promulgate such rules as are necessary to implement the provisions of this section.

**HISTORICAL NOTE**

Section added L.L. 63/2005 § 2, eff. July 11, 2005 and repealed Jan. 30,

2012. [See Note 1]

**NOTE**

1. Provisions of L.L. L.L. 63/2005:

Section 1. Declaration of legislative findings and intent. According to the Department of Homeless Services (DHS), the number of homeless New Yorkers residing in shelters each night reached the highest point in New York City history in November of 2003. Although the City has seen a recent decline in this population, there are

approximately 35,000 homeless men, women and children residing in the shelter system, including approximately 14,000 children. While the City continues in its efforts to reduce street homelessness through the use of outreach teams and drop-in centers, recent estimates are that approximately 4,400 New Yorkers are sleeping on the streets, in parks and on the subways. While deaths take place each year within the homeless population, currently the City has no way of knowing exactly how many such deaths occur, where they occur, or the causes behind them. The Council finds that in order to more effectively protect these vulnerable residents, the City needs legislation requiring the periodic gathering of information regarding their deaths. Tracking and reporting these deaths will help the City better understand the challenges faced by homeless persons in New York City, and assist in the creation of policies and programs designed to safeguard such persons and prevent future unnecessary deaths.

. . . . . § 3. If any section, subsection, sentence, clause, phrase, or other portion of this local law, including any requirement imposed pursuant to it, is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect. § 4. Effective date. This local law shall take effect immediately after its enactment into law and shall be deemed repealed on January 30, 2012.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

8

[Footnote 8]: * Section heading provided by editor. Provisions repealed Jan. 30, 2012.

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*NYC Administrative Code 17-191*

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Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-191 Child9 fatality review advisory team.

a. For purposes of this section, the term "child fatality" shall mean the death of any person in the city of New York under the age of thirteen where (1) the death is unanticipated, (2) the death is the result of trauma, or (3) the circumstances of the death are suspicious, obscure or otherwise unexplained; provided, however, that such term shall not include the death of any person under the age of thirteen where such death is the subject of a pending criminal investigation, prosecution or appeal.

b. There shall be established within the department, in accordance with all applicable state and local laws, a child fatality review advisory team to examine the facts and circumstances relating to child fatalities. The team shall consist of the commissioner of the administration of children's services, or his or her designee; the commissioner of the police department, or his or her designee; the chief medical examiner, or his or her designee; the commissioner of the department of health and mental hygiene, or his or her designee; and, if required by applicable law, the commissioner of the New York state office of children and family services, or his or her designee. The chancellor of the department of education, or his or her designee, may become a member of the team at his or her discretion. The mayor shall appoint to the team a maximum of two additional individuals, including at least one pediatrician and at least one person who advocates on child-related issues; provided, however, that such individuals shall not hold any other public office, employment or trust. The speaker of the city council shall appoint to the team a maximum of two additional individuals, including at least one pediatrician and at least one person who advocates on child-related issues; provided, however, that such individuals shall not hold any other public office, employment or trust. The public advocate shall appoint to the team one additional individual; provided, however, that such individual shall not hold any other public office, employment or trust.

c. Each member of the child fatality review advisory team, other than any member serving in an ex officio capacity, or such member's designee, and, if he or she chooses to serve, the chancellor of the department of education, or his or her designee, shall serve for a term of two years, and may be removed from office for cause. Any vacancy shall be filled in the same manner as the original appointment.

d. All members of the child fatality review advisory team shall serve without compensation, except that each member shall be allowed actual and necessary expenses to be audited in the same manner as other city charges.

e. Except as otherwise provided in this section, no person shall be ineligible for membership on the child fatality review advisory team because such person holds any other public office, employment or trust, nor shall any person be made ineligible to or forfeit such person's right to any public office, employment or trust by reason of such appointment.

f. The child fatality review advisory team shall meet at least four times a year. The commissioner of the department of health and mental hygiene shall serve as chairperson of the team and shall convene the first meeting of the team within ninety days after the effective date of the local law that added this section.

g. The child fatality review advisory team's work shall include, but not be limited to, reviewing aggregate data relating to child fatalities and formulating recommendations regarding methods of improving the protection of children in order to decrease the future incidence of child fatalities in the city of New York.

h. The child fatality review advisory team may request information from any agency as may be necessary to carry out the provisions of this section, in accordance with all applicable laws, rules and regulations, including, but not limited to, laws related to attorney-client privilege, attorney work product, material prepared for litigation and disclosure of agency records under the public officers law. The team may also request such information from any not-for-profit organization which provided services to the victim of a child fatality or to the family members of such victim, in accordance with all applicable laws, rules and regulations, including, but not limited to, laws related to attorney-client privilege, attorney work product, material prepared for litigation and confidentiality. Nothing in this subdivision shall be construed as limiting any right or obligation of agencies pursuant to the public officers law, including the exceptions to disclosure of agency records contained in such law, with respect to access to or disclosure of records or portions thereof. The team shall keep confidential all information that it receives and protect the privacy of all individuals involved in the child fatality cases that it reviews to the extent provided by law.

i. The child fatality review advisory team shall submit to the mayor, the speaker of the city council and the public advocate, annually, a report including, but not limited to, the number of child fatality cases which occurred in the city of New York during the previous year; statistics regarding the causes of child fatalities; specific non-identifying data with respect to the victims of child fatalities, such as gender, age and race, and, if available, religion and ethnicity; statistics regarding the location of child fatalities, disaggregated by borough; and recommendations regarding ways to decrease the future incidence of child fatalities in the city of New York.

**HISTORICAL NOTE**

Section added L.L. 115/2005 § 2, eff. Mar. 29, 2006 and repealed Jan.

30, 2012. [See Note 1]

**NOTE**

1. Provisions of L.L. L.L. 115/2005:

Section 1. Legislative findings and intent. New York City has a responsibility to serve its most vulnerable residents, especially its children. The Council recognizes that no child should die due to any preventable factor. The Council also recognizes that by establishing a mechanism for an independent, comprehensive, multiagency and

multidisciplinary review of all child deaths, we will better understand trends and patterns regarding how and why children die in New York City, and thus be better able to take action that can prevent other such deaths and improve the health and safety of New York City's children.

The Council finds that this review must occur at the City level to ensure that the characteristics of child protection that are unique to a large urban area such as New York City are appropriately identified and addressed. The Council also finds that the establishment of a local, independent Child Fatality Review Advisory Team would promote cooperation and communication among the various City agencies involved in investigating child fatalities and would help facilitate the provision of services needed by children and families. Therefore, the Council finds that a New York City Child Fatality Review Advisory Team is necessary to identify preventable social and family circumstances that contribute to child fatalities; provide recommendations regarding the investigation and prevention of child deaths; and identify problems in practices and recommend solutions.

. . . . . .

§ 3. Effect of invalidity; severability. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect ninety days after its enactment into law and shall be deemed repealed on January 30, 2012.

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

9

[Footnote 9]: * Repealed Jan. 30, 2012 per L.L. 115/2005 § 4.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-192*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-192 Foods containing artificial trans fat.

a. Definitions. The following terms shall have the following meanings:

1. "Artificial trans fat" shall have the meaning as such term is defined in section 81.08 of the health code of the city of New York or any successor provision.

2. "Food service establishment" shall have the meaning as such term is defined in section 81.03 of the health code of the city of New York or any successor provision.

3. "Mobile food unit commissary" shall have the meaning as such term is defined in section 89.01 of the health code of the city of New York or any successor provision.

b. Artificial trans fat restricted. No foods containing artificial trans fat shall be stored, distributed, held for service, used in preparation of any menu item or served by any food service establishment or by any mobile food unit commissary; provided that this subdivision shall not apply to food that is served directly to patrons in a manufacturer's original sealed package.

c. Rules. The department may promulgate such rules as may be necessary to implement the provisions of this section.

**HISTORICAL NOTE**

Section added L.L. 12/2007 § 2, eff. July 1, 2007 or July 1, 2008 with

special provisions. [See Note 1]

**NOTE**

1. Provisions of L.L. L.L. 12/2007:

Section 1. Legislative findings and intent. Trans fat intake increases the risk of heart disease, which is the leading cause of death in New York City. Because a significant portion of dietary trans fat comes from foods purchased at food service establishments and mobile food unit commissaries, the presence of artificial trans fat purchased at such establishments contributes to cardiovascular risk in New York City. The 2005 Dietary Guidelines for Americans, issued by the United States Department of Agriculture, recommend that dietary intake of trans fat be "as low as possible."

On December 5, 2006, pursuant to the authority granted to it by § 558 of the New York City Charter, the Board of Health unanimously approved a resolution to amend Article 81 of the New York City Health Code to restrict the use of artificial trans fat in food service establishments and mobile food unit commissaries regulated by the Department of Health and Mental Hygiene.

The Council finds that the presence of artificial trans fat in foods prepared in food service establishments and mobile food unit commissaries poses a threat to the public health. Therefore, the Council finds it warranted to incorporate the ban on artificial trans fat into the Administrative Code.

. . . . . .

§ 3. This local law shall take effect on July 1, 2007 with respect to oils, shortenings and margarines containing artificial trans fat that are used for frying or in spreads; and shall take effect on July 1, 2008 with respect to oils or shortenings used for deep frying of yeast dough or cake batter, and for all other foods containing artificial trans fat.

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-193*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-193 Trauma scenes.

a. Definitions. For purposes of this section, the following terms shall have the following meanings:

1. "City" shall mean the city of New York.

2. "City property" shall mean any property owned and managed by the city.

3. "Trauma" shall mean any serious physical injury or death.

4. "Trauma scene" shall mean any area where a trauma occurred that has been visibly contaminated by human blood or bodily fluids as a result of such trauma.

5. "Trauma scene management" shall mean the use of procedures and materials sufficient to clean and decontaminate a trauma scene and safely remove human blood or bodily fluids and other appropriate waste as determined by the department from such scene.

b. City property. The department shall establish guidelines for trauma scene management on city property that shall be followed by city agencies, subject to applicable emergency response protocols, which shall include, but not be limited to, procedures regarding:

1. the immediate restriction of access to a trauma scene;

2. the cleaning and decontamination of a trauma scene including, but not limited to, the application of

appropriate disinfectants to such scene; and

3. the removal of any waste, including but not limited to, waste generated from cleaning and decontamination activities and the disposal of such waste in accordance with applicable laws and guidelines.

c. Property other than city property. The department shall establish guidelines for trauma scene management on property other than city property within the city and post such guidelines on an appropriate website. Where a trauma scene occurs on or within any portion of such property, a member of the police department or fire department responding to such scene shall inform the owner, resident or occupant of such property that such guidelines may be obtained by calling 311 or accessing the website established by the city for such purpose. Such guidelines shall include, but not be limited to:

1. guidelines for trauma scene management established pursuant to subdivision b of this section and modified, where appropriate, to include procedures for trauma scene management that may be undertaken by such owner, resident or occupant on such property;

2. contact information for the New York state crime victims board and information indicating how such owner, resident or occupant can apply to such board for financial assistance to help cover the cost of professional clean up of a trauma scene, including how application forms can be obtained at the board's local office or website;

3. contact information for any organization that certifies professional trauma scene clean-up companies in the New York city area; and

4. a statement indicating that private insurance might cover the cost of professional clean-up of a trauma scene and that such owner, resident or occupant should contact his or her insurance carrier for further information.

d. Rules. The commissioner shall promulgate rules and regulations as may be necessary to carry out the provisions of this section.

**HISTORICAL NOTE**

Section added L.L. 62/2007 § 1, eff. Mar. 30, 2008.

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-194*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-194 Drinking water tank inspections.

a. Definitions. For purposes of this section, the following terms shall have the following meanings:

1. "Building" shall mean any building, structure, premises, or part thereof.

2. "Drinking water" shall mean water used for human consumption or used directly or indirectly in connection with the preparation of food for human consumption, including, but not limited to, the cleaning of utensils used in the preparation of food.

3. "Owner" shall mean any owner, manager, operator or other person or persons having control of a building and any authorized agent thereof.

4. "Water heater" shall mean any heating appliance or equipment that heats potable water and supplies such water to the potable hot water distribution system.

5. "Water tank" shall mean any device used to store drinking water that is distributed as part of the water supply system of a building, however such term shall not apply to domestic hot water heaters.

b. Any owner of a building that has a water tank as part of its drinking water supply system shall have such water tank inspected at least once annually. Such inspection shall ensure that the water tank complies with all provisions of the administrative code of the city of New York, the construction codes of the city of New York and the health code of the city of New York. The results of such inspection shall be recorded in a manner prescribed by the commissioner.

Such results shall be maintained by the owner for at least five years from the date of inspection and shall be made available to the department upon request within five business days. The department shall request such information from the building owner or manager when contacted pursuant to subdivision c of this section.

c. The owner of a building shall post a notice stating that (i) the water tank inspection results are maintained on file in a specific location and will be made available when a person makes such a request to either the building owner or manager and (ii) that a person may contact the department if the inspection results are not made available to such person by the building owner or manager. Upon receipt of such request, the owner or manager shall make a copy of the inspection results available within five business days. Such notice shall be posted in a location easily accessible to tenants and in a frame with a transparent cover, and may be combined with similar notices where not otherwise prohibited by law.

d. Beginning March 1, 2010, and each year thereafter for three years, the department shall submit to the council a report which shall provide information about water tank inspections for the preceding calendar year including, but not limited to:

1. the estimated number of building water tanks and the estimated number of buildings serviced by such tanks;

2. the number of building water tank inspection results examined by the department and the number that were in compliance with subdivision b of this section;

3. the estimated compliance rate with subdivision b of this section for the city; and

4. the number of violations issued by the department pursuant to subdivision e of this section.

e. Any owner of a building who violates subdivision b of this section or any of the rules promulgated thereunder shall be liable for a civil penalty not less than two hundred and not to exceed two thousand dollars for each violation. Any owner of a building who violates subdivision c of this section or any of the rules promulgated thereunder shall be liable for a civil penalty not to exceed two hundred fifty dollars for each violation.

**HISTORICAL NOTE**

Section added L.L. 11/2009 § 1, eff. May 27, 2009. [See Note 1]

**NOTE**

1. Provisions of L.L. L.L. 11/2009:

§ 2. If any subsection, sentence, clause, phrase, or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that added this section, which remaining portions shall remain in full force and effect. Nothing in this local law shall be interpreted or applied so as to create any power, duty or obligation in conflict with any federal or state law.

**FOOTNOTES**

5

[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-195*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 1 DEPARTMENT OF HEALTH AND MENTAL HYGIENE*5

§ 17-195 Food allergy posters.

a. Definitions. 1. "Covered languages" shall mean Chinese, English, Korean, Russian and Spanish, and any other language determined by the department.

2. "Food service establishment" shall have the meaning as such term is defined in section 81.03 of the health code of the city of New York, except that it shall apply exclusively to restaurants where food is sold and space is designated specifically as an eating area.

b. The department shall create a poster containing information on food allergy to be posted in food service establishments. Such poster shall be printed in the covered languages and shall be made available by the department to food service establishments.

c. Every food service establishment shall post, in accordance with the rules of the department, the poster containing information on food allergy created by the department pursuant to subdivision b of this section in a conspicuous location accessible to all employees involved in the preparation of food and the service of food.

d. The department may charge a fee to cover printing, postage and handling expenses in connection with making the poster available to food service establishments.

e. Any food service establishment that violates subdivision c of this section or any of the rules promulgated thereunder shall be liable for a civil penalty not to exceed one hundred dollars for each violation.

**HISTORICAL NOTE**

Section added L.L. 17/2009 § 1, eff. Sept. 14, 2009.

**FOOTNOTES**

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[Footnote 5]: * Chapter heading amended L.L. 22/2002 § 19, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

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

*NYC Administrative Code 17-201*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 2 MEDICAL EXAMINER

§ 17-201 Report of deaths; removal of body.

It shall be the duty of any citizen who becomes aware of the death of any person, occurring under the circumstances described in paragraph one of subdivision (f) of section five hundred fifty-seven of the charter, to report such death forthwith to the office of the chief medical examiner, and to a police officer who shall forthwith notify the officer in charge of the station-house in the police precinct in which such person died. Any person who shall wilfully neglect or refuse to report such death or who without written order from a medical examiner shall wilfully touch, remove or disturb the body of any such person, or wilfully touch, remove or disturb the clothing or any article upon or near such body, shall be guilty of a misdemeanor.

**HISTORICAL NOTE**

Section amended L.L. 53/2007 § 2, eff. Nov. 5, 2007.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 878-1.0 added chap 929/1937 § 1

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

*NYC Administrative Code 17-202*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 2 MEDICAL EXAMINER

§ 17-202 Procedure in deaths reportable to the office of chief medical examiner.

a. Upon any such death, the officer in charge of the station-house in the police precinct in which such person died shall immediately notify the office of chief medical examiner of the known facts concerning the time, place, manner and circumstances of such death. Immediately upon receipt of such notification the chief medical examiner, or a deputy chief medical examiner, or a medical examiner, or a medical investigator, or a lay medical investigator shall go to and take charge of the dead body. Such medical examiner, medical investigator or lay medical investigator shall fully investigate the essential facts concerning the circumstances of the death, taking the names and addresses of as many witnesses thereto as it may be practicable to obtain, and shall record all such facts and file the same in the office of chief medical examiner. Such medical examiner, medical investigator or lay medical investigator shall take possession of any portable objects which, in his or her opinion, may be useful in establishing the cause of death, and except as provided in subdivision c hereof, shall deliver them to the police department.

b. The police officer detailed in such cases shall, in the absence of next of kin of the deceased person, take possession of all property of value found on such person, make an exact inventory thereof on his or her report, and deliver such property to the police department, which shall surrender the same to the person entitled to its custody or possession.

c. Notwithstanding the provisions of subdivisions a and b of this section, any suicide note or other written evidence of suicide found on such deceased person shall be delivered to the chief medical examiner and shall be retained by said medical examiner.

d. Nothing in this section contained shall affect the powers and duties of a public administrator.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended L.L. 25/2006 § 3, eff. July 11, 2006.

**DERIVATION**

Formerly § 878-2.0 added chap 929/1937 § 1

Amended LL 39/1945 § 1

Sub a amended LL 56/1961 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where autopsy report gave cause of death as "apparent suicide" medical examiner was required to determine whether the death was either "accidental" death or "suicide" and if the examiner on reconsideration made no formal finding of either plaintiff could reapply for an order expunging from the records the words "apparent suicide".-Feinblum v. Helpern, 160 (32) N.Y.L.J. (2-15-73) 16, Col. 8 T.

**CASE NOTES**

¶ 1. Authority to assign certain Medical Examiner duties relating to the investigation and examination of dead bodies to paraprofessionals called "Medicolegal Investigators" who are not licensed physicians is enjoined. Ad Cd §§17-202, 17-203 and Charter § 557 require investigation and certification of death to be the duty of CME and § 557(c) requires medical investigators to be physicians. Liebowitz v. Hirsch, 146 Misc. 2d 1065, [1991], upheld 167 AD2d 298 [1991].

¶ 2. Only licensed physicians (rather than physicians' assistants) can carry out preliminary death investigations under the jurisdiction of the Chief Medical Examiner. Liebowitz v. Hirsch, 167 A.D.2d 298, 562 N.Y.S.2d 41 (1st Dept. 1990).

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

*NYC Administrative Code 17-203*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 2 MEDICAL EXAMINER

§ 17-203 Autopsies; findings.

If it may be concluded with reasonable certainty that death occurred from natural causes or obvious traumatic injury, and there are no other circumstances which would appear to require an autopsy, the chief medical examiner, deputy chief medical examiner or medical examiner or medical investigator in charge shall certify the cause of death and file a report of his or her findings in the office of chief medical examiner. If, however, in the opinion of a medical examiner, an autopsy is necessary, the same shall be performed by a medical examiner. Where indicated, the autopsy shall include toxicologic, histologic, microbiologic and serologic examinations. A detailed description of the findings of all autopsies shall be written or dictated. The findings of the investigation at the scene of death, the autopsy and any toxicologic, histologic, serologic and microbiologic examinations, and the conclusions drawn therefrom shall be filed in the office of chief medical examiner. Such findings and conclusions shall be signed by the medical examiner performing the autopsy.

**HISTORICAL NOTE**

Section amended L.L. 25/2006 § 4, eff. July 11, 2006.

Section amended L.L. 95/1997 § 1, eff. Dec. 30, 1997.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 878-3.0 added chap 929/1937 § 1

Amended LL 81/1957 § 1

Amended LL 56/1961 § 3

**CASE NOTES FROM FORMER SECTION**

¶ 1. In prosecution of physicians for manslaughter in the first degree as result of the death of a person upon whom they performed an illegal abortion, admission in evidence of findings of a medical examiner who died after signing his report of an autopsy performed upon the deceased woman, **held** not to have violated defendants' right of confrontation, inasmuch as the autopsy findings were contained in a report filed in a public office by a public officer for a public purpose embodying facts required by statute to be stated therein, and that was sufficient to permit their admission in evidence even though in the public interest such records were available only to public officials.-People v. Nisonoff, 293 N.Y. 597, 59 N.E. 2d 520 [1944].

¶ 2. Where plaintiff, sister of victim, sues to recover damages for an unauthorized autopsy and defendant alleges that, "autopsy was performed in manner provided for by § 878 of the Administrative Code," such a defense is a legal conclusion and must fall. However, since no cause of action accrued in favor of plaintiff but did to the surviving spouse or next of kin, the second affirmative defense is valid and a motion by plaintiff to strike was denied.-Traumell v. City of N.Y., 193 Misc. 356, 82 N.Y.S. 2d 762 [1948], aff'd, 276 App. Div. 781, 93 N.Y.S. 2d 299 [1949].

¶ 3. In an action to recover damages in a death action it was error to exclude from evidence the report of the toxicologist as to the quantity of alcohol found in the brain of the deceased. N.Y. City Charter § 878, Administrative Code §§ 556-13.0, 878-3.0-879-2.0.-Iovino v. Green Bus Lines, Inc., 277 App. Div. 1002, 100 N.Y.S. 2d 148 [1950].

¶ 4. A father had sufficient interest to maintain a proceeding to require that a statement that his son died as a result of suicide be expunged from the public records. The son died of a gunshot wound and reasonable men could find either that it was suicide or an accident from an unknown cause. In such an arguable situation, the findings of the medical examiners must be sustained as far as their entries in the public records are concerned. A public determination is arbitrary only when no reasonable man would be expected to make it.-Matter of Mitchell, 17 App. Div. 2d 922, 233 N.Y.S. 2d 297 [1962].



Administrative Code of the City of New York



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

*NYC Administrative Code 17-204*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 2 MEDICAL EXAMINER

§ 17-204 Cremation.

Whenever an application is made pursuant to law for a permit to cremate the body of any person, the department, board or office in which such application is filed shall forward such application to the chief medical examiner who shall thereupon cause an investigation and report to be made thereon. In the event that the chief medical examiner, or a deputy chief medical examiner, or a medical examiner shall, in the course of such investigation, determine that reasonable grounds exist therefor, an autopsy shall be performed upon such body by a medical examiner. Where indicated, the autopsy shall include toxicologic, histologic, microbiologic and serologic examinations. A detailed description of the findings of all autopsies shall be written or dictated. The findings of the investigation, the autopsy and any toxicologic, histologic, serologic and microbiologic examinations, and the conclusions drawn therefrom shall be filed in the office of chief medical examiner. Such findings and conclusions shall be signed by the medical examiners performing the autopsy.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Section amended L.L. 25/2006 § 5, eff. July 11, 2006.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 878-3.1 added LL 109/1949 § 2

Amended LL 56/1961 § 4

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

*NYC Administrative Code 17-205*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 2 MEDICAL EXAMINER

§ 17-205 Records.

Records shall be kept in the office of the chief medical examiner, properly indexed, stating the name, if known, of every person dying under the circumstances described in paragraph one of subdivision (f) of section five hundred fifty-seven of the charter, the place where the body was found and the date of death. To the record of each case shall be attached the original report of the medical examiner and the detailed findings of the autopsy, if any. The appropriate district attorney and the police commissioner of the city may require from the chief medical examiner such further records, and such daily information, as they may deem necessary.

**HISTORICAL NOTE**

Section amended L.L. 53/2007 § 3, eff. Nov. 5, 2007.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 879-1.0 added chap 929/1937 § 1

**CASE NOTES**

¶ 1. The office of Chief Medical Examiner is affiliated with the Department of Health and is not a law enforcement agency nor under control of the district attorney's office for **Rosario** purposes although the office is to determine the cause of death, Charter § 557(f) and maintain record and provide them to law enforcement officials and

prosecutors, Ad Cd §17-205, Charter § 557(g). However this requirement to furnish information does not place the office under control of the prosecutor's office. In this case audiotapes made by the examining pathologist during autopsy do not constitute **Rosario** material since the tapes are not in the People's control. People v. Nova, 206 AD2d 132 [1994].

¶ 2. Although this section states that the District Attorney can require the Office of the Chief Medical Examiner (OCME) to furnish autopsy records, the section does not require the OCME to make an audiotape of an autopsy in the first instance or to retain a copy of the audiotape. Since the District Attorney has no control over the form of records kept by the OCME, or which records the OCME decides to turn over to the prosecution, an audiotape of an autopsy does not constitute "Rosario" material (People v. Rosario, 9 N.Y.2d 286, 213 N.Y.S.2d 448) and does not have to be turned over to the defense in a homicide case. People v. Washington, 196 A.D.2d 346, 612 N.Y.S.2d 586 (2nd Dept. 1994).



Administrative Code of the City of New York



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

*NYC Administrative Code 17-206*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 2 MEDICAL EXAMINER

§ 17-206 Fees for copies of records.

a. Whenever the chief medical examiner shall furnish to any private individual a copy or transcript of any record or any photograph or photostat of such record, such chief medical examiner shall and is hereby authorized to charge as follows:

**[See tabular material in printed version]**

It is provided that the charge for any single request for documents of a single case shall not exceed fifty dollars.

b. The chief medical examiner shall waive such fee or any portion thereof when furnishing such copies to indigent next of kin.

c. The chief medical examiner, in his or her discretion, shall have the power to waive such fee or any portion thereof when furnishing such copies to those engaged in scientific or other research.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 879-2.0 added chap 929/1937 § 1

Amended LL 18/1949 § 1

Amended LL 113/1964 § 1

Amended LL 87/1981 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 17-301*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 1 [MILK AND MILK PRODUCTS]*

§ 17-301 Records, documents and papers.

Upon the request of the commissioner, an applicant or holder of a permit issued pursuant to article one hundred eleven of the New York city health code shall furnish all information regarding the financial standing or responsibility of such applicant or permittee holding any license, permit or registration of any kind issued pursuant to the New York city health code and/or the administrative code.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B22-5.0 added LL 17/1967 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 17-302*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 1 [MILK AND MILK PRODUCTS]*

§ 17-302 Filing of applications.

Any corporation, association partnership or sole proprietorship applying for a permit or renewal thereof issued pursuant to article one hundred eleven of the New York city health code shall, at the time of the filing, furnish to the commissioner with the following information:

1. The name of the applicant.

2. The location of its principal place of business.

3. The amount and description of its capital stock, if any.

4. The names and post office addresses of the individuals, partners and/or officers and directors of the corporation, association or partnership.

5. The names and post office addresses of the individual, partners and/or officers and directors of the corporation, association or partnership who are officers, directors or stockholders of any other corporation, association or partnership operating pursuant to a permit issued pursuant to article one hundred eleven of the New York city health code.

6. The names and post office addresses of all stockholders of record or beneficial owners in stock standing in the

name of another in the amount of ten percent or more of the corporation.

7. The names and post office addresses of all stockholders of record or beneficial owners in stock standing in the name of another in the amount of ten percent or more of the corporation who are officers, directors or stockholders of any other corporation, association or partnership operating pursuant to a permit issued pursuant to article one hundred eleven of the New York city health code.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B22-6.0 added LL 18/1967 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 17-303*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 1 [MILK AND MILK PRODUCTS]*

§ 17-303 Change of information.

In the event of any change of information provided hereinabove, the commissioner shall be notified of same within thirty days.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B22-7.0 added LL 18/1967 § 1

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

*NYC Administrative Code 17-304*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 1 [MILK AND MILK PRODUCTS]*

§ 17-304 Rules and regulations.

The commissioner shall have the power to promulgate such rules and regulations as may be necessary for the proper enforcement of this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B22-8.0 added LL 18/1967 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 17-305*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 1 [MILK AND MILK PRODUCTS]*

§ 17-305 Penalties.

The violation of any of the provisions of this subchapter shall be punishable by a fine of not less than five hundred dollars or imprisonment for thirty days or both.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B22-9.0 added LL 18/1967 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 17-306*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 2 FOOD VENDORS

§ 17-306 Definitions.

Whenever used in this subchapter the following terms shall mean:

a. "Commissary". A service room, catering establishment, restaurant or any other place in which food, containers or supplies are processed, prepared, handled, packed, transferred or stored and directly from which food is distributed to a food vendor or from which any vehicle or pushcart offering food to the public in any public space is supplied.

b. "Food". Any raw, cooked or processed edible substances, beverages, ingredients, ice or water used or intended for use or for sale in whole or in part for human consumption.

c. "Food vendor" or "vendor". A person who hawks, peddles, sells or offers food for sale at retail in any public space.

d. "Food vending business". The business of selling or offering food for sale at retail in a public space engaged in by a food vendor.

e. "Public space". All publicly owned property between the property lines on a street as such property lines are shown on city records including, but not limited to, a park, plaza, roadways, shoulder, tree space, sidewalk or parking

space between such property lines. It shall also include, but not be limited to, publicly owned or leased land, buildings, piers, wharfs, stadiums and terminals.

f. "Pushcart". Any wheeled vehicle or device used by a food vendor, other than a motor vehicle or trailer, which may be moved with or without the assistance of a motor and which does not require registration by the department of motor vehicles. The term "pushcart" shall include any green cart, as that term is defined by subdivision s of this section.

g. "Vehicle". A motor vehicle or trailer, as defined in the vehicle and traffic law.

h. "Vend". To hawk, peddle, sell or offer to sell food at retail in a public space, delivered immediately upon consummation of purchase.

i. "Person." A natural person, partnership, corporation or other asso- ciation.

j. "Veteran". Any person who was in active service in the armed forces of the United States and was honorably discharged from such service.

k. "Disabled veteran". A veteran who is certified by the United States department of veterans' affairs as having a disability rated at ten per centum or more that was incurred by such person during active service in the armed forces of the United States and which disability is in existence at the time of application for a permit under this sub-chapter.

l. "Honorable discharge". Any type of discharge or release from the armed forces of the United States other than a dishonorable discharge.

m. "Disabled person". Any person who has or had a physical or mental impairment that substantially limits one or more major life activities and has a record of such an impairment. For the purposes of this subdivision, "physical impairment" means a physiological disorder or condition, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; genitourinary; hemic and lymphatic; or skin and endocrine. It includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, muscular dystrophy, and multiple sclerosis. For the purposes of this subdivision, "mental impairment" means any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. For the purposes of this subdivision, "major life activities" means functions such as walking, seeing, hearing and speaking. For the purposes of this subdivision, a record of such an impairment shall be established by submission to the commissioner of either:

(a) A letter or certificate describing the physical or mental impairment of the applicant which must include the notarized signature of one of the following:

(i) A licensed physician, opthamologist, optometrist or psychologist; or

(ii) An authorized representative of a social agency that conducts programs for the disabled in cooperation with an official agency of the state and from which the applicant is receiving services such as, but not limited to, the state office of vocational rehabilitation; or

(b) A previous certification not more than one year old establishing the physical or mental impairment of the applicant such as, but not limited to, verification of an income tax exemption or social security benefits on the basis of physical or mental impairment.

n. "Unemancipated child". Any son, daughter, step-son or step-daughter who is under the age of eighteen, unmarried and living in the same household.

o. "Exclusive distributor". A person who has a written agreement with a manufacturer of a food product for the

sale of that product by a food vendor licensed pursuant to this subchapter from a vehicle or pushcart to the exclusion of any similar food product manufactured by any other manufacturer.

p. "Manufacturer". A person who processes or fabricates food products from raw materials for commercial purposes.

q. "Fresh fruits and vegetables". Unprocessed unfrozen raw fruits and vegetables that have not been combined with other ingredients.

r. "Fresh fruits and vegetables permit". A full-term permit for the vending at retail solely of fresh fruits or vegetables, or both, from a pushcart or vehicle in a public place. Unless otherwise specified, a fresh fruits and vegetables permit shall be a permit in accordance with the provisions of this subchapter.

s. "Green cart". A pushcart used exclusively by those issued fresh fruits and vegetables full-term permits pursuant to section 17-307 of this subchapter and which, in addition to being in compliance with all other legal requirements applicable to non-processing pushcarts, must also have a distinctive and easily recognizable appearance in accordance with rules to be established by the commissioner.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. f amended L.L. 9/2008 § 2, eff. June 11, 2008. [See § 17-325.2

Note 1]

Subd. i repealed and added L.L. 15/1995 § 1, eff. Feb. 3, 1995.

Subds. j-m added L.L. 34/1993 § 1 eff. May 18, 1993.

Subd. n added L.L. 15/1995 § 2, eff. Feb. 3, 1995.

Subds. o, p added L.L. 27/1997 § 2, eff. May 5, 1997.

Subd. q added L.L. 9/2008 § 2, eff. June 11, 2008. [See § 17-325.2

Note 1]

Subd. r added L.L. 9/2008 § 2, eff. June 11, 2008. [See § 17-325.2

Note 1]

Subd. s added L.L. 9/2008 § 2, eff. June 11, 2008. [See § 17-325.2

Note 1]

**DERIVATION**

Formerly § D22-1.0 added LL 77/1977 § 2

Sub h amended LL 50/1979 § 2

(legislative findings, prevent congestion LL 50/1979 § 1)

Subs d, m amended LL 17/1983 § 2

(legislative findings, limit vending to prevent congestion and accidents, LL 17/1983 § 1)

Sub j repealed LL 17/1983 § 3

**CASE NOTES**

¶ 1. A concession covering seven locations within a city park was held to be illegal. The City had no authority to exempt the plaintiff, a private non-profit corporation, from the restrictions against granting multiple permits. Such an exception, if it were to have the force of law, would have to be enacted by the City Council. Moreover, allowing multiple permits would be contrary to the intent of the statute, which was designed to make permits available to a broader spectrum of persons. Precision Carts Vending v. City of New York, 250 A.D.2d 396, 672 N.Y.S.2d 346 (App.Div. 1st Dept. 1998), leave to appeal denied, 92 N.Y.2d 815, 683 N.Y.S.2d 759 (1998).



Administrative Code of the City of New York



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

*NYC Administrative Code 17-307*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 2 FOOD VENDORS

§ 17-307 Licenses, permits required; restrictions; term.

a. 1. It shall be unlawful for any individual to act as a food vendor without having first obtained a license therefor from the commissioner in accordance with the provisions of this subchapter.

2. In addition to the conditions set forth in section 17-310 of this subchapter a license shall be renewable by the licensee provided that the licensee meets all other requirements for renewal, the license has not been revoked or suspended and the licensee has not committed a violation or violations which could be a basis for license revocation or suspension.

b. 1. It shall be unlawful to vend food from any vehicle or pushcart in a public space without having first obtained a permit for such vehicle or pushcart from the commissioner in accordance with the provisions of this subchapter. The commissioner shall establish standards relating to the size and design of such vehicles and pushcarts. No vendors shall vend from any vehicle or pushcart which does not comply with the standards established by the commissioner. No vendor shall vend from other than a vehicle or pushcart. No food vendor issued a fresh fruits and vegetables permit shall vend from other than a vehicle or a green cart. No food vendor issued a fresh fruits and vegetables permit shall vend any food other than fresh fruits and vegetables from the green cart or vehicle for which the permit was issued.

2. (a) On and after July thirtieth, nineteen hundred eighty-three, no new full-term permits shall be issued until

the number of such permits which are in effect is less than three thousand. Thereafter, the maximum number of such permits which may be in effect shall be three thousand and no new permits shall be issued in excess of such maximum number. Notwithstanding the limitations on the issuance of new full-term permits, a permit issued prior to July thirtieth, nineteen hundred eighty-three which is in effect shall be renewable by the licensee to whom the permit was issued subject to the provisions of subparagraph (f) of this paragraph and provided that all other requirements for renewal under the provisions of this subchapter and any rules promulgated pursuant thereto are complied with, the license of the person to whom the permit was issued or the permit has not been revoked or suspended and the licensee has not committed a violation or violations which could be a basis for permit or license revocation or suspension.

(b) (i) On and after March fifteenth, nineteen hundred ninety-five, without increasing the number of full-term permits which may be in effect in accordance with subparagraph (a) of this paragraph, two hundred full-term permits shall be designated for use exclusively in specified boroughs as follows:

(A) fifty of such full-term permits shall authorize the holders thereof to vend food from any vehicle or pushcart in any public place in the borough of the Bronx where food vendors are not prohibited from vending;

(B) fifty of such full-term permits shall authorize the holders thereof to vend food from any vehicle or pushcart in any public place in the borough of Brooklyn where food vendors are not prohibited from vending;

(C) fifty of such full-term permits shall authorize the holders thereof to vend food from any vehicle or pushcart in any public place in the borough of Queens where food vendors are not prohibited from vending; and

(D) fifty of such full-term permits shall authorize the holders thereof to vend food from any vehicle or pushcart in any public place in the borough of Staten Island where food vendors are not prohibited from vending.

(ii) After the initial issuance of such permits, the commissioner shall establish a separate waiting list for each of the relevant boroughs to be administered in accordance with procedures to be established by rules of the commissioner. The commissioner may by rule limit the number of places on each such waiting list.

(c) On and after January first, nineteen hundred ninety-five, full-term permits shall be issued only to persons who at the time of application for a permit have not had a full-term permit revoked or suspended and who satisfy the commissioner that they are fit and able to conduct, maintain or operate a food vending business. Except as otherwise provided in item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of this section, no person shall be issued more than one permit, whether full-term or temporary.

(d) The issuance or renewal of a full-term permit pursuant to this subchapter shall be subject to the permittee within three months after the certification of a complete application therefor presenting a pushcart or vehicle for inspection by the department and within six months after such certification, passing such inspection.

(e) The commissioner shall establish a separate waiting list for the issuance of full-term permits pursuant to this subchapter to be administered in accordance with requirements to be established by rules of the commissioner. The commissioner may by rule limit the number of places on such waiting list.

(f) Except as otherwise provided in item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of this section, on and after January first, nineteen hundred ninety-six, and on every renewal date thereafter, a permit holder may not renew more than one permit, whether full-term or temporary. Such permit shall be renewed provided that all other requirements for renewal under the provisions of this subchapter and any rules promulgated pursuant thereto are complied with, the license of the person to whom the permit was issued or the permit has not been revoked or suspended and such person has not committed a violation or violations which could be a basis for permit or license suspension or revocation.

(g) Other than subparagraphs (c), (d) and (f), this paragraph shall not apply to the issuance of fresh fruits and

vegetable permits.

3. (a) Notwithstanding the provisions of paragraph two of this subdivision limiting the number of full-term permits that are authorized to be issued, the commissioner may issue up to a maximum of one hundred additional full-term permits authorizing the holders thereof to vend food from any vehicle or pushcart in any public place in the city of New York where food vendors are not prohibited from vending. Such permits shall be issued only to natural persons who at the time of application for a permit hereunder are not holders of a full-term permit issued pursuant to paragraph two of this subdivision and who have not had a full-term permit revoked or suspended. No person shall be issued more than one permit. Such permits shall be issued in the order in which applications for such permits are received in accordance with the preferences specified in subparagraph (b) of this paragraph and the procedures established by the commissioner. The issuance or renewal of a full-term permit pursuant to this paragraph shall be subject to the permittee within three months after the certification of a complete application therefor presenting a pushcart or vehicle for inspection by the department and, within six months after such certification, passing such inspection. After the initial issuance of such permits, the commissioner shall establish a waiting list, not to exceed four hundred in number, to be administered in accordance with procedures to be established by rules of the commissioner.

(b) Preferences shall be given in the issuance of permits pursuant to this paragraph and in the placement on such waiting list to the following categories of persons in the following order:

(i) Veterans who on August second, nineteen hundred ninety-one held a valid general vendor's license issued by the department of consumer affairs pursuant to subchapter twenty-seven of chapter two of title twenty of the code by virtue of having claimed a disability.

(ii) Disabled veterans.

(iii) Disabled persons.

(iv) Veterans.

(c) A person who has been issued a permit pursuant to this paragraph shall not be eligible to obtain a full-term permit authorized by paragraph two of this subdivision if at the time of application for a full-term permit authorized by such paragraph two such person is a holder of a full-term permit issued pursuant to this paragraph or such person has had a full-term permit issued pursuant to this paragraph revoked or suspended.

(d) This paragraph shall not apply to fresh fruits and vegetables permits.

4. (a) Notwithstanding the provisions of paragraph two of this subdivision limiting the total number of full-term permits that are authorized to be issued, the commissioner may issue up to a maximum of one thousand fresh fruits and vegetable permits, as that term is defined in subdivision r of section 17-306 of this chapter. The initial issuance of these one thousand fresh fruits and vegetables permits shall be phased in over a two-year period. No more than five hundred permits shall be issued during the first year of permit availability, nor shall more than one-half of the number of fresh fruits and vegetables permits designated for use in a borough be issued during the first year of permit availability. During the second year of permit availability the commissioner may issue the remaining five hundred permits along with any permits from the initial five hundred not issued during the first year of permit availability. Thereafter, the maximum number of such permits which may be in effect shall be one thousand and no new permits shall be issued in excess of such number. Each of the one thousand fruits and vegetables permits to be issued pursuant to this paragraph shall be designated for use exclusively in a specified borough as follows:

(i) three hundred fifty of such fruits and vegetables permits shall authorize the holders thereof to vend fresh fruits and vegetables from any vehicle or any green cart in the borough of the Bronx in the areas designated in clause (i) of subparagraph b of this paragraph.

(ii) three hundred fifty of such fruits and vegetables permits shall authorize the holders thereof to vend fresh fruits and vegetables from any vehicle or any green cart in the borough of Brooklyn in the areas designated in clause (ii) of subparagraph b of this paragraph.

(iii) one hundred fifty of such fresh fruits and vegetables permits shall authorize the holders thereof to vend fresh fruits and vegetables from any vehicle or any green cart in the borough of Manhattan in the areas designated in clause (iii) of subparagraph b of this paragraph.

(iv) one hundred of such fresh fruits and vegetables permits shall authorize the holders thereof to vend fresh fruits and vegetables from any vehicle or any green cart in the borough of Queens in the areas designated in clause (iv) of subparagraph b of this paragraph.

(v) fifty of such fresh fruits and vegetables permits shall authorize the holders thereof to vend fresh fruits and vegetables from any vehicle or any green cart in the borough of Staten Island in the areas designated in clause (v) of subparagraph b of this paragraph.

(b) The issuance or renewal of a full-term permit issued pursuant to this paragraph shall be subject to the permittee within three months after the certification of a complete application therefore presenting a green cart or vehicle for inspection by the department and, within six months after such certification, passing such inspection. No person shall be issued more than one permit. Fresh fruits and vegetables permits, in addition to being designated for use exclusively in a borough as specified in subparagraph (a) of this paragraph, shall be designated for use exclusively within the police precincts specified below and shall be subject to the same time and place restrictions for vending in such areas as other food vendors:

(i) Bronx: Police Precincts 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 52;

(ii) Brooklyn: Police Precincts 67, 70, 71, 72, 73, 75, 77, 79, 81, 83;

(iii) Manhattan: Police Precincts 23, 25, 26, 28, 30, 32, 33, 34;

(iv) Queens: Police Precincts 100, 101, 103, 113; and

(v) Staten Island: Police Precinct 120.

(c) Notwithstanding any provision of this section to the contrary, within eight months of the effective date of the local law adding this paragraph, the commissioner may exempt by rule any police precinct specified in subparagraph b of paragraph four of this section upon determining that the rate of consumption of fresh fruits and vegetables in the precinct is not substantially lower than the citywide average and that the precinct does not have an elevated rate of nutrition-related health problems compared to the rest of the city.

(d) Fresh fruits and vegetables permits shall be issued in accordance with the preferences specified in subparagraph (e) of this paragraph and the procedures established by the commissioner. The commissioner shall establish a separate waiting list for each borough, to be administered in accordance with procedures to be established by rules of the commissioner. The commissioner may by rule limit the number of places on each such waiting list.

(e) Preferences shall be given in the issuance of fresh fruits and vegetables permits pursuant to this paragraph and in the placement on any waiting list for such permits to the following categories of persons in the following order:

(i) Persons who, on the effective date of the local law which added this provision, are on any of the existing waiting lists established by the commissioner for the issuance of mobile food unit permits for pushcarts and vehicles. From among those persons within this preference category, additional preference in both the issuance of fresh fruits and vegetables permits and placement on any waiting list for such permits shall be given to those persons who fall within

the following groups of persons in the following order: disabled veterans; disabled persons; veterans.

(ii) Disabled veterans.

(iii) Disabled persons.

(iv) Veterans.

(f) A person who has been issued a permit pursuant to this paragraph shall not be eligible to obtain a full-term permit authorized by paragraphs two or three of this subdivision if at the time of application for a full-term permit authorized by such paragraphs such person is a holder of a full-term permit issued pursuant to this paragraph or such person has had a full-term permit issued pursuant to this paragraph revoked or suspended.

c. It shall be unlawful for any person to operate a commissary, or place of food distribution, or a place wherein five or more pushcarts, or more than one vehicle are stored, without first obtaining a permit.

d. A food vendor's license shall entitle the holder thereof to vend any food which the commissioner or board may authorize or otherwise approve, except that a food vendor vending from a green cart or vehicle with a fresh fruits and vegetables permit shall only be authorized to vend fresh fruits and vegetables. No food vendor while acting as such shall vend any item which the commissioner or board has not authorized or otherwise approved.

e. All licenses and permits issued pursuant to this subchapter shall be valid for two years unless sooner suspended or revoked. The commissioner may issue such licenses and permits to expire at various times during a year. To achieve such staggered expiration dates, initial licenses or permits may be issued for a period up to three years.

f. 1. The commissioner may issue temporary licenses and permits upon the furnishing of information and an application in such form and detail as such commissioner may prescribe and the payment of a fee pro-rated in accordance with the schedule of fees set forth in section 17-308 of this subchapter, but in no event shall the fee for such temporary license be less than ten dollars or the fee for such temporary permit be less than fifteen dollars.

2. In addition to the conditions set forth in section 17-310 of this subchapter a temporary license shall be renewable by the licensee within one year of its expiration date provided that the licensee meets all other requirements for renewal, the license has not been revoked or suspended and the licensee has not committed a violation or violations which could be a basis for license revocation or suspension.

3. (a) (i) On and after July thirtieth, nineteen hundred eighty-three, no new temporary permits shall be issued until the number of such permits which are in effect is less than one thousand. Thereafter, the maximum number of such permits which may be in effect shall be one thousand and no new permits shall be issued in excess of such maximum number. Notwithstanding the limitations on the issuance of new temporary permits, a temporary permit issued prior to July thirtieth, nineteen hundred eighty-three shall be renewable by the licensee to whom the permit was issued within one year of its expiration date subject to the provisions of clause (ii) of this subparagraph and provided that all other requirements for renewal under the provisions of this subchapter and any rules promulgated pursuant thereto are complied with, the license of the person to whom the permit was issued or the permit has not been revoked or suspended and the licensee has not committed a violation or violations which could be a basis for license or permit revocation or suspension.

(ii) (A) Except as otherwise provided in item (B) of this clause, on and after January first, nineteen hundred ninety-six, and on every renewal date thereafter, a permit holder may not renew more than one permit, whether full-term or temporary. Such permit shall be renewed provided that all other requirements for renewal under the provisions of this subchapter and any rules promulgated pursuant thereto are complied with, the license of the person to whom the permit was issued or the permit has not been revoked or suspended and such person has not committed a violation or violations which could be a basis for permit or license suspension or revocation.

(B) (I) Notwithstanding any other provision of law to the contrary, on and after the effective date of the local law which added this subitem, any person who is an exclusive distributor or a manufacturer of a food product and who on February third, nineteen hundred ninety-five was an exclusive distributor or a manufacturer of such food product who held more than one temporary permit issued pursuant to this subchapter, may be issued the number of additional temporary permits such person held on February third, nineteen hundred ninety-five and, in addition, may continue to hold one full-term permit issued pursuant to this subchapter if such exclusive distributor or manufacturer held one full-term permit issued pursuant to this subchapter on the effective date of the local law which added this subitem. A written agreement evidencing an exclusive distributorship shall be proof satisfactory that an applicant for multiple temporary permits was an exclusive distributor of a food product on February third, nineteen hundred ninety-five and is an exclusive distributor of such food product at the time of such application. Any written agreement evidencing an applicant's status as an exclusive distributor on February third, nineteen hundred ninety-five shall have been in effect on such date.

(II) Any person who is eligible for the issuance of additional temporary permits pursuant to subitem (I) of this item shall be issued a maximum of sixty temporary permits.

(III) Additional temporary permits shall be issued pursuant to subitem (I) of this item only to persons who are eligible therefor who have not at the time of application for such additional temporary permits had a permit issued pursuant to this subchapter revoked or suspended and who satisfy the commissioner that they are fit and able to conduct, maintain and operate a food vending business. Such permits shall be renewed provided that all other requirements for renewal under the provisions of this subchapter and any rules promulgated pursuant thereto are complied with, the license of the person to whom the permits were issued or the permits have not been revoked or suspended and such person has not committed a violation or violations which would be a basis for permit or license suspension or revocation.

(IV) Nothing contained in subitem (I) of this item shall be construed as authorizing the issuance of full-term or temporary permits in excess of the numbers of such permits that are authorized to be issued pursuant to paragraph two of subdivision b of this section or clause (i) of this subparagraph.

(b) On and after January first, nineteen hundred ninety-five, temporary permits shall be issued only to persons who have not had a temporary permit revoked or suspended and who satisfy the commissioner that they are fit and able to conduct, maintain or operate a food vending business.

(c) The issuance or renewal of a temporary permit pursuant to this subchapter shall be subject to the permittee within three months after the certification of a complete application therefor presenting a pushcart or vehicle for inspection by the department and within six months after such certification, passing such inspection.

(d) The commissioner shall establish a separate waiting list for the issuance of temporary permits pursuant to this subchapter to be administered in accordance with procedures to be established by rules of the commissioner. The commissioner may by rule limit the number of places on such waiting list.

(e) Temporary permits and temporary licenses issued pursuant to this subchapter shall be valid only during the period of time beginning on April first and ending on October thirty-first of each calendar year.

g. For purposes of determining the number of full-term or temporary permits held by a permittee pursuant to subdivisions b and f of this section, the following provisions shall apply:

1. A natural person shall be deemed to hold the full-term or temporary permits issued in the name of such natural person's unemancipated child, a partnership in which such natural person is a partner, a corporation in which such natural person is an officer, director or shareholder, or a limited liability company in which such natural person is a member, manager or officer.

2. A corporation shall be deemed to hold the full-term or temporary permits issued in the name of:

(a) an officer, director or shareholder of such corporation;

(b) another corporation where such corporation and such other corporation share a common officer, director or shareholder, or such corporation or any of its officers, directors or shareholders has any direct or indirect interest in such other corporation;

(c) a limited liability company where such corporation or any of its officers, directors or shareholders is a member, manager or officer of such limited liability company, or such corporation or any of its officers, directors or shareholders has any direct or indirect interest in such limited liability company; or

(d) a partnership where such corporation or any of its officers, directors or shareholders is a partner in such partnership, or such corporation or any of its officers, directors or shareholders has any direct or indirect interest in such partnership.

3. A limited liability company shall be deemed to hold the full-term or temporary permits issued in the name of:

(a) a member, manager or officer of such limited liability company;

(b) another limited liability company where such limited liability company and such other limited liability company share a common member, manager or officer, or such limited liability company or any of its members, managers or officers has any direct or indirect interest in such other limited liability company;

(c) a corporation where such limited liability company or any of its members, managers or officers is an officer, director or shareholder in such corporation, or such limited liability company or any of its members, managers or officers has any direct or indirect interest in such corporation; or

(d) a partnership where such limited liability company or any of its members, managers or officers is a partner in such partnership, or such limited liability company or any of its members, managers or officers has any direct or indirect interest in such partnership.

4. A partnership shall be deemed to hold the full-term or temporary permits issued in the name of:

(a) a partner of such partnership;

(b) another partnership where such partnership is a partner in such other partnership, such partnership and such other partnership share a common partner, or such partnership or any if its partners has any direct or indirect interest in such other partnership;

(c) a corporation where such partnership or any of its partners is an officer, director or shareholder in such corporation, or such partnership or any of its partners has any direct or indirect interest in such corporation; or

(d) a limited liability company where such partnership or any of its partners is a member, manager or officer in such limited liability company, or such partnership or any of its partners has any direct or indirect interest in such limited liability company.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended L.L. 15/1995 § 3, eff. Feb. 3, 1995.

Subd. b par 1 amended L.L. 9/2008 § 3, eff. June 11, 2008. [See § 17-325.2 Note 1]

Subd. b par 2 subpar (c) amended L.L. 27/1997 § 3, eff. May 5, 1997.

Subd. b par 2 subpar (d) amended L.L. 128/2005 § 1, eff. Dec. 29, 2005 and repealed Oct. 1, 2006. [See Note 2] Subpar (d) has reverted to the same language as that in the main volume.

Subd. b par 2 subpar (f) amended L.L. 27/1997 § 4, eff. May 5, 1997.

Subd. b par 2 subpar g added L.L. 9/2008 § 4, eff. June 11, 2008. [See § 17-325.2 Note 1]

Subd. b par 4 (now par 3) added L.L. 34/1993 § 2 eff. May 18, 1993.

Subd. b par 4 (now par 3) subpar (b) amended L.L. 9/1994 § 1, eff. May 16, 1994.

Subd. b par 3 subpar d added L.L. 9/2008 § 5, eff. June 11, 2008. [See § 17-325.2 Note 1]

Subd. b par 4 added L.L. 9/2008 § 6, eff. June 11, 2008. [See § 17-325.2 Note 1]

Subd. d amended L.L. 9/2008 § 7, eff. June 11, 2008. [See § 17-325.2 Note 1]

Subd. f par 3 amended L.L. 15/1995 § 4, eff. Feb. 3, 1995.

Subd. f par 3 subpar (a) amended L.L. 27/1997 § 5, eff. May 5, 1997. [See Note]

Subd. f par 3 subpar (e) added L.L. 27/1997 § 6, eff. May 5, 1997.

Subd. g added L.L. 15/1995 § 5, eff. Feb. 3, 1995.

**DERIVATION**

Formerly § D22-2.0 added LL 77/1977 § 2

Subs a, f amended LL 17/1983 § 4

(LL 17/1983 § 4 expires 1/31/1986 per LL 17/1983 § 21)

Sub b repealed and added LL 17/1983 § 5

Sub a par 2 amended LL 26/1984 § 1

Sub f par 2 amended LL 26/1984 § 1

**NOTE**

1. Provisions of L.L. L.L. 27/1997 § 1:

Section 1. Legislative findings and intent. The council finds that local law 15 for the year 1995 restricted the number of food vendor permits to be issued to those engaged in the food vending business to one full-term or temporary food vendor permit per individual, corporation, partnership or other business entity in order to stop the amassing of large numbers of permits by any one individual, corporation, partnership or other business entity, and the illegal leasing of such permits by some of these multiple permit holders for exorbitant sums of money. The council further finds that an unintended effect of such local law was the difficulty this one permit limitation created for certain small business owners who held multiple temporary permits and who are exclusive distributors or manufacturers of food such as ice cream sold on a seasonal basis on the streets of the City. These exclusive distributors or manufacturers must rely on their ability to maintain a certain number of pushcarts or vehicles that can legally purvey their food products on the City's streets during a limited season, and such pushcarts or vehicles each need a valid temporary food vendor permit from the City's Department of Health. Without more than one temporary permit, these exclusive distributors or manufacturers cannot maintain the requisite number of pushcarts or vehicles they need during their limited vending season to stay in business and to keep their product available to the City's residents, work force and visiting tourists. The council further finds that through the use of unissued temporary food vendor permits and as currently issued temporary food vendor permits are retired, those exclusive distributors or manufacturers who held multiple temporary food vendor permits before local law 15 for the year 1995 divested them of their additional permits should be allowed to again hold their multiple temporary food vendor permits up to a maximum of a total of sixty temporary food vendor permits. Moreover, multiple temporary food vendor permits should only be issued to persons who were in business as exclusive distributors or manufacturers at the time local law 15 for the year 1995 was enacted and such multiple permits should not be transferable.

**2. Provisions of L.L. 128/2005:**

§ 2. Rules. The department shall promulgate such rules as are necessary for the purposes of implementing and carrying out the provisions of subparagraph (d) (ii).

§ 3. Effective date. This local law shall take effect immediately after its enactment and shall be deemed repealed on October 1, 2006.

**CASE NOTES**

¶ 1. The court upheld the constitutionality of this section as a valid exercise of the police power to regulate use of the city streets so as to promote the health and safety of residents. Big Apple Food Vendors Association v. City of New York, 638 N.Y.S.2d 540 (Sup.Ct. New York Co. 1995), aff'd 1996 Westlaw 332414 (App.Div. 1st Dept.).



Administrative Code of the City of New York



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

*NYC Administrative Code 17-308*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 2 FOOD VENDORS

§ 17-308 Fees.

a. The annual fees for licenses and permits set forth in subdivisions b and c of this section shall be payable at the time of application for a license or permit or renewal thereof, except as otherwise provided in subdivision e of section 17-307 of this subchapter.

b. The annual fee for a license or renewal thereof shall be twenty-five dollars; provided, however, that for an initial license issued for more than two years the applicable license fee shall be increased proportionally to the nearest quarter year.

c. The annual fee for a permit or renewal thereof shall be:

1. For a pushcart or vehicle selling prepackaged food or for a fresh fruits and vegetables permit: fifty dollars for the first year and twenty-five dollars for each year thereafter.

2. For a vehicle selling foods prepared or processed therein: one hundred dollars.

d. The fee for issuing a duplicate license, permit or plate when the original has been lost, destroyed or mutilated shall be: ten dollars.

e. A person holding a license pursuant to the provisions of article four of the general business law shall be

exempt from the payment of fees set forth in this section.

f. The fees provided for herein shall be in addition to any fees required pursuant to the New York city health code or the New York state sanitary code.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. c par 1 amended L.L. 9/2008 § 8, eff. June 11, 2008. [See

§ 17-325.2 Note 1]

**DERIVATION**

Formerly § D22-3.0 added LL 77/1977 § 2

Sub d amended LL 51/1979 § 1

Sub c par 1 amended LL 17/1983 § 6

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

*NYC Administrative Code 17-308.1*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 2 FOOD VENDORS

§ 17-308.1 Domestic Partners.

For purposes of this subchapter, the rights and benefits bestowed upon the surviving spouse of an honorably discharged member of the armed forces of the United States pursuant to article four of the general business law shall also be bestowed upon the surviving domestic partner of such veteran.

**HISTORICAL NOTE**

Section added L.L. 27/1998 § 20, eff. Sept. 5, 1998.

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

*NYC Administrative Code 17-309*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 2 FOOD VENDORS

§ 17-309 Applications; hearings.

a. All applications for a license or permit shall be accompanied by payment of the fee and shall be in such form and detail as the commissioner may prescribe.

b. In addition to any other information required, the commissioner shall require the following information:

1. The name, home and business address of the applicant. If the applicant is applying for a permit to vend food from a vehicle or pushcart in a public place, the name, home address and license number of every food vendor who will be authorized to operate such applicant's vehicle or pushcart and the legal relationship between such applicant and such food vendor.

2. A description of the food to be offered for sale and a description of the vehicle or pushcart to be used and a statement whether or not the application is for a fresh fruits and vegetables permit.

3. Three prints of a full-face photograph of the applicant taken not more than thirty days prior to the date of the application.

4. Proof that the applicant has obtained a certificate of authority to collect sales taxes pursuant to section eleven hundred thirty-four of the tax law and has a tax clearance certificate from the state tax commission of the state of New

York.

5. Whether such applicant is an individual, partnership or other association, or a corporation or limited liability company and if such applicant is an individual applying for a permit to vend food from a vehicle or pushcart in a public place, whether any of such applicant's unemancipated children hold such permits; if a partnership, limited liability company or other association, the name and address of each partner, member, officer or manager of such entity; if a corporation, the names and addresses of the officers, directors and shareholders.

6. An applicant who is a non-resident of the city shall provide the name and address of a registered agent within the city or designate the commissioner as his or her agent upon whom process or other notification may be served.

7. No City officer or employee shall inquire about an applicant's immigration or citizenship status as part of an application made pursuant to this section. Information about an applicant's immigration or citizenship status shall not affect the consideration of the application for a food vendor's license or renewal thereof.

8. Proof that the applicant has obtained the appropriate seal of approval from a weights and measures official for his or her weighing or measuring device or system as required under section one hundred eighty-three of the agriculture and markets law.

c. Only a licensed food vendor may be issued a vehicle or pushcart permit. The application for such permit shall set forth the information required in paragraphs one, two, four, five, six and seven of subdivision b of this section and such other information as the commissioner may prescribe.

d. Upon approval of an application the commissioner shall issue a license to the applicant for a license and a permit and plate to the applicant for a vehicle or pushcart permit. Such license shall contain the name and address of the licensee, his or her license number and a non-removable photograph of such licensee. The plate shall indicate whether or not the permit is a fresh fruits and vegetable permit.

e. Repealed.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b par 1 amended L.L. 15/1995 § 6, eff. Feb. 3, 1995.

Subd. b par 2 amended L.L. 9/2008 § 9, eff. June 11, 2008. [See § 17-325.2 Note 1]

Subd. b par 5 amended L.L. 15/1995 § 7, eff. Feb. 3, 1995.

Subd. b par 7 repealed and added L.L. 66/2005 § 2, eff. Aug. 10, 2005. [See Note 1]

Subd. d amended L.L. 9/2008 § 10, eff. June 11, 2008. [See § 17-325.2 Note 1]

Subd. e repealed L.L. 15/1995 § 8, eff. Feb. 3, 1995.

**DERIVATION**

Formerly § D22-4.0 added LL 77/1977 § 2

Sub d amended LL 51/1979 § 2

Sub b par 8 added LL 45/1981 § 1

Sub b pars 1,2 amended LL 17/1983 § 7

Sub c amended LL 17/1983 § 8

Sub d amended LL 17/1983 § 9

**NOTE**

1. Provisions of L.L. L.L. 66/2005:

Section 1. Legislative findings and intent.

New York has a longstanding history as a home to immigrants from around the world who have always contributed to the vibrant diversity of our city. Street vendors of New York City, many of whom are immigrants, are small business owners who work hard to support their families and contribute to the economic development of their neighborhoods. Every day millions of New Yorkers and tourists enjoy the cultural diversity that these vendors bring to our community.

Although immigrants have vended on city streets for many decades, they have often been the targets for anti-immigrant hostility. In an attempt to clear the Lower East Side of Jewish, Italian and other ethnic vendors, the City began prohibiting non-citizens from vending as early as 1938. Recognizing this history and the City's current commitment to justice and diversity, the City finds that all applicants for general vendor and food vendor licenses should be treated equally and subjected to the same requirements.

The City's interests in community health and safety, administrative efficiency and justice are best served by a system where immigrants can more fully participate in the City's economy and services. Recent Executive Orders Nos. 34 and 41 place new restrictions on the types of private information the City is allowed to collect or disclose, including immigration information. Respect for privacy and confidentiality is essential to ensure the effective performance of the City's many services. Street vendors should be able to access government services without fear that their personal information will be collected or disseminated.

Allowing greater access to the City's services will help vendors successfully integrate into the City's small business system and cooperate with City agencies. Vendors will provide more revenue to the City through licensing fees and taxation. Through its health code, the City will be more able to control and regulate the sale and hygiene of food. More residents will be able to support their families, including those who began to vend in the streets as their only option for survival after losing their jobs as a result of the September 11 terrorist attacks. By providing greater access to vending licenses, the City will encourage equality and entrepreneurship.

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*NYC Administrative Code 17-310*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 2 FOOD VENDORS

§ 17-310 Renewal of license or permit.

a. An application for renewal of a license or permit shall be filed with the appropriate fee for such renewal, with a tax clearance certificate issued by the state tax commission of the state of New York, and with a tax clearance certificate issued by the commissioner of finance, in such form and containing such information as he or she shall require, indicating payment of all applicable taxes imposed by title eleven of the code and administered by the commissioner of finance, at least thirty days prior to the expiration date of the existing license or permit. The commissioner of finance shall charge and collect a fee of ten dollars for issuing a tax clearance certificate.

b. The commissioner of finance shall promulgate rules and regulations establishing (1) such standards of sales tax payments sufficient to indicate that operating as a food vendor is a full-time or part-time occupation of the licensee and (2) that a minimum payment of all applicable sales and business taxes imposed by title eleven of the code and administered by the commissioner of finance have been paid during the preceding calendar year.

**HISTORICAL NOTE**

Section heading amended L.L. 15/1995 § 9, eff. Feb. 3, 1995.

Section added chap 907/1985 § 1

Subd. a amended L.L. 33/1987 § 1.

Subd. b relettered (formerly subd. c) L.L. 15/1995 § 9, eff. Feb. 3, 1995.

Subd. b repealed L.L. 15/1995 § 9, eff. Feb. 3, 1995.

**DERIVATION**

Formerly § D22-5.0 added LL 77/1977 § 2

Amended LL 54/1982 § 1

Amended LL 17/1983 § 10



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

*NYC Administrative Code 17-311*

Administrative Code of the City of New York

Title 17 Health

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§ 17-311 Display of license or plate.

a. Each food vendor shall carry his or her license upon his or her person and it shall be exhibited upon demand to any police officer, public health sanitarian or other authorized officer or employee of the city.

b. The food vendor's license shall be worn conspicuously by him or her at all times while he or she is operating as a food vendor.

c. The permit plate shall be firmly affixed to the vending vehicle or pushcart in a conspicuous place.

d. Vendors issued fresh fruits and vegetables permits pursuant to paragraph four of subdivision b of section 17-307 of the administrative code of the city of New York shall carry upon their person a laminated or similarly durable and easily readable map, prepared and issued to them by the commissioner, designating those areas of the city in which they are authorized to vend. Those persons issued a fresh fruits and vegetables permit found to be vending from green carts and vehicles in precincts other than those designated on their borough-specific permits shall be deemed to be operating such vehicle or pushcart without a permit.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. d added L.L. 9/2008 § 11, eff. June 11, 2008. [See § 17-325.2 Note 1]

**DERIVATION**

Formerly § D22-6.0 added LL 77/1977 § 2

Amended LL 51/1979 § 3

Sub c amended LL 17/1983 § 11



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

*NYC Administrative Code 17-312*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

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§ 17-312 Notification of change.

The commissioner shall be notified of any change in the information provided on an application for a license or a permit within ten days of such change.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D22-7.0 added LL 77/1977 § 2



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

*NYC Administrative Code 17-313*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 2 FOOD VENDORS

§ 17-313 Bookkeeping requirements.

Each food vendor shall keep such written records as the commissioner or board may prescribe of daily gross sales, purchases and expenses, including receipts for expenditures, and shall make such records available for inspection by any authorized officer or employee of the city.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D22-8.0 added LL 77/1977 § 2

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

*NYC Administrative Code 17-314*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 2 FOOD VENDORS

§ 17-314 Duties of licensees and permittees.

Each person issued a food vendor license or a permit to vend food from a vehicle or pushcart in a public place shall:

a. Permit regular inspections by the department of any vehicle or pushcart used in the operation of his or her business, any premises under his or her control in which food intended to be sold or offered for sale by him or her as a food vendor is prepared, processed or stored and present such vehicle or pushcart for inspection at such place and time as may be designated by the department;

b. Provide to the commissioner or any other authorized officer or employee of the city, the addresses and names of the owners of such service rooms, commissaries or distributors from whom such licensee receives his or her food and also the address at which such vendor stores his or her food and vehicle or pushcart;

c. Not use or permit anyone else to use a food vending vehicle or pushcart for vending any foods other than those authorized for sale by the commissioner or board unless prior written approval has been obtained from the commissioner or board; provided, however, that an exclusive distributor who has been issued more than one temporary permit pursuant to subitem (I) of item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of section 17-307 of this subchapter must primarily vend or permit anyone else using a pushcart or vehicle for which such exclusive distributor has a temporary permit to primarily vend, the food product that was the subject of the exclusive distribution agreement that such exclusive distributor had with a manufacturer on February third, nineteen hundred

ninety-five, and, provided further, that a manufacturer who has been issued more than one temporary permit pursuant to subitem (I) of item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of section 17-307 of this subchapter must primarily vend or permit anyone else using a pushcart or vehicle for which such manufacturer has a temporary permit to primarily vend, the product that such manufacturer sold from a pushcart or vehicle on February third, nineteen hundred ninety-five;

d. Surrender his or her license, permit and plate promptly to the commissioner upon revocation, suspension, termination or expiration of his or her license or permit;*17

**HISTORICAL NOTE**

Section amended L.L. 15/1995 § 10, eff. Feb. 3, 1995.

Section added chap 907/1985 § 1

Subd. c amended L.L. 27/1997 § 7, eff. May 5, 1997.

**DERIVATION**

Formerly § D22-9.0 added LL 77/1977 § 2

Subs d, e amended LL 51/1979 § 4

Subs a, b, c amended LL 17/1983 § 12

**FOOTNOTES**

17

[Footnote 17]: * So in original. ("permit;" should be "permit.")

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

*NYC Administrative Code 17-314.1*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 2 FOOD VENDORS

§ 17-314.1 Transferability.

a. No license, permit or plate issued under this subchapter shall be assignable or transferable.

b. No vehicle or pushcart used to vend food in a public place shall be assignable or transferable with a license, permit or plate that has been issued under this subchapter attached thereto.

c. A transfer in violation of this section shall be deemed to have occurred where, if a corporation is the permittee, there has been a change in fifty percent or more of the ownership interest in such corporation from the ownership interest existing on the date the permit was issued, or where the permittee is a limited liability company, where there has been the addition of any member, and where the permittee is a partnership, where there has been the addition of any partner. Furthermore, any such transfer in an exclusive distributor or a manufacturer who has been issued more than one temporary permit pursuant to item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of section 17-307 of this subchapter shall result in the automatic revocation of all such additional temporary permits issued to such persons pursuant to such provision.

d. Notwithstanding the provisions in subdivisions a, b and c of this section:

1. the commissioner may, in his or her discretion, transfer a permit to a dependent husband, wife, domestic partner or child of an incapacitated or deceased person to whom the permit was issued under this subchapter;

2. an exclusive distributor or a manufacturer who has been issued more than one temporary permit pursuant to item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of section 17-307 of this subchapter may lease a vehicle or pushcart owned by such exclusive distributor or manufacturer with such exclusive distributor's or manufacturer's temporary permit attached thereto to a person licensed as a food vendor pursuant to this subchapter if (a) such exclusive distributor or manufacturer files with the department the bill of sale or other proof of ownership for such vehicle or pushcart with a duly issued sales tax receipt attached thereto; (b) such lease agreement sets forth the food product which may be primarily sold using such vehicle or pushcart; and (c) such lease agreement is approved by the department, provided, however, that if such lease agreement is not approved or disapproved within thirty calendar days after such lease agreement is filed with the department, such lease agreement shall be deemed to be approved by the department. The commissioner shall promulgate rules establishing the standards by which the department shall evaluate such lease agreements and such standards shall include, but not be limited to, requirements that such lease agreements contain fair and reasonable terms based upon such factors as the cost of purchasing and maintaining such pushcart or vehicle and that the terms of such lease agreement are the result of an arm's length negotiation between the parties thereto. Subleasing of any such vehicle or pushcart owned by such exclusive distributor or manufacturer with such exclusive distributor's or manufacturer's temporary permit attached thereto is strictly prohibited. Authorized officers and employees of the department of small business services and the department of investigation may assist the commissioner and the department in effectuating the provisions of this paragraph. Any violation or violations of the provisions of this paragraph or any rules promulgated hereunder by an exclusive distributor or a manufacturer who has been issued more than one temporary permit pursuant to item (B) of clause (ii) of subparagraph (a) of paragraph three of subdivision f of section 17-307 of this subchapter may be the basis for suspension or revocation of all of the permits issued to such exclusive distributor or manufacturer pursuant to this subchapter.

**HISTORICAL NOTE**

Section added L.L. 15/1995 § 11, eff. Feb. 3, 1995.

Subd. c amended L.L. 27/1997 § 8, eff. May 5, 1997.

Subd. d amended L.L. 27/1997 § 8, eff. May 5, 1997.

Subd. d par 1 amended L.L. 27/1998 § 21, eff. Sept. 5, 1998.

Subd. d par 2 amended L.L. 34/2002 § 9, eff. Nov. 7, 2002.

Subd. d par 2 amended L.L. 27/1997 § 9, eff. Sept. 2, 1997.

**CASE NOTES**

¶ 1. ALJ recommends revocation of vendor's mobile food vendor permit and denial of new license to vendor due to unlawful transfer of permit decal from original cart to a different cart by means of a metal cutter and rivets. Dep't of Health & Mental Hygiene v. Madkour, OATH Index No. 2237/05 (Sept. 23, 2005).

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

*NYC Administrative Code 17-315*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 2 FOOD VENDORS

§ 17-315 Restrictions on the placement of vehicles and pushcarts; vending in certain areas restricted or prohibited.

a. No pushcart shall be placed upon any sidewalk unless said sidewalk has at least a twelve foot clear pedestrian path to be measured from the boundary of any private property to any obstruction in or on the sidewalk, or if there are no obstructions, to the curb. In no event shall any pushcart be placed on any part of a sidewalk other than that which abuts the curb.

b. No vending vehicle or pushcart or any other item related to the operation of a food vendor's business shall touch, lean against or be affixed permanently or temporarily in any building or structure including, but not limited to, lamp posts, parking meters, mail boxes, traffic signal stanchions, fire hydrants, tree boxes, benches, bus shelters, refuse baskets or traffic barriers.

c. All items relating to the operation of a food vending business shall be kept in or under the vending vehicle or pushcart, except that samples of the non-perishable items sold may be displayed on the vending vehicle or pushcart. No items relating to the operation of a food vending business other than an adjoining acceptable waste container shall be placed upon any public space adjacent to the vending vehicle or pushcart, and no food shall be sold except from an authorized vehicle or pushcart.

d. No vending pushcart shall be located against display windows of fixed location businesses, nor shall they be within twenty feet of an entranceway to any building, store, theatre, movie house, sports arena or other place of public

assembly.

e. No food vendor shall vend within any bus stop, within ten feet of any driveway, any subway entrance or exit, or any crosswalk at any intersection.

f. Each food vendor who vends from a pushcart or vehicle in the roadway shall obey all traffic and parking laws, rules and regulations as now exist or as may be promulgated, but in no case shall a food vendor vend so as to restrict the continued maintenance of a clear passageway for vehicles.

g. Repealed.

h. No food vendor shall vend on the median strip of a divided roadway unless such strip is intended for use as a pedestrian mall or plaza.

i. No vendor shall vend within areas under the jurisdiction of the department of parks and recreation unless written authorization therefor has been obtained from the commissioner of such department, but nothing therein contained shall exempt any vendor from obtaining a license and permit in accordance with this subchapter.

j. Where exigent circumstances exist and a police officer or other authorized officer or employee of the city gives notice to a food vendor to temporarily move from a location such vendor shall not vend from such location. For the purpose of this subdivision, exigent circumstances shall include but not be limited to, unusually heavy pedestrian or vehicular traffic, existence of any obstructions in the public space at or near such location, an accident, fire or other emergency situation at or near such location, or a parade, demonstration, or other such event or occurrence at or near such location.

k. No food vendor shall vend on any street at any time where and when the operation of any food vending business is prohibited pursuant to either local law or section 20-465.1 of the code and any rules promulgated pursuant thereto. No food vendor shall vend in the area including and bounded on the east by the easterly side of Broadway, on the south by the southerly side of Liberty Street, on the west by the westerly side of West Street and on the north by the northerly side of Vesey Street.

l. Food vendors shall be prohibited from vending on the following streets at the following days and times:

BOROUGH OF MANHATTAN

Third Avenue: East 40th to East 57th Street, Monday through Friday, 8 am to 6 pm; East 58th to East 60th Street, Monday through Saturday, 8 am to 9 pm; Lexington Avenue: East 40th to East 57th Street, Monday through Saturday, 8 am to 7 pm; East 58th to East 60th Street, Monday through Saturday, 8 am to 9 pm; East 61st to East 69th Street, Monday through Saturday, 8 am to 6 pm; Park Avenue: East 34th to East 42nd Street, Monday through Friday, 8 am to 7 pm; East 55th to East 59th Street, Monday through Friday, 10 am to 7 pm; Vanderbilt Avenue: East 42nd to East 45th Street, Monday through Friday, 8 am to 7 pm; Madison Avenue: East 34th to East 45th Street, Monday through Friday, 8 am to 6 pm; East 46th to East 59th Street, Monday through Saturday, 10 am to 7 pm; Fifth Avenue: 32nd to 59th Street, Monday through Saturday, 8 am to 7 pm; Avenue of the Americas: West 32nd to West 59th Street, Monday through Saturday, 8 am to 7 pm; Broadway: West 32nd to West 52nd Street, Everyday, 8 am to 8 pm; Seventh Avenue: West 33rd to West 34th Street, Monday through Saturday, 8 am to 6 pm; West 35th to West 45th Street, Monday through Saturday, 8 am to midnight; West 46th to West 52nd Street, Monday through Saturday, 2 pm to 7 pm; Fourteenth Street: Broadway to Seventh Avenue, Monday through Saturday, noon to 8 pm; West Thirty-fourth Street: Fifth Avenue to Seventh Avenue, Monday through Saturday, 8 am to 7 pm; Fortysecond Street: Third Avenue to Eighth Avenue, Monday through Saturday, 8 am to 7 pm; West Forty-third Street: Broadway to Eighth Avenue, Wednesday and Saturday, noon to 11 pm; Sunday, noon to 6 pm; Other days, 7 pm to 11 pm; West Forty-fourth Street: Broadway to Eighth Avenue, Wednesday and Saturday, noon to 11 pm; Sunday, noon to 6 pm; Other days, 7 pm to 11 pm; West Forty-fifth Street: Broadway to Eighth Avenue, Wednesday and Saturday, noon to 11 pm; Sunday, noon to 6 pm; Other

days, 7 pm to 11 pm; West Forty-sixth Street: Seventh to Eighth Avenues, Wednesday and Saturday, noon to 11 pm; Sunday, noon to 6 pm; Other days, 7 pm to 11 pm; West Forty-seventh Street: Fifth to Eighth Avenues, Wednesday and Saturday, noon to 11 pm; Sunday, noon to 6 pm; Other days, 7 pm to 11 pm; West Forty-eighth Street: Broadway to Eighth Avenues, Wednesday and Saturday, noon to 11 pm; Sunday, noon to 6 pm; Other days, 7 pm to 11 pm; West Forty-ninth Street: Broadway to Eighth Avenues, Wednesday and Saturday, noon to 11 pm; Sunday, noon to 6 pm; Other days, 7 pm to 11 pm; West Fiftieth Street: Broadway to Eighth Avenues, Wednesday and Saturday, noon to 11 pm; Sunday, noon to 6 pm; Other days, 7 pm to 11 pm; West Fifty-first Street: Broadway to Eighth Avenues, Wednesday and Saturday, noon to 11 pm; Sunday, noon to 6 pm; Other days, 7 pm to 11 pm; West Fifty-second Street: Broadway to Eighth Avenues, Wednesday and Saturday, noon to 11 pm; Sunday, noon to 6 pm; Other days, 7 pm to 11 pm; West Fifty-third Street: Broadway to Eighth Avenues, Wednesday and Saturday, noon to 11 pm; Sunday, noon to 6 pm; Other days, 7 pm to 11 pm.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. c amended L.L. 39/2006 § 2, eff. Dec. 16, 2006. [See Note 1]

Subd. g repealed L.L. 14/1995 § 1, eff. Feb. 3, 1995.

Subd. k amended chap 11/2004 § 2, eff. Mar. 5, 2004 and retroactive to

Feb. 28, 2003.

Subd. k amended L.L. 14/1995 § 2, eff. Feb. 3, 1995.

**DERIVATION**

Formerly § D22-10.0 added LL 77/1977 § 2

Subs a, b, d, e, g amended LL 17/1983 § 13

Sub c repealed LL 17/1983 § 14

Subs l, m added LL 17/1983 § 15

**NOTE**

1. Provisions of L.L. L.L. 39/2006:

Section 1. Declaration of legislative findings and intent. The Council of the City of New York hereby finds that the Administrative Code of the City of New York contains several provisions that are either outdated, in need of modification or are no longer practical and the enforcement of which has a detrimental impact upon the City's small business community. It is the Council's intention to modify or repeal these antiquated and problematic provisions of the Administrative Code in a first effort to improve the small business environment in New York City so that these businesses can thrive.

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*NYC Administrative Code 17-316*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 2 FOOD VENDORS

§ 17-316 Prohibitions.

No person shall sell, give or otherwise transfer any food to an unlicensed food vendor for resale.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D22-11.0 added LL 77/1977 § 2



Administrative Code of the City of New York



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

*NYC Administrative Code 17-317*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 2 FOOD VENDORS

§ 17-317 Issuance, renewal, suspension and revocation of licenses and permits.

a. The commissioner may refuse to issue a food vendor license or a permit to vend food from a vehicle or pushcart in a public place, and may, after due notice and an opportunity to be heard, in addition to any other penalties provided herein, refuse to renew, suspend or revoke a food vendor license or a permit to vend food from a vehicle or pushcart in a public place, upon the occurrence of any one or more of the following conditions:

1. the applicant, licensee, permittee, its officers, directors, shareholders, members, managers or employees have made a material false statement or concealed a material fact in connection with:

(a) an application for a food vendor license or a permit to vend food from a vehicle or pushcart in a public place; or

(b) the sale of any item of food.

2. the applicant, licensee, permittee, its officers, directors, shareholders, members, managers or employees have been found guilty of four or more violations of this subchapter or any rules promulgated pursuant thereto within a two-year period or have been found guilty of a violation of the provisions of part fourteen of the state sanitary code or of the New York city health code, or the applicant, licensee, permittee, its officers, directors, shareholders, members, managers or employees have pending any unanswered summonses for violation of this subchapter or any rules

promulgated pursuant thereto.

3. the applicant, licensee, permittee, its officers, directors, shareholders, members, managers or employees have been convicted of any offense which, in the judgment of the commissioner, has a direct relationship to such person's fitness or ability to perform any of the activities for which a license or permit is required under this subchapter or has been convicted of any other offense which, in accordance with article twenty-three-a of the correction law, would provide a justification for the commissioner to refuse to issue or renew, or to suspend or revoke, such license or permit.

4. with respect to renewal of a food vendor license, a licensee is not in compliance with the rules promulgated by the commissioner of finance pursuant to subdivision b of section 17-310 of this subchapter.

5. A licensee issued a "fresh fruits and vegetables" permit, pursuant to paragraph 4 of subdivision b of section 17-307 of this subchapter, is found to be vending food other than fresh fruits and vegetables or is found to be vending in a police precinct other than one in which the licensee is authorized to vend in accordance with his (her) borough-specific permit.

b. The commissioner shall not issue or renew a food vendor license or a permit to vend food from a vehicle or pushcart in a public place if the applicant, licensee, permittee, its officers, directors, shareholders, members, managers or employees have failed to pay any fine, penalty or judgment duly imposed pursuant to the provisions of this subchapter or any rules promulgated thereunder.

c. The commissioner, for good cause, may, prior to giving notice and an opportunity to be heard, suspend a license or permit issued pursuant to this subchapter for a period of up to ten days. Notice of such suspension shall be served on the licensee or permittee. The commissioner shall provide the licensee or permittee with the opportunity for a hearing within ten days after the notification of suspension, after which the commissioner shall forthwith make a determination as to whether such suspension should continue and the length of such suspension, and in addition may impose any penalty or sanction authorized by this subchapter or any rules promulgated pursuant thereto.

d. Unless otherwise provided in section 17-314.1 of this subchapter, the commissioner shall not renew a permit to vend food from a vehicle or pushcart in a public place where the permittee has died if the permittee is a natural person, or if the permittee is a corporation, where there has been a change in fifty percent or more of the ownership interest in such corporation from the ownership interest existing on the date the permit was issued; where the permittee is a limited liability company, where there has been the addition of any member or where such limited liability company has been dissolved, and where the permittee is a partnership, where there has been the addition of any partner or where such partnership has been dissolved.

e. Each applicant, licensee and permittee shall notify the department in writing by registered mail, return receipt requested, within three business days of receipt of a notice of service of a summons for a violation relating to conducting, maintaining or operating a food vending business and a conviction of such applicant, licensee, permittee, its officers, directors, shareholders, members, managers or employees for any offense occurring after the filing date of the application for a license or permit or a renewal thereof or occurring during the term of the license or permit.

f. Any person issued a food vendor license pursuant to this subchapter who commits three or more violations of the provisions of this subchapter and any rules promulgated thereunder within a two year period shall have his or her food vendor license revoked.

**HISTORICAL NOTE**

Section repealed and added L.L. 15/1995 § 12, eff. Feb. 3, 1995.

Section added chap 907/1985 § 1.

Subd. a par 5 added L.L. 9/2008 § 12, eff. June 11, 2008. [See

§ 17-325.2 Note 1]

Subd. f added L.L. 27/1997 § 10, eff. May 5, 1997.

**DERIVATION**

Formerly § D22-12.0 added LL 77/1977 § 2

Sub d amended LL 51/1979 § 5

**CASE NOTES**

¶ 1. Under subsection (a)(1)(a) of this section, the Commissioner may refuse to renew a food vendor license where the licensee made a material false statement or concealed a material fact in connection with an application for a food vendor license. Vendor, who defaulted in this matter and in an earlier license revocation matter, obtained a new mobile food vendor license by concealing his true identity and making false statements in his application for a new license, for which he was ineligible based on his record as a scofflaw. Vendor was guilty of more than four rule violations within the two-year period. ALJ recommends revocation of mobile food vendor license issued by agency as a result of deception and denial of any new or renewal license to vendor. Dep't of Health & Mental Hygiene v. Hassan, OATH Index No. 405/06 (Sept. 26, 2005).



Administrative Code of the City of New York



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

*NYC Administrative Code 17-318*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 2 FOOD VENDORS

§ 17-318 Notice; hearings.

Unless otherwise specifically provided, notice and hearing upon denial of an application or suspension or revocation of a license shall be in accordance with applicable provisions of the New York city health code.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D22-13.0 added LL 77/1977 § 2

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

*NYC Administrative Code 17-320*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

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§ 17-320 Exemptions.

a. The commissioner or board may promulgate rules exempting any non-profit association, including but not limited to a government agency, charitable, educational, religious or other such organization, from compliance with any of the provisions of this subchapter.

b. Notwithstanding any other provision of this subchapter, a person may be issued more than one full-term or temporary food vendor permit to vend in any area under the jurisdiction of the department of parks and recreation pursuant to an agreement entered into in accordance with chapter fourteen of the charter. Such person shall be exempt from any provisions of this subchapter restricting the number of full-term or temporary food vendor permits that may be issued to any one person and the full-term or temporary food vendor permits issued to such persons also shall be exempt from any provisions of this subchapter restricting the total number of full-term and temporary food vendor permits that may be issued. Such permits shall be subject to all other provisions, limitations and conditions imposed by this code or the health code, and all rules promulgated thereunder.

**HISTORICAL NOTE**

Section amended L.L. 23/1999 § 1, eff. May 26, 1999.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D22-15.0 added LL 77/1977 § 2



Administrative Code of the City of New York



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

*NYC Administrative Code 17-321*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 2 FOOD VENDORS

§ 17-321 Enforcement.

a. Public health sanitarians or other authorized officers or employees of the department and police officers shall have the power to enforce all laws, rules and regulations relating to food vendors. This provision shall in no way restrict any other power granted by law to any officer or employee of the city.

b. If a food vendor does not move his or her vehicle or pushcart when directed to do so by a police officer or other authorized officer or employee of the city in compliance with the provisions of subdivision k of section 17-315 of this subchapter, such officer or employee may provide for the removal of such vehicle or pushcart to any garage, automobile pound or other place of safety, and the owner or other person lawfully entitled to the possession of such vehicle or pushcart may be charged with reasonable costs for such removal and storage, payable prior to the release of such vehicle or pushcart.

c. An officer or employee designated in subdivision a of this section may seize any vehicle or pushcart which (i) does not have a permit or (ii) is being used to vend on property owned by the city and under the jurisdiction of a city agency including, but not limited to, the department of parks and recreation or the department of small business services, without the written authorization of the commissioner of such department, or (iii) is being used by an unlicensed vendor, or (iv) is being used to vend in the area including and bounded on the east by the easterly side of Broadway, on the south by the southerly side of Liberty Street, on the west by the westerly side of West Street and on the north by the northerly side of Vesey Street, or (v) is selling food not authorized by the permit, and may seize any

food sold or offered for sale from such vehicle or pushcart. Such vehicle, pushcart or food shall be subject to forfeiture as provided in section 17-322 of this subchapter. If a forfeiture proceeding is not commenced, the vendor may be charged with the reasonable costs for removal and storage payable prior to the release of such food, vehicle or pushcart unless the charge of vending without a permit or vending without a license or vending without the authorization of such commissioner is dismissed.

d. If a food vendor operates any food vending business on any street at any time where and when the operation of any food vending business is prohibited pursuant to the provisions of section 20-465.1 of the code and any rules promulgated pursuant thereto, or if a food vendor operates a food vending business in the area including and bounded on the east by the easterly side of Broadway, on the south by the southerly side of Liberty Street, on the west by the westerly side of West Street and on the north by the northerly side of Vesey Street, any authorized officer or employee of the city or member of the New York city police department is authorized to provide for the removal of such food vendor's food, vehicle or pushcart to any garage, automobile pound or other place of safety, and the owner or other person lawfully entitled to the possession of such vehicle or pushcart or food may be charged with reasonable costs for removal and storage.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. c amended L.L. 9/2008 § 13, eff. June 11, 2008. [See § 17-325.2 Note 1]

Subd. c amended chap 11/2004 § 3, eff. Mar. 5, 2004 and retroactive to Feb. 28, 2003.

Subd. d amended chap 11/2004 § 4, eff. Mar. 5, 2004 and retroactive to Feb. 28, 2003.

Subd. d amended L.L. 14/1995 § 3, eff. Feb. 3, 1995.

**DERIVATION**

Formerly § D22-16.0 added LL 77/1977 § 2

Sub c amended LL 35/1979 § 1

Sub c amended LL 50/1979 § 3

Subs b, c amended LL 17/1983 § 16

Sub d added LL 17/1983 § 17

Sub c repealed and added LL 26/1984 § 2



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

*NYC Administrative Code 17-322*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

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§ 17-322 Forfeitures.

a. In addition to any penalties imposed pursuant to subdivision a of section 17-325 of this subchapter upon any person found guilty of violating subdivision a, b or c of section 17-307 of this subchapter, all property seized pursuant to this subchapter shall be subject to forfeiture upon notice and judicial determination. Notice of the institution of the forfeiture proceeding shall be in accordance with the provisions of the civil practice law and rules.

b. The police department having custody of the seized property, after judicial determination of forfeiture shall, upon a public notice of at least five days, sell such forfeited property at public sale. The net proceeds of such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the city of New York.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D22-17.0 added LL 77/1977 § 2

Sub b amended LL 57/1983 § 2

**CASE NOTES**

¶ 1. Where the City establishes at a hearing that none of the individuals selling food from the subject vending cart had a proper license, the City had the authority, under the enforcement provisions of the food vending statute, to order forfeiture of the cart. City of New York v. Nadler, 759 N.Y.S.2d 49 (App.Div. 1st Dept. 2003).



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

*NYC Administrative Code 17-323*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 2 FOOD VENDORS

§ 17-323 Seizure of perishable food.

In the event that a seizure made pursuant to this subchapter shall include any perishable item of food which cannot be retained in custody without such item becoming unwholesome, putrid, decomposed or unfit in any way, the commissioner may order such item destroyed or otherwise disposed of provided, however, that written notice of such destruction or other disposition setting forth an itemized description of the property, the reason for its destruction or other disposition, and the date when it was destroyed or otherwise disposed of be mailed to the food vendor from whom it was seized within twenty-four hours after such disposition. A copy of such notice shall be kept on file by the department for a period of one year.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D22-18.0 added LL 77/1977 § 2

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

*NYC Administrative Code 17-324*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

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§ 17-324 Rules.

The commissioner or board shall make such rules as deemed necessary for the proper implementation and enforcement of this subchapter.

**HISTORICAL NOTE**

Section amended L.L. 15/1995 § 13, eff. Feb. 3, 1995.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § D22-19.0 added LL 77/1977 § 2



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

*NYC Administrative Code 17-325*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

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§ 17-325 Penalties.

a. Any person who violates the provisions of subdivision a, b, or c of section 17-307 of this subchapter shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred fifty dollars nor more than one thousand dollars, or by imprisonment for not more than three months or by such fine and imprisonment.

b. Except as provided in subdivision a of this section, a person who violates any provision of this subchapter or any of the rules or regulations promulgated hereunder shall be guilty of an offense punishable by the court as follows:

1. For the first violation, a fine of not less than twenty-five nor more than fifty dollars.

2. For the second violation within a period of two years of the date of a first violation, a fine of not less than fifty dollars nor more than one hundred dollars.

3. For a third violation within a period of two years of the date of a first violation, a fine of not less than one hundred dollars nor more than two hundred and fifty dollars, in addition to the remedy provided for in subdivision f of section 17-317 of this subchapter.

4. For any subsequent violations within a period of two years of the date of a first violation, a fine of not less than two hundred fifty dollars nor more than one thousand dollars.

c. 1. In addition to the penalties prescribed by subdivision a of this section, any person who violates, or any person aiding another to violate, the provisions of subdivision a, b, or c of section 17-307 of this subchapter shall be liable for a civil penalty of not less than one hundred fifty dollars nor more than one thousand dollars together with a penalty of one hundred dollars per day for every day during which the unlicensed business operated.

2. In addition to the penalties prescribed by subdivision b of this section, any person who violates any of the provisions of this subchapter, other than subdivision a, b, or c of section 17-307 of this subchapter, or any of the rules and regulations promulgated hereunder shall be liable for a civil penalty as follows:

(a) For the first violation, a penalty of not less than twenty-five nor more than fifty dollars.

(b) For the second violation within a period of two years of the date of a first violation, a penalty of not less than fifty dollars nor more than one hundred dollars.

(c) For the third violation within a period of two years of the date of a first violation, a penalty of not less than one hundred dollars nor more than two hundred and fifty dollars, in addition to the remedy provided for in subdivision f of section 17-317 of this subchapter.

(d) For any subsequent violations within a period of two years of the date of a first violation, a penalty of not less than two hundred fifty dollars nor more than one thousand dollars.

d. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision c of this section shall be commenced by the service of a notice of violation which shall be returnable to the environmental control board or the administrative tribunal established by the board of health. The environmental control board or the board of health's administrative tribunal shall have the power to impose the civil penalties prescribed by subdivision c of this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1.

Subd. b par 3 amended L.L. 27/1997 § 11, eff. May 5, 1997.

Subd. c par 2 subpar (c) amended L.L. 27/1997 § 12, eff. May 5, 1997.

**DERIVATION**

Formerly § D22-20.0 added LL 77/1977 § 2

Repealed and added LL 51/1979 § 6

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

*NYC Administrative Code 17-325.1*

Administrative Code of the City of New York

Title 17 Health

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§ 17-325.1 Failure to display and produce license or permit; presumptive evidence of unlicensed or unpermitted activity.

a. In any civil or criminal action or proceeding, failure by a food vendor who is required to be licensed pursuant to the provisions of this chapter to display and exhibit upon demand a food vendor's license in accordance with the provisions of this chapter to any police officer, public health sanitarian or other authorized officer or employee of the department or other city agency shall be presumptive evidence that such food vendor is not duly licensed.

b. In any civil or criminal action or proceeding, the failure of any vehicle or pushcart which is required to be permitted pursuant to the provisions of this chapter to have a permit plate affixed thereto in accordance with the provisions of this chapter shall be presumptive evidence that such vehicle or pushcart is not duly permitted.

**HISTORICAL NOTE**

Section added L.L. 19/1994 § 1, eff. July 30, 1994.



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

*NYC Administrative Code 17-325.2*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

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§ 17-325.2 Report on green carts.

Not later than fifteen months after the effective date of this local law, and each year thereafter for three years, the department shall submit a report to the council which shall set forth information concerning fresh fruits and vegetables permits and green carts including, but not limited to:

a. the number of applications for permits, disaggregated by borough;

b. the number of permits issued, disaggregated by borough;

c. the number of people on the waiting list, disaggregated by borough; d. the number of violations issued to green carts by anyone authorized to issue such violations, disaggregated by borough, and the location of such carts at the time such violations were issued; and

e. the consumption of fruits and vegetables, disaggregated by neighborhood.

**HISTORICAL NOTE**

Section added L.L. 9/2008 § 14, eff. June 11, 2008. [See Note 1]

**NOTE**

1. Provisions of L.L. L.L. 9/2008:

Section 1. Legislative findings. The Council finds that many New Yorkers suffer from health conditions related to poor nutrition, such as diabetes, heart disease, cancer and high blood pressure. Obesity rates in NYC have increased more than 70% since 1994. More than 1.1 million New Yorkers are obese, and another 2 million are overweight. Similarly, diabetes has more than doubled in NYC over the past 10 years. More than 500,000 adult New Yorkers have diagnosed diabetes and an additional 200,000 have diabetes and do not yet know it.

Poor nutrition, obesity, and diabetes are interconnected. According to one national study, eating fruits and vegetables three or more times a day as opposed to less than once a day is associated with a 42% lower risk of dying from stroke and 24% lower risk of dying from heart disease. Neighborhoods where fruit and vegetable consumption is the lowest have high rates of obesity and diabetes. In neighborhoods with the lowest fruit and vegetable consumption, such as East New York, Bushwick and Bedford-Stuyvesant, as many as one in four adults report that they did not eat a single fruit or vegetable the previous day. The availability of healthy food in the immediate neighborhood has a strong impact on the diet of its residents. In East Harlem, only 4% of small grocery stores sell leafy green vegetables and only 25% sell apples, oranges and bananas. With small grocery stores outnumbering supermarkets by almost three to one in such neighborhoods, residents of low-income neighborhoods have few healthy food options close to home. These findings demonstrate an urgent need to take measures that increase the accessibility of fruits and vegetables in neighborhoods where studies show that consumption of these items is low.

. . . . . .

§ 15. This local law shall take effect on the ninetieth day after it shall have become a law, provided that the commissioner of health and mental hygiene shall be authorized to take any steps necessary to prepare for implementation of the law, including the promulgation of rules, prior to such date.



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

*NYC Administrative Code 17-326*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 3 RENTAL HORSE LICENSING AND PROTECTION LAW*5

§ 17-326 Definitions.

Whenever used in this subchapter the following terms shall have the following meanings:

(a) "Person" means an individual, partnership, corporation, association or other legal entity.

(b) "Veterinarian" means a person licensed to practice veterinary medicine in the state of New York.

(c) "Work", a horse is considered to be at work when it is out of its stable and presented to the public as being available for riding, pulling carriages, vehicles or other devices, or when it is saddled or in harness or when it is being ridden or is pulling a carriage, vehicle or device.

(d) "Owner" means the owner of a horse which is required to be licensed pursuant to this subchapter and the owner of a rental horse business in which such horse is used.

(e) "Riding horse" means a horse which is available to the public for a fee for the purpose of riding.

(f) "Carriage horse" means any horse which is used by its owner or any other person to pull any vehicle, carriage, sled, sleigh or other device in exchange for a fee. A horse rented or leased by its owner to another for any of the foregoing purposes shall be deemed to be a carriage horse for the purposes of this subchapter.

(g) "Rental horse business" means a business enterprise which provides or offers the use of a horse to the public for a fee for the purpose of riding or drawing a horse drawn vehicle or which operates a horse drawn vehicle for hire such as a horse drawn cab.

(h) "Rental horse" means a horse which is used in a rental horse business.

(i) "Under tack" means that a horse is equipped for riding or driving.

(j) "ASPCA" means the American Society for the Prevention of Cruelty to Animals.

(k) "Stable" means any place, establishment or facility where one or more rental horses are housed or maintained.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § E22-2.0 added LL 4/1982 § 1

Renumbered LL 64/1982 § 1

(formerly § D22-2.0)

**FOOTNOTES**

5

[Footnote 5]: * Added LL 4/1982, relettered LL 64/1982 § 1 (formerly Title D)

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*NYC Administrative Code 17-327*

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Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 3 RENTAL HORSE LICENSING AND PROTECTION LAW*5

§ 17-327 License required.

a. On and after January first, nineteen hundred eighty-two no person shall use or offer the use of a horse in a rental horse business unless such horse is licensed pursuant to the provisions of this subchapter. For purposes of this subchapter the use of a horse in a rental horse business means that a horse is used or offered for use by the public for a fee for the purpose of riding or drawing a horse drawn vehicle or is used in the operation of a horse drawn vehicle for hire such as a horse drawn cab.

b. A license shall be issued for a term of one year from the date of issuance thereof and shall be renewed prior to the expiration of such term.

c. The annual fee for a license or the renewal of a license shall be twenty-five dollars.

d. Application for a license or the renewal of a license shall be made to the department of health and mental hygiene. Such application shall contain the name and address of the owner of the horse and of the owner of the rental horse business in which such horse is to be used if such person is not the owner of the horse, the age, sex, color, markings and any other identifying marks such as brands or tattoos of the horse, the location of the stable where the horse is to be kept and any other information which the commissioner of health and mental hygiene may require. An application with respect to a horse which is used in the operation of a "horse drawn cab" as defined in subchapter twenty-one of chapter two of title twenty of this code shall include the identification number required to be inscribed on

such horses hoof pursuant to the rules and regulations of the department of consumer affairs. The application shall be accompanied by the license or renewal fee.

e. No license shall be transferable. Upon the transfer of ownership of any horse to a new owner, the new owner shall obtain a license for such horse within fifteen days after the date of the transfer of ownership.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. d amended L.L. 22/2002 § 25, eff. July 29, 2002 and deemed in

effect as of July 1, 2002.

**DERIVATION**

Formerly § E22-3.0 added LL 4/1982 § 1

Renumbered LL 64/1982 § 1

(formerly § D22-3.0)

**FOOTNOTES**

5

[Footnote 5]: * Added LL 4/1982, relettered LL 64/1982 § 1 (formerly Title D)



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

*NYC Administrative Code 17-328*

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Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 3 RENTAL HORSE LICENSING AND PROTECTION LAW*5

§ 17-328 Identification tag and certificate of license.

a. Each horse licensed pursuant to the provisions of this subchapter shall be assigned an official identification number by the department. Such identification number shall be branded on the hoof of the horse in a manner to be prescribed by the commissioner and shall also be inscribed on a metal tag which shall be attached to the bridle of the horse in a conspicuous place to be specified by the commissioner at all times when the horse is at work. Such tag shall be issued to the owner with the certificate of license. The tag and certificate of license shall be of such form and design and shall contain such information as the commissioner shall prescribe. Duplicate tags and certificates of license shall be issued only upon proof of loss of the original and the payment of a fee of two dollars.

b. The certificate of license shall at all times remain at the stable where the horse is kept and shall be available for inspection by any police officer, agent of the department and the ASPCA, or to veterinarians employed or retained by the department or the ASPCA or employees of the department of consumer affairs or any persons designated by the commissioner to enforce this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § E22-4.0 added LL 4/1982 § 1

Renumbered LL 64/1982 § 1

(formerly § D22-4.0)

**FOOTNOTES**

5

[Footnote 5]: * Added LL 4/1982, relettered LL 64/1982 § 1 (formerly Title D)



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

*NYC Administrative Code 17-329*

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Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 3 RENTAL HORSE LICENSING AND PROTECTION LAW*5

§ 17-329 Disposition of licensed horse.

The department shall be notified of the transfer of ownership or other disposition of a licensed horse within ten days thereafter. Such notice shall include the date of disposition and if sold in New York city, the name and address of the buyer or other transferee and such other information as the commissioner may prescribe. A horse shall not be sold or disposed of except in a humane manner.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § E22-5.0 added LL 4/1982 § 1

Renumbered LL 64/1982 § 1

(formerly § D22-5.0)

**FOOTNOTES**

5

[Footnote 5]: * Added LL 4/1982, relettered LL 64/1982 § 1 (formerly Title D)



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

*NYC Administrative Code 17-330*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 3 RENTAL HORSE LICENSING AND PROTECTION LAW*5

§ 17-330 Regulations.

a. The commissioner, with the advice of the advisory board as hereinafter established, shall promulgate such regulations as are necessary to carry out the provisions of this subchapter and to promote the health, safety and well being of the horses which are required to be licensed hereunder and of members of the public who hire such horses.

b. Horses shall not be left untethered or unattended except when confined in a stable or other enclosure.

c. Standing stalls in stables shall be of a size specified by regulation of the commissioner.

d. Horses shall be adequately quartered. Stables and stalls shall be clean and dry and sufficient bedding of straw, shavings or other suitable materials shall be furnished and changed as often as necessary to maintain them in a clean and dry condition. Adequate heating and ventilation shall be maintained in stables as prescribed by the commissioner.

e. Owners shall insure that appropriate and sufficient food and drinking water are available for each horse and that while working each horse is permitted to eat and drink at reasonable intervals.

f. Owners shall not allow a horse to be worked on a public highway, path or street during adverse weather or other dangerous conditions which are a threat to the health or safety of the horse. A horse being worked when such conditions develop shall be immediately returned to the stable by the most direct route.

g. Carriage horses shall not be at work for more than nine hours in any continuous twenty-four hour period. Riding horses shall not be at work for more than eight hours in any continuous twenty-four hour period. Rest periods for carriage horses and riding horses shall be of such duration and at such intervals as the commissioner shall prescribe, but rest periods for carriage horses shall in no event be for less than fifteen minutes after each two hour working period, and the time of such rest period shall be included in calculating the number of hours the horse has worked in any twenty-four hour period. During such rest periods, the person in charge of such carriage horses shall make fresh water available to the horse.

h. Carriage horses shall not be driven at a pace faster than a trot. Riding horses may be ridden at a canter but shall not be galloped.

i. Horses shall be suitably trimmed or shod, and saddles, bridles, bits, road harnesses and any other equipment used on or with a horse at work shall be maintained and properly fitted as prescribed by regulation of the commissioner.

j. Stables in which horses used in a rental horse business are kept shall be open for inspection by authorized officers, veterinarians and employees of the department, and any persons designated by the commissioner to enforce the provisions of this subchapter, agents of the ASPCA, police officers, and employees of the department of consumer affairs.

k. An owner shall be jointly liable with the person to whom a horse is rented for any violation of this subchapter or of any regulations promulgated hereunder committed by such person if the owner had knowledge or notice of the act which gave rise to the violation at the time of or prior to its occurrence or under the circumstances should have had knowledge or notice of such act and did not attempt to prevent it from occurring.

l. An owner of a rental horse business shall keep such records as the commissioner of health shall prescribe including but not limited to a consecutive daily record of the movements of each licensed horse including the driver's name and identification number, if applicable, rider's name, the horse's identification number, vehicle license plate number, if applicable, time of leaving stable and time of return to stable. Such records shall be kept on the premises of the stable where the horses are kept and shall be available for inspection. The commissioner may, in his or her discretion, require a time clock, date stamp or time stamp where such commissioner believes it is appropriate.

m. A horse required to be licensed pursuant to this subchapter which is lame or suffers from a physical condition or illness making it unsuitable for work may be ordered to be removed from work by the commissioner or his or her designee or by an agent of the ASPCA or a veterinarian employed or retained by such commissioner or ASPCA to inspect licensed horses. A horse for which such an order has been issued shall not be returned to work until it has recovered from the condition which caused the issuance of the order or until such condition has improved sufficiently that its return to work will not aggravate the condition or otherwise endanger the health of the horse. In any proceeding, under this section it shall be presumed that a horse which is found at work within forty-eight hours after the issuance of an order of removal and which is disabled by the same condition which caused such order to be issued has been returned to work in violation of this section. Such presumption may be rebutted by offering a certificate of a veterinarian indicating suitability to return to work prior to the expiration of the forty-eight hour period.

n. Every horse required to be licensed hereunder shall be examined by a veterinarian prior to its use in a rental horse business and thereafter at intervals of not more than one year. The examination shall include the general physical condition of the horse, its teeth, hoofs and shoes, and its stamina and physical ability to perform the work or duties required of it. The examination shall also include a record of any injury, disease, or deficiency observed by the veterinarian at the time, together with any prescription or humane correction or disposition of the same. A signed health certificate by the examining veterinarian shall be maintained at the stable premises at which such horse is located. A copy of said certificate shall be mailed by the examining veterinarian to the department of health and mental hygiene.

o. 1. Carriage horses shall not be worked whenever the air temperature is 18 degrees fahrenheit or below.

2. Carriage horses shall not be worked whenever the air temperature is 90 degrees fahrenheit or above.

3. For purposes of this subdivision, temperatures shall be those measured by a state-of-the-art thermometer, as determined by the commissioner, as measured by the commissioner or his or her designee at street level at one of the stands designated pursuant to section 19-174 of the code.

4. If the temperature exceeds the limits set by this subdivision during the course of a particular ride, at the ride's conclusion, but no later than one-half hour after the temperature exceeds these limits, the operator must immediately cease working, move the horse to an area of shelter, where available, rest the horse and then walk it directly to its stable. All horses so returned to their stable must be unbridled and unharnessed and remain at the stable for at least one hour, and thereafter, until such time as the weather conditions shall once again reach acceptable limits.

5. No violation of this subdivision shall occur unless a written warning of violation is first issued by the authorized enforcement personnel to the operator advising that the air temperature limits of this subdivision have been exceeded and directing that the operator cease working a carriage horse in accordance with the provisions of this subdivision. A violation of this subdivision may be issued if an operator fails to comply with the direction contained in the written warning of violation. Failure to comply with such direction shall not be construed as a separate violation.

p. In the event that any regulation requiring horse drawn carriages to be equipped with a manure catching device is adopted by any city agency or agencies, such devices shall be affixed or attached to the carriage and shall at no time be affixed or attached to the horse.

**HISTORICAL NOTE**

Section repealed & added L.L. 2/1994 § 1, retro. to Jan. 1, 1994.

Section added chap 907/1985 § 1

Subd. g amended L.L. 89/1989 § 4.

Subd. n amended L.L. 22/2002 § 26, eff. July 29, 2002 and deemed in

effect as of July 1, 2002.

Subds. o, p added L.L. 89/1989 § 5.

**DERIVATION**

Formerly § E22-6.0 added LL 4/1982 § 1

Renumbered LL 64/1982 § 1

(formerly § D22-6.0)

**FOOTNOTES**

5

[Footnote 5]: * Added LL 4/1982, relettered LL 64/1982 § 1 (formerly Title D)

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*NYC Administrative Code 17-331*

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Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 3 RENTAL HORSE LICENSING AND PROTECTION LAW*5

§ 17-331 Advisory board.

a. The commissioner shall appoint an advisory board consisting of five members as follows:

1. Two members shall be appointed from among the owners of rental horse businesses operating within the city, one of whom shall be representative of the interests of owners of riding horses and one of whom shall be representative of the interests of owners of carriage horses.

2. Two members shall be appointed from the public at large. However, in no event shall more than one person so appointed to the board be a member of the board of directors or an employee of any animal humane society or association.

3. One member shall be a veterinarian.

b. The terms of office of the members of the board shall be three years except that the terms of office of the members first appointed shall be as follows:

1. Two of such members first appointed shall serve for a term ending on the thirty-first day of December, nineteen hundred eighty-two.

2. Two of such members first appointed shall serve for a term ending on the thirty-first day of December,

nineteen hundred eighty-three.

3. One of such members first appointed shall serve for a term ending on the thirty-first day of December, nineteen hundred eighty-four.

c. The members of the board shall serve without compensation.

d. The board shall make recommendations to the commissioner on regulations necessary to carry out the provisions of this subchapter and to promote the health, safety and well-being of horses which are required to be licensed hereunder and of members of the public who hire such horses.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § E22-7.0 added LL 4/1982 § 1

Renumbered LL 64/1982 § 1

(formerly § D22-7.0)

**FOOTNOTES**

5

[Footnote 5]: * Added LL 4/1982, relettered LL 64/1982 § 1 (formerly Title D)



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

*NYC Administrative Code 17-332*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 3 RENTAL HORSE LICENSING AND PROTECTION LAW*5

§ 17-332 Violations.

a. Any violation of this subchapter, or of any of the rules promulgated hereunder, shall upon conviction thereof be punishable by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment not exceeding fifteen days, or both.

b. In lieu of criminal prosecution, any violation of this subchapter or any of the rules promulgated hereunder may be prosecuted as civil violations subject to a civil penalty of not less than twenty-five dollars nor more than five hundred dollars or by the suspension or revocation of a license and the suspension from work of the horse with respect to which the act caused the violation was committed or by both such civil penalty and suspension. Civil violations, under this section, shall be adjudicated before the administrative tribunal of the department.

**HISTORICAL NOTE**

Section repealed & added L.L. 2/1994 § 2, retro. to Jan. 1, 1994.

Section added chap 907/1985 § 1

Subd. a amended L.L. 89/1989 § 7.

**DERIVATION**

Formerly § E22-8.0 added LL 4/1982 § 1

Renumbered LL 64/1982 § 1

(formerly § D22-8.0)

**FOOTNOTES**

5

[Footnote 5]: * Added LL 4/1982, relettered LL 64/1982 § 1 (formerly Title D)



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

*NYC Administrative Code 17-333*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 3 RENTAL HORSE LICENSING AND PROTECTION LAW*5

§ 17-333 Lighting of horse drawn cabs.

The commissioner of consumer affairs shall promulgate rules requiring that sufficient lighting, as prescribed by such commissioner, be provided on horse drawn cabs which operate at night or during other periods of low visibility, and requiring sufficient lighting on the rear axle of all horse drawn cabs where their licenses are affixed. Such rules shall be enforced in the same manner as the enforcement of rules relating to horse drawn cabs and drivers promulgated pursuant to section 20-384 of the code.

**HISTORICAL NOTE**

Section amended L.L. 2/1994 § 3, retro. to Jan. 1, 1994.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § E22-9.0 added LL 4/1982 § 1

Renumbered LL 64/1982 § 1

(formerly § D22-9.0)

**FOOTNOTES**

5

[Footnote 5]: * Added LL 4/1982, relettered LL 64/1982 § 1 (formerly Title D)



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

*NYC Administrative Code 17-334*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 3 RENTAL HORSE LICENSING AND PROTECTION LAW*5

§ 17-334 Construction.

a. The provisions of this subchapter shall not be construed to supersede or affect any of the provisions of subchapter twenty-one of chapter two of title twenty of the code relating to a "horse drawn cab" as defined therein or any of the regulations of the commissioner of consumer affairs promulgated thereunder.

b. The provisions of this subchapter shall not be construed to permit the possession or use of a horse in any area where such possession or use is prohibited by any other law, rule or regulation.

c. The provisions of this subchapter shall not be construed to prohibit the ASPCA or the department from enforcing any provision of law, rule or regulation relating to the humane treatment of animals with respect to any horse regardless of whether such horse is required to be licensed pursuant to the provisions of this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § E22-10.0 added LL 4/1982 § 1

Renumbered LL 64/1982 § 1

(formerly § D22-10.0)

**FOOTNOTES**

5

[Footnote 5]: * Added LL 4/1982, relettered LL 64/1982 § 1 (formerly Title D)



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

*NYC Administrative Code 17-334.1*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 3 RENTAL HORSE LICENSING AND PROTECTION LAW*5

§ 17-334.1 Training program and examination.

a. The department shall offer a training program and a written examination for all horse drawn cab drivers. The commissioner shall issue a certificate to any person successfully completing the training program and achieving satisfactory results on the written examination administered by the department. Subjects which shall be included in such training program are: (1) proper horse care and grooming, (2) proper preparation and cleaning of harnesses and padding, (3) proper fitting of the bit, bridle and harness to the horse, (4) proper hitching of the horse to the carriage, (5) traffic laws and rules of the city of New York, (6) permissible hours and areas of operation of horse drawn cabs in the city of New York, (7) all laws and rules of the city of New York pertaining in any way to horse drawn cabs and (8) such other subjects as shall be deemed appropriate and necessary by the commissioner.

b. The department may impose a fee for the training program and examination, as provided in subdivision a herein, in order to defray expenses incurred in the administration thereof.

c. The department shall offer the training program and examination, as provided in subdivision a herein, on a regularly scheduled basis, no less frequently than at least four times per year or more frequently as deemed necessary by the commissioner.

**HISTORICAL NOTE**

Section repealed & added L.L. 2/1994 § 4, retro. to Jan. 1, 1994.

Section added L.L. 89/1989 § 8.

**FOOTNOTES**

5

[Footnote 5]: * Added LL 4/1982, relettered LL 64/1982 § 1 (formerly Title D)



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

*NYC Administrative Code 17-335*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 4 INHALATION THERAPY

§ 17-335 Inhalation therapy.

a. Definitions. Whenever used in this section, the following terms shall mean and include:

1. "Inhalation therapy." The therapeutic use of oxygen, helium, carbon dioxide or other gas or gases for a human being.

2. "Inhalation therapy service." The furnishing of gas and complete inhalation therapy equipment, with or without a technician to administer or operate the same, or the furnishing, with one or more other persons, of such gas and complete equipment, or the furnishing of a supervising technician or technician to operate inhalation therapy equipment.

3. "Purveyor." A person who directly or indirectly engages in the business of supplying inhalation therapy service or who holds himself or herself out, directly or indirectly, or by a sign, stationery, business card, billhead, advertisement or otherwise as being engaged in the business of supplying inhalation therapy service. The term "purveyor" shall not include a hospital or other institution subject to visitation or inspection by the state department of social services, pursuant to section four hundred sixty-c of the social services law, a hospital or other institution operated by the city, or a manufacturer or distributor of gas or inhalation therapy equipment, unless such manufacturer or distributor supplies inhalation therapy service consisting of gas and complete inhalation equipment, with or without, a technician to operate the same, or a technician to operate inhalation therapy equipment.

4. "Supervising technician." A person who is the technical supervisor or director of the inhalation therapy service of a purveyor and who supervises the technicians who operate the inhalation therapy equipment of such purveyor or for such purveyor.

5. "Technician." A person who operates inhalation therapy equipment of a purveyor or for a purveyor under the supervision of a supervising technician. The terms "supervising technician" shall not include any person administering any gas (a) for emergency first aid, (b) for emergency resuscitation, (c) in conjunction with or during lawful administration of an anesthetic, (d) in a hospital or other institution subject to visitation or inspection by the state department of social services, pursuant to section four hundred sixty-c of the social services law, or (e) in a hospital or other institution operated by the city.

b. Purveyors' licenses, supervising technicians' and technicians' certificates of competency.

1. It shall be unlawful for any person to be a purveyor without a license therefor and it shall be unlawful for any person to be a supervising technician or technician without a certificate of competency therefor.

2. The annual fee for a license to be a purveyor shall be fifty dollars. The fee for a certificate to be a supervising technician shall be ten dollars and the annual renewal fee shall be one dollar. The fee for a certificate to be a technician shall be five dollars and the annual renewal fee shall be one dollar.

3. Each purveyor shall cause his or her license to be conspicuously displayed in his or her principal place of business. Each supervising technician and each technician, during the performance of his or her duties as such, shall carry his or her certificate or renewal certificate on his or her person and shall display the same on demand.

4. The department shall issue licenses and certificates of competency and renewals thereof pursuant to this section. Each such license, certificate and renewal shall expire on the thirty-first day of December next succeeding the date of issuance thereof.

5. All licenses, certificates of competency and renewals thereof issued pursuant to this section shall be according to an established form and shall be regularly numbered and duly registered.

6. Where the applicant is a non-profit organization or an employee of such organization and the activity for which the license is required, is operated or is to be operated on a non-profit basis, the commissioner may in his or her discretion waive the payment of any of the fees prescribed by this section for such licenses issued by him or her.

c. Commissions prohibited. For the better protection and preservation of the public health, safety and welfare of the city and its inhabitants, it shall be unlawful for any purveyor, supervising technician or technician, directly or indirectly, to pay or give, permit or cause to be paid or given, or offer to pay or give to any person, or for any person, directly or indirectly, to request, receive or accept from any purveyor, supervising technician or technician any sum of money, credit or other valuable consideration as a commission, discount or gratuity for:

1. Recommending or procuring the inhalation therapy service of such purveyor for any other person, or

2. Directing patronage or clientele to such purveyor, or

3. Influencing any person to refrain from using or utilizing the inhalation therapy service or equipment of any other purveyor or person.

The provisions of this subdivision shall be inapplicable to:

1. Compensation paid by a purveyor to his or her bona fide employees or for bona fide advertising.

2. Trade discounts granted by one purveyor to another purveyor.

d. Operation of equipment. It shall be unlawful for any purveyor to supply inhalation therapy service or equipment, unless the use thereof is prescribed and supervised by a licensed physician and the operation thereof is controlled by a licensed physician, a supervising technician or a technician. A purveyor shall be deemed to have complied with the requirement of this subdivision with respect to a prescription for the use of inhalation therapy service or equipment if:

1. He or she or his or her representative shall have ascertained from the physician or from a person employed in the office of the physician having knowledge thereof or from the registered nurse charged with the care of the person requiring such inhalation therapy, that the physician has prescribed the use of such inhalation therapy or equipment; and

2. He or she or his or her representative has made a note on the records of such purveyor of the name and address of the physician, the name of the registered nurse or the person in the office of the physician from whom such information was received and the date on and the time at which such information was received.

The provisions of this subdivision shall be inapplicable to the use of inhalation therapy in the administration of emergency first aid, emergency resuscitation, in conjunction with or during lawful administration of anesthetic, in a hospital or other institution subject to visitation or inspection by the state department of social services pursuant to section four hundred sixty-c of the social services law or in a hospital or other institution operated by the city.

e. Powers of department. For the better protection of the health, safety and welfare of the inhabitants of the city, the department shall have power to:

1. Promulgate rules and regulations governing inhalation service or equipment and for the proper enforcement of the provisions of this section.

2. Conduct examinations for and issue certificates of competency to supervising technicians and technicians.

3. Inspect or investigate the inhalation therapy equipment or service of any purveyor.

4. Make and enforce orders with relation to the care, use, operation, testing and repair of inhalation therapy service or equipment.

5. Deny, suspend or revoke a license, certificate of competency or any renewal thereof for failure to comply with the provisions of this section or with any rule, regulation, standard or order prescribed or made by the department with relation to inhalation therapy service or equipment.

f. Repealed.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1.

Subd. f repealed L.L. 16/1997 § 1, eff. Apr. 1, 1997.

**DERIVATION**

Formerly § 561-3.0 added LL 33/1943 § 1

Sub a par 3 amended LL 64/1947 § 1

Sub d amended LL 58/1948 § 1

Sub b par 2 amended LL 129/1954 § 1

Sub b par 6 add LL 91/1955 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Conviction of defendant for engaging in business of a purveyor without a license, in violation of Administrative Code § 561-3.0 was reversed and the complaint dismissed, as the mere showing that defendant held himself out to be engaged in the business of a purveyor without proof that he was actually engaged in such business, was insufficient to establish a violation of the statute.-People v. Weiner, 271 App. Div. 1022, 69 N.Y.S. 2d 41 [1947].

¶ 2. Refusal of Department of Health to issue to petitioner a purveyor's license to conduct the business of supplying inhalation therapy service, was not arbitrary where there was reasonable ground for belief that petitioner was merely the alter ego for an individual who theretofore had been denied a license because of his past record.-Assoc. Ambulance, &c., Services, Inc. v. Dept. of Health, 116 (28) N.Y.L.J. (8-8-46) 231, Col. 3 F.

¶ 3. New York City Department of Health **held** not to have abused its discretion in refusing to grant petitioner a license as a purveyor of inhalation therapy service, as it appeared that misleading statements had been made concerning the ownership of an ambulance and oxygen service, that petitioner did not properly supervise the business as shown in a certain matter in which the knowledge and competency of a supervising technician were involved, that petitioner was evasive about his past criminal record which included two arrests on felony charges, later reduced to misdemeanors, upon which sentence was suspended, and that he orally made misleading statements to certify an application by his father-in-law for a technician's certificate.-Weiner v. Dept. of Health of City of N.Y., 114 (54) N.Y.L.J. (9-4-45) 413, Col. 5 M.



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

*NYC Administrative Code 17-336*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 4 INHALATION THERAPY

§ 17-336 Purveyors of certain services regulated.

a. Whenever used in this section, the following terms shall mean and include:

1. "Purveyor." A person who directly or indirectly engages in the business of supplying a service or services to another person or persons for use or utilization by such other person or persons.

2. "Service" or "services." The sale, rental, supplying or furnishing of:

(a) Clinical laboratory services or supplies

(b) X-ray laboratory services or supplies

(c) Inhalation therapy service or equipment

(d) Ambulances service

(e) Sick room supplies

(f) Physical therapy service or equipment

(g) Orthopedic or surgical appliances or supplies

(h) Drugs, medication or medical supplies

(i) Glasses, lenses or other optical supplies or equipment

(j) Hearing aids or devices

(k) Any other goods, services, supplies or procedures prescribed or suggested for medical diagnosis, care or treatment.

b. For the better protection and preservation of the public health, safety and welfare of the city and its inhabitants, it shall be unlawful for any purveyor, directly or indirectly, to pay or give, permit or cause to be paid or given, or offer to pay or give to any person, or for any person, directly or indirectly, to request, receive or accept from any purveyor any sum of money, credit or other valuable consideration as a commission, discount or gratuity for:

1. Recommending or procuring a service of such purveyor for any other person, or

2. Directing patronage or clientele to such purveyor, or

3. Influencing any person to refrain from using or utilizing a service of any other purveyor.

c. The provisions of subdivision b of this section shall be inapplicable to:

1. Compensation paid by a purveyor to his or her bona fide employees or for bona fide advertising.

2. Trade discounts granted by one purveyor to another purveyor.

d. Repealed.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1.

Subd. d repealed L.L. 17/1997 § 1, eff. Apr. 1, 1997.

**DERIVATION**

Formerly § 561-4.0 added LL 30/1943 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Judgments convicting defendant of two violations of Administrative Code § 561-4.0 were affirmed without opinion.-People v. Lahn, 270 App. Div. 949, 62 N.Y.S. 2d 829 [1946].



Administrative Code of the City of New York



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

*NYC Administrative Code 17-337*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 4 INHALATION THERAPY

§ 17-337 Compressed air in tanks; underwater breathing use.

a. Commencing September twentieth, nineteen hundred sixty-six no person shall sell or distribute compressed air in tanks for underwater breathing use unless he or she shall have obtained a permit from the commissioner.

b. On or before August twentieth, nineteen hundred sixty-six, the board shall promulgate rules establishing air purity standards for compressed air in tanks for underwater breathing use which rules shall not permit more than ten parts per million of carbon monoxide and shall not permit the existence of oil vapor or other oil contamination.

c. Commencing September twentieth, nineteen hundred sixty-six, compressed air in tanks shall not be sold or distributed for underwater breathing use unless it complies with the standards established by the board and unless there is attached to each tank a certificate issued by the seller representing that the contents comply with the standards established by the board.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 562-1.0 added LL 14/1966 § 5



Administrative Code of the City of New York



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

*NYC Administrative Code 17-338*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 5 MEDICAL RECORDS

§ 17-338 Medical records.

a. Definitions.

1. The term "patient" shall mean any person who is receiving or has received medical attention from a medical facility.

2. The term "medical facility" shall mean a proprietary or voluntary hospital within New York city.

3. The term "operator" shall mean an independent business entity located within the city of New York, whose function it is to properly maintain and store patients' medical records upon a medical facility's discontinuance of operation. The term "operator" shall not include an article twenty-eight facility.

4. The term "article twenty-eight facility" shall mean a medical facility issued an operating certificate of approval under article twenty-eight of the public health law.

5. The terms "trustee" or "administrator" shall mean the person who supervises the general administrative activities of a medical facility.

b. If pursuant to a plan approved by the state, the medical records of a closing medical facility are to be transferred to an operator, that operator shall be licensed as provided in section 17-339 of this subchapter.

c. The medical records shall be released pursuant to law.

d. The department may set reasonable fees to be charged by the licensed operator.

e. The commissioner shall promulgate regulations as deemed necessary for the proper implementation and enforcement of this section and section 17-339 of this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 568-2.0 added LL 46/1980 § 1



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

*NYC Administrative Code 17-339*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 5 MEDICAL RECORDS

§ 17-339 License.

a. It shall be unlawful for any operator to assume control or store the medical records of any medical facility which is discontinuing operation without a license issued by the department therefor.

b. The commissioner shall have cognizance and control of the granting, issuance, transferring, renewal, denial, revocation, suspension and cancellation of all licenses issued to operators to store and preserve medical records.

c. All licenses issued pursuant to this section shall be valid for one year unless sooner suspended or revoked.

d. Commissioner may impose reasonable fees for the license provided for herein.

e. Each operator applying for a license or renewal thereof shall file an application in such form and detail as the commissioner may prescribe and shall pay the fee required by this section. In addition to such information required by the commissioner, any application for a license or renewal thereof shall contain information which will demonstrate the operator's ability to properly maintain and store medical records pursuant to the state approved plan.

f. The New York city department of records and information services shall investigate, inspect and monitor the operations of the operator and shall recommend to the commissioner the granting, issuance, transferring, renewal, denial, cancellation, revocation or suspension of the license of an operator.

g. The commissioner may revoke or suspend a license and/or impose a penalty not exceeding five hundred dollars on a licensee and/or deny an application for a license if, after notice and hearing, the commissioner finds that a licensee or applicant has:

1. made a material misstatement or misrepresentation on an application for a license or renewal; or

2. violated any provision of this section or any rule or regulation promulgated pursuant to the provisions of this section; or

3. failed or refused to pay any penalty imposed pursuant to the provisions of this section; or

4. failed to properly maintain medical records or to make such records available as provided by law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 568-2.1 added LL 46/1980 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 17-340*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 5 MEDICAL RECORDS

§ 17-340 Violations, penalty. [Repealed]

**HISTORICAL NOTE**

Section repealed L.L. 14/1997 § 1, eff. Apr. 1, 1997.

Section added chap 907/1985 § 1.

**DERIVATION**

Formerly § 568-2.2 added LL 46/1980 § 1

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*NYC Administrative Code 17-341*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 5 MEDICAL RECORDS

§ 17-341 Annual report, submission to council.

a. The department shall submit an annual report to the council no later than June thirtieth of each successive year.

b. The report shall include the number of licensed operators, the facilities in which the medical records are kept, the state of the management and maintenance of these facilities, the number of times the facilities were inspected by the department of records and information services and any other information deemed necessary by the council.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 568-2.3 added LL 46/1980 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 17-342*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 6 DANGEROUS DOG REGULATION AND PROTECTION LAW*9

§ 17-342 Definitions.

Whenever used in this subchapter, the following terms shall be defined as follows:

a. "Person" means any individual, partnership, firm, joint stock company, corporation or employee thereof, or other legal entity, unless otherwise stated.

b. "Owner" means any person possessing, harboring, keeping, having an interest in, or having control or custody of a dog.

c. "Dangerous dog" means (1) any dog that when unprovoked, approaches, or menaces any person in a dangerous or terrorizing manner, or in an apparent attitude of attack, upon the streets, sidewalks, or any public grounds or places; or (2) any dog with a known propensity, tendency or disposition to attack when unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or (3) any dog which bites, inflicts injury, assaults or otherwise attacks a human being or domestic animal without provocation on public or private property; or (4) any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting.

d. "Severe injury" means any physical injury that results in broken bones or disfiguring lacerations requiring either multiple stitches or cosmetic surgery.

e. "Unprovoked" means that the dog was not hit, kicked, taunted or struck by a person with any object or part of a person's body nor was any part of the dog's body pulled, pinched or squeezed by a person.

**HISTORICAL NOTE**

Section added L.L. 2/1991 § 2, eff. Apr. 4, 1991.

**FOOTNOTES**

9

[Footnote 9]: * Note provisions of L.L. 2/1991 § 1.

Section one. Legislative findings. The City Council hereby finds that the regulation and control of dangerous dogs in New York City is a matter of vital concern, affecting the public health, safety and welfare of all New Yorkers. Experience from New York City and all across the United States has demonstrated that while most dogs make suitable pets, there are certain exceptionally dangerous and unpredictable dogs of various breeds. Once provoked, they become uncontrollable and lethal weapons, posing significant dangers to unsuspecting and innocent people. In the past four years, 28 Americans have been killed by dogs and countless other have been hurt and maimed. This year, people are dying as a result of dog attacks, at the rate of one or more a month, with children and elderly persons being the most frequent targets.

This law seeks to remedy this dangerous situation by regulating the ownership of dangerous dogs in New York City. Given the population of New York City, the Council believes that such a law is necessary to protect the health, safety and welfare of its residents.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-343*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 6 DANGEROUS DOG REGULATION AND PROTECTION LAW*9

§ 17-343 Acquisition of a dangerous dog prohibited.

a. No person shall own or harbor any dog for the purpose of dog fighting, or train, torment, badger, bait or use any dog for the purpose of causing or encouraging said dog to attack human beings or domestic animals when not provoked.

b. No person shall sell, offer for sale, breed, buy or attempt to buy any dangerous dog within the city of New York.

**HISTORICAL NOTE**

Section added L.L. 2/1991 § 2, eff. Apr. 4, 1991.

**FOOTNOTES**

9

[Footnote 9]: * Note provisions of L.L. 2/1991 § 1.

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-344*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 6 DANGEROUS DOG REGULATION AND PROTECTION LAW*9

§ 17-344 Humane destruction.

The commissioner may order the humane destruction of any dog that kills or causes severe injury to a human being.

**HISTORICAL NOTE**

Section added L.L. 2/1991 § 2, eff. Apr. 4, 1991.

**FOOTNOTES**

9

[Footnote 9]: * Note provisions of L.L. 2/1991 § 1.

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*NYC Administrative Code 17-345*

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Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 6 DANGEROUS DOG REGULATION AND PROTECTION LAW*9

§ 17-345 Determination of a dangerous dog.

The commissioner shall have the authority to make a determination that a dog is dangerous, as defined in subdivision (c) of section 17-342, upon the complaint of any person that a dog is dangerous. The Commissioner shall make such determination after a hearing, written notice of which shall be given to the complainant and to the owner of the dog, within fifteen days after seizure of the dog has been ordered by the department, where the owner's address can be reasonably ascertained by the commissioner. The hearing shall be held no less than ten days nor more than twenty days after such notice is mailed to the owner of the dog. At such hearing all interested persons shall have the opportunity to present evidence on the issue of the dog's dangerousness. In the event that the dog in question has caused severe injury to any person, the commissioner may impound the dog, at the owner's expense, pending the hearing and determination of the complaint. If, after the hearing, the commissioner determines that the dog is dangerous, he or she may order the owner to comply with one or more of the following requirements, in any combination thereof:

a. Registration. The commissioner may order the owner of a dangerous dog to register such dog with the department. The application for such registration shall contain the name and address of the owner, the breed, age, sex, color, and any other identifying marks of the dog, the location where the dog is to be kept if not at the address of the owner and any other information which the commissioner may require. The application for registraton pursuant to this paragraph shall be accompanied by a registration fee of twenty-five dollars. Each dog registered pursuant hereto shall be assigned an official registration number by the department. Such registration number shall be inscribed on a metal tag which shall be attached to the dog's collar at all times. The tag and a certificate of registration shall be of such form and

design and shall contain such information as the commissioner shall prescribe and shall be issued to the owner upon payment of the registration fee and the presentment of sufficient evidence that the owner has complied with all of the orders of the commissioner as prescribed at the determination hearing.

b. Muzzling or confinement. The commissioner may order the owner of a dangerous dog to muzzle the dog or confine the dog, at all times, indoors or in a proper enclosure for a dangerous dog which shall consist of a securely enclosed and locked pen or structure, suitable to prevent the entry of young children, or any part of their bodies or other foreign objects, and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and prevent the dog from digging his way out through the bottom. The pen or structure shall also provide the dog with protection from the elements. The owner shall also conspicuously display a sign designed with a warning symbol approved by the commissioner which indicates to both children and adults the presence of a dangerous dog, on the pen or structure and on or near the entrance to the residence where the dog is kept. At any time that the dog is not confined as required herein, the dog shall be muzzled in such a manner as to prevent it from biting or injuring any person, and kept on a leash no longer than six feet with the owner or some other responsible person attending such dog.

c. Liability insurance. The commissioner may order the owner of a dangerous dog to maintain, in full force and effect, a liability insurance policy of one hundred thousand dollars for personal injury or death of any person, resulting from an attack of such dangerous dog.

d. Humane destruction. The commissioner may order the humane destruction of any dog that kills or causes severe injury to a human being, based upon the severity of the injury and the circumstances of the injury.

e. Other remedies. The commissioner may order (i) that the dog be permanently removed from the city; or (ii) that the owner and the dog complete a course of obedience and/or anti-bite training approved by the commissioner.

In the event that the owner or keeper of the dangerous dog is a minor, the parent or guardian or such minor shall be liable for all injuries and property damage sustained by any person or domestic animal caused by an unprovoked attack by such dangerous dog.

**HISTORICAL NOTE**

Section added L.L. 2/1991 § 2, eff. Apr. 4, 1991.

**FOOTNOTES**

9

[Footnote 9]: * Note provisions of L.L. 2/1991 § 1.

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

*NYC Administrative Code 17-346*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 6 DANGEROUS DOG REGULATION AND PROTECTION LAW*9

§ 17-346 Confiscation and/or confinement of a dangerous dog.

a. In the event that the owner of a dangerous dog violates any order of the commissioner as prescribed at the determination hearing, such owner's dog may be confiscated and impounded by the proper authorities upon the order of the commissioner. In addition, any dog determined to be dangerous shall be immediately confiscated by the proper authorities if the dog bites or attacks a human being and causes injury, or if the dog, at the sufferance of its owner, is engaged in or apparently engaged in a dog fight contest or is proximately near the area in which such a contest is being conducted.

b. The owner of a dog determined to be dangerous by the commissioner, which has been confiscated pursuant to subdivision (a) of this section, may request the commissioner to conduct a hearing to determine if the dog should be returned to the owner. Upon such request, the commissioner shall provide for a hearing within five days.

**HISTORICAL NOTE**

Section added L.L. 2/1991 § 2, eff. Apr. 4, 1991.

**FOOTNOTES**

9

[Footnote 9]: * Note provisions of L.L. 2/1991 § 1.

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-347*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 6 DANGEROUS DOG REGULATION AND PROTECTION LAW*9

§ 17-347 Excused behavior.

No dog shall be declared dangerous pursuant to § 17-345 if the threat, injury, or damage caused by such dog was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing, or assaulting the dog, or has, in the past, been observed or reported to have tormented, abused or assaulted the dog, or was committing or attempting to commit a crime. Nor shall any dog be declared dangerous if it was responding to pain or injury, or was protecting itself, its kennels, or its offspring. If the trespass is determined to be of an innocent nature, the commissioner may, depending on the circumstances, and in accordance with the procedures set forth in section 17-345, find the dog to be dangerous.

**HISTORICAL NOTE**

Section added L.L. 2/1991 § 2, eff. Apr. 4, 1991.

**FOOTNOTES**

9

[Footnote 9]: * Note provisions of L.L. 2/1991 § 1.

Section one. Legislative findings. The City Council hereby finds that the regulation and control of dangerous dogs in New York City is a matter of vital concern, affecting the public health, safety and welfare of all New Yorkers. Experience from New York City and all across the United States has demonstrated that while most dogs make suitable pets, there are certain exceptionally dangerous and unpredictable dogs of various breeds. Once provoked, they become uncontrollable and lethal weapons, posing significant dangers to unsuspecting and innocent people. In the past four years, 28 Americans have been killed by dogs and countless other have been hurt and maimed. This year, people are dying as a result of dog attacks, at the rate of one or more a month, with children and elderly persons being the most frequent targets.

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SUBCHAPTER 6 DANGEROUS DOG REGULATION AND PROTECTION LAW*9

§ 17-348 Regulations.

The commissioner, within ninety days of the effective date of this subchapter and with the advice of the advisory board hereinafter established, shall promulgate such regulations as are necessary to carry out the provisions of this subchapter and to promote the health, safety and well-being of the public.

**HISTORICAL NOTE**

Section added L.L. 2/1991 § 2, eff. Apr. 4, 1991.

**FOOTNOTES**

9

[Footnote 9]: * Note provisions of L.L. 2/1991 § 1.

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SUBCHAPTER 6 DANGEROUS DOG REGULATION AND PROTECTION LAW*9

§ 17-349 Dangerous dog advisory board.

a. In the department, there shall be a dangerous dog advisory board consisting of the commissioner, or his or her designee, and five members, two of whom shall be appointed by the mayor and three of whom shall be appointed by the speaker of the city council. The membership of such board shall include two veterinarians, a certified animal trainer in possession of a valid permit and certificate issued by the commissioner pursuant to § 161.09(a) and (h) of the New York city health code, a representative of a recognized humane society, such as the American Society for the Prevention of Cruelty to Animals, or similar organization, and a member of the public.

b. Each member of the advisory board, other than the commissioner, or his or her designee, shall serve for a term of three years, without compensation.

c. The board shall be appointed and meet within one month of the effective date of this subchapter.

d. The board shall make recommendations to the commissioner on regulations necessary to carry out the provisions of this subchapter and to promote the health, safety and welfare of the public, and of dangerous dogs.

e. The board shall meet at least once every four months to assess the regulations promulgated by the commissioner and to make further recommendations on regulations necessary to carry out the provisions of this subchapter. A written report describing its activities and plans shall be issued to the commissioner by the board one year

after the effective date of the local law and each year thereafter.

**HISTORICAL NOTE**

Section added L.L. 2/1991 § 2, eff. Apr. 4, 1991.

**FOOTNOTES**

9

[Footnote 9]: * Note provisions of L.L. 2/1991 § 1.

Section one. Legislative findings. The City Council hereby finds that the regulation and control of dangerous dogs in New York City is a matter of vital concern, affecting the public health, safety and welfare of all New Yorkers. Experience from New York City and all across the United States has demonstrated that while most dogs make suitable pets, there are certain exceptionally dangerous and unpredictable dogs of various breeds. Once provoked, they become uncontrollable and lethal weapons, posing significant dangers to unsuspecting and innocent people. In the past four years, 28 Americans have been killed by dogs and countless other have been hurt and maimed. This year, people are dying as a result of dog attacks, at the rate of one or more a month, with children and elderly persons being the most frequent targets.

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SUBCHAPTER 6 DANGEROUS DOG REGULATION AND PROTECTION LAW*9

§ 17-350 Violations and penalties.

a. Any person who violates any provision of this subchapter or any of the regulations promulgated hereunder shall be guilty of a misdemeanor punishable by a fine or not less than five hundred nor more than five thousand dollars or by imprisonment for not more than one year, or both.

b. In addition to the penalties prescribed by subdivision a of this section, any person who violates any of the provisions of this subchapter or any rule or regulaton promulgated hereunder shall be liable for a civil penalty of not less than five hundred nor more than five thousand dollars.

c. Any fine or penalty assessed pursuant to this section may be reduced by any amount which is paid as restitution by the owner of the dog to the person or persons suffering serious physical injury as compensation for unreimbursed medical expenses, lost earnings and other damages resulting from such injury.

**HISTORICAL NOTE**

Section added L.L. 2/1991 § 2, eff. Apr. 4, 1991.

Subd. c added chap 526/2005 § 2, eff. Nov. 14, 2005.

**FOOTNOTES**

9

[Footnote 9]: * Note provisions of L.L. 2/1991 § 1.

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*NYC Administrative Code 17-351*

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Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 6 DANGEROUS DOG REGULATION AND PROTECTION LAW*9

§ 17-351 Enforcement.

Authorized officers, veterinarians and employees of the department, and of the police department, and any other persons designated by the commissioner, shall be empowered to enforce the provisions of this subchapter or any rule or regulation promulgated hereunder.

**HISTORICAL NOTE**

Section added L.L. 2/1991 § 2, eff. Apr. 4, 1991.

**FOOTNOTES**

9

[Footnote 9]: * Note provisions of L.L. 2/1991 § 1.

Section one. Legislative findings. The City Council hereby finds that the regulation and control of dangerous dogs in New York City is a matter of vital concern, affecting the public health, safety and welfare of all New Yorkers. Experience from New York City and all across the United States has demonstrated that while

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SUBCHAPTER 6 DANGEROUS DOG REGULATION AND PROTECTION LAW*9

§ 17-352 Construction.

The provisions of this subchapter shall not be construed to prohibit the department, the American Society for the Prevention of Cruelty to Animals or any law enforcement officer from enforcing any other law, rule or regulation regarding the humane treatment of animals.

**HISTORICAL NOTE**

Section added L.L. 2/1991 § 2, eff. Apr. 4, 1991.

**FOOTNOTES**

9

[Footnote 9]: * Note provisions of L.L. 2/1991 § 1.

Section one. Legislative findings. The City Council hereby finds that the regulation and control of dangerous dogs in New York City is a matter of vital concern, affecting the public health, safety and welfare of all New Yorkers. Experience from New York City and all across the United States has demonstrated that while

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SUBCHAPTER 6 DANGEROUS DOG REGULATION AND PROTECTION LAW*9

§ 17-353 Exemptions.

The provisions of this subchapter shall not apply to any federal, state or city law enforcement agency.

**HISTORICAL NOTE**

Section added L.L. 2/1991 § 2, eff. Apr. 4, 1991.

**FOOTNOTES**

9

[Footnote 9]: * Note provisions of L.L. 2/1991 § 1.

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CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 6 DANGEROUS DOG REGULATION AND PROTECTION LAW*9

§ 17-354 Severability.

If any provision of this subchapter is adjudged invalid by any court of competent jurisdiction, such judgment shall not affect or impair the validity of the remainder of this subchapter.

**HISTORICAL NOTE**

Section added L.L. 2/1991 § 2, eff. Apr. 4, 1991.

**FOOTNOTES**

9

[Footnote 9]: * Note provisions of L.L. 2/1991 § 1.

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Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 7 TATTOO REGULATION ACT*12

§ 17-355 Short title.

This subchapter shall be known as the "Tattoo Regulation Act."

**HISTORICAL NOTE**

Section added L.L. 12/1997 § 2, eff. June 25, 1997.

**FOOTNOTES**

12

[Footnote 12]: * Subchapter 7 added L.L. 12/1997 § 2, eff. June 25, 1997. Note provisions of § 1 of such local law:

Section 1. Declaration of legislative findings and intent. The Council of the City of New York finds that although it is currently illegal in the City of New York to apply tattoos, tattooists are nonetheless currently operating in the City without any standards or regulation. Without effective health regulation of tattooing, diseases can be transmitted to customers and tattooists through supplies and equipment. In recent years, there

has been an increase in demand for tattoo services, resulting in an increasing number of New Yorkers being placed at risk for disease. The Council therefore finds it appropriate for the protection of the public health, safety and welfare of the citizens of New York City to enact legislation to regulate tattooing and tattooists. Such regulation will ensure that tattooists practice basic health and safety procedures necessary to competently engage in the practice of tattooing. The licensing of tattooists will permit the Department of Health to enforce safety standards for tattooists and impose penalties, including license suspension and revocation, for violations of such standards.



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

*NYC Administrative Code 17-356*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 7 TATTOO REGULATION ACT*12

§ 17-356 Definitions.

As used in this subchapter, the following terms shall be defined as follows:

a. "Tattoo" means any mark on the body of a person made with indelible ink or pigments injected beneath the outer layer of the skin, or to make such a mark.

b. "Tattooist" means any person who applies a tattoo to the body of another person.

**HISTORICAL NOTE**

Section added L.L. 12/1997 § 2, eff. June 25, 1997.

**FOOTNOTES**

12

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*NYC Administrative Code 17-357*

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Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 7 TATTOO REGULATION ACT*12

§ 17-357 Licenses.

a. No person shall engage in the practice of tattooing without having obtained a license to engage in such practice in the manner prescribed in this subchapter.

b. The provisions of this subchapter shall not apply to a physician licensed under article one hundred thirty-one of the New York state education law.

c. Notwithstanding the requirements set forth in this section, the commissioner may issue a seven-day temporary license to a person holding a license or similar certification or registration to engage in the practice of tattooing issued under the jurisdiction of another political subdivision, state or nation. Such temporary license will allow a person to apply tattoos within the city of New York under the direct supervision of a tattooist holding a license issued by the department pursuant to subdivision a of this section. Where an applicant for such a seven-day temporary license practices tattooing in a jurisdiction that does not license or otherwise register tattooists, the commissioner may issue such seven-day temporary license to such person upon the presentation of proof satisfactory to the commissioner that the applicant has received training equivalent to that necessary to satisfactorily pass the examination required in section 17-358. The fee for such temporary license shall be established in rules promulgated by the commissioner.

**HISTORICAL NOTE**

Section added L.L. 12/1997 § 2, eff. June 25, 1997.

**FOOTNOTES**

12

[Footnote 12]: * Subchapter 7 added L.L. 12/1997 § 2, eff. June 25, 1997. Note provisions of § 1 of such local law:

Section 1. Declaration of legislative findings and intent. The Council of the City of New York finds that although it is currently illegal in the City of New York to apply tattoos, tattooists are nonetheless currently operating in the City without any standards or regulation. Without effective health regulation of tattooing, diseases can be transmitted to customers and tattooists through supplies and equipment. In recent years, there has been an increase in demand for tattoo services, resulting in an increasing number of New Yorkers being placed at risk for disease. The Council therefore finds it appropriate for the protection of the public health, safety and welfare of the citizens of New York City to enact legislation to regulate tattooing and tattooists. Such regulation will ensure that tattooists practice basic health and safety procedures necessary to competently engage in the practice of tattooing. The licensing of tattooists will permit the Department of Health to enforce safety standards for tattooists and impose penalties, including license suspension and revocation, for violations of such standards.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-358*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 7 TATTOO REGULATION ACT*12

§ 17-358 Licenses, applications, procedures and requirements.

a. Any person intending to engage in the practice of tattooing shall apply to the commissioner for a tattoo license, in the form and manner prescribed by the commissioner. Such application shall contain such information as the commissioner deems reasonable and necessary to determine the qualifications for granting a license to the applicant. The application shall be subscribed by the applicant and affirmed under penalty of perjury.

b. Any person eighteen years of age or older may apply to the commissioner for a license to practice tattooing. No license may be issued to a person who has been convicted of criminal tattooing of a minor in violation of section 260.21 of the New York state penal law within the year immediately preceding such license application.

c. Each applicant for a tattoo license shall take an examination administered by the department in accordance with rules promulgated by the commissioner regarding health issues relating to tattooing, including but not limited to, infection control, utilization of universal precautions as recommended by the federal centers for disease control and prevention and proper methods of waste disposal. The fee for such examination shall be established pursuant to rules promulgated by the commissioner. An application for a tattoo license must be accompanied by satisfactory evidence of passing such examination. The commissioner shall issue an informational publication which may be used by applicants for a tattoo license in preparing to take such examination. The commissioner shall update such informational publication when the commissioner determines that new health-related information or techniques have become available.

d. The biennial fee for a tattoo license shall be one hundred dollars.

**HISTORICAL NOTE**

Section added L.L. 12/1997 § 2, eff. June 25, 1997.

**FOOTNOTES**

12

[Footnote 12]: * Subchapter 7 added L.L. 12/1997 § 2, eff. June 25, 1997. Note provisions of § 1 of such local law:

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-359*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 7 TATTOO REGULATION ACT*12

§ 17-359 Expiration; transfer; assignment; display.

a. All licenses shall be numbered and shall expire two years from the date of issuance.

b. No license shall be assignable or transferable.

c. Each license issued pursuant to this subchapter and a sign in the form prescribed by the commissioner indicating a department of health and mental hygiene address or telephone number where customers may register complaints shall be posted in a conspicuous place on the premises where the licensee is applying tattoos.

d. A license may be renewed without examination; provided, however, that if a license is not renewed within two years of its expiration, the licensee shall be subject to the provisions of section 17-358.

e. Any holder of a license which has been revoked may, upon expiration of the revocation period, reapply for such license under the provisions of section 17-358.

f. All advertising by or for a licensee must contain the phrase "LICENSED BY THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE" and the license number of such licensee. For the purposes of this subdivision, an alphabetical listing in a telephone directory shall not be considered advertising.

**HISTORICAL NOTE**

Section added L.L. 12/1997 § 2, eff. June 25, 1997.

Subds. c, f amended L.L. 22/2002 § 27, eff. July 29, 2002 and deemed

in effect as of July 1, 2002.

**FOOTNOTES**

12

[Footnote 12]: * Subchapter 7 added L.L. 12/1997 § 2, eff. June 25, 1997. Note provisions of § 1 of such local law:

Section 1. Declaration of legislative findings and intent. The Council of the City of New York finds that although it is currently illegal in the City of New York to apply tattoos, tattooists are nonetheless currently operating in the City without any standards or regulation. Without effective health regulation of tattooing, diseases can be transmitted to customers and tattooists through supplies and equipment. In recent years, there has been an increase in demand for tattoo services, resulting in an increasing number of New Yorkers being placed at risk for disease. The Council therefore finds it appropriate for the protection of the public health, safety and welfare of the citizens of New York City to enact legislation to regulate tattooing and tattooists. Such regulation will ensure that tattooists practice basic health and safety procedures necessary to competently engage in the practice of tattooing. The licensing of tattooists will permit the Department of Health to enforce safety standards for tattooists and impose penalties, including license suspension and revocation, for violations of such standards.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-360*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 7 TATTOO REGULATION ACT*12

§ 17-360 Sanitary conditions; physical facilities; equipment; procedures.

a. Every tattoo establishment, store, place or premises in which one or more tattooists engage in the practice of tattooing, shall be kept in a clean and sanitary condition at all times and shall have proper ventilation and lighting, waste receptacles, washing facilities with cold and hot running water, sanitary soap and towels for customers and tattooists and such other sanitary conditions as required by rules promulgated by the commissioner.

b. The commissioner shall promulgate rules with respect to hand-washing by tattooists, the wearing of latex gloves by tattooists and the wearing by tattooists of any other protective garments as the commissioner may require.

c. The commissioner shall promulgate rules with respect to the proper sterilization of tattoo equipment, proper sterilization and disposal of needles, and the tattooing procedure, including, but not limited to, the preparation of the skin to be tattooed and the treatment of the skin by the tattooist and the customer following tattooing.

d. The commissioner shall promulgate rules with respect to the tattooing of persons who have skin lesions or other conditions as determined by the commissioner.

e. No person shall apply a tattoo to any person under eighteen years of age.

f. After the tattooing procedure has been completed, every tattooist shall provide his or her customers with

written instructions on the proper care of tattooed skin.

g. Every tattooist shall maintain a record of the name, address, and age of every customer and date tattooed and any other information required by the commissioner and shall report to the commissioner any information as the commissioner shall determine.

**HISTORICAL NOTE**

Section added L.L. 12/1997 § 2, eff. June 25, 1997.

**FOOTNOTES**

12

[Footnote 12]: * Subchapter 7 added L.L. 12/1997 § 2, eff. June 25, 1997. Note provisions of § 1 of such local law:

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

*NYC Administrative Code 17-361*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 7 TATTOO REGULATION ACT*12

§ 17-361 Advisory committee.

a. There shall be established within the department an advisory committee to advise the commissioner on health issues relating to tattooing consisting of a chair and eight individuals with the following qualifications: (i) two persons with prior experience in the practice of tattooing, one appointed by the speaker of the city council and one by the mayor; (ii) two persons engaged in the training of such practice, one appointed by the speaker of the city council and one by the mayor; (iii) two persons, by practice and profession, knowledgeable in the practice of sterilization and sanitary procedures, one appointed by the speaker of the city council and one by the mayor; and (iv) two persons licensed as dermatologists, one appointed by the speaker of the city council and one by the mayor. Each member shall serve for a term of two years without compensation and may be reappointed for additional terms. Each member shall reside in or have his or her primary place of business within the city of New York. The chair shall be appointed by the commissioner.

b. The advisory committee shall make recommendations to the commissioner on all matters relating to this subchapter, including the promulgation and amendment of rules necessary to carry out the provisions of this subchapter and such other matters as the commissioner may deem necessary.

**HISTORICAL NOTE**

Section added L.L. 12/1997 § 2, eff. June 25, 1997.

**FOOTNOTES**

12

[Footnote 12]: * Subchapter 7 added L.L. 12/1997 § 2, eff. June 25, 1997. Note provisions of § 1 of such local law:

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-362*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 7 TATTOO REGULATION ACT*12

§ 17-362 Violations and penalties.

a. The first conviction of a licensee for criminal tattooing of a minor under section 260.21 of the New York state penal law shall result in the suspension of such license for a period of six months. Not later than ten business days prior to the expiration of such six-month suspension, where such a suspended licensee intends to resume tattooing, such licensee shall post a bond with the commissioner in such form and amount as the commissioner shall require. Such bond shall remain in full force and effect for eighteen months following the expiration of such six-month suspension. The second conviction of a licensee for criminal tattooing of a minor under section 260.21 of the New York state penal law within two years of the first conviction shall result in the revocation of such license for a period of two years and the forfeiture of such bond as may have been posted with the commissioner pursuant to this section. The third conviction of a licensee for criminal tattooing of a minor under section 260.21 of the New York state penal law within two years of the first conviction shall result in the revocation of such license for a period of five years. A license issued pursuant to this subchapter may be suspended or revoked for any other reasonable cause specified by the commissioner in order to ensure the health and safety of the public.

b. In addition to any other penalty imposed by any other provision of law or rule promulgated thereunder, any person found to be in violation of this subchapter or any of the rules promulgated hereunder shall be liable for a civil penalty of not more than three hundred dollars for the first violation; not more than five hundred dollars for the second violation within a two-year period; and not more than one thousand dollars for the third and all subsequent violations within a two-year period.

c. A proceeding to suspend or revoke a license authorized pursuant to subdivision a of this section, or to recover any civil penalty authorized pursuant to subdivision b of this section, shall be commenced by the service of a notice of violation which shall be returnable to the administrative tribunal established by the board of health. Such tribunal shall have the power to suspend or revoke a license issued pursuant to this subchapter and to impose the civil penalties prescribed by subdivision b of this section.

**HISTORICAL NOTE**

Section added L.L. 12/1997 § 2, eff. June 25, 1997.

**FOOTNOTES**

12

[Footnote 12]: * Subchapter 7 added L.L. 12/1997 § 2, eff. June 25, 1997. Note provisions of § 1 of such local law:

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-363*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 7 TATTOO REGULATION ACT*12

§ 17-363 Rules.

The commissioner shall promulgate rules in accordance with the provisions of this subchapter, and such other rules as may be necessary for the purpose of implementing and carrying out the provisions of this subchapter.

**HISTORICAL NOTE**

Section added L.L. 12/1997 § 2, eff. June 25, 1997.

**FOOTNOTES**

12

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-364*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 8 BOARDING KENNEL REGULATION ACT*18

§ 17-364 Short title.

This subchapter shall be known and may be cited as the "Boarding Kennel Regulation Act".

**HISTORICAL NOTE**

Section added L.L. 67/2005 § 2, eff. July 11, 2005. [See Subchapter 8 footnote]

**FOOTNOTES**

18

[Footnote 18]: * Subchapter 8 added L.L. 67/2005 § 2, eff. July 11, 2005. Note provisions of L.L. 67/2005:

Section 1. Declaration of legislative findings and intent. Many diseases that affect dogs are highly contagious and the chances of transmitting such diseases are greatly increased when dogs are housed in boarding

kennels, businesses or establishments. Vaccinations for rabies and other diseases are an important part of preventing disease among dogs. By requiring dog owners to provide proof of vaccination for certain common diseases before such animals are placed in boarding kennels, businesses or establishments, the City could lower the incidence of preventable diseases and help improve the health of these animals.

. . . . . § 3. If any section, subsection, sentence, clause, phrase, or other portion of this local law is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-365*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 8 BOARDING KENNEL REGULATION ACT*18

§ 17-365 Definitions.

For the purposes of this section, the term "boarding kennel, business or establishment" means a facility other than an animal shelter where animals not owned by the proprietor of such facility are sheltered, harbored, maintained, groomed, fed or watered in return for a fee.

**HISTORICAL NOTE**

Section added L.L. 67/2005 § 2, eff. July 11, 2005. [See Subchapter 8 footnote]

**FOOTNOTES**

18

[Footnote 18]: * Subchapter 8 added L.L. 67/2005 § 2, eff. July 11, 2005. Note provisions of L.L. 67/2005:

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-366*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 8 BOARDING KENNEL REGULATION ACT*18

§ 17-366 Proof of vaccination required.

No dog shall be accepted at a boarding kennel, business or establishment unless the owner of such dog provides proof to such facility, including but not limited to a health certificate, a bill or receipt from a veterinarian or other documentation acceptable to the department, that such animal has been vaccinated against rabies, distemper, hepatitis, para influenza and parvo during the previous three years and against bordetella during the previous six months; provided that an owner of a dog shall not be required to provide proof of vaccination pursuant to this section if such owner provides a written statement from a veterinarian indicating that the dog of such owner should not be given such vaccination because of a standard veterinary contraindication and that such dog does not show symptoms of the disease or diseases for which such vaccination is contraindicated.

**HISTORICAL NOTE**

Section added L.L. 67/2005 § 2, eff. July 11, 2005. [See Subchapter 8 footnote]

**FOOTNOTES**

18

[Footnote 18]: * Subchapter 8 added L.L. 67/2005 § 2, eff. July 11, 2005. Note provisions of L.L. 67/2005:

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. . . . . § 3. If any section, subsection, sentence, clause, phrase, or other portion of this local law is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

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*NYC Administrative Code 17-367*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 8 BOARDING KENNEL REGULATION ACT*18

§ 17-367 Record keeping.

Every boarding kennel, business or establishment shall maintain and make available for inspection records for each dog utilizing such facility for a period of twelve (12) months from the last day of such utilization indicating: the owner's name, address, telephone number and emergency contact; duration of stay; services provided; and proof of vaccinations or veterinarian's statements that vaccination is contraindicated.

**HISTORICAL NOTE**

Section added L.L. 67/2005 § 2, eff. July 11, 2005. [See Subchapter 8 footnote]

**FOOTNOTES**

18

[Footnote 18]: * Subchapter 8 added L.L. 67/2005 § 2, eff. July 11, 2005. Note provisions of L.L. 67/2005:

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. . . . . § 3. If any section, subsection, sentence, clause, phrase, or other portion of this local law is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.



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

*NYC Administrative Code 17-368*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 8 BOARDING KENNEL REGULATION ACT*18

§ 17-368 Inspection.

The department shall conduct an inspection of the records of each boarding kennel, business or establishment to determine such facility's compliance with the provisions of this subchapter.

**HISTORICAL NOTE**

Section added L.L. 67/2005 § 2, eff. July 11, 2005. [See Subchapter 8 footnote]

**FOOTNOTES**

18

[Footnote 18]: * Subchapter 8 added L.L. 67/2005 § 2, eff. July 11, 2005. Note provisions of L.L. 67/2005:

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-369*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 8 BOARDING KENNEL REGULATION ACT*18

§ 17-369 Rules.

The department may promulgate rules as may be necessary for the purpose of implementing and carrying out the provisions of this subchapter.

**HISTORICAL NOTE**

Section added L.L. 67/2005 § 2, eff. July 11, 2005. [See Subchapter 8 footnote]

**FOOTNOTES**

18

[Footnote 18]: * Subchapter 8 added L.L. 67/2005 § 2, eff. July 11, 2005. Note provisions of L.L. 67/2005:

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. . . . . § 3. If any section, subsection, sentence, clause, phrase, or other portion of this local law is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

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*NYC Administrative Code 17-370*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 3 LICENSES AND PERMITS

SUBCHAPTER 8 BOARDING KENNEL REGULATION ACT*18

§ 17-370 Violations and penalties.

Any owner or operator of a boarding kennel, business or establishment that violates any provision of this subchapter shall be liable for a civil penalty of two hundred and fifty dollars for each violation. A proceeding to recover any such civil penalty shall be commenced by the service of a notice of violation which shall be returnable to the administrative tribunal established by the department. Such tribunal shall have the power to impose civil penalties prescribed by this section.

**HISTORICAL NOTE**

Section added L.L. 67/2005 § 2, eff. July 11, 2005. [See Subchapter 8 footnote]

**FOOTNOTES**

18

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67/2005:

Section 1. Declaration of legislative findings and intent. Many diseases that affect dogs are highly contagious and the chances of transmitting such diseases are greatly increased when dogs are housed in boarding kennels, businesses or establishments. Vaccinations for rabies and other diseases are an important part of preventing disease among dogs. By requiring dog owners to provide proof of vaccination for certain common diseases before such animals are placed in boarding kennels, businesses or establishments, the City could lower the incidence of preventable diseases and help improve the health of these animals.

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-401*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 4 STANDARDS GOVERNING THE PERFORMANCE OF STERILIZATIONS

§ 17-401 Findings and declaration.

The council declares that due to the irreversible nature of the sterilization procedure, it is essential that the patient fully comprehends the effects and possible complications of the operation. The patient should have a reasonable time to consider his or her decision and possible alternative methods of contraception before the operation is performed. Since it is within the purview of the public policy of the city to preserve, protect and improve the public health, safety and welfare, it is imperative that the council establish standards governing the performance of sterilizations.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C22-1.0 added LL 37/1977 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 17-402*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 4 STANDARDS GOVERNING THE PERFORMANCE OF STERILIZATIONS

§ 17-402 Definitions.

When used in this chapter:

1. "Sterilization" shall mean any procedure or operation, the purpose of which is to render an individual permanently incapable of reproducing.

2. "Patient" shall mean a person, twenty-one years of age or older, who is legally capable of giving his or her consent.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C22-2.0 added LL 37/1977 § 1

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*NYC Administrative Code 17-403*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 4 STANDARDS GOVERNING THE PERFORMANCE OF STERILIZATIONS

§ 17-403 Application of chapter.

This chapter shall apply to every sterilization performed within the city of New York.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C22-3.0 added LL 37/1977 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 17-404*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 4 STANDARDS GOVERNING THE PERFORMANCE OF STERILIZATIONS

§ 17-404 Waiting period.

A sterilization may not be performed sooner than thirty days following the initial informed consent given by the patient unless the patient waives the thirty-day waiting period under the following circumstances:

1. A patient who has completed the appropriate forms and informational session, and who has signed the required informed consent form at least thirty days prior to her anticipated delivery date, may be sterilized in less than thirty days, but in no case less than seventy-two hours following the initial informed consent given by such patient if she delivers prior to the anticipated date and the sterilization is performed at the time of delivery.

2. A patient who has completed the appropriate forms and informational session and who signs the required consent form at least thirty days prior to the anticipated sterilization may be sterilized in less than thirty days if that patient is, within the thirty-day period, admitted to a facility for emergency abdominal surgery and the sterilization is concurrent with the abdominal surgery, but in no case shall the sterilization occur less than seventy-two hours after the initial consent.

3. If a patient appears for delivery or emergency abdominal surgery at a facility other than that at which the patient has completed the appropriate forms and informational session, the receiving facility shall contact, by telephone, the facility at which the forms and procedures were completed for verification of same. This must be noted in the record, with the name and title of the person providing the information, the date that the consent form was signed and the anticipated delivery date if under subdivision one of this section or sterilization date if under subdivision two of this section. If it is verified that the consent form was signed at least thirty days prior to the anticipated delivery or sterilization date, the receiving facility may perform the sterilization operation. Telephone verification may not be

waived unless the patient presents a duplicate copy of the initial consent, duly signed, witnessed and dated at least thirty days prior to the anticipated delivery or sterilization date.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C22-4.0 added LL 37/1977 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 17-405*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 4 STANDARDS GOVERNING THE PERFORMANCE OF STERILIZATIONS

§ 17-405 Requirements for informed consent.

No sterilization shall be performed which does not meet the following conditions:

1. Initial consent may not be elicited from a female patient during admission or hospitalization for childbirth or abortion.

2. An informational session conducted by a counselor, who is not the operating physician, must precede the patient's consent. During the session, information about the irreversibility of sterilization, alternative methods of contraception, and the corresponding risks must be discussed in the preferred language of the patient.

3. Written informed consent for sterilization must be obtained from each patient. A standardized consent form must be used to satisfy this requirement. The form, supplied by the department must be explained orally by the counselor in the presence of a witness. A copy of the signed consent form shall be provided the patient.

4. On admission to the facility where the sterilization will be performed each patient must give written affirmation of his or her informed consent to the sterilization.

5. The patient must be given oral and written assurance that medical services or benefits will not be lost as a result of refusing sterilization.

6. Contraceptive devices will be prescribed for the patient's use during the thirty-day waiting period.

7. Consent for the sterilization may be revoked any time prior to the operation.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C22-5.0 added LL 37/1977 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 17-406*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 4 STANDARDS GOVERNING THE PERFORMANCE OF STERILIZATIONS

§ 17-406 Consent form.

The standardized consent form provided by the department must include information about the irreversibility of sterilization, alternative methods of contraception and the corresponding risks.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C22-6.0 added LL 37/1977 § 1



Administrative Code of the City of New York



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

*NYC Administrative Code 17-407*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 4 STANDARDS GOVERNING THE PERFORMANCE OF STERILIZATIONS

§ 17-407 Reports.

The obstetrics or gynecology department of each hospital where sterilizations are performed, the administrator in charge of each clinic where sterilizations are performed, and physicians in private practice who perform sterilizations must submit monthly reports of the number of sterilizations performed to the department of health and mental hygiene. Forms will be provided by the department.

**HISTORICAL NOTE**

Section amended L.L. 22/2002 § 28, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C22-7.0 added LL 37/1977 § 1

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*NYC Administrative Code 17-408*

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Title 17 Health

CHAPTER 4 STANDARDS GOVERNING THE PERFORMANCE OF STERILIZATIONS

§ 17-408 Enforcement proceedings.

a. Notwithstanding the provisions of any other law, any person violating any of the provisions of this chapter shall be liable and responsible for a penalty of not more than one thousand dollars to be recovered in a civil action but in the name of the city in any court of record in the city.

b. The commissioner may in his or her discretion request the corporation counsel to institute legal proceedings to restrain, correct or enjoin any violation of this chapter; and the corporation counsel shall thereupon institute such action or proceeding as may be necessary and appropriate for such purpose.

c. Such actions and proceedings may be entered into by the corporation counsel in any court of civil jurisdiction within the city. In such actions and proceedings the city may apply for restraining orders, preliminary injunctions or other provisional remedies with or without notice.

d. In no case shall the department or any officer or employee thereof be liable for costs in any such action or proceeding and officers and employees of the department, acting in good faith, shall be free from liability for acts done in any action or proceeding.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § C22-8.0 added LL 37/1977 § 1



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

*NYC Administrative Code 17-501*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 5*13 SMOKE-FREE AIR ACT

§ 17-501 Short title.

This chapter shall be known and may be cited as the "Smoke-Free Air Act."

**HISTORICAL NOTE**

Section amended L.L. 5/1995 § 2, eff. Apr. 10, 1995. See Note.

Section added L.L. 2/1988 § 2.

**NOTE**

Effective 4/6/1988 L.L. 2/1988 provisions

Section one. Legislative findings. The City Council hereby finds that the regulation and control of smoking in enclosed public places is a matter of vital concern, affecting the public health, safety and welfare of all New Yorkers. There is increasing scientific evidence that passive exposure to cigarette smoke (second-hand smoke) is linked to a variety of negative health consequences in humans, including lung cancer, bronchitis, pneumonia, acute respiratory disease, cardiovascular disease, decreased pulmonary function, and low birth weight in children born to smokers. Such health consequences have been documented by the U.S. Surgeon General and the National Academy of Sciences and virtually every major health organization that has studied the effects of second-hand smoke. With respect to the adverse health effects of second-hand smoke, the Surgeon General has concluded that: "[t]he scientific case against involuntary smoking as a health risk is more than sufficient to justify appropriate remedial action."

Many jurisdictions around the country have already taken such action, as it is estimated that about 150 cities and 40 states have enacted legislation or regulations which in some way place restrictions on smoking in public places.

Given the current state of scientific evidence on the adverse health effects of second-hand smoke, the Council, in enacting this chapter, seeks to accomplish two goals: (1) to protect the public health and welfare by prohibiting smoking in certain public places except in designated smoking areas and by regulating smoking in the workplace; and (2) to strike a reasonable balance between persons who smoke and the right of nonsmokers to breathe smoke-free air.

§ 3. This local law shall take effect ninety days after its enactment. Actions necessary to prepare for the implementation of this local law may be taken prior to its effective date.

**NOTE**

Provisions of L.L. 5/1995 § 1

Section 1. Declaration of legislative findings and intent. According to the United States Environmental Protection Agency (the "EPA"), the health risks attributable to exposure to environmental tobacco smoke ("ETS") (also known as second-hand smoke, passive smoke or involuntary smoke) are well established. Further, the EPA has found that ETS is responsible for the lung cancer deaths of approximately 3,000 nonsmokers in the United States each year, and is a deadly carcinogen which belongs in the category of Group A (known human) carcinogens. Studies conducted by the EPA also conclude that exposure to ETS causes other significant health problems in adults, including coughing, phlegm production, chest discomfort and reduced lung function. In addition, studies conducted by other entities have concluded that ETS aggravates the condition of people with heart disease, and some studies have linked involuntary smoking with heart disease.

Moreover, the findings of the EPA indicate that exposure to ETS can pose substantial health risks to children, as it is casually associated with, among other things, increases in the prevalence of childhood respiratory illnesses, increases in the prevalence of fluid in the middle ear of children, and a statistically significant reduction in the lung function of children. The EPA's findings also indicate that ETS results in additional episodes and increased severity of asthma in children who suffer from this disease, and is a risk factor for new cases of asthma in children who have not previously displayed asthmatic symptoms.

The EPA reports that twenty-six percent of the population of the United States, or about 50 million Americans, are smokers. As the Council finds that virtually all Americans, including all citizens of New York City, are likely to be exposed to ETS by virtue of its widespread presence in public places and in the workplace, and that exposure to ETS presents a substantial health risk to nonsmokers, it is the Council's intention to strengthen existing local laws which limit the areas in which smoking is permissible. The Council is therefore placing further restrictions on smoking in public places and in the workplace, including placing restrictions which, in certain cases, limit smoking to separately ventilated rooms. Further, the Council is prohibiting smoking in particular places frequented by children, such as child day care center, children's institutions and playgrounds. It is the Council's intention that these additional restrictions will help protect children and nonsmoking adults from the health hazards presented by exposure to ETS.

**CASE NOTES**

¶ 1. The court upheld the constitutionality of the law as applied to cigars. The court rejected plaintiff's claims that the law violated the due process and equal protection clauses of the constitution. The legislature had a rational basis for including cigars within the law. The court pointed out, for example, that it would have been difficult to enforce a law that barred cigarettes but not cigars from certain premises; it is often difficult to determine which products constitute cigarettes and which constitute cigars. Beatie v. New York City, 1996 Westlaw 442869, U.S.Dist. Ct., S.D.N.Y.

¶ 2. In Matter of Penny Port, N.Y.L.J., Sept. 27, 1999, page 30, col. 5 (Sup.Ct. New York Co.), appeal withdrawn, 276 A.D.2d 1014, 714 N.Y.S.2d 349 (1st Dept. 2000), the City sought to enforce its anti-smoking regulations against

the owner of a restaurant located in Grand Central Station. The owner leased the space from the Metropolitan Transit Authority (MTA), which has its own smoking restrictions. In opposing the City, the owner contended that under Public Authorities Law Sec. 1266(8), the City did not have jurisdiction over MTA activities. The City contended that Section 1286 applied only to the MTA's own activities, not to private commercial enterprises that merely lease space from the MTA. In analyzing the situation, the court looked to an analogous case, MTA v. City of New York, 70 A.D.2d 551 (App.Div. 1st Dept.), leave denied, 48 N.Y.2d 607. MTA involved the construction of Public Authorities Law Sec. 1275, which provided for a tax exemption to property leased by the MTA and used for "transportation purposes." The MTA court held that food stores and other commercial enterprises that catered to rail commuters were in effect being used for transportation purposes, and held that the exemption applied to space leased to these enterprises. In Penny Port, the court held that the lessees were in effect conducting MTA-related activities, so that Section 1266 of the Public Authorities Law was applicable. Thus, the court held that the City had no authority to enforce Section 17-501 against the MTA's lessees. It is important to note that the court limited its holding to the facts of the case, and indicated, in a general way, that there might be some MTA lessees who would not qualify for the exemption provided by Section 1286 and thus could be subject to the City's smoking restrictions.

¶ 3. The court rejected a challenge by a private club to the constitutionality of the statute. The plaintiff alleged that the entry or anticipated entry of City inspectors to ascertain compliance with the smoking ban constituted an unlawful warrantless search in violation of the Fourth Amendment. The court, however, said that since the premises were licensed to serve food, the City inspectors had the right to be present on the premises by virtue of the health laws. In other words, the smoking ban did not expand municipal searches beyond those permitted by pre-existing law. The court also rejected Equal Protection and First Amendment challenges to the law. The Players, Inc. v. City of New York, N.Y.L.J., June 1, 2005, at 22, col. 3 (U.S. Dist. Ct. S.D.N.Y.)

**FOOTNOTES**

13

[Footnote 13]: * Chapter added L.L. 2/1988 § 2.

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*NYC Administrative Code 17-502*

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Title 17 Health

CHAPTER 5*13 SMOKE-FREE AIR ACT

§ 17-502 Definitions.

As used in this chapter, the following terms shall be defined as follows:

a. "Auditorium" means the part of the building where an audience sits including any corridors, hallways or lobbies adjacent thereto.

b. "Bar" means a business establishment or any portion of a non-profit entity, which is devoted to the selling and serving of alcoholic beverages for consumption by the public, guests, patrons, or members on the premises and in which the serving of food, if served at all, is only incidental to the sale or consumption of such beverages. For the purposes of this chapter, the term "bar": (i) shall include a restaurant bar; (ii) shall include any area located in a hotel or motel, which is devoted to the selling and serving of alcoholic beverages for consumption by the public, guests, patrons, or members on the premises and in which the serving of food, if at all, is only incidental to the sale or consumption of alcoholic beverages; and (iii) shall include a cabaret as defined in section 20-359 of the code which is required to be licensed by the department of consumer affairs pursuant to section 20-360 of the code and in which the serving of food, if at all, is only incidental to the sale or consumption of alcoholic beverages. For the purposes of this subdivision, (i) service of food shall be considered incidental to the sale or consumption of alcoholic beverages if the food service generates less than forty percent of total annual gross sales and (ii) any business establishment or any portion of a non-profit entity which is devoted to the selling and serving of alcoholic beverages for consumption by the public, guests, patrons, or members on the premises that generates forty percent or more of total annual gross sales from the sale of food for on-premises consumption shall be a restaurant.

c. "Business establishment" means any sole proprietorship, partnership, association, joint venture, corporation or

other entity formed for profit-making purposes, including professional corporations and other entities where legal, medical, dental, engineering, architectural, financial, counseling, and other professional or consumer services are provided.

d. "Child day care center" means (i) any public, private or parochial child care center, school-age child care program, day nursery school, kindergarten, play school, or other similar school or service, (ii) any child care arrangement licensed by the city, (iii) any facility that provides child care services as defined in section four hundred ten-p of the New York state social services law and (iv) any child day care center as defined in section three hundred ninety of the New York state social services law. Such definition applies whether or not care is given for compensation and whether or not the child day care center is located in a private residence.

e. "Children's institution" means (i) any public, private or parochial congregate institution, group residence, group home or other place where, for compensation or otherwise, seven or more children under twenty-one years of age are received for day and night care apart from their parents or guardians, (ii) youth centers or facilities for detention as defined in sections five hundred twenty-seven-A and five hundred two of the New York state executive law, (iii) group homes for children as defined in section three hundred seventy-one of the New York state social services law, (iv) public institutions for children as defined in section three hundred seventy-one of the New York state social services law and (v) residential treatment facilities for children and youth as defined in section 1.03 of the New York state mental hygiene law.

f. "Commissioner" means the commissioner of the New York City department of health and mental hygiene.

g. "Department" means the New York City department of health and mental hygiene.

h. "Employee" means any person who is employed by any employer in return for the payment of direct or indirect monetary wages or profit, or any person who volunteers his or her services to such employer for no monetary compensation.

i. "Employer" means any person, partnership, association, corporation or non-profit entity which employs one or more persons, including agencies of the city of New York, as defined in section 1-112 of the code, and the council of the city of New York.

j. Repealed.

k.* "Limousine"14 means a for-hire vehicle required to be licensed by the taxi and limousine commission, designed to carry fewer than nine passengers, excluding the driver, which is dispatched from a garage, maintains a minimum of $500,000/$1,000,000 liability insurance coverage and in which passengers are charged fees calculated on the basis of garage to garage service.

k.* "Motion picture theater" means any public hall or room in which motion pictures are displayed, including any corridors, hallways or lobbies adjacent thereto. For purposes of this subdivision, "motion picture" means a display on a screen or other device, of pictures or objects in motion or rapidly changing scenery, whether or not such display shall be accompanied by a lecture, recitation or music.

l. "Non-profit entity" means any corporation, unincorporated association or other association or other entity created for charitable, philanthropic, educational, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organization and not to secure private financial gain. A public agency is not a "non-profit entity" within the meaning of this subdivision.

m. "Place of employment" means any indoor area or portion thereof under the control of an employer which employees normally frequent during the course of employment and which is not generally accessible to the public, including, but not limited to, private offices, work areas, employee lounges and restrooms, conference and class rooms,

employee cafeterias, employee gymnasiums, auditoriums, libraries, storage rooms, file rooms, mailrooms, employee medical facilities, rooms or areas containing photocopying or other office equipment used in common by employees, elevators, stairways and hallways. A private residence is not a "place of employment" within the meaning of this subdivision, except that areas in a private residence where a child day care center or health care facility is operated during the times when employees are working in such child day care center or health care facility areas and areas in a private residence which constitute common areas of a multiple dwelling containing ten or more dwelling units, are "places of employment" within the meaning of this subdivision.

n. "Playground" means an outdoor area open to the public where children play, which contains play equipment such as a sliding board, swing, jungle gym, sandbox, or see-saw, or which is designated as a play area.

o. Repealed.

p. "Public place" means any area to which individuals other than employees are invited or permitted, including, but not limited to, banks, educational facilities, health care facilities, child day care centers, children's institutions, shopping malls, property owned, occupied or operated by the city of New York or an agency thereof, public transportation facilities, reception areas, restaurants, catering halls, retail stores, theaters, sports arenas and recreational areas and waiting rooms. A private residence is not a "public place" within the meaning of this subdivision, except that areas in a private residence where a child day care center or health care facility is operated during the times of operation and areas in a private residence which constitute common areas of a multiple dwelling containing ten or more dwelling units, are "public places" within the meaning of this subdivision.

q. "Residential health care facility" means (i) a facility providing therein nursing or other care to sick, invalid, infirm, disabled or convalescent persons in addition to lodging and board service, (ii) an inpatient psychiatric facility which provides individuals with active treatment under the direction of a physician, and (iii) a residential facility providing health related service.

r. "Restaurant" means any coffee shop, cafeteria, luncheonette, sandwich stand, diner, short order cafe, fast food establishment, soda fountain, and any other eating or beverage establishment (other than a bar), including a restaurant located in a hotel or motel, or part of any organization, club, boardinghouse or guest house, which gives or offers for sale food or beverages to the public, guests, members, or patrons, whether food or beverages are customarily consumed on or off the premises, but not an establishment whose sole purpose is to serve food or beverages to employees of a common employer or to students of a common educational institution.

s. "Restaurant bar" means a contiguous area (i) in a restaurant, (ii) containing a counter and (iii) which is primarily devoted to the selling and serving of alcohol beverages for consumption by patrons on the premises and in which the serving of food, if served at all, is only incidental to the sale or consumption of alcoholic beverages in such restaurant bar.

t. "Retail store" means any place which in the regular course of business sells or rents goods directly to the public.

u. "Retail tobacco store" means a retail store devoted primarily to the sale of any tobacco product, including but not limited to cigarettes, cigars, pipe tobacco and chewing tobacco, and accessories and in which the sale of other products is merely incidental. The sale of such other products shall be considered incidental if such sales generate less than fifty percent of the total annual gross sales.

v. Repealed.

w. "Separate smoking room" means an enclosed room the exclusive purpose of which is for smoking. No business transactions, including, but not limited to, the sale, including by vending machines, and/or service of food, beverages, or any other product, and/or collection of any payments, shall be conducted in such room.

Such room shall (i) be completely enclosed on all sides by solid floor-to-ceiling walls; (ii) comply with all applicable fire and building code requirements, and have a sprinkler system for fire safety (which may be part of a sprinkler system of the premises in which the room is located); and (iii) have a separate ventilation system whereby the air from such enclosed room is immediately exhausted to an outdoor area (exclusive of any seating area) by an exhaust fan rather than being recirculated inside, and which is compliant with the additional specifications set forth in this subdivision; (iv) be clearly designated as a separate smoking room wherein no services are offered. Such room may contain furniture. Such room shall not contain the sole means of ingress and egress to restrooms or any other smoke-free area, and shall not constitute the sole indoor waiting area of the premises. Any doors in such room shall be self-closing, and shall remain closed except to the extent necessary to permit ingress and egress to such room. Such room shall not exceed twenty-five percent of the aggregate square footage of the premises, including non-smoking lounges and shall not in any event exceed three hundred fifty square feet. In calculating the square footage of the premises pursuant to this subdivision, all spaces, whether or not occupied by furniture or any counter, including public dining areas, beverage service areas, the separate smoking room, and lounges shall be included; provided however, that service areas (including areas behind any counter) and other areas to which the general public does not generally have access (such as storage rooms, kitchens, offices and cloakrooms), restrooms, telephone areas and waiting areas (other than waiting areas located in any lounges) shall not be included. No employee shall be permitted to enter such room for the purposes of conducting any business transaction, including but not limited to the sale or service of food, beverages, or any other product, provided, however, that an employee shall be allowed into such room to provide busing or other cleaning services when no smoking has occurred for fifteen minutes prior to the employee entering the room and no customers are present. Such room shall have a ventilation system in which the ventilation rate is at least sixty cubic feet per minute per occupant based on a maximum occupancy of seven individuals per one hundred feet of floor space, and the negative air pressure is at a rate such that when measured by a device approved by the department of health and mental hygiene, the pressure differential is at least three hundredths of an inch of water column relative to the air pressure in the adjacent room in which smoking is not permitted. Such ventilation system shall discharge air from the separate smoking room at least twenty-five feet away from operable windows, doors, air conditioning, and any other heating, ventilation and air conditioning intakes.

x. "Service line" or "waiting area" means a queue, line or other formation of persons, whether seated or standing, in which one or more persons are waiting for service of any kind, whether or not such service involves an exchange of consideration.

y. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or any form of lighted object or device which contains tobacco.

z. "Sports arena and recreational area" means any sports pavilion, stadium, race track, boxing arena, roller and ice skating rink, billiard parlor, bowling establishment and other similar place where members of the general public assemble either to engage in physical exercise, participate in athletic or recreational competition or activity or witness sports, cultural, recreational or similar activities. Playgrounds, gymnasiums, health clubs, enclosed areas containing a swimming pool and areas where bingo is played are not "sports arenas and recreational areas" within the meaning of this subdivision.

aa. "Tobacco business" means a sole proprietorship, corporation, partnership or other enterprise in which the primary activity is the sale or manufacture of tobacco, tobacco products and accessories at wholesale, and in which the sale or manufacture of other products is merely incidental, and in which smoking on the premises is essential to the entity for the testing or product development of such tobacco or tobacco products.

bb. "Zoo" means any indoor area open to the public for the purpose of viewing animals. An aquarium is a "zoo" within the meaning of this subdivision.

cc. "Day treatment program" means a facility which is (i) licensed by the state department of health or the office of alcoholism and substance abuse services, the office of mental health, or the office of mental retardation and

developmental disabilities within the state department of mental hygiene to provide treatment to aid in the rehabilitation or recovery of its patients based on a structured environment requiring patient participation for no less than three hours each day; or (ii) which is authorized by the state commissioner of health to conduct a program pursuant to section 80.135 of title ten of the New York code of rules and regulations.

dd. "Health related service" means service in a facility which provides or offers lodging, board and physical care including, but not limited to, the recording of health information, dietary supervision and supervised hygienic services incident to such service.

ee. "Member" means, for purposes of subdivision ff of this section, a person who (i) satisfies the requirements for membership in a membership association, and (ii) affirmatively accepts an invitation from such membership association to become a member.

ff. "Membership association" means a not-for-profit entity which has been created or organized for a charitable, philanthropic, educational, political, social or other similar purpose and which is registered with the department of health and mental hygiene in accordance with the rules of the department. In determining whether such an entity is a "membership association," the department of health and mental hygiene shall consider, but need not be limited to, the following factors:

(i) whether it has by-laws or a similar governing instrument and whether such by-laws or similar governing instrument expressly provides for members;

(ii) whether it has established permanent and identifiable membership selection criteria, the purpose of which is to screen potential members on a basis related to its charitable, philanthropic, educational, political, social or other similar purpose;

(iii) whether it conducts elections to select its governing structure and/or body;

(iv) whether the premises within which it is located are controlled by its membership;

(v) whether it is operated solely for the benefit and pleasure of its membership;

(vi) whether it expressly acknowledges the acceptance of members, such as by sending a membership card or by the inclusion of a member on a membership roster.

Such registration shall remain in effect for two years and shall be renewable based upon the factors described in this subdivision and the rules of the department.

gg. "Owner operated bar" means a bar in which all duties with respect to preparing food and drink, cleaning, dishwashing and racking glasses, serving, maintaining inventory, stocking shelves and providing of security for such a bar are performed at all times only by individuals who are principal owners of such bar as defined in this section and which is registered with the department of health and mental hygiene in accordance with the rules of the department; provided, however, that individuals other than the principal owners may perform cleaning functions at times when the bar is not open to the public, guests, members or patrons.

hh. "Principal owner" shall mean an individual who holds a twenty-five percent or greater ownership interest in a bar and is a state liquor authority licensee for such bar, or an individual who holds a twenty-five percent or greater ownership interest in a partnership, joint venture, corporation or limited liability corporation, which is the sole owner of a bar and the state liquor authority licensee for such bar; provided, however, that an owner operated bar shall have no more than three principal owners.

ii "Tobacco product" means any substance which contains tobacco, including, but not limited to, cigarettes,

cigars, pipe tobacco and chewing tobacco.

jj. "Tobacco bar" is a bar that, in the calendar year ending December 31, 2001, generated ten percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines, and is registered with the department of health and mental hygiene in accordance with the rules of such agency. Such registration shall remain in effect for one year and shall be renewable only if: (i) in the preceding calendar year, the previously registered tobacco bar generated ten percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors; and (ii) the tobacco bar has not expanded its size or changed its location from its size or location as of December 31, 2001.

kk. "Negative air pressure" shall mean the air exhausted to the outdoors from a room is at a greater volume than the volume of air supplied into the room.

ll. "Ventilation rate" shall mean the rate at which air is supplied into a room.

**HISTORICAL NOTE**

Section amended L.L. 5/1995 § 3, eff. Apr. 10, 1995.

Section added L.L. 2/1988 § 2.

Subd. a amended L.L. 47/2002 § 1, eff. Mar. 30, 2003.

Subd. b amended L.L. 47/2002 § 1, eff. Mar. 30, 2003.

Subds. f, g amended L.L. 22/2002 § 29, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Subd. j repealed L.L. 47/2002 § 2, eff. Mar. 30, 2003.

Subd. k amended L.L. 47/2002 § 1, eff. Mar. 30, 2003.

Subd. k (laid out second) was part of amendment by L.L. 30/1995 § 1, eff. June 30, 1995, this subd. k was bracketed out of law in L.L. 5/1995 amendment.

Subd. o repealed L.L. 47/2002 § 2, eff. Mar. 30, 2003.

Subd. p amended L.L. 47/2002 § 1, eff. Mar. 30, 2003.

Subd. q amended L.L. 47/2002 § 1, eff. Mar. 30, 2003.

Subd. r amended L.L. 47/2002 § 1, eff. Mar. 30, 2003.

Subd. t amended L.L. 47/2002 § 1, eff. Mar. 30, 2003.

Subd. v repealed L.L. 47/2002 § 2, eff. Mar. 30, 2003.

Subd. w amended L.L. 47/2002 § 1, eff. Mar. 30, 2003.

Subd. z amended L.L. 47/2002 § 1, eff. Mar. 30, 2003.

Subd. aa amended L.L. 47/2002 § 1, eff. Mar. 30, 2003.

Subd. cc added L.L. 47/2002 § 3, eff. Mar. 30, 2003.

Subd. dd added L.L. 47/2002 § 3, eff. Mar. 30, 2003.

Subd. ee added L.L. 47/2002 § 3, eff. Mar. 30, 2003.

Subd. ff added L.L. 47/2002 § 3, eff. Mar. 30, 2003.

Subd. gg added L.L. 47/2002 § 3, eff. Mar. 30, 2003.

Subd. hh added L.L. 47/2002 § 3, eff. Mar. 30, 2003.

Subd. ii added L.L. 47/2002 § 3, eff. Mar. 30, 2003.

Subd. jj added L.L. 47/2002 § 3, eff. Mar. 30, 2003.

Subd. kk added L.L. 47/2002 § 3, eff. Mar. 30, 2003.

Subd. ll added L.L. 47/2002 § 3, eff. Mar. 30, 2003.

**CASE NOTES**

¶ 1. In Re 62nd & 1st, LLC v. d/b/a Cigar Lounge Merchants New York, 49 AD3d 471, 857 N.Y.S.2d 53 (1st Dept. 2008) discusses the laws regarding cigar bars. Petitioner's predecessor company, 1120 First LLC, started a cigar bar in 1997 on the lower level of the premises, and operated a restaurant upstairs. In December 2001, ostensibly for estate planning purposes, the businesses were transferred from 1125 to the current owner, 62nd & 1st LLC. The officers, members, and respective percentages of ownership of the members, remained the same after the transfer. In 2002, after the amendment of the New York City Smoke Free Air Act (Title 17), petitioner sought to register as a grandfathered tobacco bar exempt from the ban on smoking in enclosed areas within public spaces (Admin. Code. 17-503 and 24 RCNY 10-07).

Admin. Code Sec. 17-502 (j) defines "tobacco bar" as: "a bar that, in the calendar year ending December 31, 2001, generated ten percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidor, not including any sales from vending machines." Such registration shall remain in effect for one year and shall be renewable only if: (i) in the preceding calendar year, the previously registered tobacco bar generated ten percent or more of its total gross annual income from the on-site sale of tobacco products and the rental of on-site humidors, and (ii) the tobacco bar has not expanded its size or changed its location from its size or location as of December 31, 2001.

The City denied the application, claiming that the change in ownership resulted in an automatic revocation of the food service establishment (FSE) permit (see 24 RCNY 5.11) and that therefore petitioner had not shown, as it required, that it operated a tobacco bar pursuant to an FSE permit since the calendar year ending December 31, 2001.

The court, however, held that since there was no change in actual beneficial ownership, and since the change in nominal ownership did not appear to be designed to evade the grandfathering law, the revocation penalty imposed by the City was grossly disproportionate to the offense and an abuse of discretion.

The City had also denied the grandfathering application on the ground that petitioner had failed to include the upper-level restaurant in its calculating of gross sales from tobacco. The court found that this determination was arbitrary and capricious. The City cited the facts that the premises had a single owner, single FSE permit and single entrance from which patrons could proceed to the upper or lower level, and that the two businesses filed a single tax

return in 2001 and 2002. However, the court gave greater weight to factors in petitioner's favor: the restaurant and cigar bar began operations on different dates and maintained separate records, separate menus, separate hours, separate restroom facilities, separate ventilation systems and, most importantly, separate liquor licenses.

**FOOTNOTES**

13

[Footnote 13]: * Chapter added L.L. 2/1988 § 2.

14

[Footnote 14]: * There are two subdivisions k.

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

*NYC Administrative Code 17-503*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 5*13 SMOKE-FREE AIR ACT

§ 17-503 Prohibition of smoking.

a. Smoking is prohibited in all enclosed areas within public places except as otherwise restricted in accordance with the provisions below. Such public places include, but are not limited to, the following:

1. Public transportation facilities, including, but not limited to, ticketing, boarding and waiting areas of public transit depots.

2. Public means of mass transportation, including, but not limited to, subway cars and all underground areas of a subway station, buses, vans, taxicabs and all for-hire vehicles, including but not limited to limousines, required to be licensed or franchised by the city of New York.

3. Public restrooms.

4. Retail stores (other than retail tobacco stores).

5. Restaurants.

6. Business establishments (other than retail tobacco stores) including, but not limited to, banks and other financial institutions, catering halls, offices where trade or vocational activity occurs or professional or consumer services are rendered and non-profit entities, including religious institutions; provided however, that this paragraph shall not apply to membership associations.

7. Libraries, museums and galleries.

8. Motion picture theaters, concert halls, buildings or areas or rooms in buildings primarily used for or designed for the primary purpose of exhibiting movies or presenting performances, including, but not limited to, stage, musical recital, dance, lecture or other similar performances, except that smoking may be part of a theatrical production.

9. Auditoriums.

10. Convention halls.

11. Sports arenas and recreational areas.

12. Gymnasiums, health clubs and enclosed areas containing a swimming pool.

13. Places of meeting or public assembly during such time as a meeting open to the public is being conducted for educational, religious, recreational, or political purposes, but not including meetings conducted in private residences, unless such meetings are conducted in an area in a private residence where a child day care center or health care facility is operated during the times of operation or in an area which constitutes a common area of a multiple dwelling containing ten or more dwelling units.

14. Health care facilities including, but not limited to, hospitals, clinics, psychiatric facilities, residential health care facilities, physical therapy facilities, convalescent homes, and homes for the aged; provided however, that this paragraph shall not prohibit smoking by patients in separate enclosed rooms of residential health care facilities or facilities where day treatment programs are provided, which are designated as smoking rooms for patients of such facilities or programs, provided, however, that prior written approval is received from the fire commissioner pursuant to section 27-4276 of the code.

15. All schools other than public and private pre-primary, primary, and secondary schools providing instruction for students at or below the twelfth-grade level, including, but not limited to, community colleges, technical training establishments, specialty schools, colleges and universities.

16. Children's institutions.

17. Zoos.

18. Elevators.

19. Public areas where bingo is played.

20. Bars; provided however, that smoking shall be permitted in:

(a) tobacco bars; (b) owner operated bars; and (c)*20 separate smoking rooms in bars, provided, however, that the owner or operator of such bar shall have filed a copy of the architectural or engineering plan for such room with the department of health and mental hygiene.

21. Tobacco businesses, except that smoking shall be permitted in areas within a tobacco business designated by such business for the purpose of testing or development of tobacco or tobacco products; provided, however, that such areas must all be located on no more than two floors of the building where such business is located.

22. Membership associations; provided however, that smoking shall only be allowed in membership associations in which all of the duties with respect to the operation of such association, including, but not limited to, the preparation of food and beverages, the service of food and beverages, reception and secretarial work, and the security services of the membership association are performed by members of such membership association who do not receive compensation of any kind from the membership association or any other entity for the performance of such duties.

b. Smoking is prohibited on any service line, waiting area, or portion thereof, whether located indoor or outdoor during the times in which the public is invited or permitted, notwithstanding the fact that the service line, waiting area, or portion thereof, is in an area otherwise designated for smoking pursuant to subdivision a of this section; provided, however, that this subdivision shall not be construed to prohibit smoking in any area where smoking is permitted pursuant to section 17-505.

c. Smoking is prohibited in the following outdoor areas of public places, except as otherwise restricted in accordance with the provisions below:

1. Outdoor dining areas of restaurants with no roof or other ceiling enclosure; provided, however, that smoking may be permitted in a contiguous outdoor area designated for smoking so long as such area: (i) constitutes no more than twenty-five percent of the outdoor seating capacity of such restaurant; (ii) is at least three feet away from the outdoor area of such restaurant not designated for smoking; and (iii) is clearly designated with written signage as a smoking area.

2. Outdoor seating or viewing areas of open-air motion picture presentations or open-air concert, stage, dance, lecture or recital presentations or performances or other similar open-air presentations or performances, when seating or standing room is assigned by issuance of tickets.

3. Outdoor seating or viewing areas of sports arenas and recreational areas, when seating or standing room is assigned by issuance of tickets.

4. Outdoor areas of all children's institutions.

5. Playgrounds.

d. Smoking is prohibited in all indoor and outdoor areas of the following public places at all times:

1. All public and private pre-primary, primary, and secondary schools providing instruction for students at or below the twelfth-grade level, and any vehicles owned, operated or leased by such schools which are used to transport such students or the personnel of such schools.

2. All child day care centers; provided, however, that with respect to child day care centers operated in private residences, this paragraph shall apply only to those areas of such private residences where the child day care centers are operated during the times of operation or during the time employees are working in such child day care centers.

**HISTORICAL NOTE**

Section heading amended L.L. 47/2002 § 4, eff. Mar. 30, 2003.

[See Note]

Section amended L.L. 5/1995 § 4, eff. Apr. 10, 1995.

Section added L.L. 2/1988 § 2.

Subd. a open par amended L.L. 47/2002 § 4, eff. Mar. 30, 2003.

[See Note]

Subd. a par 1 amended L.L. 47/2002 § 4, eff. Mar. 30, 2003. [See Note]

Subd. a par 4 amended L.L. 47/2002 § 4, eff. Mar. 30, 2003. [See Note]

Subd. a par 5 amended L.L. 47/2002 § 4, eff. Mar. 30, 2003. [See Note]

Subd. a par 6 amended L.L. 47/2002 § 4, eff. Mar. 30, 2003. [See Note]

Subd. a par 8 amended L.L. 47/2002 § 4, eff. Mar. 30, 2003. [See Note]

Subd. a par 10 amended L.L. 47/2002 § 4, eff. Mar. 30, 2003. [See Note]

Subd. a par 11 amended L.L. 47/2002 § 4, eff. Mar. 30, 2003. [See Note]

Subd. a par 13 amended L.L. 83/1992 § 4, eff. Apr. 25, 1993. Note this par 13 was bracketed out of law by L.L. 5/1995 § 4.

Subd. a par 14 amended L.L. 47/2002 § 4, eff. Mar. 30, 2003. [See Note]

Subd. a par 15 amended L.L. 47/2002 § 4, eff. Mar. 30, 2003. [See Note]

Subd. a par 19 added L.L. 47/2002 § 5, eff. Mar. 30, 2003. [See Note]

Subd. a par 20 added L.L. 47/2002 § 5, eff. Mar. 30, 2002. [See Note]

Subd a par 20 subpar c repealed L.L. 47/2002 § 24, eff. Jan. 2, 2006. [See Note]

Subd. a pars 21, 22 added L.L. 47/2002 § 5, eff. Mar. 30, 2002. [See Note]

Subd. c open par amended L.L. 47/2002 § 6, eff. Mar. 30, 2003. [See Note]

Subd. c par 1 amended L.L. 47/2002 § 6, eff. Mar. 30, 2003. [See Note]

**NOTE**

Provisions of L.L. 47/2002:

21a. Before the ninetieth day after this local law shall have become a law, every employer shall make any changes necessary in their written smoking policies to bring them into compliance with the requairements of chapter 5 of title 17 of the administrative code of the city of New York as amended by this local law.

b. Nothing in this law shall be construed to impair, diminish or otherwise affect any collectively bargained procedure or remedy available to an employee, existing prior to the effective date of this local law, with respect to disputes arising under the emloyer's smoking policy or with respect to the establishment of a procedure for redress of any adverse personnel action taken against an employee in retaliation for that employee's attempt to exercise his or her rights under chapter 5 of title 17 of the administrative code with respect to the place of employment.

§22. If any provision of this local law, including but not limited to the provisions relating to tobacco bars and owner operated bars is ruled invalid, the remainder of the local law shall remain in force and effect. It is the intent of the Council that if any exemption from the prohibition of smoking is determined to be invalid, the remainder of the law shall be enforced as if that exemption had not been enacted, and smoking shall be prohibited in any place where the exemption previously applied.

§23. Notwithstanding any provision of this local law, it is the intent of the Council not to prohibit the owner of any establishment regulated under this local law, or any family member of such owner, from smoking on the premises at times when such establishment is not open for business.

§24. Subparagraph c of paragraph 20 of subdivision a of section 17-503 of the administrative code of the city of New York, as added by section 5 of this local law, is REPEALED.

**CASE NOTES**

¶ 1. The court rejected a constitutional challenge to the law's restrictions to the law's prohibitions against cigar smoking in restaurants. The plaintiff contended that the statute lacked a rational basis in that, unlike the case of second hand cigarette smoke, no scientific studies had demonstrated that second hand cigar smoke harmed others. The court, pointed to various materials submitted by the City, including a report by the U.S. Environmental Protection Administration, showing that cigar smoke might well be as dangerous as cigarette smoke. The City did not have to conclusively prove that cigar smoke was dangerous to non-smokers. So long as there was enough evidence to furnish a rational basis for the legislation, the law would be upheld. Beatie v. City of New York, 123 F.3d 707 (2nd Cir. 1997).

**FOOTNOTES**

13

[Footnote 13]: * Chapter added L.L. 2/1988 § 2.

20

[Footnote 20]: * Subpar (c) of par 20 of subd. a repealed Jan. 2, 2006 per L.L. 47/2002 §§24, 25.

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

*NYC Administrative Code 17-504*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 5*13 SMOKE-FREE AIR ACT

§ 17-504 Regulation of smoking in places of employment.

a. Smoking is prohibited in those indoor areas of places of employment to which the general public does not generally have access. This section shall not prohibit smoking in any area where smoking is not regulated pursuant to section 17-505.

b. Repealed.

c. Smoking is prohibited in company vehicles occupied by more than one person. Smoking is prohibited in all vehicles owned by the city of New York.

d. No employer shall take any retaliatory adverse personnel action against any employee or applicant for employment on the basis of such person's exercise, or attempt to exercise, his or her rights under this chapter with respect to the place of employment. Such adverse personnel action includes, but is not limited to, dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, compensation or other benefit, failure to hire, failure to appoint, failure to promote, or transfer or assignment or failure to transfer or assign against the wishes of the affected employee. The employer shall establish a procedure to provide for the adequate redress of any such adverse personnel action taken against an employee in retaliation for that employee's attempt to exercise his or her rights under this chapter with respect to the place of employment.

e. By November 1, 1995, every employer subject to the provisions of this chapter shall adopt, implement, make known, maintain and update to reflect any changes, a written smoking policy which shall contain at minimum, the following requirements:

1. The prohibition of smoking except in accordance with the provisions of this chapter and any rules promulgated pursuant thereto, and a description of the smoking restrictions adopted or implemented.

2. As set forth in subdivision d of this section, the (A) protection from retaliatory adverse personnel action with respect to all employees or applicants for employment who exercise, or attempt to exercise, any rights granted under such subdivision; and (B) the establishment of a procedure to provide for the adequate redress of any such adverse personnel action taken against an employee in retaliation for that employee's attempt to exercise his or her rights under this chapter with respect to the place of employment.

f. Employers shall prominently post the smoking policy in the workplace, and shall, within three weeks of its adoption and any modification, disseminate the policy to all employees, and to new employees when hired.

g. Employers shall supply a written copy of the smoking policy upon request to any employee or prospective employee.

h. A copy of the smoking policy shall be provided to the department, the department of buildings, the department of consumer affairs, the department of environmental protection, the fire department and the department of sanitation upon request.

i. This section shall not be construed to permit smoking in any area in which smoking is prohibited or restricted pursuant to section 17-503. Where a place of employment is also a public place where smoking is prohibited or restricted pursuant to section 17-503, and is not exempt from regulation under section 17-505, smoking shall be prohibited.

j. Nothing in this section shall be construed to impair, diminish, or otherwise affect any collectively bargained procedure or remedy available to an employee, existing as of February 1, 1995, with respect to disputes arising under the employer's smoking policy or with respect to the establishment of a procedure for redress of any adverse personnel action taken against an employee in retaliation for that employee's attempt to exercise his or her rights under this chapter with respect to the place of employment. Upon expiration of any such collectively bargained procedure or remedy, the provisions of this section shall take effect.

**HISTORICAL NOTE**

Section amended L.L. 5/1995 § 5, eff. Apr. 10, 1995.

Section added L.L. 2/1988 § 2.

Subd. a amended L.L. 47/2002 § 7, eff. Mar. 30, 2003.

Subd. b repealed L.L. 47/2002 § 8, eff. Mar. 30, 2003.

Subd. c amended L.L. 47/2002 § 7, eff. Mar. 30, 2003.

Subd. d amended L.L. 47/2002 § 7, eff. Mar. 30, 2003.

Subd. e amended L.L. 47/2002 § 7, eff. Mar. 30, 2003.

Subd. i amended L.L. 47/2002 § 7, eff. Mar. 30, 2003.

**CASE NOTES**

¶ 1. Where an employer violated this section and refused to take steps to provide a smoke-free area to an employee who was allergic to cigarette smoke, the employee had good cause to leave his employment and was eligible

for unemployment insurance. Halpern v. Chapdelaine Corporate Securities, 265 A.D.2d 702, 696 N.Y.S.2d 581 (3d Dept. 1999).

**FOOTNOTES**

13

[Footnote 13]: * Chapter added L.L. 2/1988 § 2.



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

*NYC Administrative Code 17-505*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 5*13 SMOKE-FREE AIR ACT

§ 17-505 Areas where smoking is not regulated by this chapter.

The following areas shall not be subject to the smoking restrictions of this chapter; provided however, that nothing in this section shall be construed to permit smoking where smoking is otherwise prohibited or restricted by any other law or rule:

a. Repealed.

b. Private residences, except any area of a private residence where a child day care center or health care facility is operated (i) during the times of operation or (ii) during the times when employees are working in such child day care center or health care facility areas; provided, however, that a common area of a multiple dwelling containing ten or more dwelling units shall be subject to smoking restrictions.

c. Hotel and motel rooms occupied by, or available for, occupancy by guests.

d. Repealed.

e. Repealed.

f. Private automobiles.

g. Retail tobacco stores.

h. Enclosed rooms in restaurants, bars, catering halls, convention halls, hotel and motel conference rooms, and

other such similar facilities during the time these enclosed areas or rooms are being used exclusively for functions where the public is invited for the primary purpose of promoting and sampling tobacco products, and the service of food and drink is incidental to such purpose, provided that the operator of such function shall have provided notice to the department of health and mental hygiene in a form satisfactory to such department at least two weeks before such a function begins, and such notice has identified the dates on which such function shall occur. No such facility may permit smoking under this subdivision for more than five days in any calendar year.

i. Repealed.

j. Repealed.

k. Repealed.

l. Repealed.

**HISTORICAL NOTE**

Section amended L.L. 5/1995 § 6, eff. Apr. 10, 1995.

Section added L.L. 2/1988 § 2.

Subd. a repealed L.L. 47/2002 § 9, eff. Mar. 30, 2003.

Subd. d repealed L.L. 47/2002 § 9, eff. Mar. 30, 2003.

Subd. e repealed L.L. 47/2002 § 9, eff. Mar. 30, 2003.

Subd. h amended L.L. 47/2002 § 10, eff. Mar. 30, 2003.

Subd. i repealed L.L. 47/2002 § 9, eff. Mar. 30, 2003.

Subd. j repealed L.L. 47/2002 § 9, eff. Mar. 30, 2003.

Subd. k repealed L.L. 47/2002 § 9, eff. Mar. 30, 2003.

Subd. l repealed L.L. 47/2002 § 9, eff. Mar. 30, 2003.

**FOOTNOTES**

13

[Footnote 13]: * Chapter added L.L. 2/1988 § 2.

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

*NYC Administrative Code 17-506*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 5*13 SMOKE-FREE AIR ACT

§ 17-506 Posting of signs; prohibition of ashtrays.

a. Except as may otherwise be provided by rules promulgated by the commissioner, "Smoking" or "No Smoking" signs, or the international symbols indicating the same, and any other signs necessary to comply with the provisions of this chapter shall be prominently and conspicuously posted where smoking is either prohibited, permitted or otherwise regulated by this chapter, by the owner, operator, manager or other person having control of such area. The size, style and location of such signs shall be determined in accordance with rules promulgated by the commissioner, but in promulgating such rules, the commissioner shall take into consideration the concerns of the various types of establishments regulated herein with respect to the style and design of such signs.

b. In addition to the posting of signs as provided in subdivision a, every owner, manager or operator of a theatre which exhibits motion pictures to the public shall show upon the screen for at least five seconds prior to the showing of each feature motion picture, information indicating that smoking is prohibited within the premises.

c. The owner, operator or manager of a hotel or motel that chooses to develop and implement a smoking policy for rooms rented to guests shall post a notice at the reception area of the establishment as to the availability, upon request, of smoke-free rooms.

d. Ashtrays are prohibited in all smoke-free areas covered by this chapter except (i) ashtrays offered for sale or (ii) ashtrays placed immediately adjacent to hotel and motel elevators and immediately adjacent to public entrances to hotels and motels, provided that such ashtrays are positioned so that second-hand smoke emanating from such ashtrays will not ordinarily activate smoke detectors and provided further that "No Smoking" signs as set forth in subdivision a of this section and in any rules promulgated by the commissioner shall be posted immediately adjacent to such ashtrays.

**HISTORICAL NOTE**

Section amended L.L. 5/1995 § 7, eff. Apr. 10, 1995.

Section added L.L. 2/1988 § 2.

Subd. b amended L.L. 47/2002 § 11, eff. Mar. 30, 2003.

Subd. d amended L.L. 12/1998 § 1, eff. Mar. 13, 1998.

**FOOTNOTES**

13

[Footnote 13]: * Chapter added L.L. 2/1988 § 2.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-507*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 5*13 SMOKE-FREE AIR ACT

§ 17-507 Enforcement.

a. The department shall enforce the provisions of this chapter. In addition, designated enforcement employees of the department of buildings, the department of consumer affairs, the department of environmental protection, the fire department and the department of sanitation shall have the power to enforce the provisions of this chapter.

b. Any person who desires to register a complaint under this chapter may do so with the department.

c. With respect to a public place or place of employment, the operator or employer shall inform, or shall designate an agent who shall be responsible for informing, individuals smoking in restricted areas that they are in violation of this local law; provided, however, that the obligations under this subdivision with respect to an operator of a multiple dwelling containing ten or more dwelling units shall be limited to (i) those multiple dwellings where an agent is on duty and (ii) designating such agent to be responsible for informing individuals smoking in restricted common indoor areas where such agent is on duty, during the times such agent is on duty, that such individuals are in violation of this local law.

d. Where an owner or building manager of a public place where smoking is prohibited or restricted pursuant to section 17-503 is not the operator of such public place but has an agent on duty in such place, the owner or building manager shall designate such agent to inform individuals smoking in restricted common indoor areas (i) where such agent is on duty and (ii) during the times when such agent is on duty, that such individuals are in violation of this local law.

e. Where an owner or building manager of a building in which a place of employment is located where smoking

is prohibited or restricted pursuant to section 17-504 is not the operator or employer of such place of employment but has an agent on duty in such place, the owner or building manager shall designate such agent to inform individuals smoking in restricted common indoor areas (i) where such agent is on duty and (ii) during the times when such agent is on duty, that such individuals are in violation of this local law. Such owner or building manager shall also mail a notice to tenants operating such place of employment, informing such tenants of their obligations under this chapter with respect to such restricted common indoor areas. A copy of the mailed notice shall be provided to the department upon request.

f. The department shall seek to obtain voluntary compliance with this chapter by means of publicity and education programs, and the issuance of warnings, where appropriate.

**HISTORICAL NOTE**

Section added L.L. 2/1988 § 2.

Subd. c amended L.L. 5/1995 § 8, eff. Apr. 10, 1995.

Subds. d, e added L.L. 5/1995 § 8, eff. Apr. 10, 1995.

Subd. f relettered L.L. 5/1995 § 8, eff. Apr. 10, 1995 (formerly subd. d)

**FOOTNOTES**

13

[Footnote 13]: * Chapter added L.L. 2/1988 § 2.

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

*NYC Administrative Code 17-508*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 5*13 SMOKE-FREE AIR ACT

§ 17-508 Violations and penalties.

a. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of premises in which smoking is prohibited or restricted pursuant to this chapter, or the designated agent thereof, to (i) provide a room designated for smoking including, but not limited to, a separate smoking room or an enclosed room, which fails to comply with the provisions of this chapter; provided, however, that the obligations of an owner or building manager of a building (where such owner or building manager of a building in which a public place is located is not the operator or employer of such public place) with respect to such a room shall be limited to work authorized by any permits necessary to perform construction obtained by the owner or his or her agent; (ii) fail to post the signs required by section 17-506; (iii) fail to remove ashtrays as required by subdivision d of section 17-506; or (iv) fail to make a good faith effort to comply with subdivisions c, d and e of section 17-507. In actions brought for violations of this subdivision, the following shall be affirmative defenses: (i) that during the relevant time period actual control of the premises was not exercised by the respondent or a person under the control of the respondent, but rather by a lessee, sublessee or any other person; provided, however, that after receiving the notice of violation, the respondent submits to the department within five business days, by certified mail, a sworn affidavit and other such proof as may be necessary, indicating that he or she has not exercised actual control during the relevant time period; (ii) that a person smoking in any area where smoking is prohibited pursuant to section 17-503 was informed by a person who owns, manages, operates or otherwise controls the use of such premises, or the designated agent thereof, that such person smoking is in violation of this local law and that such person who owns, manages, operates or otherwise controls the use of such premises has complied with all applicable provisions of this chapter during the relevant time period; provided, however, that after receiving notice of violation, the respondent submits to the department within five business days, by certified mail, a sworn affidavit and other such proof as may be necessary, indicating that respondent informed the person smoking in any area

where smoking is prohibited pursuant to section 17-503 that such person was in violation of this local law and that respondent has complied with all applicable provisions of this chapter during the relevant time period; or (iii) that a person smoking in any restricted common indoor area where smoking is prohibited pursuant to section 17-503 was not informed by the owner or building manager of the premises (where such owner or building manager of a building in which a public place or a place of employment is located is not the operator or employer of such public place or place of employment) or by the operator of a multiple dwelling containing ten or more dwelling units that such person smoking is in violation of this local law because such owner, building manager or operator did not have a designated agent on duty when such person was smoking and that such owner or building manager has, where applicable, complied with the mailing of a notice required pursuant to subdivision e of section 17-507; provided however, that after receiving notice of violation, the respondent submits to the department within five business days, by certified mail, a sworn affidavit and other such proof as may be necessary, indicating that a person smoking in any restricted common indoor area where smoking is prohibited pursuant to section 17-503 was not informed by the respondent that such person smoking is in violation of this local law because the respondent did not have a designated agent on duty when such person was smoking and that the respondent has, where applicable, mailed the notice required pursuant to subdivision e of section 17-507.

b. It shall be unlawful for an employer whose place of employment is subject to regulation under section 17-504 to fail to comply with the provisions of that section, including, but not limited to, those provisions requiring the adoption, implementation, dissemination and maintenance of a written smoking policy which conforms to the requirements of subdivision e of section 17-504, or to fail to make a good faith effort to comply with subdivision c of section 17-507. In actions brought for violations of this subdivision, it shall be an affirmative defense that the employer (i) has made good faith efforts to insure that employees comply with the provisions of such written smoking policy and (ii) has complied with all applicable provisions of this chapter.

c. Repealed.

d. It shall be unlawful for any person to smoke in any area where smoking is prohibited under section 17-503 and section 17-504.

e. Every person who violates subdivisions a or b of this section shall, for a first violation thereof, be liable for a civil penalty of not less than two hundred dollars nor more than four hundred dollars; for a second violation, both of which were committed within a period of twelve months, be liable for a civil penalty of not less than five hundred dollars nor more than one thousand dollars; and for a third or subsequent violation, all of which were committed within a period of twelve months, be liable for a civil penalty of not less than one thousand dollars nor more than two thousand dollars. Every person who violates subdivision d of this section shall be liable for a civil penalty of one hundred dollars for each violation.

f. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision e of this section shall be commenced by the service of a notice of violation which shall be returnable to the administrative tribunal established by the board of health. The board of health's administrative tribunal shall have the power to impose the civil penalties prescribed by subdivision e of this section.

g. Whenever a notice of violation of subdivision a or b of this section is served by a person with power to enforce the provisions of this chapter pursuant to subdivision a of section 17-507, such notice shall, where applicable, include an order which requires the respondent to correct the condition constituting the violation and to file a certification with the department that the condition has been corrected. Such order shall require that the condition be corrected within ten days from the date that the order is issued and that certification of the correction of the condition be filed with the department in a manner and form within such further period of time to be determined in accordance with rules and regulations promulgated by the commissioner.

h. If the administrative tribunal established by the board of health finds, upon good cause shown, that the

respondent cannot correct the violation specified in subdivision g of this section, it may postpone the period for compliance with such order upon such terms and conditions and for such period of time as shall be appropriate under the circumstances.

i. In any proceeding before the administrative tribunal established by the board of health, if the tribunal finds that the department or other agency issuing the notice of violation has failed to prove the violation charged, it shall notify the department or other agency issuing the notice of violation, and the order requiring the respondent to correct the condition constituting the violation shall be deemed to be revoked.

j. When the owner or operator of a bar has been found to be in violation of subparagraph c of paragraph twenty of subdivision a of section 17-503 on two or more occasions on the basis of one or more employees being in a separate smoking room at times not permitted under this chapter, the tribunal shall revoke the right of such owner or operator to maintain a separate smoking room in such bar.

k. The penalties provided by this section shall be in addition to any other penalty imposed by any other provision of law or regulation thereunder.

**HISTORICAL NOTE**

Section added L.L. 2/1988 § 2.

Subd. a amended L.L. 5/1995 § 9, eff. Apr. 10, 1995.

Subd. b amended L.L. 5/1995 § 9, eff. Apr. 10, 1995.

Subd. c amended L.L. 5/1995 § 9, eff. Apr. 10, 1995.

Subd. e amended L.L. 5/1995 § 9, eff. Apr. 10, 1995.

**FOOTNOTES**

13

[Footnote 13]: * Chapter added L.L. 2/1988 § 2.

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

*NYC Administrative Code 17-509*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 5*13 SMOKE-FREE AIR ACT

§ 17-509 Waiver. [Repealed.]

**HISTORICAL NOTE**

Section repealed L.L. 47/2002 § 14, eff. Mar. 30, 2003.

Section added L.L. 2/1988 § 2.

Subd. a amended L.L. 5/1995 § 10, eff. Apr. 10, 1995.

**FOOTNOTES**

13

[Footnote 13]: * Chapter added L.L. 2/1988 § 2.



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

*NYC Administrative Code 17-510*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 5*13 SMOKE-FREE AIR ACT

§ 17-510 Public education.

The department shall engage in a continuing program to explain and clarify the provisions and purposes of this chapter and shall provide assistance to those persons who seek to comply, and to those who want to stop smoking.

**HISTORICAL NOTE**

Section added L.L. 2/1988 § 2.

**FOOTNOTES**

13

[Footnote 13]: * Chapter added L.L. 2/1988 § 2.



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

*NYC Administrative Code 17-511*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 5*13 SMOKE-FREE AIR ACT

§ 17-511 Governmental agency cooperation.

The department shall seek to encourage state and federal governmental and educational agencies having facilities within the city of New York, but not subject to the provisions of this chapter, to establish local operating procedures which substantially conform to the requirements of this chapter.

**HISTORICAL NOTE**

Section added L.L. 2/1988 § 2.

**FOOTNOTES**

13

[Footnote 13]: * Chapter added L.L. 2/1988 § 2.



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

*NYC Administrative Code 17-512*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 5*13 SMOKE-FREE AIR ACT

§ 17-512 General provisions.

a. Nothing in this chapter shall be construed to permit smoking where it is otherwise prohibited by law or regulation.

b. Nothing in this chapter shall be construed to prohibit owners, operators, managers, employers or other persons having control of any establishment subject to this chapter from adopting a smoke-free policy which completely prohibits smoking on the premises of such establishment at all times.

c. Nothing in this chapter shall be construed to require owners, operators, managers, employers or other persons having control of any establishment subject to this chapter to choose to construct a separate smoking room, an enclosed room where smoking is permitted or a solid floor-to-ceiling partition separating a restaurant bar from the indoor dining area of a restaurant as the means of complying with this chapter.

d. Nothing in this chapter shall be construed to preclude owners, operators, managers, employers or other persons having control of any establishment covered by this act from prohibiting smoking in such establishment to a greater extent than is provided by this chapter, in accordance with applicable law.

e. Nothing in this chapter shall be construed to allow owners, operators, managers, employers or other persons having control of any establishment covered by this act to be subject to any legal proceeding or action to enforce this chapter in any court by any party, other than the city of New York or its designated agencies, based on such owners', operators', managers', employers' or other persons alleged manner or method of compliance with the provisions of this chapter or his or her alleged failure to comply with the same.

**HISTORICAL NOTE**

Section added L.L. 2/1988 § 2.

Subds. b, c added L.L. 5/1995 § 11, eff. Apr. 10, 1995.

Subds. d, e relettered L.L. 5/1995 § 11, eff. Apr. 10, 1995.

(formerly subds. b, c)

**FOOTNOTES**

13

[Footnote 13]: * Chapter added L.L. 2/1988 § 2.

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

*NYC Administrative Code 17-513*

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Title 17 Health

CHAPTER 5*13 SMOKE-FREE AIR ACT

§ 17-513 Rules and report.

a. The commissioner shall promulgate rules in accordance with the provisions contained in this chapter, and such other rules as may be necessary for the purpose of implementing and carrying out the provisions of this chapter.

b. The commissioner of the department of buildings in conjunction with the commissioner of the department of environmental protection, the commissioner of the fire department and the commissioner shall study methods of and, if deemed appropriate, develop recommendations with respect to preventing, to the greatest extent practicable, second-hand smoke from drifting or recirculating from restaurant bars to indoor smoke-free areas of restaurants. The study and any recommendations of such commissioners shall include, but not be limited to, the advisability of requiring restaurant bars to construct or implement any of the following:

1. Separate smoking rooms.

2. Enclosed rooms.

3. Ventilation systems.

4. Separation of restaurant bar from indoor smoke-free areas by means of a partition.

5. Spatial separation of restaurant bar from indoor smoke-free areas by a specific distance.

In determining the advisability of requiring that certain protections from second-hand smoke be provided in restaurant bars, the commissioners shall consider any applicable standards or recommendations of the American Society

of Heating, Refrigerating and Air-Conditioning Engineers, any applicable standards or recommendations of the United States environmental protection agency and the occupational safety and health administration of the United States department of labor with respect to indoor air quality relating to second-hand smoke, the impact on public health of exposure to second-hand smoke and any other factors which such commissioners deem appropriate. Such commissioner shall report to the council by January 1, 1996 regarding the results of the study required pursuant to this subdivision and any recommendations.

**HISTORICAL NOTE**

Section amended L.L. 5/1995 § 12, eff. Apr. 10, 1995.

Section added L.L. 2/1988 § 2.

**FOOTNOTES**

13

[Footnote 13]: * Chapter added L.L. 2/1988 § 2.

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*NYC Administrative Code 17-513.1*

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Title 17 Health

CHAPTER 5*13 SMOKE-FREE AIR ACT

§ 17-513.1 Effective dates for membership associations, owner operated bars and tobacco bars.

a. Any entity who in good faith believes itself to be a membership association shall have one hundred eighty days from the effective date of the local law that added this section to apply to the department of health and mental hygiene for registration as a membership association. During the period of time from the effective date of the local law which added this section until the expiration of one hundred eighty days, no provision of the local law that added this section, except for the provisions of this section, shall apply to such entity, but all provisions of local law 5 for the year 1995 shall continue to apply to such entity.

b. Any entity who in good faith believes itself to be an owner operated bar shall have one hundred eighty days from the effective date of the local law that added this section to apply to the department of health and mental hygiene for registration as an owner operated bar. During the period of time from the effective date of the local law which added this section until the expiration of one hundred eighty days, no provision of the local law that added this section, except for the provisions of this section, shall apply to such entity, but all provisions of local law 5 for the year 1995 shall continue to apply to such entity.

c. Any entity who in good faith believes itself to be a tobacco bar shall have one hundred eighty days from the effective date of the local law that added this section to apply to the department of health and mental hygiene for registration as a tobacco bar. During the period of time from the effective date of the local law which added this section until the expiration of one hundred eighty days, no provision of the local law that added this section, except for the provisions of this section, shall apply to such entity, but all provisions of local law 5 for the year 1995 shall continue to apply to such entity.

**HISTORICAL NOTE**

Section repealed and added L.L. 47/2002 §§ 15, 16, eff. Mar. 30, 2003.

Section added L.L. 5/1995 § 13, eff. Apr. 10, 1995.

**FOOTNOTES**

13

[Footnote 13]: * Chapter added L.L. 2/1988 § 2.

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*NYC Administrative Code 17-513.2*

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Title 17 Health

CHAPTER 5*13 SMOKE-FREE AIR ACT

§ 17-513.2 Construction.

The provisions of this chapter shall not be interpreted or construed to permit smoking where it is prohibited or otherwise restricted by other applicable laws, rules or regulations.

**HISTORICAL NOTE**

Section added L.L. 47/2002 § 17, eff. Mar. 30, 2003.

**FOOTNOTES**

13

[Footnote 13]: * Chapter added L.L. 2/1988 § 2.



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

*NYC Administrative Code 17-514*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 5*13 SMOKE-FREE AIR ACT

§ 17-514 Report.

Not later than twelve months after the effective date of this local law, and each year thereafter, the department shall submit a report to the mayor and the council concerning the administration and enforcement of this local law.

**HISTORICAL NOTE**

Section added L.L. 2/1988 § 2.

**FOOTNOTES**

13

[Footnote 13]: * Chapter added L.L. 2/1988 § 2.



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

*NYC Administrative Code 17-601*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 6*15 DRUG TESTING OF SCHOOL SYSTEM CONVEYANCE DRIVERS

§ 17-601 Definitions.

As used in this chapter, the following terms shall be defined as follows:

a. "Driver" or "Bus driver" shall mean every person employed by a motor carrier who drives and operates a bus or other motor vehicle to transport school children and every person employed by a motor carrier who drives and operates a mobile instructional unit pursuant to a contract between the motor carrier and the board of education.

b. "Motor carrier" shall mean any person, corporation, or entity who operates or employs others to operate buses or other motor vehicles to transport school children and any person, corporation, or entity who operates or employs others to operate mobile instructional units pursuant to a contract with the board of education.

c. "The department" shall mean the New York city department of health and mental hygiene.

d. "Board" or "Board of education" shall mean the New York city board of education.

e. "Illegal drug" shall mean marijuana or concentrated cannabis, cocaine and its derivatives, opiates, amphetamines, phencyclidine and any other drug the board of education shall designate by rule pursuant to section 17-609 of this chapter.

f. "Drug test" shall mean a scientific procedure employing an initial screening test and, where required by this chapter, a subsequent confirmatory test on urine to detect the presence of illegal drugs.

g. "Sample" shall mean a portion of a urine specimen used for testing.

h. "Screening test" shall mean an immunoassay screen using a test at least as reliable as the enzyme multiplied immunoassay test.

i. "Confirmatory test" shall mean a second analytical procedure performed on a different sample of the same specimen that has tested positive on the screening test.

j. "Pre-employment test" shall mean a drug test given to an applicant for the position of driver.

k. "Random test" shall mean a drug test given annually to a predetermined percentage of drivers who are selected on a scientifically defensible random and unannounced basis.

l. "Post-accident test" shall mean a drug test administered to a driver after a serious accident or series of accidents, as defined in section 17-607, has occurred during his or her operation of a bus or other motor vehicle in the course of his or her employment.

m. "Return to duty test" shall mean a drug test given to a driver who previously tested positive to a drug test and is returning to active duty, and any additional, unannounced drug test administered for a period of up to sixty months after a positive test result.

n. "Serious accident" shall mean an accident associated with the operation of a bus or other motor vehicle used to transport school children in which an individual dies or must be taken to a medical treatment facility, or in which property damage is estimated to be more than two thousand five hundred dollars.

o. "Chain of custody procedures" shall mean procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen.

p. "Medical review officer" shall mean a licensed physician responsible for receiving and interpreting laboratory results generated by a drug testing program.

q. "Positive test result" shall mean that the drug test result shows positive evidence that an illegal drug is present in a driver's system in a level established by the board of education pursuant to section 17-609.

r. "Pass a drug test" shall mean that a medical review officer has determined, pursuant to section 17-609 herein, that the results of a drug test administered under this chapter: (1) showed no evidence or insufficient evidence of an illegal drug; (2) showed evidence of an illegal drug but there was a legitimate medical explanation for the result; (3) were scientifically insufficient to warrant further action; or (4) were suspect because of irregularities in the administration of the test or observation of chain of custody procedures.

s. "Active duty" shall mean the operation of a bus or other motor vehicle used for the transportation of school children.

t. "School year" shall mean the period of time commencing September first and ending on August thirty-first.

u. "Mobile instructional unit" shall mean a vehicle in which federally mandated educational services are provided to eligible non-public school children pursuant to title I of the Elementary and Secondary Education Act of 1965, as amended.

**HISTORICAL NOTE**

Section added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Subds. a, b amended L.L. 25/1990 § 1 eff. Sept. 1, 1990.

Subd. c amended L.L. 22/2002 § 30, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Subd. u added L.L. 25/1990 § 2 eff. Sept. 1, 1990.

**FOOTNOTES**

15

[Footnote 15]: * Chapter added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Note provisions of L.L. 104/1989 § 1:

Section one. Declaration of legislative intent and findings. The Council finds that the safety of more than 100,000 school children depends on the ability of New York City school bus drivers to perform at their optimum mental and physical capacities. It is clear that drug use by a school bus driver could severely impede his or her ability to transport children to school safely. It has been documented that drug use impairs the central nervous system, often causing detrimental changes in alertness, consciousness, coordination, judgment, personality, muscle strength, reflex reactions and time sequencing. Consequently, it is necessary to ensure that school bus drivers do not operate buses or other motor vehicles while under the influence of drugs. Implementation of a drug testing program for school bus drivers is the best way to detect drug use by drivers and to prevent those under the influence of drugs from endangering themselves and others. In this manner, parents may be assured that their child's bus driver is drug-free. As such, the Council finds it appropriate, for the protection of the health, safety and welfare of all New Yorkers, to mandate that all entities contracting with the Board of Education to transport school children implement a drug testing program for drivers.

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*NYC Administrative Code 17-602*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 6*15 DRUG TESTING OF SCHOOL SYSTEM CONVEYANCE DRIVERS

§ 17-602 Drug testing of school system drivers.

Every motor carrier shall certify to the board of education that it requires all drivers employed by such motor carrier to submit to pre-employment drug testing, random drug testing, reasonable suspicion drug testing, post-accident drug testing and return to duty drug testing, in accordance with the requirements of this chapter and any rules promulgated pursuant hereto.

**HISTORICAL NOTE**

Section added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

**FOOTNOTES**

15

[Footnote 15]: * Chapter added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Note provisions of L.L. 104/1989 § 1:

Section one. Declaration of legislative intent and findings. The Council finds that the safety of more than 100,000 school children depends on the ability of New York City school bus drivers to perform at their optimum mental and physical capacities. It is clear that drug use by a school bus driver could severely impede his or her

ability to transport children to school safely. It has been documented that drug use impairs the central nervous system, often causing detrimental changes in alertness, consciousness, coordination, judgment, personality, muscle strength, reflex reactions and time sequencing. Consequently, it is necessary to ensure that school bus drivers do not operate buses or other motor vehicles while under the influence of drugs. Implementation of a drug testing program for school bus drivers is the best way to detect drug use by drivers and to prevent those under the influence of drugs from endangering themselves and others. In this manner, parents may be assured that their child's bus driver is drug-free. As such, the Council finds it appropriate, for the protection of the health, safety and welfare of all New Yorkers, to mandate that all entities contracting with the Board of Education to transport school children implement a drug testing program for drivers.

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*NYC Administrative Code 17-603*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 6*15 DRUG TESTING OF SCHOOL SYSTEM CONVEYANCE DRIVERS

§ 17-603 Prior notice of testing policy.

At the beginning of each school year, every motor carrier shall give written notice of its drug testing policy, as provided by the board of education pursuant to section 17-609(d)(2) of this chapter, to all drivers employed by it. The written notice shall contain the following information: the need for drug testing; the procedure for confirming an initial positive drug test result; the right to obtain an additional drug test on the same specimen at the driver's own expense; the consequences pursuant to this chapter of not passing a drug test or refusing to take a drug test; and the right to explain a positive test result.

**HISTORICAL NOTE**

Section added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

**FOOTNOTES**

15

[Footnote 15]: * Chapter added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Note provisions of L.L. 104/1989 § 1:

Section one. Declaration of legislative intent and findings. The Council finds that the safety of more than

100,000 school children depends on the ability of New York City school bus drivers to perform at their optimum mental and physical capacities. It is clear that drug use by a school bus driver could severely impede his or her ability to transport children to school safely. It has been documented that drug use impairs the central nervous system, often causing detrimental changes in alertness, consciousness, coordination, judgment, personality, muscle strength, reflex reactions and time sequencing. Consequently, it is necessary to ensure that school bus drivers do not operate buses or other motor vehicles while under the influence of drugs. Implementation of a drug testing program for school bus drivers is the best way to detect drug use by drivers and to prevent those under the influence of drugs from endangering themselves and others. In this manner, parents may be assured that their child's bus driver is drug-free. As such, the Council finds it appropriate, for the protection of the health, safety and welfare of all New Yorkers, to mandate that all entities contracting with the Board of Education to transport school children implement a drug testing program for drivers.

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

*NYC Administrative Code 17-604*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 6*15 DRUG TESTING OF SCHOOL SYSTEM CONVEYANCE DRIVERS

§ 17-604 Pre-employment testing.

For the purposes of this chapter, a motor carrier shall not hire or assign an individual as a driver unless he or she passes a drug test in accordance with the provisions of this chapter.

**HISTORICAL NOTE**

Section added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

**FOOTNOTES**

15

[Footnote 15]: * Chapter added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Note provisions of L.L. 104/1989 § 1:

Section one. Declaration of legislative intent and findings. The Council finds that the safety of more than 100,000 school children depends on the ability of New York City school bus drivers to perform at their optimum mental and physical capacities. It is clear that drug use by a school bus driver could severely impede his or her ability to transport children to school safely. It has been documented that drug use impairs the central nervous system, often causing detrimental changes in alertness, consciousness, coordination, judgment, personality,

muscle strength, reflex reactions and time sequencing. Consequently, it is necessary to ensure that school bus drivers do not operate buses or other motor vehicles while under the influence of drugs. Implementation of a drug testing program for school bus drivers is the best way to detect drug use by drivers and to prevent those under the influence of drugs from endangering themselves and others. In this manner, parents may be assured that their child's bus driver is drug-free. As such, the Council finds it appropriate, for the protection of the health, safety and welfare of all New Yorkers, to mandate that all entities contracting with the Board of Education to transport school children implement a drug testing program for drivers.

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*NYC Administrative Code 17-605*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 6*15 DRUG TESTING OF SCHOOL SYSTEM CONVEYANCE DRIVERS

§ 17-605 Random testing.

a. All drivers employed by a motor carrier subject to this chapter shall be subject to drug testing on an unannounced and random basis.

b. During the school year commencing September 1, 1990 and ending August 31, 1991, every motor carrier shall administer a number of random drug tests equal to twenty-five percent of all drivers employed during that year. For each subsequent school year, every motor carrier shall administer a number of random drug tests equal to fifty percent of all drivers employed by such motor carrier during that year.

c. Each driver shall be in a pool from which random selection is made. Each driver in the pool shall have an equal chance of selection and shall remain in the pool after he or she has been tested.

d. A driver shall be selected for drug testing on a random basis by using a scientifically valid random number generation method.

e. Testing shall be spread through the twelve-month period of the school year.

f. The board of education shall select the dates and times that random drug tests shall be administered and shall be responsible for the driver selection process required by subdivision d of this section.

**HISTORICAL NOTE**

Section added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

**FOOTNOTES**

15

[Footnote 15]: * Chapter added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Note provisions of L.L. 104/1989 § 1:

Section one. Declaration of legislative intent and findings. The Council finds that the safety of more than 100,000 school children depends on the ability of New York City school bus drivers to perform at their optimum mental and physical capacities. It is clear that drug use by a school bus driver could severely impede his or her ability to transport children to school safely. It has been documented that drug use impairs the central nervous system, often causing detrimental changes in alertness, consciousness, coordination, judgment, personality, muscle strength, reflex reactions and time sequencing. Consequently, it is necessary to ensure that school bus drivers do not operate buses or other motor vehicles while under the influence of drugs. Implementation of a drug testing program for school bus drivers is the best way to detect drug use by drivers and to prevent those under the influence of drugs from endangering themselves and others. In this manner, parents may be assured that their child's bus driver is drug-free. As such, the Council finds it appropriate, for the protection of the health, safety and welfare of all New Yorkers, to mandate that all entities contracting with the Board of Education to transport school children implement a drug testing program for drivers.

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*NYC Administrative Code 17-606*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 6*15 DRUG TESTING OF SCHOOL SYSTEM CONVEYANCE DRIVERS

§ 17-606 Reasonable suspicion testing.

Nothing in this chapter shall preclude a motor carrier from administering a drug test when the motor carrier has a reasonable suspicion that a driver is using an illegal drug or when the chancellor of the board of education, or his or her designee, has a reasonable suspicion that a driver is using an illegal drug and requests that a driver take a drug test.

**HISTORICAL NOTE**

Section added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

**FOOTNOTES**

15

[Footnote 15]: * Chapter added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Note provisions of L.L. 104/1989 § 1:

Section one. Declaration of legislative intent and findings. The Council finds that the safety of more than 100,000 school children depends on the ability of New York City school bus drivers to perform at their optimum mental and physical capacities. It is clear that drug use by a school bus driver could severely impede his or her ability to transport children to school safely. It has been documented that drug use impairs the central nervous

system, often causing detrimental changes in alertness, consciousness, coordination, judgment, personality, muscle strength, reflex reactions and time sequencing. Consequently, it is necessary to ensure that school bus drivers do not operate buses or other motor vehicles while under the influence of drugs. Implementation of a drug testing program for school bus drivers is the best way to detect drug use by drivers and to prevent those under the influence of drugs from endangering themselves and others. In this manner, parents may be assured that their child's bus driver is drug-free. As such, the Council finds it appropriate, for the protection of the health, safety and welfare of all New Yorkers, to mandate that all entities contracting with the Board of Education to transport school children implement a drug testing program for drivers.

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*NYC Administrative Code 17-607*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 6*15 DRUG TESTING OF SCHOOL SYSTEM CONVEYANCE DRIVERS

§ 17-607 Post-accident testing.

a. A drug test must be administered to any bus driver who, during the course of his or her employment, (i) is involved in a serious accident while operating a bus or other motor vehicle; or (ii) during any twelve month period, is involved in three or more accidents while operating a bus or other motor vehicle, regardless of the amount of property damage caused or injuries sustained.

b. The specimen for a post-accident drug test required by this section shall be collected as soon after the accident as is practicable, but not later than thirty-two hours after the accident. In those cases involving testing under paragraph (ii) of subdivision a of this section, the specimen shall be collected in accordance with the requirements of this subdivision after the third accident.

**HISTORICAL NOTE**

Section added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

**FOOTNOTES**

15

[Footnote 15]: * Chapter added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Note provisions of L.L. 104/1989 § 1:

Section one. Declaration of legislative intent and findings. The Council finds that the safety of more than 100,000 school children depends on the ability of New York City school bus drivers to perform at their optimum mental and physical capacities. It is clear that drug use by a school bus driver could severely impede his or her ability to transport children to school safely. It has been documented that drug use impairs the central nervous system, often causing detrimental changes in alertness, consciousness, coordination, judgment, personality, muscle strength, reflex reactions and time sequencing. Consequently, it is necessary to ensure that school bus drivers do not operate buses or other motor vehicles while under the influence of drugs. Implementation of a drug testing program for school bus drivers is the best way to detect drug use by drivers and to prevent those under the influence of drugs from endangering themselves and others. In this manner, parents may be assured that their child's bus driver is drug-free. As such, the Council finds it appropriate, for the protection of the health, safety and welfare of all New Yorkers, to mandate that all entities contracting with the Board of Education to transport school children implement a drug testing program for drivers.



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

*NYC Administrative Code 17-608*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 6*15 DRUG TESTING OF SCHOOL SYSTEM CONVEYANCE DRIVERS

§ 17-608 Return to active duty testing.

A driver who has been removed from active duty pursuant to this chapter may not resume active duty until he or she passes a drug test and the medical review officer has determined the driver is fit to return to active duty. A driver who is tested under this section may be administered one or more unannounced drug tests for up to sixty months after returning to active duty.

**HISTORICAL NOTE**

Section added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

**FOOTNOTES**

15

[Footnote 15]: * Chapter added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Note provisions of L.L. 104/1989 § 1:

Section one. Declaration of legislative intent and findings. The Council finds that the safety of more than 100,000 school children depends on the ability of New York City school bus drivers to perform at their optimum mental and physical capacities. It is clear that drug use by a school bus driver could severely impede his or her

ability to transport children to school safely. It has been documented that drug use impairs the central nervous system, often causing detrimental changes in alertness, consciousness, coordination, judgment, personality, muscle strength, reflex reactions and time sequencing. Consequently, it is necessary to ensure that school bus drivers do not operate buses or other motor vehicles while under the influence of drugs. Implementation of a drug testing program for school bus drivers is the best way to detect drug use by drivers and to prevent those under the influence of drugs from endangering themselves and others. In this manner, parents may be assured that their child's bus driver is drug-free. As such, the Council finds it appropriate, for the protection of the health, safety and welfare of all New Yorkers, to mandate that all entities contracting with the Board of Education to transport school children implement a drug testing program for drivers.

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*NYC Administrative Code 17-609*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 6*15 DRUG TESTING OF SCHOOL SYSTEM CONVEYANCE DRIVERS

§ 17-609 Drug testing procedures.

a. All drug tests administered pursuant to this chapter shall utilize those reliable screening and confirmatory procedures set forth in rules promulgated by the board of education which are at least as reliable as the enzyme multiplied immunoassay screening test and the gas chromatography/mass spectrometry confirmatory test.

b. If a sample yields a positive test result, another sample from the same specimen shall be re-tested using a test at least as reliable as the gas chromatography/mass spectrometry test. Such a confirmatory test shall use a portion of the same test specimen collected from the employee for use in the first test. If such confirmatory test yields a positive test result the driver may, at his or her option and expense, have an additional test conducted on a sample from the same specimen by any laboratory eligible to conduct drug testing under this chapter within thirty days of the administration of the original test.

c. (1) All test results shall be interpreted and verified by a medical review officer employed by the motor carrier. The medical review officer shall be a licensed physician with knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual's test result together with his or her individual medical history and any other relevant biomedical information.

(2) The medical review officer shall (i) receive the results of all drug tests from the laboratory; (ii) verify that the laboratory report and assessment of all drug test results are reliable and treat the results as confidential until such verification is made; (iii) determine whether an individual passes a drug test; (iv) promptly report all test results to the driver in writing; (v) report each test that does not pass to the individual whom the motor carrier has designated to receive the results and the chancellor of the board of education or his or her designee; (vi) recommend to the motor

carrier whether a driver who refused to take or did not pass a drug test administered under this chapter and who passes a subsequent return to active duty test may return to active duty; and (vii) maintain records of all recommendations to the motor carrier concerning removal from or return to active duty and in cases where rehabilitation is not recommended after a confirmed positive test result, the reasons for such recommendation shall be submitted to the chancellor of the board of education or his or her designee.

(3) When reviewing positive results of a confirmatory test under this section, the medical review officer may consider the individual's medical history, including any medical records and biomedical information provided, in determining whether there is a legitimate medical explanation for the result, including the use of a legally prescribed medication.

(4) A driver may submit a list of any legally prescribed medication he or she is using to the medical review officer prior to the administration of a drug test.

d. (1) The board of education, in consultation with the department of health and mental hygiene, shall promulgate rules, which to the extent practicable are consistent with the procedures established by the United States department of transportation, to implement this chapter. Such rules shall include initial cutoff levels to be used when screening urine specimens to determine whether they test positive for illegal drugs, chain of custody procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition, specimen collection procedures, quality assurance and quality control programs, procedures governing the reporting and review of test results and procedures to safeguard the confidentiality of drivers.

(2) The board of education shall provide motor carriers with written guidelines and procedures for the implementation of the drug testing program pursuant to this chapter no later than the effective date of this local law.

e. Motor carriers subject to this chapter shall use only those laboratories certified under the United States department of health and human services mandatory guidelines for federal workplace drug testing programs or approved by the New York state department of health, to execute the drug testing program required by this chapter.

f. Laboratories employed by motor carriers to execute the drug testing program pursuant to this chapter shall report drug test results to the medical review officer in writing within five days after a drug test has been administered. All drug test specimens shall be retained by such laboratories for at least six months.

g. Two or more motor carriers may join together for the purpose of employing a medical review officer and/or a laboratory to comply with the requirements of this chapter. Notwithstanding the foregoing, each motor carrier shall be individually responsible for complying with the provisions of this chapter.

**HISTORICAL NOTE**

Section added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Subd. d par (1) amended L.L. 22/2002 § 31, eff. July 29, 2002 and

deemed in effect as of July 1, 2002.

**FOOTNOTES**

15

[Footnote 15]: * Chapter added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Note provisions of L.L. 104/1989 § 1:

Section one. Declaration of legislative intent and findings. The Council finds that the safety of more than 100,000 school children depends on the ability of New York City school bus drivers to perform at their optimum mental and physical capacities. It is clear that drug use by a school bus driver could severely impede his or her ability to transport children to school safely. It has been documented that drug use impairs the central nervous system, often causing detrimental changes in alertness, consciousness, coordination, judgment, personality, muscle strength, reflex reactions and time sequencing. Consequently, it is necessary to ensure that school bus drivers do not operate buses or other motor vehicles while under the influence of drugs. Implementation of a drug testing program for school bus drivers is the best way to detect drug use by drivers and to prevent those under the influence of drugs from endangering themselves and others. In this manner, parents may be assured that their child's bus driver is drug-free. As such, the Council finds it appropriate, for the protection of the health, safety and welfare of all New Yorkers, to mandate that all entities contracting with the Board of Education to transport school children implement a drug testing program for drivers.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-610*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 6*15 DRUG TESTING OF SCHOOL SYSTEM CONVEYANCE DRIVERS

§ 17-610 Consequences of failure to pass a drug test; refusal to take a drug test.

a. Any driver who does not pass a drug test administered pursuant to this chapter shall immediately be removed from active duty. The medical review officer may, where appropriate, recommend rehabilitation or other treatment programs. No driver shall return to active duty unless he or she submits proof of successful completion of a rehabilitation program or other recommended treatment and passes a return to active duty drug test as required by section 17-608.

b. Any driver who does not pass a drug test shall receive within ten days of the confirmatory test, together with written notification of his or her test result, written notice of the right to undergo an additional drug test performed on a sample of the same specimen, at his or her option and expense, within thirty days after the administration of the original drug test.

c. Any driver who refuses to take a drug test shall immediately be removed from active duty for a period of at least one year and shall not return to active duty until passing a return to active duty drug test as required by section 17-608.

**HISTORICAL NOTE**

Section added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

**CASE NOTES**

¶ 1. A school bus driver, who had a previously unblemished record, was ordered to submit to a random drug test, and was told that her failure to take a test that same day could lead to permanent decertification as a driver. The driver had a previously scheduled appointment with her physician and kept it. She then took the drug test the following day, and passed it. The Department of Education, claiming she had "refused" to take a drug test, permanently decertified her. She then brought an Article 78 proceeding. The court granted the Article 78 proceeding. Even assuming that petitioner's postponement of the drug test until the following day was a "refusal," the maximum penalty was removal from active duty for one year and reinstatement upon passing a drug test. The agency could not properly impose a penalty not provided for by statute or its own rules and regulations. In re Gomez v. NYC Dept. of Educ. 2008 NY Slip Op. 3956, 2008 N.Y. App.Div. Lexis 3730 856 NYS2d 603.

**FOOTNOTES**

15

[Footnote 15]: * Chapter added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Note provisions of L.L. 104/1989 § 1:

Section one. Declaration of legislative intent and findings. The Council finds that the safety of more than 100,000 school children depends on the ability of New York City school bus drivers to perform at their optimum mental and physical capacities. It is clear that drug use by a school bus driver could severely impede his or her ability to transport children to school safely. It has been documented that drug use impairs the central nervous system, often causing detrimental changes in alertness, consciousness, coordination, judgment, personality, muscle strength, reflex reactions and time sequencing. Consequently, it is necessary to ensure that school bus drivers do not operate buses or other motor vehicles while under the influence of drugs. Implementation of a drug testing program for school bus drivers is the best way to detect drug use by drivers and to prevent those under the influence of drugs from endangering themselves and others. In this manner, parents may be assured that their child's bus driver is drug-free. As such, the Council finds it appropriate, for the protection of the health, safety and welfare of all New Yorkers, to mandate that all entities contracting with the Board of Education to transport school children implement a drug testing program for drivers.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-611*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 6*15 DRUG TESTING OF SCHOOL SYSTEM CONVEYANCE DRIVERS

§ 17-611 Recordkeeping and reporting.

a. Motor carriers shall designate an individual or individuals to serve as drug testing program designees to ensure compliance with this chapter. The designees shall be responsible for the implementation of the drug testing program and maintaining all records related to the administration of drug tests. Motor carriers shall retain records related to the collection process and reports of individuals who have not passed a drug test for at least five years and records of individuals who have passed a drug test for at least one year.

b. The medical review officer shall maintain records of individuals who have not passed a drug test for at least five years and the records of individuals who have passed a drug test for at least one year.

c. A motor carrier shall permit the chancellor of the board of education or his or her designee to examine all records relating to the administration and results of the drug testing program established by such motor carrier pursuant to this chapter.

d. A motor carrier shall promptly give written notice to the chancellor of the board of education or his or her designee whenever a driver is removed from active duty or returned to active duty pursuant to this chapter. Such written notice shall include the driver's name and the date of removal from or return to active duty.

e. A motor carrier shall submit semi-annual reports to the board of education on April first and October first of each year summarizing the following information for the periods from September first through March first and March second through August thirtyfirst, respectively:

(1) The total number of drug tests administered;

(2) The number of drug tests administered and the dates of administration in each testing category (i.e., pre-employment, post-accident, reasonable suspicion, random, and return to duty);

(3) The number of post-accident drug tests administered and the dates of administration in each accident category (i.e., fatal, personal injury, property damage or three accidents);

(4) For post-accident tests, the number of hours between the accident and the collection of a urine specimen;

(5) The total number of individuals who did not pass a drug test; (6) The number of individuals who did not pass a drug test by testing category;

(7) The number of individuals who did not pass a post-accident drug test by accident category;

(8) The action taken by the motor carrier with respect to each individual who did not pass a drug test;

(9) The number of drug tests submitted to the laboratory that showed evidence of one or more illegal drugs in the immunoassay screening test in a sufficient quantity to warrant a confirmatory test; (10) The total number of drug tests submitted to the laboratory that showed evidence of one or more illegal drugs in the confirmatory test in a sufficient quantity to be reported as positive to the medical review officer;

(11) The number of drug tests submitted to the laboratory that showed evidence of one or more illegal drugs in the confirmatory test in a sufficient quantity to be reported as positive by the medical review officer;

(12) Such other relevant information as the board of education shall require.

f. The first semi-annual report required by this section shall be due on April 1, 1991.

**HISTORICAL NOTE**

Section added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

**FOOTNOTES**

15

[Footnote 15]: * Chapter added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Note provisions of L.L. 104/1989 § 1:

Section one. Declaration of legislative intent and findings. The Council finds that the safety of more than 100,000 school children depends on the ability of New York City school bus drivers to perform at their optimum mental and physical capacities. It is clear that drug use by a school bus driver could severely impede his or her ability to transport children to school safely. It has been documented that drug use impairs the central nervous system, often causing detrimental changes in alertness, consciousness, coordination, judgment, personality, muscle strength, reflex reactions and time sequencing. Consequently, it is necessary to ensure that school bus drivers do not operate buses or other motor vehicles while under the influence of drugs. Implementation of a drug testing program for school bus drivers is the best way to detect drug use by drivers and to prevent those under the influence of drugs from endangering themselves and others. In this manner, parents may be assured that their child's bus driver is drug-free. As such, the Council finds it appropriate, for the protection of the health,

safety and welfare of all New Yorkers, to mandate that all entities contracting with the Board of Education to transport school children implement a drug testing program for drivers.

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

*NYC Administrative Code 17-612*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 6*15 DRUG TESTING OF SCHOOL SYSTEM CONVEYANCE DRIVERS

§ 17-612 Certification of compliance.

a. A motor carrier shall certify to the board that it has established a drug testing program as required by the provisions of this chapter. Such certification shall be submitted to the board of education no later than one month after the effective date of this chapter, and annually thereafter.

b. The text of the certification required by this section shall be as follows: I, [name], [title], certify that [name of motor carrier] has established and implemented a drug-testing program in accordance with the terms of chapter 6 of Title 17 of the administrative code of the city of New York.

**HISTORICAL NOTE**

Section added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

**FOOTNOTES**

15

[Footnote 15]: * Chapter added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Note provisions of L.L. 104/1989 § 1:

Section one. Declaration of legislative intent and findings. The Council finds that the safety of more than 100,000 school children depends on the ability of New York City school bus drivers to perform at their optimum mental and physical capacities. It is clear that drug use by a school bus driver could severely impede his or her ability to transport children to school safely. It has been documented that drug use impairs the central nervous system, often causing detrimental changes in alertness, consciousness, coordination, judgment, personality, muscle strength, reflex reactions and time sequencing. Consequently, it is necessary to ensure that school bus drivers do not operate buses or other motor vehicles while under the influence of drugs. Implementation of a drug testing program for school bus drivers is the best way to detect drug use by drivers and to prevent those under the influence of drugs from endangering themselves and others. In this manner, parents may be assured that their child's bus driver is drug-free. As such, the Council finds it appropriate, for the protection of the health, safety and welfare of all New Yorkers, to mandate that all entities contracting with the Board of Education to transport school children implement a drug testing program for drivers.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-613*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 6*15 DRUG TESTING OF SCHOOL SYSTEM CONVEYANCE DRIVERS

§ 17-613 Termination of contracts.

The board of education may terminate the contract of any motor carrier that does not comply with the provisions of this chapter.

**HISTORICAL NOTE**

Section added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

**FOOTNOTES**

15

[Footnote 15]: * Chapter added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Note provisions of L.L. 104/1989 § 1:

Section one. Declaration of legislative intent and findings. The Council finds that the safety of more than 100,000 school children depends on the ability of New York City school bus drivers to perform at their optimum mental and physical capacities. It is clear that drug use by a school bus driver could severely impede his or her ability to transport children to school safely. It has been documented that drug use impairs the central nervous system, often causing detrimental changes in alertness, consciousness, coordination, judgment, personality,

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

*NYC Administrative Code 17-614*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 6*15 DRUG TESTING OF SCHOOL SYSTEM CONVEYANCE DRIVERS

§ 17-614 No abrogation of rights.

Nothing contained in this chapter shall limit any right of a motor carrier to terminate or otherwise discipline any of its drivers who fail to pass a drug test.

**HISTORICAL NOTE**

Section added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

**FOOTNOTES**

15

[Footnote 15]: * Chapter added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Note provisions of L.L. 104/1989 § 1:

Section one. Declaration of legislative intent and findings. The Council finds that the safety of more than 100,000 school children depends on the ability of New York City school bus drivers to perform at their optimum mental and physical capacities. It is clear that drug use by a school bus driver could severely impede his or her ability to transport children to school safely. It has been documented that drug use impairs the central nervous system, often causing detrimental changes in alertness, consciousness, coordination, judgment, personality,

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

*NYC Administrative Code 17-615*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 6*15 DRUG TESTING OF SCHOOL SYSTEM CONVEYANCE DRIVERS

§ 17-615 Costs.

The costs associated with drug testing shall be borne by the motor carriers.

**HISTORICAL NOTE**

Section added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

**FOOTNOTES**

15

[Footnote 15]: * Chapter added L.L. 104/1989 § 2 eff. Sept. 1, 1990.

Note provisions of L.L. 104/1989 § 1:

Section one. Declaration of legislative intent and findings. The Council finds that the safety of more than 100,000 school children depends on the ability of New York City school bus drivers to perform at their optimum mental and physical capacities. It is clear that drug use by a school bus driver could severely impede his or her ability to transport children to school safely. It has been documented that drug use impairs the central nervous system, often causing detrimental changes in alertness, consciousness, coordination, judgment, personality, muscle strength, reflex reactions and time sequencing. Consequently, it is necessary to ensure that school bus

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

*NYC Administrative Code 17-616*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 7 TOBACCO PRODUCT REGULATION ACT*16

§ 17-616 Short title.

This chapter shall be known and may be cited as the "Tobacco Product Regulation Act."

**HISTORICAL NOTE**

Section added L.L. 83/1992 § 2, eff. Apr. 25, 1993.

**CASE NOTES**

¶ 1. Under the City ordinance, one public health message (warning of health risks of smoking) had to be displayed for every four tobacco advertisements displayed on certain property and facilities licensed by the City, such as taxicabs. A company in the business of displaying advertising signs on the exterior of taxicabs challenged the law. The court held that the ordinance was pre-empted by the Federal Cigarette Labeling and Advertising Act of 1965. Vango Media, Inc. v. City of New York, 34 F.3d 68 (2nd Cir. 1994).

**FOOTNOTES**

16

[Footnote 16]: * Note provisions of L.L. 83/1992 § 1:

Section 1. Declaration of legislative findings and intent. The Council finds that the health risks attributable to tobacco use have been well established. According to the United States Centers for Disease Control, tobacco addiction kills 434,000 Americans each year and is responsible for approximately 1,199,000 years of potential life lost before the age of 65. In New York City, the Department of Health reports that tobacco addiction kills some 11,000 New Yorkers each year.

The Council finds that the problem of tobacco addiction among children is particularly alarming. In 1988, American children under the age of eighteen spent $1.26 billion for one billion packs of cigarettes and 26 million containers of chewing tobacco, resulting in profits of $221 million for cigarette manufacturers. Studies show that the majority of adult tobacco addicts began smoking in their teens. According to the American Heart Association, Lung Association and Cancer Society, 25% of tobacco addicts begin using tobacco products before the age of 12, 50% before the age of 14 and 90% before the age of 20. The New York City Department of Consumer Affairs reports that 200 New York children begin the deadly habit of cigarette smoking every day, and, according to the National Institute on Drug Abuse, 18.7% of high school seniors smoke daily. National Institute on Drug Abuse studies also indicate that high school seniors who smoke are more likely to have used illicit drugs as compared to non-smoking high school seniors, demonstrating that tobacco is often a gateway drug.

It is the intention of the Council to make it more difficult for minors to unlawfully purchase tobacco products. This legislation would require the direct retail seller of tobacco products to be at least 18 years of age or under the direct supervision of someone at least 18 years of age. That seller would be required to have direct, personal contact with the purchaser, who must provide photographic proof-of-age indicating that he or she is legally permitted to buy tobacco products in New York State, unless he or she reasonably appears to be at least twenty-five years of age. The legislation would also prohibit the sale of loose, individual cigarettes or other tobacco products that have been removed from their packaging so as to eliminate the health warnings required by law. In addition, it is the Council's intention to provide New York City's students with tobacco-free educational environments to the greatest extent allowble by law. Thus, tobacco product use on all school premises, both public and private, shall be prohibited.

Besides the grave dangers posed by tobacco use to the health of New York City residents of all ages, the Council also finds that tobacco use threatens the general welfare of all New Yorkers by causing enormous financial costs to the taxpayers, in the form of health care benefits, and a loss of productivity among the city's workforce.

Costs associated with illness and injury due to smoking may be immediate or deferred; there are both costs to the individual and costs to society in general. In the United States, economic costs due to smoking-attributable disease were estimated at $53.7 billion in 1984 and $65 billion in 1985. These costs include direct health care costs, indirect costs and other cost factors. Direct health care costs relating to smoking include hospitalization, physician services, nursing home care and medication. These costs are ordinarily paid by the individual, however, due to the large number of uninsured individuals in New York City and due to the fact that New York City pays a portion of Medicaid costs, the city is forced to bear a portion of the burden of direct health care costs relating to smoking. According to the New York City Department of Health, in 1989, direct health care costs attributable to smoking in New York City exceeded $550 million. Indirect costs due to smoking are the value of lost productivity, output or foregone manpower when smoking related illness and death cause lost time from work and from other productive activities. According to the Department of Health, in 1989, indirect costs due to smoking exceeded $1.3 billion in New York City.

The Council concludes that the enormous public costs resulting from tobacco addiction must be decreased by attempting to discourage all New Yorkers from the use of tobacco products. The Council deems the placement of tobacco product advertisements on certain property owned or operated by the city and certain property or facilities licensed by the city, inappropriate and contrary to the general welfare of the city's residents.

It is the Council's desire to eliminate tobacco product advertisements from such properties and facilities. However, if such tobacco product advertisements are permitted on these properties and facilities, it is the intention of the Council to require the placement of at least one public health message for every four tobacco advertisements placed or appearing in or on certain property and facilities owned or operated, in whole or in part, by the City of New York and certain property and facilities licensed by the City of New York. It is not the intent of the Council to require the placement or display of such public health messages on privately owned real property.

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

*NYC Administrative Code 17-617*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 7 TOBACCO PRODUCT REGULATION ACT*16

§ 17-617 Definitions.

For purposes of this chapter, the following terms shall be defined as follows:

a. "Affiliated company" means any business entity which is the holder of a right to place or display advertisements in or on a unit of advertising space and which has a relationship with a holder of a right to place or display advertisements in or on another unit of advertising space; such relationship shall be an identity of all principal owners or all directors; provided, however, that only entities which are holders of a right to place or display advertisements on the same type of units of advertising space shall be considered affiliated companies for purposes of this chapter.

b. "Authorizing agency" means the agency or other unit of local government of the city of New York which is (i) acting on behalf of the city with respect to a written agreement between the city and a private party which allows the placement or display of advertisements in or on a unit of advertising space; (ii) any agency designated by the mayor as having responsibility for a unit of advertising space that is the subject of a written agreement with the city which allows the placement or display of advertisements in or on such unit; or (iii) the issuer of a license or permit that expressly grants the right to place or display advertisements in or on a unit of advertising space. In the event that there is no authorizing agency as defined by this subdivision for a unit of advertising space, the authorizing agency for such unit shall be the agency with the primary expertise in the subject area covered by the written agreement with the city which allows the placement or display of advertisements in or on such unit.

c. "Cigarette license" means the license issued pursuant to section 11-1303 or 20-202 of the code.

d. "City of New York" or "city" means the city of New York or any of its agencies or other unit of local government.

e. "Employee" means any person who provides services for the payment of direct or indirect monetary wages or profit, or any person who volunteers his or her services without monetary compensation.

f. "For-hire vehicle" means "for-hire vehicle" as defined in section 19-502 of the code.

g. "For-hire vehicle base" means a place of business from which for-hire vehicles are dispatched.

h. "Instrumentality of public transportation" means buses operated pursuant to a franchise or consent issued by or from the city of New York, ferries and ferry terminals owned or operated by the city of New York, trams and their appurtenances, bus stop shelters and licensed vehicles as defined in section 19-502 of the code.

i. "Person" means any natural person, partnership, corporation, government agency, association or other legal entity.

j. "Public health message" means words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, the primary purpose of which is to communicate the health risks of tobacco product use or the health benefits of not using tobacco products.

k. "Retail dealer" means "retail dealer" as defined in section 11-1301 of the code, and any employee or other agent of such retail dealer.

l. "School premises" means the buildings, grounds or facilities, or any portion thereof, owned or occupied by public or private institutions for the primary purpose of providing educational instruction to students at or below the twelfth grade level.

m. "Special event" means an event (i) for which a permit has been issued by the city of New York; (ii) which has a duration of no longer than seven days; and (iii) for which an agreement has been entered into with the city that provides for the placement or display of signage intended to discourage the use of tobacco products.

n. "Taxicab" means "taxicab" as defined in section 19-502 of the code.

o. "Taxicab fleet" means a corporate entity organized for the ownership or operation of twenty-five or more taxicabs, which taxicabs are dispatched from a single location serving as both garage and office of record, which location has been approved by the taxi and limousine commission as adequate for the storage, maintenance, repair and dispatch of the fleet taxicabs, and which location has a dispatcher on the premises at least eighteen hours every day who is responsible for assigning drivers to fleet taxicabs.

p. "Taxicab minifleet" means a corporation licensed by the taxi and limousine commission to own and operate two or more taxicabs.

q. "Tobacco advertisement" means words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, which bear a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product, a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product.

r. "Tobacco product" means any substance which contains tobacco, including but not limited to cigarettes, cigars, pipe tobacco and chewing tobacco.

s. "Trademark" means any word, name, symbol, logo, emblem or device, or any combination thereof, used by a person to identify and distinguish his or her goods from those manufactured or sold by others and to indicate the source

of the goods, even if that source is unknown.

t. "Trade name" means any name used by a person to identify his or her business or vocation

u. "Unit of advertising space" means any real property, space, facility or instrumentality of public transportation, or any portion thereof, (i) owned or operated by, or leased from or to the city, or which is located or operates on real property owned or operated by or leased from or to the city, and which is the subject of the same contract, lease, rental agreement, franchise, revocable consent, concession or other similar written agreement with the city which allows the placement or display of advertisements, but not including any real property, space or facility leased from the city for a term of thirty years or more during the entire term of the lease or any real property, space or facility leased from or to the industrial development agency; or (ii) with respect to which a license or permit has been issued by the city that expressly grants the right to place or display advertisements, but not including licenses or permits issued pursuant to the building code.

v. "Wholesale dealer" means "wholesale dealer" as defined in section 11-1301 of the code, and any employee or other agent of such wholesale dealer.

**HISTORICAL NOTE**

Section added L.L. 83/1992 § 2, eff. Apr. 25, 1993.

Subd. c amended L.L. 2/2000 § 4, eff. Aug. 2, 2000.

Subd. v added L.L. 2/2000 § 4, eff. Aug. 2, 2000.

**FOOTNOTES**

16

[Footnote 16]: * Note provisions of L.L. 83/1992 § 1:

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Besides the grave dangers posed by tobacco use to the health of New York City residents of all ages, the Council also finds that tobacco use threatens the general welfare of all New Yorkers by causing enormous financial costs to the taxpayers, in the form of health care benefits, and a loss of productivity among the city's workforce.

Costs associated with illness and injury due to smoking may be immediate or deferred; there are both costs to the individual and costs to society in general. In the United States, economic costs due to smoking-attributable disease were estimated at $53.7 billion in 1984 and $65 billion in 1985. These costs include direct health care costs, indirect costs and other cost factors. Direct health care costs relating to smoking include hospitalization, physician services, nursing home care and medication. These costs are ordinarily paid by the individual, however, due to the large number of uninsured individuals in New York City and due to the fact that New York City pays a portion of Medicaid costs, the city is forced to bear a portion of the burden of direct health care costs relating to smoking. According to the New York City Department of Health, in 1989, direct health care costs attributable to smoking in New York City exceeded $550 million. Indirect costs due to smoking are the value of lost productivity, output or foregone manpower when smoking related illness and death cause lost time from work and from other productive activities. According to the Department of Health, in 1989, indirect costs due to smoking exceeded $1.3 billion in New York City.

The Council concludes that the enormous public costs resulting from tobacco addiction must be decreased by attempting to discourage all New Yorkers from the use of tobacco products. The Council deems the placement of tobacco product advertisements on certain property owned or operated by the city and certain property or facilities licensed by the city, inappropriate and contrary to the general welfare of the city's residents. It is the Council's desire to eliminate tobacco product advertisements from such properties and facilities. However, if such tobacco product advertisements are permitted on these properties and facilities, it is the intention of the Council to require the placement of at least one public health message for every four tobacco advertisements placed or appearing in or on certain property and facilities owned or operated, in whole or in part, by the City of New York and certain property and facilities licensed by the City of New York. It is not the intent of the Council to require the placement or display of such public health messages on privately owned real property.

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-617.1*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 7 TOBACCO PRODUCT REGULATION ACT*16

§ 17-617.1 License Required.

It shall be unlawful for a person to engage in business as a wholesale dealer without a license as prescribed in section 11-1303 of the code, or as a retail dealer without a license as prescribed in section 20-202 of the code.

**HISTORICAL NOTE**

Section added L.L. 2/2000 §5, eff. Aug. 2, 2000.

**FOOTNOTES**

16

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-618*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 7 TOBACCO PRODUCT REGULATION ACT*16

§ 17-618 Out-of-package sales prohibited.

All tobacco products sold or offered for sale by a retail dealer shall be sold or offered for sale in the package, box, carton or other container provided by the manufacturer, importer or packager which bears a health warning required by federal statute.

**HISTORICAL NOTE**

Section added L.L. 83/1992 § 2, eff. Apr. 25, 1993.

**FOOTNOTES**

16

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-619*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 7 TOBACCO PRODUCT REGULATION ACT*16

§ 17-619 Age restriction on handling.

It shall be unlawful for a retail dealer to permit an employee or other agent of the retail dealer to sell, dispense or otherwise handle a tobacco product unless such employee or other agent is (1) at least eighteen years of age; or (2) under the direct supervision of the retail dealer or an employee or other agent of the retail dealer who is at least eighteen years of age, and who is present on the premises.

**HISTORICAL NOTE**

Section added L.L. 83/1992 § 2, eff. Apr. 25, 1993.

**FOOTNOTES**

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-620*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 7 TOBACCO PRODUCT REGULATION ACT*16

§ 17-620 Sale of tobacco products to minors prohibited.

Any person operating a place of business wherein tobacco products are sold or offered for sale must be licensed as required by section 17-617.1 of this code and is prohibited from selling such products to individuals under eighteen years of age, and shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, OR OTHER TOBACCO PRODUCTS, ROLLING PAPER OR PIPES, TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white card in red letters at least one-half inch in height. Sale of tobacco products in such places, other than by a vending machine, shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution, that the individual is at least eighteen years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product to an individual under eighteen years of age.

**HISTORICAL NOTE**

Section amended L.L. 2/2000 § 6, eff. Aug. 2, 2000.

Section added L.L. 83/1992 § 2, eff. Apr. 25, 1993.

**FOOTNOTES**

16

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-621*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 7 TOBACCO PRODUCT REGULATION ACT*16

§ 17-621 Public health messages required where tobacco advertisements appear on certain properties.

a. (1) There shall be a minimum of one public health message placed or displayed in or on a unit of advertising space for every four tobacco advertisements placed or displayed in or on such unit. Twenty-five percent of the public health messages placed or displayed in or on such unit shall be directed to the youth population. In the event that there is at least one tobacco advertisement but fewer than four tobacco advertisements placed or displayed in or on a unit of advertising space, there shall be a minimum of one public health message placed or displayed in or on such unit and such public health message shall be directed to the youth population. Unless otherwise expressly provided, the requirements set forth in this section shall not be applicable to any advertisements placed or displayed in connection with a special event; provided, however, that any advertisements placed or displayed in connection with a special event which would otherwise be subject to the requirements of this section shall not be exempt from such requirements where the advertisements are placed or displayed more than thirty days prior to the commencement of such special event. In addition, the requirements set forth in this section shall not be applicable to any tobacco advertisement which is less than one hundred forty-four square inches and is placed or displayed in or on a sales counter where the sale of tobacco products is transacted in a place of business that is located on real property owned or operated by or leased from or to the city.

(2) The public health messages required by this section shall, to the greatest extent possible, be comparable in size, location and visibility to the tobacco advertisements placed or displayed in or on a unit of advertising space and shall be installed and maintained by the holder of the right to place or display advertisements in or on such unit in accordance with the same standards, and the holder shall utilize the same materials and methods for display, as are used by such holder for any advertisements placed or displayed in or one such unit.

b. (1) It shall be the responsibility of the holder of the right to place or display advertisements in or on a unit of advertising space (i) to maintain at all times the ratio of public health messages to tobacco advertisements required by this section; and (ii) to maintain accurate records indicating on a daily basis the number of tobacco advertisements and public health messages placed or displayed by such holder, the locations of such advertisements and public health messages, and any other information deemed necessary by the authorizing agency or the department of health and mental hygiene. Such holder shall provide to the city council and the authorizing agency for such unit a quarterly report containing the number of tobacco advertisements and public health messages placed or displayed by such holder during the preceding three months, the locations of such advertisements and public health messages, the dates on which such advertisements and public health messages were placed and displayed and any other information deemed necessary by the authorizing agency or the department of health and mental hygiene. The authorizing agency shall provide a copy of the quarterly report to the department of health and any analysis of such report deemed necessary by the department. Any such holders who are affiliated companies may combine their units of advertising space for purposes of complying with the ratio requirements, maintaining the daily records and providing the quarterly report, required by this section. Taxicabs which are part of a taxicab fleet or taxicab minifleet may be combined for purposes of complying with the ratio requirements, maintaining the daily records and providing the quarterly report, required by this section. For-hire vehicles affiliated with a for-hire vehicle base may be combined for purposes of complying with the ratio requirements, maintaining the daily records and providing the quarterly report, required by this section. In such cases, the owner of the taxicab fleet, taxicab minifleet or for-hire vehicle base shall comply with the ratio requirements, maintain the daily records and provide the quarterly report on behalf of the owners of the taxicabs or for-hire vehicles.

(2) The holder of the permit authorizing a special event shall provide a report to the authorizing agency containing the number, locations and dates of placement and display of (i) advertisements which promoted the special event, identifying those advertisements which were tobacco advertisements; (ii) signage which was intended to discourage the use of tobacco products; and (iii) any public health messages. Such report shall also include any other information deemed necessary by the authorizing agency or the department of health and mental hygiene. The authorizing agency shall provide a copy of such report to the department.

c. The department of health and mental hygiene, together with the authorizing agencies, shall encourage the creation and submission of public health messages by interested individuals, groups or other entities. The authorizing agency for a unit of advertising space shall ensure that (i) at least twenty-five percent of the public health messages placed or displayed in or on such unit are directed to the youth population; and (ii) the ratio of public health messages to tobacco advertisements required by this section is achieved for such unit, through regular monitoring and enforcement activities.

d. Any interested individual, group or other entity may develop, print and make available for distribution such public health messages at no cost to the city of New York or the holders of the right to place or display advertisements in or on units of advertising space. Such public health messages shall be printed utilizing the same materials as are used for any advertisements placed or displayed in or on each unit of advertising space. Any costs associated with the posting of the public health messages required by this section and any costs in terms of foregone advertising revenues associated with the placement or display of such public health messages in or on a unit of advertising space shall be borne by the holder of the right to place or display advertisements in or on such unit. Where the city is the sole holder of the right to place or display advertisements in or on a unit of advertising space, the city shall bear any costs associated with the posting of the public health messages and any costs in terms of foregone advertising revenues.

e. (1) Any interested individual, group or other entity may submit a proposed public health message to the department of health and mental hygiene for approval. The department shall select for placement or display in or on a unit of advertising space those public health messages which it deems to communicate most effectively the health risks of tobacco product use or the health benefits of not using tobacco products. Such public health messages shall not use the name, image or likeness of any individual without the consent of that individual or shall not infringe any person's trade name, trademark, service mark or copyright, under applicable federal and state law. The department shall, to the greatest extent possible, select public health messages which are sufficiently different in visual images and text in order

to ensure the holder of the right to place or display advertising an adequate selection of public health messages for placement or display in or on such holder's unit of advertising space. The department shall clearly indicate those public health messages which it deems to be directed to the youth population.

(2) The authorizing agency for a unit of advertising space shall review the public health messages selected by the department for conformance to the same standards, if any, regarding form, appearance and appropriateness to which advertisements accepted for placement or display in or on such unit are required to conform, pursuant to any agreement applicable to such unit to which the city is a party, or to any license or permit which has been issued by the city that expressly grants the right to place or display advertisements in or on such unit. The authorizing agency shall submit to the holder of the right to place or display advertising in or on such unit, those public health messages which it deems to conform to applicable standards pursuant to any agreement with or license or permit from the city applicable to such holder's unit. Within one week after the receipt of such public health messages, the holder of the right to place or display advertisements or his or her designee shall submit to the authorizing agency any recommendations concerning the selected public health messages based upon the standards, if any, regarding form, appearance and appropriateness to which advertisements accepted for placement or display in or on the unit of advertising space are required to conform pursuant to any contracts governing the placement or display of advertisements in or on such unit. Within two weeks after the receipt of any recommendations from the holder of the right to place or display advertising, the authorizing agency shall make its final decision as to which public health messages conform to applicable standards and notify the department which samples of public health messages the authorizing agency will make available to the holder for placement or display. The holder of the right to place or display advertisements in or on the unit of advertising space shall not be required to replace a public health message placed or displayed in or on such unit with a different public health message more than four times annually.

f. It shall be the responsibility of the interested individuals, groups or other entities to provide the public health messages required by this section. To the extent that such public health messages are not provided in sufficient quantity to maintain the ratio between tobacco advertisements and public health messages required by this section: (1) those public health messages actually provided shall be placed or displayed in or one a unit of advertising space in accordance with the requirements of this section to the extent possible; and (2) tobacco advertisements may continue to be placed or displayed in or one such unit in a proportion in excess of the ratio required by this section.

g. (1) Any person who is the holder of a valid license or permit from, or is a party to an otherwise valid agreement with, the city of New York in effect on the date of enactment of the local law that added this section shall not be subject to the requirements of this section for the term of such license, permit or agreement. However, where such agreement provides for a right or rights of renewal for one or more periods upon the same terms and conditions or terms and conditions set forth in such agreement, the holder who is a party to such agreement or any agreements entered into pursuant to such right or rights of renewal shall be subject to the requirements of this section five years after the commencement of the first renewal period.

(2) Any holder of the right to place or display advertisements in or on a unit of advertising space who is subject to a collective bargaining agreement in effect on the date of enactment of the local law that added this section which provides for an apportionment of revenues resulting from advertisements placed or displayed in or on such unit shall not be subject to the requirements of this section until the expiration of the collective bargaining agreement.

h. If on the date of enactment of the local law that added this section, any party to a valid agreement with, or holder of a valid license or permit from, the city of New York is also a party to a valid contract entered into on or prior to such date with an entity other than the city of New York which extends beyond the term of such party's agreement with, or license or permit from, the city, such party shall not be subject to the requirements of subdivisions a through g of this section if compliance with such subdivisions would results in a material breach of the contract between such party and an entity other than the city, provided that such party:

1. shall promptly comply with subdivisions a through g of this section upon the expiration of such contract term,

excluding any periods of time subject to an option to renew such contract, or upon the removal of any legal barrier to compliance prior to the expiration of the original contract term, whichever is earlier. Any person who claims to be covered by this paragraph and who fails to comply with subdivisions a through g of this section within the time limits set forth herein shall be liable for a civil penalty of not more than five hundred dollars for each day of non-compliance following the expiration of the original contract term or upon the removal of any legal barrier to compliance, whichever is earlier. Such civil penalty shall be recovered in accordance with the provisions of subdivision b of section 17-624; and

2. shall within ten days of the effective date of the local law that added this section, notify the authorizing agency for the unit of advertising space in writing of such person's inability to comply with subdivisions a through g of this section, setting forth in detail the reasons therefor and the earliest date upon which compliance can be achieved. The authorizing agency shall, as soon as practicable after receipt of such information, forward it to the department of health and mental hygiene and the city council. Any person who fails to notify the authorizing agency as required by this paragraph or who knowingly submits information required by this paragraph which is false or misleading shall, in addition to any other penalties provided by law, be liable for a civil penalty of not more than one thousand dollars.

i. Nothing in this chapter shall be construed to permit the placement of a tobacco product advertisement as defined in subdivision m of section 27-508.2 of this code where such advertisement is prohibited by section 27-508.3 of this code or by any other law or rule.

**HISTORICAL NOTE**

Section added L.L. 83/1992 § 2, eff. Apr. 25, 1993.

Subd. b amended L.L. 22/2002 § 32, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Subd. c amended L.L. 22/2002 § 32, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Subd. e par (1) amended L.L. 22/2002 § 32, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Subd. h par 2 amended L.L. 22/2002 § 32, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Subd. i added L.L. 3/1998 § 8, eff. July 13, 1998 as per L.L. 10/1998 § 1.

**FOOTNOTES**

16

[Footnote 16]: * Note provisions of L.L. 83/1992 § 1:

Section 1. Declaration of legislative findings and intent. The Council finds that the health risks

attributable to tobacco use have been well established. According to the United States Centers for Disease Control, tobacco addiction kills 434,000 Americans each year and is responsible for approximately 1,199,000 years of potential life lost before the age of 65. In New York City, the Department of Health reports that tobacco addiction kills some 11,000 New Yorkers each year.

The Council finds that the problem of tobacco addiction among children is particularly alarming. In 1988, American children under the age of eighteen spent $1.26 billion for one billion packs of cigarettes and 26 million containers of chewing tobacco, resulting in profits of $221 million for cigarette manufacturers. Studies show that the majority of adult tobacco addicts began smoking in their teens. According to the American Heart Association, Lung Association and Cancer Society, 25% of tobacco addicts begin using tobacco products before the age of 12, 50% before the age of 14 and 90% before the age of 20. The New York City Department of Consumer Affairs reports that 200 New York children begin the deadly habit of cigarette smoking every day, and, according to the National Institute on Drug Abuse, 18.7% of high school seniors smoke daily. National Institute on Drug Abuse studies also indicate that high school seniors who smoke are more likely to have used illicit drugs as compared to non-smoking high school seniors, demonstrating that tobacco is often a gateway drug.

It is the intention of the Council to make it more difficult for minors to unlawfully purchase tobacco products. This legislation would require the direct retail seller of tobacco products to be at least 18 years of age or under the direct supervision of someone at least 18 years of age. That seller would be required to have direct, personal contact with the purchaser, who must provide photographic proof-of-age indicating that he or she is legally permitted to buy tobacco products in New York State, unless he or she reasonably appears to be at least twenty-five years of age. The legislation would also prohibit the sale of loose, individual cigarettes or other tobacco products that have been removed from their packaging so as to eliminate the health warnings required by law. In addition, it is the Council's intention to provide New York City's students with tobacco-free educational environments to the greatest extent allowble by law. Thus, tobacco product use on all school premises, both public and private, shall be prohibited.

Besides the grave dangers posed by tobacco use to the health of New York City residents of all ages, the Council also finds that tobacco use threatens the general welfare of all New Yorkers by causing enormous financial costs to the taxpayers, in the form of health care benefits, and a loss of productivity among the city's workforce.

Costs associated with illness and injury due to smoking may be immediate or deferred; there are both costs to the individual and costs to society in general. In the United States, economic costs due to smoking-attributable disease were estimated at $53.7 billion in 1984 and $65 billion in 1985. These costs include direct health care costs, indirect costs and other cost factors. Direct health care costs relating to smoking include hospitalization, physician services, nursing home care and medication. These costs are ordinarily paid by the individual, however, due to the large number of uninsured individuals in New York City and due to the fact that New York City pays a portion of Medicaid costs, the city is forced to bear a portion of the burden of direct health care costs relating to smoking. According to the New York City Department of Health, in 1989, direct health care costs attributable to smoking in New York City exceeded $550 million. Indirect costs due to smoking are the value of lost productivity, output or foregone manpower when smoking related illness and death cause lost time from work and from other productive activities. According to the Department of Health, in 1989, indirect costs due to smoking exceeded $1.3 billion in New York City.

The Council concludes that the enormous public costs resulting from tobacco addiction must be decreased by attempting to discourage all New Yorkers from the use of tobacco products. The Council deems the placement of tobacco product advertisements on certain property owned or operated by the city and certain property or facilities licensed by the city, inappropriate and contrary to the general welfare of the city's residents. It is the Council's desire to eliminate tobacco product advertisements from such properties and facilities.

However, if such tobacco product advertisements are permitted on these properties and facilities, it is the intention of the Council to require the placement of at least one public health message for every four tobacco advertisements placed or appearing in or on certain property and facilities owned or operated, in whole or in part, by the City of New York and certain property and facilities licensed by the City of New York. It is not the intent of the Council to require the placement or display of such public health messages on privately owned real property.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-622*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 7 TOBACCO PRODUCT REGULATION ACT*16

§ 17-622 Use of tobacco products on school premises prohibited.

It shall be unlawful for any person to use a tobacco product, including chewing tobacco, on school premises at any time.

**HISTORICAL NOTE**

Section added L.L. 83/1992 § 2, eff. Apr. 25, 1993.

**FOOTNOTES**

16

[Footnote 16]: * Note provisions of L.L. 83/1992 § 1:

Section 1. Declaration of legislative findings and intent. The Council finds that the health risks attributable to tobacco use have been well established. According to the United States Centers for Disease Control, tobacco addiction kills 434,000 Americans each year and is responsible for approximately 1,199,000 years of potential life lost before the age of 65. In New York City, the Department of Health reports that tobacco addiction kills some 11,000 New Yorkers each year.

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-623*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 7 TOBACCO PRODUCT REGULATION ACT*16

§ 17-623 Enforcement.

The department of health and mental hygiene and the department of consumer affairs shall enforce the provisions of this chapter. In addition, designated enforcement employees of any authorizing agency and the department of finance shall have the power to enforce the provisions of this chapter.

**HISTORICAL NOTE**

Section amended L.L. 22/2002 § 33, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Section amended L.L. 2/2000 § 7, eff. Aug. 2, 2000.

Section added L.L. 83/1992 § 2, eff. Apr. 25, 1993.

**FOOTNOTES**

16

[Footnote 16]: * Note provisions of L.L. 83/1992 § 1:

Section 1. Declaration of legislative findings and intent. The Council finds that the health risks attributable to tobacco use have been well established. According to the United States Centers for Disease Control, tobacco addiction kills 434,000 Americans each year and is responsible for approximately 1,199,000 years of potential life lost before the age of 65. In New York City, the Department of Health reports that tobacco addiction kills some 11,000 New Yorkers each year.

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Besides the grave dangers posed by tobacco use to the health of New York City residents of all ages, the Council also finds that tobacco use threatens the general welfare of all New Yorkers by causing enormous financial costs to the taxpayers, in the form of health care benefits, and a loss of productivity among the city's workforce.

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It is the Council's desire to eliminate tobacco product advertisements from such properties and facilities. However, if such tobacco product advertisements are permitted on these properties and facilities, it is the intention of the Council to require the placement of at least one public health message for every four tobacco advertisements placed or appearing in or on certain property and facilities owned or operated, in whole or in part, by the City of New York and certain property and facilities licensed by the City of New York. It is not the intent of the Council to require the placement or display of such public health messages on privately owned real property.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-624*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 7 TOBACCO PRODUCT REGULATION ACT*16

§ 17-624 Violations and penalties.

a. Any person found to be in violation of section 17-618, 17-619 or 17-620 shall be liable for a civil penalty of not more than one thousand dollars for the first violation, and not more than one thousand dollars for each additional violation found on that day; and not more than two thousand dollars for the second violation and each subsequent violation at the same place of business within a two-year period. In addition, for a second violation occurring on a different day and all subsequent violations occurring on different days at the same place of business within a two-year period, any person who engages in business as a retail dealer shall be subject to the mandatory revocation of his or her cigarette license for such place of business. For purposes of this section, any violation of section 17-618, 17-619 or 17-620 by any license holder at a place of business shall be included in determining the number of violations by any subsequent license holder at the same place of business unless the subsequent license holder provides the commissioner of consumer affairs with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision e of this section and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of violations on the premises. A cigarette license shall be revoked at the same hearing at which a retail dealer is found liable for a second violation or subsequent violations at the same place of business within a two-year period. Any person who shall knowingly make a false statement or who shall falsify or allow to be falsified any record or report required by section 17-621, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than one thousand five hundred dollars, or by imprisonment not to exceed six months, or both. Any person who shall make a false statement or who shall falsify or allow to be falsified any record or report required by section 17-621, or who shall fail to maintain any record or submit any report required by section 17-621, shall be liable for a civil penalty of not less than three hundred dollars nor more than one thousand five hundred

dollars. Any person who violates section 17-622 shall be liable for a civil penalty of not more than fifty dollars for each violation.

b. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision a of this section for a violation of section 17-618, 17-619 or 17-620 of this chapter shall be commenced by the service of a notice of violation which shall be returnable to the administrative tribunal established by the board of health where the department of health and mental hygiene issues such notice or the adjudication division of the department of consumer affairs where that department or a designated employee of any authorizing agency or the department of finance issues such notice. Such notice shall contain a statement that any hearing for a second violation or subsequent violations of section 17-618, 17-619 or 17-620 at the same place of business within a two-year period shall also constitute a hearing for the revocation of a retail dealer's cigarette license where the retail dealer is found to be in violation of any such sections. Where the department of health and mental hygiene finds a retail dealer to be liable for a violation of section 17-618, 17-619 or 17-620 that department shall notify the department of consumer affairs within thirty days of such finding. Where the department of consumer affairs finds a retail dealer to be liable for a violation of section 17-618, 17-619 or 17-620, that department shall notify the department of health within thirty days of such finding. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision a of this section for a violation of section 17-621 or authorized pursuant to subdivision h of section 17-621 shall be returnable to the administrative tribunal established by the board of health. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision a of this section for a violation of section 17-622 shall be returnable to the administrative tribunal established by the board of health. Such tribunal shall have the power to impose the civil penalties prescribed by subdivision a of this section or subdivision h of section 17-621 of this chapter. The adjudication division of the department of consumer affairs shall have the power to impose the civil penalties prescribed by subdivision a of this section for a violation of section 17-618, 17-619 or 17-620 of this chapter.

c. The penalties provided by subdivision a of this section and subdivision h of section 17-621 of this chapter shall be in addition to any other penalty imposed by any other provision of law or rulee promulgated thereunder.

d. Whenever any person has engaged in any acts or practices which constitute a violation of any provision of this chapter or of any rule promulgated thereunder, the city may make application to a court of competent jurisdiction for an order enjoining such acts or practices and for an order granting a temporary or permanent injunction, restraining order or other order enjoining such acts or practices.

e. For purposes of this section, "arm's length transaction" means a sale of a fee or all undivided interests in real property, or lease of any part thereof, or a sale of a business, in good faith and for valuable consideration, that reflects the fair market value of such real property or lease, or business, in the open market, between two informed and willing parties, where neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the sale or lease was made for the purpose of permitting the original licensee to avoid the effect of violations on the premises. The following sales or leases shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of violations on the premises:

(1) a sale between relatives; or

(2) a sale between related companies or partners in a business; or

(3) a sale or lease affected by other facts or circumstances that would indicate that the sale or lease is entered into for the primary purpose of permitting the original licensee to avoid the effect of violations on the premises.

f. Notwithstanding the provisions of subdivision a of this section, the mandatory revocation of a license for a second offense shall be waived if, upon the submission of satisfactory proof, the commissioner determines that the person or persons who committed the violations which are the basis for the mandatory revocation acted against the

licensee's will in committing such violations, the licensee utilized extensive precautionary measures to prevent violations of the provisions of sections 17-618, 17-619 and 17-620 of this code, and the licensee has terminated any financial or employment relationship with each person who committed the violations which are the basis of the mandatory revocation of its license or has taken other significant disciplinary action against such persons. The commissioner shall not determine that a licensee utilized extensive precautionary measures to prevent violations of the provisions of sections 17-618, 17-619 and 17-620 of this code unless the licensee submits satisfactory proof demonstrating that the licensee had, prior to the second violation which is the basis for the mandatory revocation of its license, done the following:

(1) implemented a clear policy requiring all persons working in the place of business to strictly comply with the provisions of sections 17-618, 17-619 and 17-620 of this code and permitting persons working in the place of business to complete a tobacco product sales transaction only after establishing the age of a prospective purchaser of tobacco products through identification that has been verified for authenticity or through photographic identification as required by section 17-620 of this code; and

(2) trained all persons working in the place of business to comply with any such policy before they are allowed to sell tobacco products to the public; and

(3) monitored the performance of persons working in the place of business to ensure that they adhere to such policy, or, in accordance with rules promulgated by the commissioner, conducted periodic retraining of persons working in the place of business.

**HISTORICAL NOTE**

Section added L.L. 83/1992 § 2, eff. Apr. 25, 1993.

Subd a amended L.L. 2/2000 § 8, eff. Aug. 2, 2000.

Subd. b amended L.L. 22/2002 § 34, eff. July 29, 2002 and deemed in

effect as of July 1, 2002.

Subd b amended L.L. 2/2000 § 8, eff. Aug. 2, 2000.

Subds e, f added L.L. 2/2000 § 8, eff. Aug. 2, 2000.

**FOOTNOTES**

16

[Footnote 16]: * Note provisions of L.L. 83/1992 § 1:

Section 1. Declaration of legislative findings and intent. The Council finds that the health risks attributable to tobacco use have been well established. According to the United States Centers for Disease Control, tobacco addiction kills 434,000 Americans each year and is responsible for approximately 1,199,000 years of potential life lost before the age of 65. In New York City, the Department of Health reports that tobacco addiction kills some 11,000 New Yorkers each year.

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-625*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 7 TOBACCO PRODUCT REGULATION ACT*16

§ 17-625 Report.

Not later than twelve months after the effective date of the local law that added this section and each year thereafter, the department shall submit a report to the mayor and the city council concerning the administration and enforcement of this chapter.

**HISTORICAL NOTE**

Section added L.L. 83/1992 § 2, eff. Apr. 25, 1993.

**FOOTNOTES**

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[Footnote 16]: * Note provisions of L.L. 83/1992 § 1:

Section 1. Declaration of legislative findings and intent. The Council finds that the health risks attributable to tobacco use have been well established. According to the United States Centers for Disease Control, tobacco addiction kills 434,000 Americans each year and is responsible for approximately 1,199,000 years of potential life lost before the age of 65. In New York City, the Department of Health reports that tobacco addiction kills some 11,000 New Yorkers each year.

The Council finds that the problem of tobacco addiction among children is particularly alarming. In 1988, American children under the age of eighteen spent $1.26 billion for one billion packs of cigarettes and 26 million containers of chewing tobacco, resulting in profits of $221 million for cigarette manufacturers. Studies show that the majority of adult tobacco addicts began smoking in their teens. According to the American Heart Association, Lung Association and Cancer Society, 25% of tobacco addicts begin using tobacco products before the age of 12, 50% before the age of 14 and 90% before the age of 20. The New York City Department of Consumer Affairs reports that 200 New York children begin the deadly habit of cigarette smoking every day, and, according to the National Institute on Drug Abuse, 18.7% of high school seniors smoke daily. National Institute on Drug Abuse studies also indicate that high school seniors who smoke are more likely to have used illicit drugs as compared to non-smoking high school seniors, demonstrating that tobacco is often a gateway drug.

It is the intention of the Council to make it more difficult for minors to unlawfully purchase tobacco products. This legislation would require the direct retail seller of tobacco products to be at least 18 years of age or under the direct supervision of someone at least 18 years of age. That seller would be required to have direct, personal contact with the purchaser, who must provide photographic proof-of-age indicating that he or she is legally permitted to buy tobacco products in New York State, unless he or she reasonably appears to be at least twenty-five years of age. The legislation would also prohibit the sale of loose, individual cigarettes or other tobacco products that have been removed from their packaging so as to eliminate the health warnings required by law. In addition, it is the Council's intention to provide New York City's students with tobacco-free educational environments to the greatest extent allowble by law. Thus, tobacco product use on all school premises, both public and private, shall be prohibited.

Besides the grave dangers posed by tobacco use to the health of New York City residents of all ages, the Council also finds that tobacco use threatens the general welfare of all New Yorkers by causing enormous financial costs to the taxpayers, in the form of health care benefits, and a loss of productivity among the city's workforce.

Costs associated with illness and injury due to smoking may be immediate or deferred; there are both costs to the individual and costs to society in general. In the United States, economic costs due to smoking-attributable disease were estimated at $53.7 billion in 1984 and $65 billion in 1985. These costs include direct health care costs, indirect costs and other cost factors. Direct health care costs relating to smoking include hospitalization, physician services, nursing home care and medication. These costs are ordinarily paid by the individual, however, due to the large number of uninsured individuals in New York City and due to the fact that New York City pays a portion of Medicaid costs, the city is forced to bear a portion of the burden of direct health care costs relating to smoking. According to the New York City Department of Health, in 1989, direct health care costs attributable to smoking in New York City exceeded $550 million. Indirect costs due to smoking are the value of lost productivity, output or foregone manpower when smoking related illness and death cause lost time from work and from other productive activities. According to the Department of Health, in 1989, indirect costs due to smoking exceeded $1.3 billion in New York City.

The Council concludes that the enormous public costs resulting from tobacco addiction must be decreased by attempting to discourage all New Yorkers from the use of tobacco products. The Council deems the placement of tobacco product advertisements on certain property owned or operated by the city and certain property or facilities licensed by the city, inappropriate and contrary to the general welfare of the city's residents. It is the Council's desire to eliminate tobacco product advertisements from such properties and facilities. However, if such tobacco product advertisements are permitted on these properties and facilities, it is the intention of the Council to require the placement of at least one public health message for every four tobacco advertisements placed or appearing in or on certain property and facilities owned or operated, in whole or in part, by the City of New York and certain property and facilities licensed by the City of New York. It is not the intent of the Council to require the placement or display of such public health messages on privately owned real

property.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-626*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 7 TOBACCO PRODUCT REGULATION ACT*16

§ 17-626 Construction.

Nothing contained in this chapter shall be construed to preclude the city of New York from prohibiting the placement or display of tobacco advertisements in or on units of advertising space.

**HISTORICAL NOTE**

Section added L.L. 83/1992 § 2, eff. Apr. 25, 1993.

**FOOTNOTES**

16

[Footnote 16]: * Note provisions of L.L. 83/1992 § 1:

Section 1. Declaration of legislative findings and intent. The Council finds that the health risks attributable to tobacco use have been well established. According to the United States Centers for Disease Control, tobacco addiction kills 434,000 Americans each year and is responsible for approximately 1,199,000 years of potential life lost before the age of 65. In New York City, the Department of Health reports that tobacco addiction kills some 11,000 New Yorkers each year.

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The Council concludes that the enormous public costs resulting from tobacco addiction must be decreased by attempting to discourage all New Yorkers from the use of tobacco products. The Council deems the placement of tobacco product advertisements on certain property owned or operated by the city and certain property or facilities licensed by the city, inappropriate and contrary to the general welfare of the city's residents. It is the Council's desire to eliminate tobacco product advertisements from such properties and facilities. However, if such tobacco product advertisements are permitted on these properties and facilities, it is the intention of the Council to require the placement of at least one public health message for every four tobacco advertisements placed or appearing in or on certain property and facilities owned or operated, in whole or in part, by the City of New York and certain property and facilities licensed by the City of New York. It is not the intent of the Council to require the placement or display of such public health messages on privately owned real property.

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

*NYC Administrative Code 17-701*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 8 REGULATION OF THE SALE OF HERBAL CIGARETTES*17

§ 17-701 Definitions.

Whenever used in this chapter, the following terms shall be defined as follows:

a. "Person" means any natural person, partnership, firm, joint stock company, corporation, or employee thereof, or other legal entity.

b. "Herbal cigarette" means a cigarette that is composed of one or more herbs and is not a tobacco product as defined in subdivision r of section §*18 17-617 of this code.

**HISTORICAL NOTE**

Section added L.L. 30/2000 § 1, eff. Aug. 2, 2000.

**FOOTNOTES**

17

[Footnote 17]: * There are two Chapters 8. This Chapter 8 was added L.L. 30/2000.

18

[Footnote 18]: ** So in original. ("§" is duplicative language).

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

*NYC Administrative Code 17-702*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 8 REGULATION OF THE SALE OF HERBAL CIGARETTES*17

§ 17-702 Sale of herbal cigarettes to minors prohibited.

It shall be unlawful for any person to sell or offer for sale herbal cigarettes to an individual under eighteen years of age.

**HISTORICAL NOTE**

Section added L.L. 30/2000 § 1, eff. Aug. 2, 2000.

**§ §17-703 Violations and penalties.**

a. Any person who violates any provision of this chapter or any rules promulgated hereunder shall be liable for a civil penalty of not less than two hundred and fifty dollars, nor more than two thousand dollars for each violation.

b. A proceeding to recover any civil penalty authorized pursuant to the provisions of paragraph a of this section shall be commenced by the service of a notice of violation which shall be returnable to the administrative tribunal established by the board of health, where the department of health issues such notice, or the adjudication division of the department of consumer affairs where that department issues such notice.

**HISTORICAL NOTE**

Section added L.L. 30/2000 § 1, eff. Aug. 2, 2000.

**FOOTNOTES**

17

[Footnote 17]: * There are two Chapters 8. This Chapter 8 was added L.L. 30/2000.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-801*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 8**19 ANIMAL SHELTERS AND STERILIZATION ACT

§ 17-801 Legislative findings.

The City Council hereby finds that New York City is experiencing a serious overpopulation of unwanted dogs and cats. This is a matter of serious concern affecting the public health, safety and welfare. The Center for Animal Care and Control, which operates animal shelters under contract with the City's Department of Health and mental hygiene, estimates that 67,000 unwanted, stray or abandoned dogs and cats entered its facilities in 1998. Of these animals, approximately seventy percent were not spayed or neutered. While wandering the City's streets, homeless dogs and cats reproduce at alarming rates, exacerbating a potentially unhealthy and dangerous situation. As a result of this situation, dog packs have formed in some areas, increasing numbers of individuals and animals are at risk for rabies, and many homeless animals have become the victims of vehicular accidents. These animals also suffer from lack of food and water and exposure to the elements. Given the large and growing number of unwanted dogs and cats, the Council finds that a law providing for a full-service animal shelter in each borough and the spaying and neutering of animals adopted from animal shelters or purchased from pet shops is necessary to protect the health, safety and welfare of New York City residents. The Council also finds that with the advancement of medical knowledge over the past ten years, many veterinarians now advocate and practice early sterilization of pets, as early as eight weeks of age. Veterinarians at animal hospitals and humane shelters across the country, as well as the American Society for the Prevention of Cruelty to Animals, have performed thousands of early spay-neuter surgeries. Many veterinary associations now also agree that even though any surgery has inherent risks, kittens and puppies heal faster and are lower surgical risks than older animals who may be ill, in heat, or pregnant. If dogs or cats are spayed or neutered before adoption from a shelter or purchase from a pet shop, then the chance that they will add more unwanted offspring to the numbers that already exist will be eliminated.

**HISTORICAL NOTE**

Section amended L.L. 22/2002 § 35, eff. July 29, 2002 and deemed in

effect as of July 1, 2002.

Section added L.L. 26/2000 § 1, eff. Nov. 8, 2000.

**CASE NOTES**

¶ 1. In Georgoutsos v. Animal Care and Control of NYC, 16 Misc.3d 1105A, 2007 NY Misc. Lexis 4638 (Sup.Ct. Kings County), the plaintiff and his dog were victims of a crime, and the dog was placed in a shelter. The defendant contended that under applicable law, sterilization of the dog was required, and refused to release the dog unless and until that procedure was carried out. The court, however, held that plaintiff was entitled to the return of the dog, and that sterilization was not required. The court explained that the purpose of the statute was to limit the reproduction of unwanted stray or abandoned dogs and cats. This particular dog was neither a stray nor abandoned, so that the law did not apply. The court noted that plaintiff had produced a veterinary certification (Adm. Code § 17-804) indicating that a sterilization procedure would endanger the dog's life.

**FOOTNOTES**

19

[Footnote 19]: * There are two Chapters 8. This Chapter 8 was added L.L. 26/2000 § 1.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-802*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 8**19 ANIMAL SHELTERS AND STERILIZATION ACT

§ 17-802 Definitions.

For the purposes of this chapter, the following terms shall be defined as follows:

a. "Adoption" means the delivery of a dog or cat deemed appropriate and suitable as a companion animal by an animal shelter to an individual at least eighteen years of age who has been approved to own, care and provide for the animal by the animal shelter.

b. "Consumer" means any individual purchasing an animal from a pet shop. A pet shop shall not be considered a consumer.

c. "Full-service shelter" shall mean a facility required to have a permit issued pursuant to subdivision (b) of section 161.09 of the New York city health code that houses lost, stray or homeless animals and:

(1) accepts dogs and cats pursuant to section 17-809 of this chapter;

(2) has an adoption program open pursuant to such section 17-809; and

(3) provides sterilization services for dogs and cats and any other veterinary services deemed necessary by a licensed veterinarian at such shelter or at a veterinary facility.

d. "Pet shop" means a facility required to have a permit issued pursuant to subdivision (a) of section 161.09 of the New York city health code, where dogs and/or cats are sold, exchanged, bartered, or offered for sale as pet animals to the general public at retail for profit. Such definition shall not include full-service shelters or other animal shelters

that make dogs and cats available for adoption whether or not a fee for such adoption is charged.

e. "Sterilization" means rendering a dog or cat, who is at least eight weeks of age, unable to reproduce by surgically altering the dog's or cat's reproductive organs. Such definition shall include the spaying of a female dog or cat or the neutering of a male dog or cat.

**HISTORICAL NOTE**

Section added L.L. 26/2000 § 1, eff. Nov. 8, 2000.

Subd. c amended L.L. 12/2002 § 1, eff. July 1, 2002.

**FOOTNOTES**

19

[Footnote 19]: * There are two Chapters 8. This Chapter 8 was added L.L. 26/2000 § 1.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-803*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 8**19 ANIMAL SHELTERS AND STERILIZATION ACT

§ 17-803 Animal shelters.

The department shall ensure that a full-service shelter is maintained in each borough of the city of New York.

**HISTORICAL NOTE**

Section added L.L. 26/2000 § 1, eff. Jan. 1, 2001 with respect to the boroughs of Brooklyn, Manhattan and Staten Island; and eff. July 1, 2006 with respect to the boroughs of the Bronx and Queens, and provided, further, that with respect to the boroughs of the Bronx and Queens, the city shall acquire the sites and comply with the provisions of section 197-c of the New York city charter by July first, two thousand four, and shall complete construction of the shelter facilities by July first, two thousand six. [Note L.L. 26/2000 § 2 amended L.L. 12/2002 § 5]

**FOOTNOTES**

19

[Footnote 19]: * There are two Chapters 8. This Chapter 8 was added L.L. 26/2000 § 1.

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-804*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 8**19 ANIMAL SHELTERS AND STERILIZATION ACT

§ 17-804 Sterilization required.

a. No full-service shelter or other shelter for homeless animals required to have a permit issued pursuant to subdivision (b) of section 161.09 of the New York city health code shall release a dog or cat to a person claiming ownership thereof, or to a person adopting such dog or cat, unless such dog or cat has been sterilized by a licensed veterinarian; provided, however, that such requirement shall not apply:

(1) if a licensed veterinarian certifies to such shelter that he or she has examined such dog or cat and found that because of a medical reason, the life of such dog or cat would be endangered by sterilization; provided, however, that such reason shall not consist solely of the youth of such dog or cat, if such dog or cat is at least eight weeks of age;

(2) in the case of a dog, if such dog, within the time period provided for by law, rule or regulation, is claimed by a person claiming ownership thereof, and such person demonstrates to the satisfaction of the shelter that such dog has a breed ring show record from the American Kennel Club or United Kennel Club or other similar, registry association, dated no more than twelve months prior to the date such dog entered such shelter, or such person claiming ownership is able to provide proof that such dog has successfully completed the requirements of the American Kennel Club or United Kennel Club or other similar, registry association, for the title Champion or its equivalent, at any time prior to the arrival of the dog at the shelter;

(3) in the case of a dog, if such dog, within the time period provided for by law, rule or regulation, is claimed by a person claiming ownership thereof, and such person demonstrates to the satisfaction of the shelter that such dog is a guide dog, hearing dog, service dog or police work dog; or

(4) in the case of a cat, if such cat within the time period provided for by law, rule or regulation, is claimed by a person claiming ownership thereof, and such person demonstrates to the satisfaction of such shelter that such cat has a breed show record from the Cat Fancier Association or other similar, registry association dated no more than twelve months prior to the date such cat entered such shelter or such person claiming ownership is able to provide proof that such cat has successfully completed the requirements of the Cat Fancier Association or other similar, registry association for the title Champion, Grand Champion or its equivalent, at any time prior to the arrival of the cat at the shelter.

b. No pet shop shall release to a consumer a dog or cat that has not been sterilized by a licensed veterinarian; provided, however, that such requirement shall not apply to a consumer who presents to the pet shop a letter from such consumer's licensed veterinarian, dated within the immediately preceding ten days, stating the reason(s) why, in the opinion of such veterinarian, such dog or cat should not be sterilized until a later specified date, not to exceed four months following the date of such letter. Such letter shall state that such veterinarian will cause such dog or cat to be sterilized at the request of such consumer on or before such later specified date. Such veterinarian shall also provide to the pet shop a certificate, in such form and manner as determined by rules promulgated by the department, stating the date on which such sterilization was performed. Any consumer who provides a pet shop with a letter with respect to a later sterilization of a dog or cat must ensure that such animal is sterilized by the date indicated in the letter.

c. Every pet shop, in accordance with rules promulgated by the department, shall maintain records of dog and cat sales, sterilization procedures performed at the request of the pet shop, and veterinarian letters and certificates received, and shall retain such records, letters and certificates for a period of two years. Such records, letters, and certificates shall be made available to the department according to rules promulgated by the deprtment.

**HISTORICAL NOTE**

Section added L.L. 26/2000 § 1, eff. Nov. 8, 2000.

**CASE NOTES**

¶ 1. A marshal executed an order of eviction, found two male Rottweiler puppies in the apartment and turned them over to defendant's shelter. The defendant, invoking Admin. Code §17-804, refused to release the dogs to the plaintiff owner unless they were first neutered. Plaintiff challenged the constitutionality of the statute under the Equal Protection Clause. There was a statutory exemption for dogs having a breed show ring record from a recognized registry, and plaintiff contended that there was no rational basis for the distinction between his dogs and the show dogs covered by the exemption. The court upheld the constitutionality of the statute. In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. So long as the law did not discriminate against suspect classes of people, a court must accord wide latitude to a legislature's judgment as to the circumstances warranting the exercise of police power. Plaintiff, who had the burden of proof, failed to establish that there was no rational connection between the regulation and the promotion of safety. Johnson v. Center for Animal Care and Control, Inc., 192 Misc.2d 210, 745 N.Y.S.2d 890 (Sup.Ct. Kings Co.).

**FOOTNOTES**

19

[Footnote 19]: * There are two Chapters 8. This Chapter 8 was added L.L. 26/2000 § 1.

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

*NYC Administrative Code 17-805*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 8**19 ANIMAL SHELTERS AND STERILIZATION ACT

§ 17-805 Reporting requirement.

The department shall provide the mayor and the city council with a report by February twenty-eighth of each year which shall set forth information regarding the management and operation of all full-service shelters performing services pursuant to a contract with the city of New York, including but not limited to:

a. the number of animals accepted by each full-service shelter during the previous calendar year;

b. the number of animals that were sterilized at each full-service shelter during the previous calendar year;

c. the number of animals that were humanely euthanized at each full-service shelter during the previous calendar year;

d. the number of adoptable animals that were humanely euthanized at each full-service shelter during the previous calendar year;

e. the number of animals that were adopted at each full-service shelter during the previous calendar year;

f. the number of animals at each full-service shelter that were returned to their owner during the previous calendar year; and

g. the number of animals at each full-service shelter that were provided to other shelters for adoption during the previous calendar year.

h. Provided, however, that the department shall report to the council each month the number of adoptable animals that were humanely euthanized at each full service shelter during the previous month.

**HISTORICAL NOTE**

Section added L.L. 26/2000 § 1, eff. Nov. 8, 2000.

Subd. h added L.L. 12/2002 § 2, eff. July 1, 2002.

**FOOTNOTES**

19

[Footnote 19]: * There are two Chapters 8. This Chapter 8 was added L.L. 26/2000 § 1.

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-806*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 8**19 ANIMAL SHELTERS AND STERILIZATION ACT

§ 17-806 Violations.

Any person found to be in violation of subdivisions (b) or (c) of section 17-804 of this chapter or any of the rules promulgated thereunder shall be liable for a civil penalty of not less than two hundred fifty dollars nor more than five hundred dollars for each violation. A proceeding to recover any civil penalty authorized pursuant to the provisions of this section shall be commenced by the service of a notice of violation which shall be returnable to the administrative tribunal established by the department.

**HISTORICAL NOTE**

Section added L.L. 26/2000 § 1, eff. Nov. 8, 2000.

**FOOTNOTES**

19

[Footnote 19]: * There are two Chapters 8. This Chapter 8 was added L.L. 26/2000 § 1.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-807*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 8**19 ANIMAL SHELTERS AND STERILIZATION ACT

§ 17-807 Rules.

The commissioner shall promulgate such rules as are necessary for the purposes of implementing and carrying out the provisions of this chapter.

**HISTORICAL NOTE**

Section added L.L. 26/2000 § 1, eff. Nov. 8, 2000.

**FOOTNOTES**

19

[Footnote 19]: * There are two Chapters 8. This Chapter 8 was added L.L. 26/2000 § 1.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-808*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 8**19 ANIMAL SHELTERS AND STERILIZATION ACT

§ 17-808 Severability.

If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

**HISTORICAL NOTE**

Section added L.L. 26/2000 § 1, eff. Nov. 8, 2000.

**FOOTNOTES**

19

[Footnote 19]: * There are two Chapters 8. This Chapter 8 was added L.L. 26/2000 § 1.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-809*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 8**19 ANIMAL SHELTERS AND STERILIZATION ACT

§ 17-809 Hours of operation and adoption program at full-service shelters.

From July first, two thousand two until December thirty-first, two thousand four a full service shelter shall accept dogs and cats twelve hours per day, seven days per week and shall operate an adoption program during weekends and three additional days during each week. The adoption program shall be operational for a minimum of six hours during each day the adoption program is required to be operational as provided by this section. After January first, two thousand five, a full service shelter shall accept dogs and cats twenty-four hours per day, seven days per week and shall operate an adoption program seven days per week.

**HISTORICAL NOTE**

Section added L.L. 12/2002 § 3, eff. July 1, 2002.

**FOOTNOTES**

19

[Footnote 19]: * There are two Chapters 8. This Chapter 8 was added L.L. 26/2000 § 1.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-810*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 8**19 ANIMAL SHELTERS AND STERILIZATION ACT

§ 17-810 [Euthanizing animals; time.]

In determining when a full-service shelter may euthanize a lost, stray or homeless animal held by it, such shelter shall exclude from the calculation of the number of hours that such shelter is required by law to hold such animal before euthanizing such animal those hours when such shelter is not required to accept dogs and cats pursuant to sections 17-802 and 17-809 of this chapter.

**HISTORICAL NOTE**

Section added L.L. 12/2002 § 4, eff. July 1, 2002.

**FOOTNOTES**

19

[Footnote 19]: * There are two Chapters 8. This Chapter 8 was added L.L. 26/2000 § 1.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-900*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 9 LEAD-BASED PAINT IN DAY CARE FACILITIES*21

SUBCHAPTER 1 DEFINITIONS

§ 17-900 Definitions.

For the purpose of this chapter the following terms shall have the following meanings:

1. " Chewable surface" shall mean a protruding interior window sill in a day care facility that is readily accessible to a child of applicable age. "Chewable surface" shall also mean any other type of interior edge or protrusion in a day care facility, such as a rail or stair, where there is evidence that such other edge or protrusion has been chewed or where the operator of such day care facility has observed that a child under six years of age has mouthed or chewed such edge or protrusion.

2. "Day care facility" shall mean any facility used to provide day care service.

3. "Day care service" shall mean any service which, during all or part of the day, regularly gives care to seven or more children under six years of age, not all of common parentage, which operates more than five hours per week for more than one month a year. Day care service shall not mean a kindergarten or higher grade in a facility operated by the board of education.

4. "Deteriorated subsurface" shall mean an unstable or unsound painted subsurface, an indication of which can be observed through a visual inspection, including but not limited to, rotted or decayed wood, or wood or plaster that has been subject to moisture or disturbance.

5. "Friction Surface" shall mean any painted surface that touches or is in contact with another surface, such that the two surfaces are capable of relative motion, and abrade, scrape or bind when in motion. Friction surfaces shall include, but not be limited to, window frames and jambs, doors, and hinges.

6. "Impact Surface" shall mean any interior painted surface that shows evidence, such as marking, denting, or chipping, that it is subject to damage by repeated sudden force, such as certain parts of door frames, moldings, or baseboards.

7. "Lead-based paint" shall mean paint or other similar surface-coating material containing 1.0 milligrams of lead per square centimeter or greater, as determined by laboratory analysis, or by an x-ray fluorescence analyzer. If an x-ray fluorescence analyzer is used, readings shall be corrected for substrate bias when necessary as specified by the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings shall be classified as positive, negative or inconclusive in accordance with the United States department of housing and urban development "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" (June 1995, revised 1997) and the PCS released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings that fall within the inconclusive zone, as determined by the performance characteristic sheets, shall be confirmed by laboratory analysis of paint chips, results shall be reported in milligrams of lead per square centimeter and the measure of such laboratory analysis shall be definitive. If laboratory analysis is used to determine lead content, results shall be reported in milligrams of lead per square centimeter. Where the surface area of a paint chip sample cannot be accurately measured or if an accurately measured paint chip sample cannot be removed, laboratory analysis may be reported in percent by weight. In such case, lead-based paint shall mean any paint or other similar surface-coating material containing more than 0.5% of metallic lead, based on the non-volatile content of the paint or other similar surface-coating material.

8. "Lead-based paint hazard" shall mean any condition that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

9. "Lead-contaminated dust" shall mean dust containing lead at 40 or more micrograms per square foot on a floor, 250 or more micrograms per square foot on window sills, and 400 or more micrograms per square foot on window wells, or such more stringent standards as may be adopted by the New York City board of health.

10. "Operator of such day care facility" shall mean any person who provides day care service and the owner of the premises where such day care facility is located. "Person" shall mean an individual, corporation, partnership, association or other for-profit or not-for-profit entity.

11. "Peeling" shall mean that the paint or other surface-coating material is curling, cracking, scaling, flaking, blistering, chipping, chalking, or loose in any manner, such that a space or pocket of air is behind a portion thereof or such that the paint is not completely adhered to the underlying surface.

12. "Remediation" or "Remediate" shall mean the reduction or elimination of a lead-based paint hazard through the wet scraping and repainting, removal, encapsulation, enclosure, or replacement of lead based paint, or other method approved by the commissioner of health and mental hygiene.

**HISTORICAL NOTE**

Section added L.L. 1/2004 § 9, eff. Aug. 2, 2004.

**FOOTNOTES**

21

[Footnote 21]: * Chapter 9 added L.L. 1/2004 § 9, eff. Aug. 2, 2004.

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Title 17 Health

CHAPTER 9 LEAD-BASED PAINT IN DAY CARE FACILITIES*21

SUBCHAPTER 2 REMEDIATION OF LEAD-BASED PAINT HAZARDS IN DAY CARE FACILITIES

§ 17-910 Presumption.

a. All paint or similar surface-coating material on the interior of any day care facility in a structure erected prior to January 1, 1978, shall be presumed to be lead-based paint.

b. The presumption established by this section may be rebutted by the operator or owner of the day care facility by submitting to the department a sworn written statement by the operator or owner of the day care facility supported by lead-based paint testing or sampling results, a sworn written statement by the person who performed the testing if performed by an employee or agent of the operator or owner of the day care facility, and such other proof as the department may require. Testing performed to rebut the presumption may only be performed by a person who has been certified as an inspector or risk assessor in accordance with subparts L and Q of part 745 of title 40 of the code of federal regulations or successor regulations. The determination as to whether such proof is adequate to rebut the presumption established by this section shall be made by the department.

**HISTORICAL NOTE**

Section added L.L. 1/2004 § 9, eff. Aug. 2, 2004.

**FOOTNOTES**

21

[Footnote 21]: * Chapter 9 added L.L. 1/2004 § 9, eff. Aug. 2, 2004.

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Title 17 Health

CHAPTER 9 LEAD-BASED PAINT IN DAY CARE FACILITIES*21

SUBCHAPTER 2 REMEDIATION OF LEAD-BASED PAINT HAZARDS IN DAY CARE FACILITIES

§ 17-911 Remediation.

a. There shall be no peeling lead-based paint in any portion of any day care facility.

b. Lead based paint or paint of unknown lead content that is peeling, or which is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces shall be immediately remediated in a manner authorized by the department.

c. Any equipment that is painted shall be painted with lead-free paint.

d. Whenever a condition prohibited by this section is found to exist, the department shall immediately serve an order on the operator or owner of such day care facility to remediate the condition. In the event such order is not complied with within forty-five days of service thereof, the department shall immediately request an agency of the city of New York to execute such order pursuant to the provisions of section 17-147 of this code. The agency shall execute the order within forty-five days of the department's request. The city of New York shall be entitled to enforce its rights for reimbursement of expenses incurred thereby, including as credits toward lease payments.

e. When lead-based paint hazards are remediated pursuant to this section such work shall be performed in compliance with work practices established by the department pursuant to section 17-912 of this sub- chapter.

**HISTORICAL NOTE**

Section added L.L. 1/2004 § 9, eff. Aug. 2, 2004.

**FOOTNOTES**

21

[Footnote 21]: * Chapter 9 added L.L. 1/2004 § 9, eff. Aug. 2, 2004.



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Title 17 Health

CHAPTER 9 LEAD-BASED PAINT IN DAY CARE FACILITIES*21

SUBCHAPTER 2 REMEDIATION OF LEAD-BASED PAINT HAZARDS IN DAY CARE FACILITIES

§ 17-912 Department rules.

The department shall promulgate such rules as may be necessary for the implementation of this chapter. Such rules shall incorporate work practices that are no less protective of public health than those set forth in section 173.14 (d) and (e) and those parts of subdivision b of the health code applicable thereto or a successor rule, and shall include a requirement that lead-contaminated dust clearance testing be performed at the completion of such work. Such rules shall require that such work be performed by a person who has, at a minimum, successfully completed a course on lead-safe work practices given by or on behalf of the department or, by the United States environmental protection agency or an entity authorized by it to give such course, or by the United States department of housing and urban development or an entity authorized by it to give such course. Such rules shall not apply where such work disturbs surfaces of less than (a) two square feet of peeling lead-based paint per room or (b) ten percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame.

**HISTORICAL NOTE**

Section added L.L. 1/2004 § 9, eff. Aug. 2, 2004.

**FOOTNOTES**

21

[Footnote 21]: * Chapter 9 added L.L. 1/2004 § 9, eff. Aug. 2, 2004.



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*NYC Administrative Code 17-913*

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Title 17 Health

CHAPTER 9 LEAD-BASED PAINT IN DAY CARE FACILITIES*21

SUBCHAPTER 2 REMEDIATION OF LEAD-BASED PAINT HAZARDS IN DAY CARE FACILITIES

§ 17-913 Annual Survey.

The operator of a day care facility shall conduct a survey of such facility annually, and more often if necessary, to determine the physical condition of surface-coating material throughout each such facility and shall provide a copy of the survey results to the department.

**HISTORICAL NOTE**

Section added L.L. 1/2004 § 9, eff. Aug. 2, 2004.

**FOOTNOTES**

21

[Footnote 21]: * Chapter 9 added L.L. 1/2004 § 9, eff. Aug. 2, 2004.



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

*NYC Administrative Code 17-914*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 10 AVAILABILITY OF INFORMATION REGARDING DAY CARE SERVICES*22

§ 17-914 Definitions.

a. "Day care service" means any service which is permitted as a group day care service in accordance with rules and regulations of the department.

b. "Day care service permittee" means the person to whom a permit to operate a day care service is issued by the commissioner of the department.

c. "Department" means the department of health and mental hygiene of the city of New York.

d. "Permit" means an authorization to operate a day care service issued by the commissioner of the department in accordance with articles 5 and 47 of title 24 of the rules of the city of New York.

e. "Serious injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

f. "Summary day care service inspection report" is a report that includes, at a minimum, the following information:

(1) the name of the day care service;

(2) the name of the day care service permittee;

(3) the day care service permit number and expiration date;

(4) the address of the day care service;

(5) the date of the most recent inspection;

(6) the maximum number of children authorized to be present at any one time as specified in the day care service permit;

(7) any violations identified by the department during inspections conducted over the past three years; and

(8) whether a permit has been ordered suspended or revoked in the past twelve months; whether a day care service has, during the past three years, been ordered closed because its continued operation represented a danger to the health or safety of children; and the terms and conditions, if any, under which such day care service has been allowed to reopen and is authorized to operate.

g. "Violation" means a citation issued by the department which alleges that a day care service has failed to comply with a provision of applicable law, rule or regulation.

**HISTORICAL NOTE**

Section added L.L. 13/2005 § 2, eff. July 31, 2005. [See Chapter 10

footnote]

**FOOTNOTES**

22

[Footnote 22]: * There are two chapters 10. Chapter 10 added L.L. 13/2005 § 2, eff. July 31, 2005. Note: provisions of L.L. 13/2005:

Section 1. Legislative intent. The city of New York has an obligation to protect the safety and well being of its children, who are among its most vulnerable residents. This includes the regulation of child day care services regulated by the city of New York and not otherwise regulated by the state of New York, which provide care for children while their parents are at work. The Council recognizes an ever-increasing demand for day care services to help maintain the financial security of families. The Council finds, however, that parents often do not have access to complete, accurate information they need to make informed decisions when they select child care facilities for their children. The purpose of this local law is to

ensure that parents have access to critical information they need to make informed decisions regarding their children's care and to improve the quality of day care throughout New York City.



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*NYC Administrative Code 17-915*

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Title 17 Health

CHAPTER 10 AVAILABILITY OF INFORMATION REGARDING DAY CARE SERVICES*22

§ 17-915 Access to summary day care service inspection reports.

Commencing on the effective date of the local law that added this chapter, following each inspection of a day care service, the department shall post a summary day care service inspection report on the department's website and shall make summary day care service inspection reports available by calling 311.

**HISTORICAL NOTE**

Section added L.L. 13/2005 § 2, eff. July 31, 2005. [See Chapter 10 footnote]

**FOOTNOTES**

22

[Footnote 22]: * There are two chapters 10. Chapter 10 added L.L. 13/2005 § 2, eff. July 31, 2005. Note: provisions of L.L. 13/2005:

Section 1. Legislative intent. The city of New York has an obligation to protect the safety and well being of its children, who are among its most vulnerable residents. This includes the regulation of child day care services regulated by the city of New York and not otherwise regulated by the state of New York, which provide

care for children while their parents are at work. The Council recognizes an ever-increasing demand for day care services to help maintain the financial security of families. The Council finds, however, that parents often do not have access to complete, accurate information they need to make informed decisions when they select child care facilities for their children. The purpose of this local law is to

ensure that parents have access to critical information they need to make informed decisions regarding their children's care and to improve the quality of day care throughout New York City.

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*NYC Administrative Code 17-916*

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Title 17 Health

CHAPTER 10 AVAILABILITY OF INFORMATION REGARDING DAY CARE SERVICES*22

§ 17-916 Posting of information on-site.

Every day care service must post a sign in a conspicuous place near its public entrance or entrances stating that the most recent summary day care service inspection report may be accessed through the website of the department or by calling 311. The sign, whose form and content shall be provided or approved by the department, shall be printed in clear and legible type, in such a manner as to be readily visible to parents or other persons entering the day care service and shall provide instructions on how to gain access to the summary day care service inspection reports through the department's website.

**HISTORICAL NOTE**

Section added L.L. 13/2005 § 2, eff. July 31, 2005. [See Chapter 10 footnote]

**FOOTNOTES**

22

[Footnote 22]: * There are two chapters 10. Chapter 10 added L.L. 13/2005 § 2, eff. July 31, 2005. Note: provisions of L.L. 13/2005:

Section 1. Legislative intent. The city of New York has an obligation to protect the safety and well being of its children, who are among its most vulnerable residents. This includes the regulation of child day care services regulated by the city of New York and not otherwise regulated by the state of New York, which provide care for children while their parents are at work. The Council recognizes an ever-increasing demand for day care services to help maintain the financial security of families. The Council finds, however, that parents often do not have access to complete, accurate information they need to make informed decisions when they select child care facilities for their children. The purpose of this local law is to

ensure that parents have access to critical information they need to make informed decisions regarding their children's care and to improve the quality of day care throughout New York City.

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*NYC Administrative Code 17-917*

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CHAPTER 10 AVAILABILITY OF INFORMATION REGARDING DAY CARE SERVICES*22

§ 17-917 Denial of permit.

a. Every applicant for a new or renewal permit to operate a day care service shall disclose whether a serious injury or the death of a child in its care, or the care of any of its owners, directors, employees, volunteers or agents, has occurred. Every such permit applicant shall further disclose any civil or criminal court verdicts holding that the applicant, or any of its owners, directors, employees, volunteers or agents, was responsible for such serious injury or death of a child, or administrative agency decisions holding or finding that there is credible evidence that the applicant, or any of its owners, directors, employees, volunteers or agents, was responsible for such serious injury or death of a child, and whether any legal proceeding involving the serious injury or death of a child is pending against the applicant, or any of its owners, directors, employees, volunteers or agents. The department shall deny such a permit unless, on the basis of the application and other papers submitted, including the information provided pursuant to this section, and on the basis of department or City investigation, if any, it is satisfied that the provisions of the New York City health code and other applicable law will be met. The death of a child or the occurrence of more than one incident resulting in a serious injury to a child or children in the care of an applicant or permittee shall create a presumption in any proceeding brought by the department to deny or revoke such a permit of the inability of the applicant or permittee to comply with the provisions of said code or other applicable law. Nothing herein shall otherwise limit the department's authority to deny the issuance or renewal of a permit or to revoke a permit.

b. To the extent permissible by law, where the department has received written notification that a person with responsibility for oversight and direction of a day care service has a felony conviction at any time for a sex offense, crime against a child, or a crime involving violence, or a felony conviction within the past five years for a drug-related offense, the department shall, when consistent with article twenty-three-A of the correction law, deny the application for

a permit to operate such day care service.

**HISTORICAL NOTE**

Section added L.L. 13/2005 § 2, eff. July 31, 2005. [See Chapter 10

footnote]

**FOOTNOTES**

22

[Footnote 22]: * There are two chapters 10. Chapter 10 added L.L. 13/2005 § 2, eff. July 31, 2005. Note: provisions of L.L. 13/2005:

Section 1. Legislative intent. The city of New York has an obligation to protect the safety and well being of its children, who are among its most vulnerable residents. This includes the regulation of child day care services regulated by the city of New York and not otherwise regulated by the state of New York, which provide care for children while their parents are at work. The Council recognizes an ever-increasing demand for day care services to help maintain the financial security of families. The Council finds, however, that parents often do not have access to complete, accurate information they need to make informed decisions when they select child care facilities for their children. The purpose of this local law is to

ensure that parents have access to critical information they need to make informed decisions regarding their children's care and to improve the quality of day care throughout New York City.



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*NYC Administrative Code 17-918*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 10 AVAILABILITY OF INFORMATION REGARDING DAY CARE SERVICES*22

§ 17-918 Notification of authorities.

The department shall report to an appropriate state agency any serious injury or death of a child in day care services which has been reported to the department in accordance with applicable law, rules and regulations. Such report shall include the name of the day care service and the day care service permittee of any day care service in which a serious injury or death of a child has occurred.

**HISTORICAL NOTE**

Section added L.L. 13/2005 § 2, eff. July 31, 2005. [See Chapter 10 footnote]

**FOOTNOTES**

22

[Footnote 22]: * There are two chapters 10. Chapter 10 added L.L. 13/2005 § 2, eff. July 31, 2005. Note: provisions of L.L. 13/2005:

Section 1. Legislative intent. The city of New York has an obligation to protect the safety and well being of its children, who are among its most vulnerable residents. This includes the regulation of child day care

services regulated by the city of New York and not otherwise regulated by the state of New York, which provide care for children while their parents are at work. The Council recognizes an ever-increasing demand for day care services to help maintain the financial security of families. The Council finds, however, that parents often do not have access to complete, accurate information they need to make informed decisions when they select child care facilities for their children. The purpose of this local law is to

ensure that parents have access to critical information they need to make informed decisions regarding their children's care and to improve the quality of day care throughout New York City.

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*NYC Administrative Code 17-919*

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Title 17 Health

CHAPTER 10 AVAILABILITY OF INFORMATION REGARDING DAY CARE SERVICES*22

§ 17-919 Distribution of information to referral agencies.

a. Definitions. 1. "Child day care program" means any program that provides child day care as defined in section 390 of the New York state social services law or day care services as defined in article 47 of title 24 of the rules of the city of New York.

2. "Referral agency" means the administration for children's services, the department of social services/human resources administration or any state-funded child care resource and referral agency operating in New York City.

b. To the extent permissible under law, the department shall promptly make available to referral agencies information regarding any child day care program for which the department is aware of a current suspension of its license, registration or permit or that it has had its license, registration or permit terminated.

c. The department shall request that referral agencies advise parents to seek additional information regarding any program to which a referral is made by consulting the department's website or by calling 311.

d. Within six months of the effective date of the local law that added this section, the department shall publish an informational pamphlet which shall, at a minimum, do the following:

1. Describe the government authorities responsible for regulating child day care programs, along with contact information for persons to use if they have questions or complaints about child day care programs.

2. Describe key rules or regulations relating to child day care, including mandated staff and adult/child ratios,

maximum capacity and health and safety standards.

3. Describe the inspection process and the registration, licensing and permitting processes for child day care programs.

4. Advise parents seeking child day care to ask child day care program providers to see the program's current license, registration or permit and not to enroll a child in any program that does not have a current registration, license or permit or has a current suspension of its registration, license or permit.

The informational pamphlet required by this section shall be translated into all covered languages as defined in §8-1002 of the administrative code of the city of New York. Copies of the pamphlet shall be provided to all referral agencies.

**HISTORICAL NOTE**

Section added L.L. 12/2005 § 2, eff. July 31, 2005. [See Note 1]

**NOTE**

1. Provisions of L.L. L.L. 12/2005:

Section 1. Legislative intent. The city of New York has an obligation to protect and promote the safety and well being of its youngest and most vulnerable residents. Public and private agencies upon which parents depend when they seek appropriate child care must be equipped to supply complete and accurate information regarding child care citywide. The purpose of this local law is to enhance the flow of information regarding child care facilities to public and private agencies that make referrals and ensure that referring agencies provide complete, accurate and up-to-date information to parents who seek child care.

**FOOTNOTES**

22

[Footnote 22]: * There are two chapters 10. Chapter 10 added L.L. 13/2005 § 2, eff. July 31, 2005. Note: provisions of L.L. 13/2005:

Section 1. Legislative intent. The city of New York has an obligation to protect the safety and well being of its children, who are among its most vulnerable residents. This includes the regulation of child day care services regulated by the city of New York and not otherwise regulated by the state of New York, which provide care for children while their parents are at work. The Council recognizes an ever-increasing demand for day care services to help maintain the financial security of families. The Council finds, however, that parents often do not have access to complete, accurate information they need to make informed decisions when they select child care facilities for their children. The purpose of this local law is to

ensure that parents have access to critical information they need to make informed decisions regarding their children's care and to improve the quality of day care throughout New York City.



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Title 17 Health

CHAPTER 10 AVAILABILITY OF INFORMATION REGARDING DAY CARE SERVICES*22

§ 17-920 Reports regarding child care facilities citywide.*

a. Beginning 4523 days after the end of the first full calendar quarter following the effective date of the local law that added this section and 45 days after the end of each succeeding calendar quarter thereafter, the department will furnish to the speaker of the city council a report regarding child day care in New York City that includes, at a minimum, and to the extent that the department has access to such information, the following information concerning state regulated family and group family day care homes and school age child care programs and day care services regulated pursuant to Articles 5 and 47 of the New York City health code:

1. number of providers currently holding a valid license, registration or permit issued under state or local law or regulations, disaggregated by borough and by type of program;

2. number of inspections of such child day care providers, programs and services conducted, disaggregated borough and by the type of day care inspected;

3. number of license, registration or permit renewal applications received, disaggregated by type of day care;

4. number of new applications for licenses, registrations or permits received, disaggregated by type of program and by borough;

5. number of renewal licenses, registrations and permits issued, disaggregated by type of program and by borough;

6. number of new licenses, registrations and permits issued, disaggregated by type of program and by borough;

7. number of complaints received regarding day care operating with a license, registration or permit, disaggregated by the type of day care and borough of the day care that is the subject of the complaint;

8. number of complaints received regarding day care operating without a license, registration or permit, disaggregated by the borough in which the day care that is the subject of the complaint is located;

9. number of State licensed or registered day care providers or programs cited for having violations, disaggregated by borough and by the type of provider or program;

10. number of City permitted day care services:

(a) that have passed initial inspections by the department;

(b) that have failed initial inspections by the department;

(c) that have passed compliance inspections by the department; and

(d) that have failed compliance inspections by the department;

11. number of day care licenses, registrations or permits revoked, disaggregated by type of day care;

12. number of day care licenses, registrations or permits suspended, disaggregated by the type of day care;

13. number of cease and desist orders issued, disaggregated by the type of state licensed or registered provider or program;

14. number of city permitted day care services closed by order of the department;

15. number of early childhood consultants employed in the department's bureau of day care as of the close of business on the final day of the reporting period;

16. number of early childhood consultant vacancies in the department's bureau of day care as of the close of business on the final day of the reporting period;

17. number of public health sanitarians employed in the department's bureau of day care as of the close of business on the final day of the reporting period; and

18. number of public health sanitarian vacancies in the department's bureau of day care as of the close of business on the final day of the reporting period.

b. Within 45 days after the end of each calendar year, the department will publish and make available on its website an annual report containing the information set forth in subdivision a of this section for the prior calendar year.

**HISTORICAL NOTE**

Section added L.L. 14/2005 § 1, eff. July 31, 2005 and expiring July 31,

2008 per L.L. 14/2005 § 2.

**FOOTNOTES**

22

[Footnote 22]: * There are two chapters 10. Chapter 10 added L.L. 13/2005 § 2, eff. July 31, 2005. Note: provisions of L.L. 13/2005:

Section 1. Legislative intent. The city of New York has an obligation to protect the safety and well being of its children, who are among its most vulnerable residents. This includes the regulation of child day care services regulated by the city of New York and not otherwise regulated by the state of New York, which provide care for children while their parents are at work. The Council recognizes an ever-increasing demand for day care services to help maintain the financial security of families. The Council finds, however, that parents often do not have access to complete, accurate information they need to make informed decisions when they select child care facilities for their children. The purpose of this local law is to

ensure that parents have access to critical information they need to make informed decisions regarding their children's care and to improve the quality of day care throughout New York City.

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[Footnote 23]: * Expires July 31, 2008 per L.L. 14/2005 § 2.



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*NYC Administrative Code 17-1001*

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Title 17 Health

CHAPTER 10 PRESCRIPTION DRUG DISCOUNT CARD ACT*24

§ 17-1001 Short title.

This chapter shall be known and may be cited as the "Prescription Drug Discount Card Act."

**HISTORICAL NOTE**

Section added L.L. 19/2005 § 2, eff. July 5, 2005. [See Chapter 10 footnote]

**FOOTNOTES**

24

[Footnote 24]: * There are two chapters 10. Chapter 10 added L.L. 19/2005 § 2, eff. July 5, 2005. Note provisions of L.L. 19/2005:

Section 1. Legislative findings and intent. National spending for prescription drugs has continued to rise dramatically over the last decade. It is estimated that Americans spent more than $180 billion on prescription drugs in 2003, and that such spending could reach as much as $250 billion by 2006. According to a recent report from the Association of Chain Drug Stores, brand-name retail drug prices jumped nearly $10 per prescription between 2002 and 2003.

The rising cost of prescription drugs has become particularly problematic as the number of uninsured individuals has continued to increase. According to a 2004 report by Families USA, approximately 81.8 million people-including one out of three of those under the age of 65-were without health insurance in the United States for all or part of 2002 and 2003. In New York State, the proportion of individuals without insurance is even higher than the national average, with more than one out of three people under the age of 65 without health insurance for all or part of 2002 and 2003. In New York City, it is estimated that 1.8 million people had no health insurance in 2002, and two-thirds of the uninsured were employed. According to the New York City Community Health Survey, during 2003, an estimated 908,000 people chose not to fill one or more prescriptions because of cost.

Accordingly, the New York City Council finds that a New York City prescription drug discount card program should be made available to all New York City residents regardless of age, income, immigration status or health insurance coverage status, and without any barriers, such as a fee for the card or a registration process, to participation in the program.

It is the intent of the Council that the discounts under such program will pass to the beneficiary-the consumer-at the point of sale. Based on the experience of prescription drug discount cards in other jurisdictions, the Council expects that consumers will receive a substantial discount on prescription drugs under the New York City program. For example, under the Nassau County prescription drug card program, users of the NassauRx card benefited from drug prices that were up to 40% lower than the lowest commonly available retail price. Furthermore, it is also the intent of the Council that a New York City prescription drug discount card be used for purchases at pharmacies, through mail order and over the Internet. It is not the intent of the Council that the New York City prescription drug discount card be used in conjunction with any other discount prescription drug card during the same transaction or that this chapter be construed to require prescription drug manufacturers to participate in such program or to negotiate with any administrator regarding such program.

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*NYC Administrative Code 17-1002*

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Title 17 Health

CHAPTER 10 PRESCRIPTION DRUG DISCOUNT CARD ACT*24

§ 17-1002 Definitions.

When used in this chapter, the term "rebate" shall mean a refund of a certain portion of the wholesale price of a drug based on a negotiated agreement between a drug manufacturer and any administrator of the prescription drug discount card program created pursuant to this chapter.

**HISTORICAL NOTE**

Section added L.L. 19/2005 § 2, eff. July 5, 2005. [See Chapter 10 footnote]

**FOOTNOTES**

24

[Footnote 24]: * There are two chapters 10. Chapter 10 added L.L. 19/2005 § 2, eff. July 5, 2005. Note provisions of L.L. 19/2005:

Section 1. Legislative findings and intent. National spending for prescription drugs has continued to rise dramatically over the last decade. It is estimated that Americans spent more than $180 billion on prescription drugs in 2003, and that such spending could reach as much as $250 billion by 2006. According to a recent report

from the Association of Chain Drug Stores, brand-name retail drug prices jumped nearly $10 per prescription between 2002 and 2003.

The rising cost of prescription drugs has become particularly problematic as the number of uninsured individuals has continued to increase. According to a 2004 report by Families USA, approximately 81.8 million people-including one out of three of those under the age of 65-were without health insurance in the United States for all or part of 2002 and 2003. In New York State, the proportion of individuals without insurance is even higher than the national average, with more than one out of three people under the age of 65 without health insurance for all or part of 2002 and 2003. In New York City, it is estimated that 1.8 million people had no health insurance in 2002, and two-thirds of the uninsured were employed. According to the New York City Community Health Survey, during 2003, an estimated 908,000 people chose not to fill one or more prescriptions because of cost.

Accordingly, the New York City Council finds that a New York City prescription drug discount card program should be made available to all New York City residents regardless of age, income, immigration status or health insurance coverage status, and without any barriers, such as a fee for the card or a registration process, to participation in the program.

It is the intent of the Council that the discounts under such program will pass to the beneficiary-the consumer-at the point of sale. Based on the experience of prescription drug discount cards in other jurisdictions, the Council expects that consumers will receive a substantial discount on prescription drugs under the New York City program. For example, under the Nassau County prescription drug card program, users of the NassauRx card benefited from drug prices that were up to 40% lower than the lowest commonly available retail price. Furthermore, it is also the intent of the Council that a New York City prescription drug discount card be used for purchases at pharmacies, through mail order and over the Internet. It is not the intent of the Council that the New York City prescription drug discount card be used in conjunction with any other discount prescription drug card during the same transaction or that this chapter be construed to require prescription drug manufacturers to participate in such program or to negotiate with any administrator regarding such program.

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

*NYC Administrative Code 17-1003*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 10 PRESCRIPTION DRUG DISCOUNT CARD ACT*24

§ 17-1003 Prescription drug discount card program.

a. The department shall develop a prescription drug discount card program which shall be made available to all New York city residents, regardless of age, income, immigration status or health insurance coverage status, for the purpose of providing all New York city residents with a prescription drug discount card which may be used to buy prescription drugs at reduced prices at participating pharmacies. Such prescription drug discount card program shall enable each user of such program to purchase at a reduced price from a pharmacy that participates in the program any prescription drug that is eligible for a discount through such program. The prescription drug discount card program shall allow users to purchase a drug at the lower of either the drug price available through the prescription drug discount card program or the pharmacy's customary and usual price. Any prescription drug discount card issued pursuant to this section may not be utilized in conjunction with another type of prescription drug discount card for the same transaction.

b. Nothing in this chapter shall be construed to provide any governmental entity other than the department with access to any individually identifiable information regarding users of the prescription drug discount card program established pursuant to this section. The department shall keep confidential all information concerning the identity of users of the program and the drugs that such users purchase through the program. The department may use such information solely to conduct epidemiological and health planning studies and to provide general information to users about the drugs such users are taking, the conditions for which such users are taking the drugs and other services of the department or the city of New York related to such conditions.

c. No administrator of the prescription drug discount card program shall provide the prescription drug discount card developed pursuant to this section to any resident of the city of New York unless such administrator ensures that a portion of any rebate payments received from drug manufacturers is distributed to users of such program, including

pharmacies participating in the program.

d. Any duly licensed pharmacy willing to comply with the terms and conditions of the prescription drug discount card program shall be permitted to participate in the program.

**HISTORICAL NOTE**

Section added L.L. 19/2005 § 2, eff. July 5, 2005. [See Chapter 10

footnote]

**FOOTNOTES**

24

[Footnote 24]: * There are two chapters 10. Chapter 10 added L.L. 19/2005 § 2, eff. July 5, 2005. Note provisions of L.L. 19/2005:

Section 1. Legislative findings and intent. National spending for prescription drugs has continued to rise dramatically over the last decade. It is estimated that Americans spent more than $180 billion on prescription drugs in 2003, and that such spending could reach as much as $250 billion by 2006. According to a recent report from the Association of Chain Drug Stores, brand-name retail drug prices jumped nearly $10 per prescription between 2002 and 2003.

The rising cost of prescription drugs has become particularly problematic as the number of uninsured individuals has continued to increase. According to a 2004 report by Families USA, approximately 81.8 million people-including one out of three of those under the age of 65-were without health insurance in the United States for all or part of 2002 and 2003. In New York State, the proportion of individuals without insurance is even higher than the national average, with more than one out of three people under the age of 65 without health insurance for all or part of 2002 and 2003. In New York City, it is estimated that 1.8 million people had no health insurance in 2002, and two-thirds of the uninsured were employed. According to the New York City Community Health Survey, during 2003, an estimated 908,000 people chose not to fill one or more prescriptions because of cost.

Accordingly, the New York City Council finds that a New York City prescription drug discount card program should be made available to all New York City residents regardless of age, income, immigration status or health insurance coverage status, and without any barriers, such as a fee for the card or a registration process, to participation in the program.

It is the intent of the Council that the discounts under such program will pass to the beneficiary-the consumer-at the point of sale. Based on the experience of prescription drug discount cards in other jurisdictions, the Council expects that consumers will receive a substantial discount on prescription drugs under the New York City program. For example, under the Nassau County prescription drug card program, users of the NassauRx card benefited from drug prices that were up to 40% lower than the lowest commonly available retail price. Furthermore, it is also the intent of the Council that a New York City prescription drug discount card be used for purchases at pharmacies, through mail order and over the Internet. It is not the intent of the Council that the New York City prescription drug discount card be used in conjunction with any other discount prescription drug card during the same transaction or that this chapter be construed to require prescription drug manufacturers to participate in such program or to negotiate with any administrator regarding such program.

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*NYC Administrative Code 17-1004*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 10 PRESCRIPTION DRUG DISCOUNT CARD ACT*24

§ 17-1004 Report.

Not later than sixty days after the end of each twelve-month period during which the prescription drug discount card program has been in operation, the department shall provide the city council with a report regarding such program. Such report shall provide information regarding the operation of such program during the reporting period, including, but not limited to (i) the number of prescription drug discount card holders who used the prescription drug discount card at least once, (ii) the total cost savings to all card holders generated by the program, (iii) the average cost savings to a card holder per prescription, (iv) the source and method of cost savings under the program, (v) the major drug categories that are not discounted under the program and an explanation as to why such drugs are not listed, (vi) the drugs for which rebates are offered under the program, listed according to major drug category, (vii) the number of pharmacies participating in the program, and (viii) to the extent available, any costs incurred by pharmacies to participate in the program.

**HISTORICAL NOTE**

Section added L.L. 19/2005 § 2, eff. July 5, 2005. [See Chapter 10 footnote]

**FOOTNOTES**

24

[Footnote 24]: * There are two chapters 10. Chapter 10 added L.L. 19/2005 § 2, eff. July 5, 2005. Note provisions of L.L. 19/2005:

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The rising cost of prescription drugs has become particularly problematic as the number of uninsured individuals has continued to increase. According to a 2004 report by Families USA, approximately 81.8 million people-including one out of three of those under the age of 65-were without health insurance in the United States for all or part of 2002 and 2003. In New York State, the proportion of individuals without insurance is even higher than the national average, with more than one out of three people under the age of 65 without health insurance for all or part of 2002 and 2003. In New York City, it is estimated that 1.8 million people had no health insurance in 2002, and two-thirds of the uninsured were employed. According to the New York City Community Health Survey, during 2003, an estimated 908,000 people chose not to fill one or more prescriptions because of cost.

Accordingly, the New York City Council finds that a New York City prescription drug discount card program should be made available to all New York City residents regardless of age, income, immigration status or health insurance coverage status, and without any barriers, such as a fee for the card or a registration process, to participation in the program.

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*NYC Administrative Code 17-1005*

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Title 17 Health

CHAPTER 10 PRESCRIPTION DRUG DISCOUNT CARD ACT*24

§ 17-1005 Implementation.

The department may enter into contracts or agreements with third parties to implement the provisions of this chapter, including, but not limited to, developing and/or administering the prescription drug discount card program established pursuant to section 17-1003 of this chapter and collecting information required by section 17-1004 of this chapter.

**HISTORICAL NOTE**

Section added L.L. 19/2005 § 2, eff. July 5, 2005. [See Chapter 10 footnote]

**FOOTNOTES**

24

[Footnote 24]: * There are two chapters 10. Chapter 10 added L.L. 19/2005 § 2, eff. July 5, 2005. Note provisions of L.L. 19/2005:

Section 1. Legislative findings and intent. National spending for prescription drugs has continued to rise dramatically over the last decade. It is estimated that Americans spent more than $180 billion on prescription

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

*NYC Administrative Code 17-1006*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 10 PRESCRIPTION DRUG DISCOUNT CARD ACT*24

§ 17-1006 Rules.

The department may promulgate such rules as may be necessary to implement the provisions of this chapter.

**HISTORICAL NOTE**

Section added L.L. 19/2005 § 2, eff. July 5, 2005. [See Chapter 10 footnote]

**FOOTNOTES**

24

[Footnote 24]: * There are two chapters 10. Chapter 10 added L.L. 19/2005 § 2, eff. July 5, 2005. Note provisions of L.L. 19/2005:

Section 1. Legislative findings and intent. National spending for prescription drugs has continued to rise dramatically over the last decade. It is estimated that Americans spent more than $180 billion on prescription drugs in 2003, and that such spending could reach as much as $250 billion by 2006. According to a recent report from the Association of Chain Drug Stores, brand-name retail drug prices jumped nearly $10 per prescription between 2002 and 2003.

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-1101*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 11 NEIGHBOR NOTIFICATION OF PESTICIDE APPLICATION*25

§ 17-1101 Definitions.

For the purposes of this chapter only, the following terms shall have the following meanings:

1. "Abutting property" means any property which has any boundary or boundary point in common with the property on which the pesticide is to be applied.

2. "Agricultural commodity" means any plant or part thereof, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturalists, floriculturists, orchardists, foresters or other comparable persons) primarily for sale, consumption, propagation or other use by man or animals.

3. "Agency" means any state agency; municipal corporation; public authority; college, as that term is defined in the education law; railroad, as that term is defined in the railroad law; or telegraph, telephone, telegraph and telephone, pipeline, gas, electric, or gas and electric corporation, as those terms are defined in the transportation corporations law, which applies pesticides.

4. "Commercial lawn application" means the application of pesticide to ground, trees or shrubs on public or private outdoor property. For the purposes of this section, the following shall not be considered commercial lawn application:

i. the application of pesticide for the purpose of producing an agricultural commodity;

ii. residential application of pesticides;

iii. the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;

iv. the application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification requirements pursuant to section 33-1003 of the environmental conservation law where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and

v. the application of pesticides on golf courses or turf farms.

5. "Dwelling" means any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place for one or two families.

6. "General use pesticide" means a pesticide which does not meet the state criteria for a restricted pesticide as established under authority of section 33-0303 of the environmental conservation law.

7. "Multiple dwelling" means any dwelling which is to be occupied by or is occupied as the residence or home of three or more families living independently of each other.

8. "Pesticide" means:

i. any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; and

ii. any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

9. "Premises" means land and improvements or appurtenances or any part thereof.

10. "Residential lawn application" means the application of general use pesticides to ground, trees, or shrubs on property owned by or leased to the individual making such application. For the purposes of this section, the following shall not be considered residential lawn application:

i. the application of pesticides for the purpose of producing an agricultural commodity;

ii. the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;

iii. the application of pesticides by or on behalf of agencies, except that agencies shall be subject to visual notification requirements pursuant to section 33-1003 of the environmental conservation law where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and

iv. the application of pesticides on golf courses or turf farms.

**HISTORICAL NOTE**

Section added L.L. 36/2005 § 2, eff. Jan. 1, 2006. [See Chapter 11

footnote]

**FOOTNOTES**

25

[Footnote 25]: * Chapter 11 added L.L. 36/2005 § 2, eff. Jan. 1, 2006. Note provisions of L.L. 36/2005: Section 1. Legislative Findings. The Council finds that individuals and their personal property are, or can be, unwittingly exposed to pesticides applied on their neighbor's property. The Council further finds that pesticides may pose health and safety risks to people, particularly children, pregnant women, the elderly and people with infirmities. Such potential risks include short-term impacts, such as headaches, nausea, seizures and respiratory problems, and long-term impacts, such as neurological damage, hormone disruption, reproductive disorders and various cancers. The intent of this local law is to provide information to City residents about certain pesticide applications to which they may be exposed, so that they can take steps to minimize such exposure to themselves, their families, pets, backyard wildlife and property.

Accordingly, this Council adopts the special notice requirements for commercial and residential applications of pesticides as set forth in Section 33-1004 of the New York Environmental Conservation Law. It is intended that this local law be read and applied consistently with that section and all other applicable provisions of the Environmental Conservation Law and regulations promulgated thereunder.

. . . . . § 3. Within twenty days after the enactment of this local law, the clerk of the city of New York shall forward one certified copy of this law to the New York state commissioner of environmental conservation and one to the New York state attorney general.

§ 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 5. This local law shall take effect on the first day of January after it shall have been enacted into law.

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

*NYC Administrative Code 17-1102*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 11 NEIGHBOR NOTIFICATION OF PESTICIDE APPLICATION*25

§ 17-1102 Notification requirements for commercial and residential lawn applications.

a. (1) All retail establishments that sell general use pesticides for commercial or residential lawn application shall display a sign meeting standards, established by the New York state commissioner of environmental conservation pursuant to subdivision one of section 33-1005 of the environmental conservation law, in a conspicuous place, and such sign shall be placed as close as possible to the place where such pesticides are displayed.

(2) The signs required to be displayed pursuant to paragraph one of this subdivision shall contain, at a minimum, pursuant to section 33-1005 of the environmental conservation law:

i. a warning notice directing consumers to follow directions on labels;

ii. a provision to inform the customer of the posting requirements set forth in subdivision c of this section; and

iii. a recommendation that the customer notify neighbors prior to the application of pesticides so that such neighbors may take precautions to avoid pesticide exposure.

b. (1) At least forty-eight hours prior to any commercial lawn application of a pesticide, the person or business making such application shall supply written notice, as defined in subdivision three of section 33-1005 of the environmental conservation law, to:

i. occupants of all dwellings on abutting property with a boundary that is within one hundred fifty feet of the site of such application; and

ii. owners, owners' agents or other persons in a position of authority for all other types of premises that are on abutting property with a boundary that is within one hundred fifty feet of the site of such application. Owners or owners' agents of multiple family dwellings shall supply such written notice to the occupants of such multiple family dwellings and for all other types of premises, owners, owners' agents or other persons in a position of authority shall post such written notice in a manner specified by the New York state commissioner of environmental conservation.

(2) The written notice required pursuant to paragraph one of this subdivision shall contain, at a minimum, pursuant to section 33-1005 of the environmental conservation law:

i. the address of the premises where application is to be done;

ii. the name and telephone number and pesticide business registration number or certified applicator number of the person providing the application;

iii. the specific date of each pesticide application and two alternative dates to the proposed date of application when, due to weather conditions, the pesticide application on the proposed date is precluded;

iv. the product name or names and the United States environmental protection agency registration number or numbers of the pesticide or pesticides to be applied; and

v. a prominent statement that reads: "This notice is to inform you of a pending pesticide application to neighboring property. You may wish to take precautions to minimize pesticide exposure to yourself, family members, pets or family possessions. Further information about the product or products being applied, including any warnings that appear on the labels of such pesticide or pesticides that are pertinent to the protection of humans, animals or the environment, can be obtained by calling the National Pesticides Telecommunications Network at 1-800-858-7378 or the New York State Department of Health Center for Environmental Health Info line at 1-800-458-1158."

(3) The prior notification provisions of paragraph one of this subdivision shall not apply to the following:

i. the application of anti-microbial pesticides and anti-microbial products as defined by the federal insecticide, fungicide and rodenticide act (FIFRA) in 7 U.S.C. sections 136(mm) and 136q(h)(2);

ii. the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps and hornets. This section shall not exempt from notification the use of any fogger product or aerosol product that discharges to a wide area;

iii. the use of non-volatile insect or rodent bait in a tamper resistant container;

iv. the application of a pesticide classified by the United States environmental protection agency as an exempt material under section 152.25 of title forty of the code of federal regulations;

v. the application of a pesticide which the United States environmental protection agency has determined satisfies its reduced risk criteria, including a biopesticide;

vi. the use of boric acid and disodium octaborate tetrahydrate;

vii. the use of horticultural soap and oils that do not contain synthetic pesticides or synergists;

viii. the application of a granular pesticide, where granular pesticide means any ground applied solid pesticide that is not a dust or powder;

ix. the application of a pesticide by direct injection into a plant or the ground;

x. the spot application of a pesticide, where spot application means the application of pesticide in a manually pressurized or non-pressurized container of thirty-two fluid ounces or less to an area of ground less than nine square feet;

xi. the application of a pesticide to the ground or turf of any cemetery; and

xii. an emergency application of a pesticide when necessary to protect against an imminent threat to human health, provided, however, that prior to any such emergency application, the person providing such application shall make a good faith effort to supply the written notice required pursuant to this chapter. Upon making an emergency application, the person making such application shall notify the New York state commissioner of health, using a form developed by such commissioner for such purposes that shall include minimally the name of the person making such application, the pesticide business registration number or certified applicator number of the person making such application, the location of such application, the date of such application, the product name and United States environmental protection agency registration number of the pesticide applied and the reason for such application.

c. (1) All persons performing residential lawn applications treating an area more than one hundred square feet shall affix markers to be placed within or along the perimeter of the area where pesticides will be applied. Markers are to be placed so as to be clearly visible to persons immediately outside the perimeter of such property. Such markers shall be posted at least twelve inches above the ground and shall be at least four inches by five inches in size.

(2) The markers required pursuant to paragraph one of this subdivision shall be in place on the day during which the pesticide is being applied and shall instruct persons not to enter the property and not to remove the signs for a period of at least twenty-four hours. Such instruction shall be printed boldly in letters at least three-eighths of an inch in height.

**HISTORICAL NOTE**

Section added L.L. 36/2005 § 2, eff. Jan. 1, 2006. [See Chapter 11

footnote]

**FOOTNOTES**

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[Footnote 25]: * Chapter 11 added L.L. 36/2005 § 2, eff. Jan. 1, 2006. Note provisions of L.L. 36/2005: Section 1. Legislative Findings. The Council finds that individuals and their personal property are, or can be, unwittingly exposed to pesticides applied on their neighbor's property. The Council further finds that pesticides may pose health and safety risks to people, particularly children, pregnant women, the elderly and people with infirmities. Such potential risks include short-term impacts, such as headaches, nausea, seizures and respiratory problems, and long-term impacts, such as neurological damage, hormone disruption, reproductive disorders and various cancers. The intent of this local law is to provide information to City residents about certain pesticide applications to which they may be exposed, so that they can take steps to minimize such exposure to themselves, their families, pets, backyard wildlife and property.

Accordingly, this Council adopts the special notice requirements for commercial and residential applications of pesticides as set forth in Section 33-1004 of the New York Environmental Conservation Law. It is intended that this local law be read and applied consistently with that section and all other applicable provisions of the Environmental Conservation Law and regulations promulgated thereunder.

. . . . . § 3. Within twenty days after the enactment of this

local law, the clerk of the city of New York shall forward one certified copy of this law to the New York state commissioner of environmental conservation and one to the New York state attorney general.

§ 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 5. This local law shall take effect on the first day of January after it shall have been enacted into law.

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

*NYC Administrative Code 17-1103*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 11 NEIGHBOR NOTIFICATION OF PESTICIDE APPLICATION*25

§ 17-1103 Enforcement.

a. Pursuant to section 33-1004 of the environmental conservation law, the department and the department of environmental protection shall have concurrent authority with the state of New York to enforce the provisions of this chapter, provided that all penalties, which shall be assessed after providing a hearing or opportunity to be heard, shall be as specified in section 17-1104 of this chapter and shall be payable to and deposited with the city of New York.

b. Pursuant to section 33-1004 of the environmental conservation law, the department of consumer affairs shall have concurrent authority with the department, the department of environmental protection and the state of New York to enforce the provisions of subdivision a of section 17-1102 of this chapter, provided that all penalties, which shall be assessed after providing a hearing or opportunity to be heard, shall be as specified in section 17-1104 of this chapter and shall be payable to and deposited with New York city.

c. A proceeding to recover any civil penalty authorized pursuant to section 17-1104 shall be commenced by the service of a notice of violation returnable to the administrative tribunal established by the board of health pursuant to section 558 of the charter of the city of New York where the department issues such notice, the environmental control board established pursuant to section 1049-a of the charter of the city of New York where the department of environmental protection issues such notice, or the adjudication division of the department of consumer affairs established pursuant to section 20-104(e) of the administrative code of the city of New York where that department issues such notice. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein. The administrative tribunal of the board of health, the environmental control board and the adjudication division of the department of consumer affairs shall have the power to render decisions and orders and to impose the remedies and

penalties provided for in section 17-1104, in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

**HISTORICAL NOTE**

Section added L.L. 36/2005 § 2, eff. Jan. 1, 2006. [See Chapter 11 footnote]

Subd. c amended L.L. 35/2008 § 6, eff. Sept. 11, 2008. [See Charter § 1049-a Note 1]

**FOOTNOTES**

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[Footnote 25]: * Chapter 11 added L.L. 36/2005 § 2, eff. Jan. 1, 2006. Note provisions of L.L. 36/2005: Section 1. Legislative Findings. The Council finds that individuals and their personal property are, or can be, unwittingly exposed to pesticides applied on their neighbor's property. The Council further finds that pesticides may pose health and safety risks to people, particularly children, pregnant women, the elderly and people with infirmities. Such potential risks include short-term impacts, such as headaches, nausea, seizures and respiratory problems, and long-term impacts, such as neurological damage, hormone disruption, reproductive disorders and various cancers. The intent of this local law is to provide information to City residents about certain pesticide applications to which they may be exposed, so that they can take steps to minimize such exposure to themselves, their families, pets, backyard wildlife and property.

Accordingly, this Council adopts the special notice requirements for commercial and residential applications of pesticides as set forth in Section 33-1004 of the New York Environmental Conservation Law. It is intended that this local law be read and applied consistently with that section and all other applicable provisions of the Environmental Conservation Law and regulations promulgated thereunder.

. . . . . § 3. Within twenty days after the enactment of this local law, the clerk of the city of New York shall forward one certified copy of this law to the New York state commissioner of environmental conservation and one to the New York state attorney general.

§ 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 5. This local law shall take effect on the first day of January after it shall have been enacted into law.



Administrative Code of the City of New York



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

*NYC Administrative Code 17-1104*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 11 NEIGHBOR NOTIFICATION OF PESTICIDE APPLICATION*25

§ 17-1104 Civil and criminal penalties.

a. (1) Any person providing a commercial lawn application who violates any provision of subdivision b of section 17-1102 of this chapter or any rule promulgated pursuant thereto shall be liable for a civil penalty not to exceed five thousand dollars for a first violation, and not to exceed ten thousand dollars for a subsequent offense.

(2) Notwithstanding any provision of law to the contrary, an owner or owner's agent of a multiple dwelling or owner, owner's agent or a person in a position of authority for all other types of premises who violates any provision of subdivision b of section 17-1102 of this chapter or any rule or regulation promulgated pursuant thereto and any person who violates any provision of subdivision c of section 17-1102 of this chapter or any rule promulgated pursuant thereto shall, for a first such violation, in lieu of a penalty, be issued a written warning and shall also be issued educational materials pursuant to subdivision two of section 33-1005 of the environmental conservation law. Such persons shall, however, be liable for a civil penalty not to exceed one hundred dollars for a second violation, and not to exceed two hundred fifty dollars for any subsequent violation.

(3) Notwithstanding any provision of law to the contrary, any person who violates the provisions of subdivision a of section 17-1102 of this chapter shall be issued a warning for the first violation and shall be provided seven days to correct such violation. Such person shall, however, be liable for a civil penalty not to exceed one hundred dollars for a second violation and not to exceed two hundred fifty dollars for any subsequent violation.

b. (1) Any person providing a commercial lawn application who, having the culpable mental states defined in subdivision one or subdivision two of section 15.05 or in section 20.20 of the penal law, violates any provision of subdivision b of section 17-1102 of this chapter, except an offense relating to the application of a general use pesticide,

shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for a subsequent offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine not to exceed ten thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment.

(2) Any person providing a commercial lawn application who violates any provision of subdivision b of section 17-1102 of this chapter relating to the use of a general use pesticide shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine not to exceed two thousand five hundred dollars. If the conviction is for a subsequent offense committed after a first such conviction of such person under this subdivision, punishment shall be by a fine not to exceed five thousand dollars.

**HISTORICAL NOTE**

Section added L.L. 36/2005 § 2, eff. Jan. 1, 2006. [See Chapter 11

footnote]

**FOOTNOTES**

25

[Footnote 25]: * Chapter 11 added L.L. 36/2005 § 2, eff. Jan. 1, 2006. Note provisions of L.L. 36/2005: Section 1. Legislative Findings. The Council finds that individuals and their personal property are, or can be, unwittingly exposed to pesticides applied on their neighbor's property. The Council further finds that pesticides may pose health and safety risks to people, particularly children, pregnant women, the elderly and people with infirmities. Such potential risks include short-term impacts, such as headaches, nausea, seizures and respiratory problems, and long-term impacts, such as neurological damage, hormone disruption, reproductive disorders and various cancers. The intent of this local law is to provide information to City residents about certain pesticide applications to which they may be exposed, so that they can take steps to minimize such exposure to themselves, their families, pets, backyard wildlife and property.

Accordingly, this Council adopts the special notice requirements for commercial and residential applications of pesticides as set forth in Section 33-1004 of the New York Environmental Conservation Law. It is intended that this local law be read and applied consistently with that section and all other applicable provisions of the Environmental Conservation Law and regulations promulgated thereunder.

. . . . . § 3. Within twenty days after the enactment of this local law, the clerk of the city of New York shall forward one certified copy of this law to the New York state commissioner of environmental conservation and one to the New York state attorney general.

§ 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 5. This local law shall take effect on the first day of January after it shall have been enacted into law.

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

*NYC Administrative Code 17-1201*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 12 PESTICIDE USE BY CITY AGENCIES*26

§ 17-1201 Application.

This chapter shall apply to all pest control activities on property owned or leased by the city, whether such activities are performed by city employees, contractors or subcontractors.

**HISTORICAL NOTE**

Section added L.L. 37/2005 § 1, eff. May 9, 2005. [See Chapter 12 footnote]

**FOOTNOTES**

26

[Footnote 26]: * Chapter 12 added L.L. 37/2005 § 1, eff. May 9, 2005. Note provisions of L.L. 37/2005: § 2. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-1202*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 12 PESTICIDE USE BY CITY AGENCIES*26

§ 17-1202 Definitions.

For the purposes of this chapter only, the following terms shall have the following meanings:

(1) "Anti-microbial pesticide" shall mean:

i. disinfectants intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects;

ii. sanitizers intended to reduce the number of living bacteria or viable virus particles on inanimate surfaces, in water, or in air;

iii. bacteriostats intended to inhibit the growth of bacteria in the presence of moisture;

iv. sterilizers intended to destroy viruses and all living bacteria, fungi and their spores, on inanimate surfaces;

v. fungicides and fungistats intended to inhibit the growth of, or destroy, fungi (including yeasts), pathogenic to humans or other animals on inanimate surfaces; and

vi. commodity preservatives and protectants intended to inhibit the growth of, or destroy bacteria in or on raw materials (such as adhesives and plastics) used in manufacturing, or manufactured products (such as fuel, textiles, lubricants, and paints), but not those utilized in the pulp and paper process or cooling towers.

(2) "Biological pesticide" shall mean a pesticide which is a naturally occurring substance that controls pests and

microorganisms that control pests.

(3) "City agency" shall mean a city, county, borough, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(4) "Contractor" shall mean any person or entity that enters into a contract with a city agency, or any person or entity that enters into an agreement with such person or entity to perform work or provide labor or services related to such contract.

(5) "Pest" shall mean:

i. any insect, rodent, fungus, or weed; or

ii. any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism (except viruses, bacteria or other microorganisms on or in living man or other living animals) which the commissioner of environmental conservation declares to be a pest.

(6) "Pesticide" shall mean:

i. any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; or

ii. any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

**HISTORICAL NOTE**

Section added L.L. 37/2005 § 1, eff. May 9, 2005. [See Chapter 12

footnote]

**FOOTNOTES**

26

[Footnote 26]: * Chapter 12 added L.L. 37/2005 § 1, eff. May 9, 2005. Note provisions of L.L. 37/2005: § 2. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

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Administrative Code of the City of New York



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

*NYC Administrative Code 17-1203*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 12 PESTICIDE USE BY CITY AGENCIES*26

§ 17-1203 Reduction of pesticide use.

a. Effective six months after the enactment of the local law that added this section, no city agency or contractor shall apply to any property owned or leased by the city any pesticide classified as Toxicity Category I by the United States environmental protection agency as of April 1, 2005, provided that for any pesticide classified as Toxicity Category I by the United States environmental protection agency after April 1, 2005, no such agency or contractor shall apply such pesticide after six months of its having been so classified, except as provided for in sections 17-1205 or 17-1206 of this chapter.

b. Effective twelve months after the enactment of the local law that added this section, no city agency or contractor shall apply to any property owned or leased by the city any pesticide classified as a human carcinogen, likely to be carcinogenic to humans, a known/likely carcinogen, a probable human carcinogen, or a possible human carcinogen by the office of pesticide programs of the United States environmental protection agency as of April 1, 2005, except as provided for in sections 17-1205 or 17-1206 of this chapter.

c. Effective eighteen months after enactment of the local law that added this section, no city agency or contractor shall apply to any property owned or leased by the city any pesticide classified by the California office of environmental health hazard assessment as a developmental toxin as of April 1, 2005, except as provided for in sections 17-1205 or 17-1206 of this chapter.

d. On February 1, 2007, and every February 1 thereafter, the department shall submit to the City Council a report listing changes made to the list of pesticides classified as a human carcinogen, likely to be carcinogenic to humans, a known/likely carcinogen, a probable human carcinogen, or a possible human carcinogen by the office of

pesticide programs of the United States environmental protection agency and the list of pesticides classified as developmental toxins by the California office of environmental health hazard assessment after April 1, 2005. Such reports shall also include, for each pesticide added to or removed from such classifications, whether and to what extent such pesticide is used by city agencies or contractors in the city of New York.

**HISTORICAL NOTE**

Section added L.L. 37/2005 § 1, eff. May 9, 2005. [See Chapter 12

footnote]

**FOOTNOTES**

26

[Footnote 26]: * Chapter 12 added L.L. 37/2005 § 1, eff. May 9, 2005. Note provisions of L.L. 37/2005: § 2. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.



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

*NYC Administrative Code 17-1204*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 12 PESTICIDE USE BY CITY AGENCIES*26

§ 17-1204 Interagency pest management committee.

a. Effective three months after enactment of the local law that added this section, an interagency pest management committee shall be formed, which shall be headed by the commissioner, or a designee, and which shall include the commissioners of sanitation, environmental protection, citywide administrative services and parks and recreation, the chair of the New York city housing authority and the chancellor of education, or their designees. Such committee shall share information related to the pest control strategies and experience of city agencies and shall meet on a semi-annual basis.

b. By January 1, 2007, the interagency pest management committee shall develop a plan to further reduce pesticide use by city agencies, including initiatives to implement integrated pest management, giving preference to employing physical, mechanical, cultural, biological and educational tactics to prevent conditions that promote pest infestations, which shall be updated on an annual basis, as necessary. The plan, and any updates of such plan, shall be submitted to the mayor and the speaker of the council within thirty days of issuance.

**HISTORICAL NOTE**

Section added L.L. 37/2005 § 1, eff. May 9, 2005. [See Chapter 12

footnote]

**FOOTNOTES**

26

[Footnote 26]: * Chapter 12 added L.L. 37/2005 § 1, eff. May 9, 2005. Note provisions of L.L. 37/2005: § 2. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 17-1205*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 12 PESTICIDE USE BY CITY AGENCIES*26

§ 17-1205 Exemptions.

a. The restrictions established pursuant to section 17-1203 of this chapter shall not apply to the following:

(1) pesticides otherwise lawfully used for the purpose of maintaining a safe drinking water supply at drinking water treatment plants, wastewater treatment plants, reservoirs, and related collection, distribution and treatment facilities;

(2) anti-microbial pesticides;

(3) pesticides applied to professional sports playing fields, golf courses or used to maintain water quality in swimming pools;

(4) pesticides used for the purpose of maintaining heating, ventilation and air conditioning systems, cooling towers and other industrial cooling and heating systems;

(5) pesticides used for the purpose of rodent control in containerized baits or placed directly into rodent burrows or placed in areas inaccessible to children or pets;

(6) pesticides or classes of pesticides classified by the United States environmental protection agency as not requiring regulation under the federal insecticide, fungicide and rodenticide act, and therefore exempt from such regulation when intended for use, and used only in the manner specified;

(7) biological pesticides; and

(8) boric acid and disodium tetrahydrate, silica gels, diatomaceous earth, and nonvolatile insect bait in tamper resistant containers.

**HISTORICAL NOTE**

Section added L.L. 37/2005 § 1, eff. May 9, 2005. [See Chapter 12

footnote]

**FOOTNOTES**

26

[Footnote 26]: * Chapter 12 added L.L. 37/2005 § 1, eff. May 9, 2005. Note provisions of L.L. 37/2005: § 2. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 17-1206*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 12 PESTICIDE USE BY CITY AGENCIES*26

§ 17-1206 Waiver.

Any city agency, including the department, is authorized to apply to the commissioner for a waiver of the restrictions established pursuant to section 17-1203 of this chapter. Such application shall be in a form and manner prescribed by the commissioner and shall contain such information as the commissioner deems reasonable and necessary to determine whether such waiver should be granted. In determining whether to grant or deny a request for a waiver, the commissioner shall consider whether the application of 17-1203 would be, in the absence of the waiver, unreasonable with respect to (i) the magnitude of the infestation, (ii) the threat to public health, (iii) the availability of effective alternatives and (iv) the likelihood of exposure of humans to the pesticide. Such waiver may be issued with respect to one or multiple applications and may be granted for a term deemed appropriate by the commissioner, provided, however, that such term shall not exceed one year. Within thirty days of granting a waiver, the department shall provide the pest management committee with a copy of such waiver.

**HISTORICAL NOTE**

Section added L.L. 37/2005 § 1, eff. May 9, 2005. [See Chapter 12 footnote]

**FOOTNOTES**

26

[Footnote 26]: * Chapter 12 added L.L. 37/2005 § 1, eff. May 9, 2005. Note provisions of L.L. 37/2005: § 2. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 17-1207*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 12 PESTICIDE USE BY CITY AGENCIES*26

§ 17-1207 Notification.

a. Any city agency or contractor applying pesticides on property owned or leased by the city shall post a notice at publicly accessible locations on such site at least twenty-four hours prior to any such application, in a form and manner prescribed by the commissioner, provided, however, that applications requiring immediate action for public health reasons, such as severe rodent infestations, where mosquito larvae are present, or where populations of infected mosquitoes are present shall require that notice be placed concurrently with such application. Such notice shall include, but not be limited to:

(1) Date of posting, proposed date of pesticide application and two alternative dates to the proposed date of application when, due to weather conditions, the pesticide application on the proposed date is precluded;

(2) Address of pesticide application and, if known, specific sites to which the pesticide is to be applied;

(3) Pest to be controlled and method of pesticide application;

(4) Common trade names of the pesticide, if applicable;

(5) United States environmental protection agency registration number of the pesticide, the active ingredient(s) contained in the pesticide and information on how to obtain further information about the products applied, such as by calling the National Pesticides Telecommunications Network at 1-800-858-7378 or the New York State Department of Health Center for Environmental Health Info line at 1-800-458-1158; and

(6) Name and telephone number of the city agency or contractor responsible for the application.

b. The city agency or contractor responsible for posting the notice required pursuant to subdivision a of this section shall not remove such notice for the longer of either three days subsequent to the last moment of pesticide application or the number of days required on the pesticide product label.

c. The notification requirements established pursuant to this section shall not apply to pesticides listed in section 17-1205 of this chapter.

**HISTORICAL NOTE**

Section added L.L. 37/2005 § 1, eff. May 9, 2005. [See Chapter 12

footnote]

**FOOTNOTES**

26

[Footnote 26]: * Chapter 12 added L.L. 37/2005 § 1, eff. May 9, 2005. Note provisions of L.L. 37/2005: § 2. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 17-1208*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 12 PESTICIDE USE BY CITY AGENCIES*26

§ 17-1208 Recordkeeping and reporting.

a. Each city agency that uses pesticides shall keep records, for a minimum of three years or such longer time period required by statute, regulation, or agency directive, of each pesticide application by such agency, or by a contractor in the fulfillment of a contract with such agency, which shall include, but not be limited to:

(1) Date and location of the specific site of pesticide use;

(2) Pest to be controlled and the method of pesticide application;

(3) Name and quantity of the pesticide used, including common trade names of such pesticide, if applicable;

(4) United States environmental protection agency registration number of the pesticide and active ingredient(s) contained in the pesticide;

(5) Name and telephone number of the city agency or contractor responsible for the application;

(6) Proof that notice required pursuant to section 17-1207 was provided;

(7) Any waiver that was granted pursuant to section 17-1206 of this chapter, if applicable.

b. Effective February 1, 2007, and every February first thereafter, each city agency that is subject to the requirements of subdivision a of this section shall submit a report to the commissioner, in a form and manner prescribed by the commissioner, which shall contain the information required to be maintained pursuant to that subdivision for

review and analysis. Effective May 1, 2008, and every May first thereafter, the commissioner shall submit a report to the speaker of the council that includes the information reported by each agency pursuant to this subdivision and a summary of such information. Such summary report shall include, but not be limited to, a summary, disaggregated by agency, of the number of times each pesticide was used, the total amount of each pesticide used and the Toxicity Category for each pesticide as determined by the United States environmental protection agency.

c. The department of parks and recreation shall submit a report to the speaker of the New York City Council on February 1, 2007, indicating the pesticides used on city owned golf courses, the frequency of application of such pesticides and any integrated pest management program for such golf courses.

**HISTORICAL NOTE**

Section added L.L. 37/2005 § 1, eff. May 9, 2005. [See Chapter 12

footnote]

Subd. b amended L.L. 54/2007 § 1, eff. Nov. 5, 2007.

**FOOTNOTES**

26

[Footnote 26]: * Chapter 12 added L.L. 37/2005 § 1, eff. May 9, 2005. Note provisions of L.L. 37/2005: § 2. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

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***** Current through December 2009 ****

*NYC Administrative Code 17-1209*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 12 PESTICIDE USE BY CITY AGENCIES*26

§ 17-1209 Enforcement.

a. Every city contract to perform work or provide labor or services related to property owned or leased by the city shall contain the following provision: "To the extent that you apply pesticides to any property owned or leased by the city, you, or any subcontractor you hire, shall comply with chapter 12 of the administrative code."

b. Upon receiving information that a contractor is in violation of this chapter, the city agency holding the contract shall review such information and offer the contractor an opportunity to respond. If such city agency finds that a violation has occurred, it shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, and/or declaring the contractor in default.

**HISTORICAL NOTE**

Section added L.L. 37/2005 § 1, eff. May 9, 2005. [See Chapter 12

footnote]

**FOOTNOTES**

26

[Footnote 26]: * Chapter 12 added L.L. 37/2005 § 1, eff. May 9, 2005. Note provisions of L.L. 37/2005: § 2. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 17-1210*

Administrative Code of the City of New York

Title 17 Health

CHAPTER 12 PESTICIDE USE BY CITY AGENCIES*26

§ 17-1210 Rules.

The commissioner shall promulgate any rules as may be necessary for the purposes of carrying out the provisions of this chapter.

**HISTORICAL NOTE**

Section added L.L. 37/2005 § 1, eff. May 9, 2005. [See Chapter 12 footnote]

**FOOTNOTES**

26

[Footnote 26]: * Chapter 12 added L.L. 37/2005 § 1, eff. May 9, 2005. Note provisions of L.L. 37/2005: § 2. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-101*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-101 Department of parks and recreation; commissioner.

a. Definitions. Whenever used in this title, the following terms shall have the following meanings:

(1) "Commissioner" means the commissioner of parks and recreation.

(2) "Department" means the department of parks and recrea- tion.

b. The commissioner may delegate to an executive officer, an assistant executive officer, a director of maintenance and operation and any or all of the three deputies whom the commissioner is authorized to appoint authority to act generally for or in place of the commissioner, in relation to his or her powers and to perform such of the duties of the commissioner as such commissioner shall deem necessary. Such delegation of authority shall be evidenced by an instrument in writing to be filed in the principal office of the department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 531-1.0 added chap 929/1937 § 1

Amended LL 2/1942 § 1

Amended LL 25/1951 § 1

Amended LL 19/1955 § 1

Amended chap 100/1963 § 427

Amended LL 54/1977 § 57

**CASE NOTES FROM FORMER SECTION**

¶ 1. The language of this section which authorized the Commissioner of Parks to delegate to specified officers, authority to act generally for or in place of the Commissioner, contains no language justifying an inference that the section was intended to confer upon the Commissioner the right to delegate to a subordinate the power of removal of employees which, under the provisions of Civil Service Law § 22 was not to be delegated by the removing power. Thus, the dismissal of a park employee by the consulting park engineer rather than by the Park Commissioner was a violation of Civil Service Law § 22.-Matter of Morrison, 172 Misc. 129, 14 N.Y.S. 2d 67 [1939], aff'd 258 App. Div. 955, 17 N.Y.S. 2d 997 [1940].



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-102*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-102 Uniform force.

a. The members of the department shall be divided into the administrative and clerical force and the uniformed force.

b. The commissioner, from time to time, shall prescribe distinctive uniforms, badges and insignia to be worn and displayed by the members of the uniformed force and prescribe and enforce penalties for the failure of any member of such force to wear and exhibit the same while engaged in the performance of his or her duties.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 531-4.0 added LL 24/1943 § 1

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-103*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-103 Trees and vegetation; definitions.

Whenever the word "street" or the plural thereof occurs in sections 18-104, 18-105 and 18-106 of this title, it shall be deemed to include all that is included by the terms street, avenue, road, alley, lane, highway, boulevard, concourse, public square, and public place, or the plurals thereof respectively; the word "tree" or the plural thereof shall be deemed to include all forms of plants having permanent woody self-supporting trunks; the word "vegetation" shall be deemed to include plants collectively of whatever name or nature not included under the term "tree".

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-1.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-104*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-104 Trees and vegetation; jurisdiction.

The planting, care and cultivation of all trees and other forms of vegetation in streets shall be under the exclusive jurisdiction of the commissioner, except as otherwise provided in section 18-105 of this title. The commissioner is authorized to use such portions of the parks, for the cultivation of tree plants, as he or she may set apart for that purpose, without detriment to the parks in which such nurseries are established, to enable him or her at all times to have tree plants adapted for growth under the varying conditions of soil and surroundings in streets.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-2.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-105*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-105 Trees under private or public ownership; care and cultivation.

All trees in streets, which on investigation are found to be without ownership, shall be under the exclusive care and cultivation of the commissioner, and such commissioner shall employ the most improved methods for the protection and cultivation of the trees selected for preservation, and remove those condemned as unfit for cultivation. Trees found to be in the care of individual owners, corporations, societies, or associations, shall not be subject to the jurisdiction of the commissioner, unless the owners thereof make written application to the commissioner to have such trees transferred to his or her care. If the commissioner approves such transfer, he or she shall forthwith assume full control thereof and the former owner shall be relieved of all expense connected with the cultivation of such trees. In all cases where land-owners, societies or associations elect to plant and cultivate their own trees in streets, such planting and cultivation must conform to the rules and regulations adopted by the commissioner. The commissioner may, however, on the written application of any land-owner, plant and cultivate trees on the streets adjoining his or her land and charge for such service an amount not to exceed the actual cost to the department for labor and materials.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-3.0 added chap 929/1937 § 1

**CASE NOTES**

¶ 1. Owner of house on a park street has jurisdiction over trees in front of owner's house rather than the Parks Department pursuant to Ad Cd §18-105. People v. Rementeria, 150 Misc. 2d 930 [1991].

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-105.1*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-105.1 Trees, bushes and other vegetation obstructing a traffic signal or device.

a. Definitions. For purposes of this section, the following terms shall have the following meanings:

1. "Traffic control signal" shall mean any such signal as defined in section 154 of the vehicle and traffic law.

2. "Select traffic control device" shall mean any stop sign, yield sign or do not enter sign.

3. "Traffic control device" shall mean any traffic control device as defined in section 153 of the vehicle and traffic law, other than a select traffic control device.

b. The department shall inspect any location within four days of receiving notice that any traffic control signal, select traffic control device or traffic control device at such location is not visible or legible to a motorist who must obey or rely upon such sign due to an obstruction by a tree, bush or other vegetation or any portion thereof.

c. The department shall within ten days of the inspection required pursuant to subdivision b of this section prune or cause to be pruned any tree, bush or other vegetation found to require pruning because it obstructs any select traffic control device or traffic control signal; provided that the department shall prioritize such pruning the department determines is most immediately needed to correct a hazard.

d. The department shall within twenty days of the inspection required pursuant to subdivision b of this section prune or cause to be pruned any tree, bush or other vegetation found to require pruning because it obstructs any traffic control device.

e. The department shall maintain a log of all notices of the type described in subdivision b of this section. Such log shall include the date and time such notice was received, the date and time on which such location was inspected, and the date and time when such tree, bush or other vegetation was pruned or the date and time of a determination that such tree, bush or other vegetation did not require pruning, as applicable.

**HISTORICAL NOTE**

Section added L.L. 12/2008 § 1, eff. May 1, 2008.

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-106*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-106 Tree planting; permission of commissioner of transportation.

In performing the duties required by sections 18-104 and 18-105 of this title, the commissioner shall not make openings or excavations in any street for the purpose of planting or cultivating trees, without having first obtained the written approval of the commissioner of transportation nor shall any tree be so planted as to permanently interfere with the ordinary usage of the street, nor shall the planting be performed in any case so as to injure or impair any sewer, drain, water pipe, or other structure erected by legal authority.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-4.0 added chap 929/1937 § 1

Amended chap 100/1963 § 431

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-107*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-107 Replacement of trees removed during construction.

Any individual, firm or corporation that intends to remove during construction any tree that is within the jurisdiction of the commissioner, shall post a bond with the commissioner to insure that within thirty days after the completion of construction all trees removed, destroyed or severely damaged shall be replaced at the expense of the permittee. The total caliper of all trees planted in the course of restoration shall in no event be less than the total caliper of all trees removed. Replacement shall be made with 2 1/2 to 6 inch caliper trees and/or directed by the department horticultural officer. The replacement shall be made in the spring or fall season, as determined by such horticultural officer. The amount of the bond as determined by the commissioner shall be sufficient to cover the cost of replacement.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-4.1 added LL 29/1978 § 1

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-108*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-108 Public beaches; jurisdiction.

All public beaches laid out on the map or plan of the city shall be under the jurisdiction of the commissioner. The commissioner shall also have charge of the care and maintenance thereof and shall prominently post each beach as having "polluted waters not recommended for bathing" as periodically determined by the commissioner of health.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-5.0 added chap 929/1937 § 1

Amended LL 5/1968 § 1



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-108.1*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-108.1 Prohibitions on beaches.

a. For the purposes of this section, the following terms shall have the following meanings:

(1) "All terrain vehicle" or "ATV" shall mean any self-propelled vehicle which is manufactured for sale for operation primarily on off-highway trails or in off-highway competitions and only incidentally operated on public highways provided that such vehicle does not exceed sixty inches in width, or eight hundred pounds dry weight. This definition shall not include a "snowmobile" or other self-propelled vehicles manufactured for off-highway use which utilize an endless belt tread.

(2) "Authorized emergency vehicle" shall mean every ambulance, police vehicle or bicycle, correction vehicle, fire vehicle, civil defense emergency vehicle, emergency ambulance service vehicle, environmental emergency response vehicle, sanitation patrol vehicle, hazardous materials emergency vehicle and ordinance disposal vehicle of the armed forces of the United States.

(3) "Beach" shall mean land along the shores of an ocean, bay, estuary, inlet or river of New York City landward from the mean low water line extending contiguously to the place where there is a distinct difference in topography which may be demarcated by the furthest of either (i) a vegetation line; (ii) an artifically-made feature generally parallel to the ocean, bay, estuary, inlet or river, such as, but not limited to, a retaining structure, seawall, bulkhead, parking area or road, except that land that extends under an elevated boardwalk is considered to be a part of the beach; or (iii) the landward toe of the dune, which is furthest from the ocean, bay, estuary, inlet or river and twenty-five feet landward from that point.

(4) "Dune" shall mean a natural or artifically-made ridge or hill of vegetated or drifing windblown soil, the principal component of which is sand, that lies generally parallel to and landward of the shore. However, a dune shall not mean a small mount of loose, windblown sand found on a park, road or structure.

(5) "Motor vehicle" shall mean any vehicle designed to be operated or driven upon a public highway which is propelled by any power other than muscular power, except (i) electrically-driven mobility devices operated or driven by a person with a disability, (ii) vehicles which run only upon rails or tracks, (iii) snowmobiles as defined in article forty-seven of the vehicle and traffic law, and (iv) all terrain vehicles as defined in article forty-eight-B of the vehicle and traffic law.

(6) "Motorcycle" shall mean any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

(7) "Owner" shall mean a person, other than a lien holder, having the property in or title to a vehicle or vessel. The term includes a person entitled to the use and possession of a vehicle or vessel subject to a secutiy interest in another person and also includes any lessee or bailee of a motor vehicle or vessel having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days.

(8) "Operator" shall mean any person who uses a motorcycle, all terrain vehicle, snowmobile or motor vehicle.

(9) "Snowmobile" shall mean any self-propelled vehicle designed for travel on snow or ice, steered by skis or runners and supported in whole or in part by one or more skis, belts or cleats.

(10) "Toe" shall mean the lowest point on a slope of a dune.

b. No unauthorized person may operate any motorcycle, all terrain vehicle, snowmobile or motor vehicle on a beach under the jurisdiction of the commissioner. An authorized person shall include (1) a person operating a motorcycle, an all terrain vehicle, a snowmobile or a motor vehicle in accordance with a permit issued pursuant to subdivision (g) of this section; and (2) a department employee engaged in the proper and authorized performance of his or her assigned duties, a member of the police department, or an operator of an authorized emergency vehicle engaged in the proper and authorized performance of his or her assigned duties.

c. (1) A person who violates subdivision (b) of this section shall be guilty of a misdemeanor punishable by not more than ninety days imprisonment or by a fine of not more than one thousand dollars or by both such fine and imprisonment. Notwithstanding the provisions of paragraph nine of subdivision (a) of section five hundred thirty-three of the New York city charter, such person shall also be liable for a civil penalty of not less than five hundred dollars nor more than one thousand dollars which may be recovered in a proceeding before the environmental control board. (2) Where the operator is less than fourteen years of age, a notice of violation of this section shall be personally served upon such operator's parent or guardian in accordance with the civil practice law and rules. Where the operator is fourteen years of age or over, but less than eighteen years of age, a notice of violation of this section shall be personally served upon such operator and his or her parent or guardian in accordance with the civil practice law and rules. (3) Notwithstanding the provisions of any other local law, where a summons or a notice of violation is issued for a violation of subdivision (b), an authorized designee of the commissioner or a member of the police department may seize and impound the motorcycle, all terrain vehicle, snowmobile or motor vehicle.

d. A motorcycle, all terrain vehicle, snowmobile or motor vehicle seized and impounded pursuant to this section shall be released to the owner or other person lawfully entitled to possession upon payment of the costs of removal and storage as set forth in the rules of the department and proof of payment of any fine or civil penalty imposed for the violation or, if a proceeding in connection with the violation is pending before a court or the environmental control board, upon the posting of a bond or other form of security acceptable to the department in an amount which will secure the payment of such costs and any fine or civil penalty which may be imposed for the violation. If a court or the environmental control board finds in favor of the respondent, the owner shall be entitled forthwith to possession of the

motorcycle, all terrain vehicle, snowmobile or motor vehicle without charge and to the extent that any amount has been previously paid for release of the motorcycle, all terrain vehicle, snowmobile or motor vehicle, such amount shall be refunded.

e. The owner of a motorcycle, all terrain vehicle, snowmobile or motor vehicle shall be given the opportunity for a post seizure hearing within five business days before the environmental control board regarding the seizure. The environmental control board shall render a determination within three business days after the conclusion of the hearing. Where the environmental control board finds that there was no basis for the seizure, the owner shall be entitled forthwith to possession of the motorcycle, all terrain vehicle, snowmobile or motor vehicle without charge and to the extent that any amount has been previously paid for release of the motorcycle, all terrain vehicle, snowmobile or motor vehicle, such amount shall be refunded.

f. Upon the seizure of a motorcycle, all terrain vehicle, snowmobile or motor vehicle pursuant to this section, the operator shall be given written notice of the procedure for redemption of the motorcycle, all terrain vehicle, snowmobile or motor vehicle and the procedure for requesting a post seizure hearing. Where the operator is not the owner thereof, such notice provided to the operator shall be deemed to be notice to the owner. Where the motorcycle, all terrain vehicle, snowmobile or motor vehicle is registered pursuant to the vehicle and traffic law, such notice shall also be mailed to the registered owner. Where the operator is less than eighteen years old, such notice shall also be either personally served upon the operator's parent or guardian or mailed to the operator's parent or guardian if the name and address of such person is reasonably ascertainable.

g. The commissioner shall have the right to issue a permit to operate a motorcycle, all terrain vehicle, snowmobile or motor vehicle upon any beach for a special purpose, including but not limited to, the recording or filming of audio, video or other electronic media.

h. The provisions of this section shall be enforced by an authorized designee of the commissioner or by a member of the police department.

i. The commissioner, in consultation with the police commissioner, shall promulgate such rules as are necessary, (1) to set forth the procedures which must be followed regarding the seizure and release of any motorcycle, all terrain vehicle, snowmobile or motor vehicle pursuant to subdivision (c) of this section; (2) to establish the time within which a motorcycle, all terrain vehicle, snowmobile or motor vehicle which is not redeemed shall be deemed abandoned, and the procedures for subsequent disposal; and (3) to provide for reasonable fees for the transportation and storage of such vehicles.

**HISTORICAL NOTE**

Section added L.L. 42/1995 § 1, eff. Aug. 10, 1995, except subd. i eff.

May 12, 1995.

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-109*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-109 Setbacks along boardwalks and beaches.

a. Any building, whether new or altered, abutting on any boardwalk or public beach that has or is to have an open front or fronts, or in which business is or is intended to be done through windows or doorways, shall have and maintain an adequate setback satisfactory to the commissioner of buildings, such setback to be not less than four feet.

b. Any person violating any of the provisions of this section, upon conviction thereof, shall be punished by a fine not to exceed ten dollars, or by imprisonment, not to exceed ten days, or by both.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-5.1 added LL 91/1939 § 1

Amended chap 100/1963 § 432

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-110*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-110 Public beaches; life-saving apparatus.

The commissioner may furnish, erect and maintain on any public beach any life-saving apparatus, appliances and paraphernalia, for the protection and safety of bathers which any law, rule or regulation now or hereafter may require keepers of bathing establishments along the seashore to furnish and maintain. During such period as the commissioner shall furnish and maintain the same, the duty of keepers of bathing establishments on, near or along the inshore line of any such public beach to do so shall be suspended. If for any period the commissioner shall not furnish and maintain the same such commissioner shall, under such rules and regulations as he or she may establish therefor, issue permits to such keepers to furnish, erect and maintain the same.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-6.0 added chap 929/1937 § 1

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-111*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-111 Gifts of real and personal property.

a. Gifts of real and personal property, except such surplus animals and duplicate specimens as the commissioner may deem it judicious to dispose of by sale or otherwise, shall be forever properly protected, preserved and arranged for public use and enjoyment.

b. The commissioner, with his or her annual report, shall make a statement of the condition of all the gifts, devises and bequests of the previous year, and of the names of the persons making the same.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-9.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Plaintiffs who were individuals and organizations interested in the humane treatment of animals lacked standing to preliminarily enjoin city from selling, transferring or otherwise disposing of animals in zoos in Central Park, Prospect Park and Flushing Meadow on the ground that defendants were violating the Agriculture and Markets Law which forbids cruelty to animals since this law is penal in nature and does not give rise to a civil cause of action against the city.-Jones v. Beame, 56 A.D. 2d 778, 392 N.Y.S. 2d 444.

¶ 2. Court would not order transfer of animals in municipal zoos to Bronx Zoo which is maintained by the New York Zoological Society, which is an independent, non-governmental not-for-profit corporation where the society claimed that the transfer would adversely affect its ability to care for the animals already in the Bronx Zoo.-82 Misc. 2d 832, 382 N.Y.S. 2d 1004 [1976], reversed on another grd., 56 A.D. 2d 778, 392 N.Y.S. 2d 444 [1977].

¶ 3. Although this section makes it lawful for the city to transfer animals to the N.Y. Zoological Society if it discontinues the Central Park zoo this section does not require the Bronx zoo which it operates to accept any animals.-Jones v. Beame, 86 Misc. 2d 832, 382 N.Y.S. 2d 1004 [1976], reversed on another grd., 56 A.D. 2d 778, 392 N.Y.S. 2d 444 [1977].



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-112*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-112 Restrictions on Eastern parkway, etc.

a. It shall be unlawful for buildings or other erections, except porches, piazzas, fences, fountains and statuary to remain or at any time to be placed upon any of the lots fronting upon Eastern parkway, from Washington avenue easterly to the extension of Eastern parkway, or upon the extension of Eastern parkway to Bushwick avenue, within thirty feet from the line or sides of such streets respectively.

b. The intervening spaces of land on each side of Eastern parkway and the Eastern parkway extension shall be used only for court-yards, and may be planted with trees and shrubbery, and may be otherwise ornamented at the discretion of the respective owners or occupants thereof.

c. Any building standing on April twenty-fourth, nineteen hundred three, or that may have been or may be erected thereafter, on any lot fronting or to front on either Union street or Lincoln place, easterly from New York avenue to the former city line of Brooklyn, shall never be used for any purpose other than a dwelling house, church, chapel or school house, stable, carriage house, conservatory for plants or a green house; but no livery or railway stable or carhouse shall at any time be erected or maintained upon any of such lots.

d. It shall be unlawful to erect, establish or carry on, in any manner whatever, upon any lot fronting upon Eastern parkway or its extension to Bushwick avenue, or upon any lot bounded by either Union street or Lincoln place, easterly from New York avenue to the former city line of Brooklyn, or upon the streets intersecting Eastern parkway between St. Johns Place and President street, any slaughter-house, tallow chandlery, furnace, foundry, nail or other factory, or any manufactory for making starch, glue, varnish, vitriol, oil or gas, or for tanning, dressing, repairing or keeping skins, hides or leather, or any distillery, brewery or sugar bakery, lime kiln, railway or other stable, or depot, or

any other manufactory, trade, business or calling, which may be in anywise dangerous, obnoxious or offensive to the neighboring inhabitants.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-10.0 added LL 42/1939 § 2

Amended chap 100/1963 § 433



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-113*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-113 Restrictions on Ocean parkway.

a. It shall be unlawful for buildings or other erections, except porches, piazzas, fences, fountains and statuary, to remain or at any time to be placed upon Ocean parkway within thirty feet from the outside lines thereof. In addition thereto, such space on each side of such parkway shall be used only for courtyards, and may be planted with trees and shrubbery, and may be otherwise ornamented at the discretion of the respective owners or occupants thereof. Such use and ornamentation shall be under the direction of the department.

b. It shall be unlawful to erect, establish or carry on, in any manner whatever, upon any lot fronting upon Ocean parkway, any slaughter-house, tallow chandlery, furnace, foundry, nail or other factory, or any manufactory for making starch, glue, varnish, vitriol, oil or gas, or for tanning, dressing, repairing or keeping skins, hides or leather, or any distillery, brewery or sugar bakery, lime kiln, railway or other stable, or depot, or any other manufactory, trade, business or calling, which may be in anywise dangerous, obnoxious or offensive to the neighboring inhabitants.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-11.0 added LL 42/1939 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. Under § 534 of the Charter and § 532-11.0 of the Administrative Code, the Commissioner of Parks **held** to have been acting within his authority in directing plaintiff to cease construction of an open porch on his dwelling within 30 feet of the outside lines of Ocean Parkway or the court-yard area in front of the premises, where no permit therefor had been obtained, and in directing him to remove the porch.-Grancognolo v. Moses, 120 N.Y.S. 2d 851 [1953].

¶ 2. Judgments of conviction for violations of this section and § 60 of the Rules and Regulations of the New York City Department of Parks were improperly reversed on the ground that the record did not establish that the violations were committed on the precise date alleged in the pleading. The record showed that these continuing violations existed before and after the date alleged that it was also improper to reverse on the ggrounds that there was not sufficient proof that defendant was the owner of the property on that date.-People v. Scandore, 3 N.Y. 2d 681, 171 N.Y.S. 2d 808, 148 N.E. 2d 872 [1958].

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-114*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-114 Coney island oceanarium.

The commissioner may enter into an agreement with the New York Zoological Society for the operation and maintenance by such New York Zoological Society of certain premises and approaches thereto to be constructed at Coney Island in the borough of Brooklyn, to be known as the oceanarium, and for the adequate keeping, maintenance, extension, preservation, management, operation and exhibition by such New York Zoological Society of collections of aquatic animals and plants therein and for the furnishing by such New York Zoological Society of opportunities for study, research and publication in connection with such collections. Such contract shall become effective only upon the approval of the mayor. Upon the making of such contract, the city may annually, in its discretion, appropriate to the said New York Zoological Society such sum or sums as it may determine for the maintenance and support of the said oceanarium and the activities of the said New York Zoological Society in connection therewith.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-12.0 added chap 351/1946 § 1

(special provision chap 351/1946 § 2)

Amended chap 100/1963 § 434



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-115*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-115 Richmondtown exhibit.

a. The commissioner may enter into an agreement with the Staten Island Historical Society for the further restoration, operation, maintenance and management of the historical village known as Richmondtown, located at Richmondtown in the borough of Richmond, and for the operation, maintenance and exhibition by such Staten Island Historical Society of the group of historical buildings and museums therein containing exhibits portraying community life on Staten Island from the seventeenth through the nineteenth centuries. Such contract shall become effective only upon the approval of the mayor.

b. Upon the making of such contract, the city may annually, in its discretion, appropriate to the said Staten Island Historical Society such sums as it may determine for the further restoration, care and maintenance of the said historical village of Richmondtown.

c. The building or buildings and grounds so to be operated by the Staten Island Historical Society shall be open to the public with or without admission fee as shall be authorized by the board of directors of said Staten Island Historical Society with the consent and approval of the commissioner.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-13.0 added chap 306/1954 § 1

Amended chap 100/1963 § 435

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-116*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-116 Garage in Lincoln Square Performing Arts Center.

The mayor, upon the recommendation of the commissioner, may provide for the construction by the city acting by the commissioner and for the operation and maintenance by the city through the commissioner or by a person, firm or corporation under permit or license from the commissioner, with the approval of the mayor, of a surface or subsurface garage upon and under the public park property in Lincoln Square Performing Arts Center for the purpose of accommodating persons using the facilities included in the Performing Arts Center and the adjacent public parks. With the consent of the mayor and upon obtaining the approvals of the departments having jurisdiction of the subject matter involved herein, the commissioner may provide for the sale of gasoline and oil and the furnishing of minor motor vehicle repairs and services in such garage premises, notwithstanding the provisions of any law, rule, regulation or zoning resolution of the city to the contrary.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-14.0 added chap 907/1960 § 1

Amended chap 100/1963 § 436

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-117*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-117 Perkins arboretum.

a. The commissioner shall have jurisdiction over and may conduct, operate and maintain or enter into an agreement as authorized by subdivision c of this section, for the conduct, operation and maintenance of certain premises formerly owned by Evelina B. Perkins and Dorothy Perkins Freeman located at Riverdale in the borough of the Bronx and conveyed to the city, as an arboretum to be known as the Perkins Garden to be used:

(i) for the study and exhibition of plant life and plantings suitable to the city of New York with special reference to the problems affecting growers of plants under urban conditions, and the promotion of extensive and effective use of plants and as a place for rest and passive recreation,

(ii) as a center for environmental and ecological studies, including oceanography, the ecology of the Hudson river , the city of New York and of the air and waters about it, urban management and planning, and the improvement of the urban environment (such studies may include but shall not be limited to scientific investigations, classes, demonstrations, exhibitions, lectures, educational activities, conferences and publications), and

(iii) as a place for such other educational and cultural activities compatible with the foregoing purposes as Wave Hill, Incorporated, with the concurrence of the commissioner shall in the discretion of its board of directors permit to be conducted.

b. In the event that the commissioner shall determine that Perkins Garden shall be operated and maintained by the department, said commissioner shall have power:

1. To make and promulgate rules and regulations for the use of the premises described in this section including provisions for entrance and admission charges to the premises or any part thereof and for life, annual or other periodic memberships in the activities of the arboretum in exchange for the payment of dues or fees.

2. In connection with the operation of said arboretum, to provide and enter into agreements with persons, firms and corporations for the parking of automobiles, instruction in the activities of the arboretum, the sale of books, pamphlets and other publications, the sale of seeds, bulbs, plants and botanical cuttings, the conduct of cultural activities, the sale of food, at, but not limited to a restaurant, and to make provision for the charges to be made and fees to be paid for such sales and services regardless of whether the same shall be made or provided by the commissioner or others.

c. In lieu of such operation and maintenance by the department, the commissioner may, in his or her discretion, enter into an agreement with Wave Hill, Incorporated, for so long as it remains a non-profit membership corporation no part of the net earnings of which inures to the benefit of any member thereof or any other person and no part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, or any such corporation which is a successor to Wave Hill, Incorporated, for the operation and maintenance by such corporation of the Perkins Garden for the purposes described in subdivision a of this section. Such agreement shall become effective only upon the approval of the mayor, and, notwithstanding any other provision of law, may provide for and authorize ex officio membership on the board of directors of such corporation, of the mayor, the borough president of the Bronx and the commissioner. Such agreement may also provide that (1) such corporation may charge such fees as may be approved by the commissioner for entrance and admission to the premises or any part thereof and for life, annual or other periodic memberships in the activities of the arboretum in exchange for the payment of dues or fees; (2) such corporation may retain such fees and apply them to the operation and maintenance of the Perkins Garden; (3) such corporation may exercise, subject to the approval of the commissioner, any or all of the powers specified in subdivision b of this section; (4) such corporation may from time to time enter into agreements with any agency of the city or the state or any non-profit corporation or association allowing it or them to occupy a portion of the Perkins Garden for one or more of the purposes specified in subdivision a hereof, any such agreement with a nonprofit corporation or association to be only for so long as no part of its net earnings inures to the benefit of any member thereof or any other person and no part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; and (5) such other terms and conditions as may be necessary or desirable to effectuate the purposes of this section. Upon the making of such contract, the city, in its discretion, may annually appropriate for such corporation, from city funds and from the funds in the special bank account established pursuant to subdivision d hereof, such sum or sums as it may determine for the maintenance and support of the Perkins Garden and the activities of Wave Hill, Incorporated, in connection therewith.

d. The comptroller shall deposit in a special bank account or accounts any and all sums of money received by him or her including whatever endowment fund may be received from the donors of the land and the funds received from all sources in connection with the operation of the said arboretum and its appurtenant services. Such moneys shall be used and applied solely to the conduct, operation, maintenance and improvement of such arboretum and the premises described in this section. If the Perkins Garden shall be maintained and operated by the department as authorized by subdivision b of this section, the commissioner shall have power to make necessary and required withdrawals and payments from such account or accounts. The provisions of this subdivision shall not apply to funds which may be appropriated by the city for the operation, maintenance and conduct of the arboretum or for the activities of Wave Hill, Incorporated, in connection therewith.

e. Notwithstanding the provisions contained in subdivision a of this section, in the event the commissioner elects to enter into an agreement with Wave Hill, Incorporated, such agreement may provide, in part, that a lease be entered into between Wave Hill, Incorporated and the board of higher education of the city of New York for a period of two and onehalf years, renewable at the option of the parties thereto and the commissioner for one additional period of two and one-half years. Such lease shall provide for the occupation by the board of higher education of the city of New York of part of the presently existing facilities of Perkins Garden for the purpose of carrying on oceanographic studies. Such

occupation of the present Perkins Garden facilities shall be on such terms as approved by the commissioner, and shall not provide for (1) the construction of any structure; or (2) the alteration of any part of the landscape; or (3) the use of parking facilities by the board of higher education of the city of New York employees or agents, except as expressly permitted by the commissioner. The commissioner shall have sole authority to require further provisions in such lease in order to insure conformance with the purposes of Perkins Garden as contained in subdivision a of this section.

f. It is the intent of the legislature in enacting subdivision e of this section that an absolute prohibition be placed on the further construction of any substantial structure or additional parking facilities not in furtherance of the purposes of Perkins Garden as contained in subdivision a of this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-14.1 added chap 611/1960 § 1

Renumbered chap 100/1963 § 437

(formerly § 532-14.0)

Amended chap 439/1965 § 1

Subs e, f added chap 658/1974 § 1

Sub a amended chap 712/1975 § 1

Sub c amended chap 712/1975 § 2

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-118*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-118 Renting of stadium in Flushing Meadow park; exemption from down payment requirements.

a. Notwithstanding any other provision of law, general, special or local, the city, acting by the commissioner, with the approval of the board of estimate, is hereby authorized and empowered from time to time to enter into contracts, leases or rental agreements with, or grant licenses, permits, concessions or other authorizations to, any person or persons, upon such terms and conditions, for such consideration, and for such term of duration as may be agreed upon by the city and such person or persons, whereby such person or persons are granted the right, for any purpose or purposes referred to in subdivision b of this section, to use, occupy or carry on activities in, the whole or any part of a stadium, with appurtenant grounds, parking areas and other facilities, to be constructed by the city on certain tracts of land described in subdivision c of this section, being a part of Flushing Meadow park and situated in the borough of Queens, city and state of New York, title to which tracts is now in the city. Prior to or after the expiration or termination of the terms of duration of any contracts, leases, rental agreements, licenses, permits, concessions or other authorizations entered into or granted pursuant to the provisions of this subdivision and subdivision b of this section, the city, in accordance with the requirements and conditions of this subdivision and subdivision b of this section, may from time to time enter into amended, new, additional or further contracts, leases or rental agreements with, and grant new, additional or further licenses, permits, concessions or other authorizations to, the same or any other person or persons for any purpose or purposes referred to in subdivision b of this section.

b. Any contract, lease, rental agreement, license, permit, concession or other authorization referred to in subdivision a of this section may grant to the person or persons contracting with the city thereunder, the right to use, occupy or carry on activities in, the whole or any part of such stadium, grounds, parking areas and other facilities, (1) for any purpose or purposes which is of such a nature as to furnish to, or foster or promote among, or provide for the

benefit of, the people of the city, recreation, entertainment, amusement, education, enlightenment, cultural development or betterment, and improvement of trade and commerce, including professional, amateur and scholastic sports and athletic events, theatrical, musical or other entertainment presentations, and meetings, assemblages, conventions and exhibitions for any purpose, including meetings, assemblages, conventions and exhibitions held for business or trade purposes, and other events of civic, community and general public interest, and/or (2) for any business or commercial purpose which aids in the financing of the construction and operation of such stadium, grounds, parking areas and facilities, and any additions, alterations or improvements thereto, or to the equipment thereof, and which does not interfere with the accomplishment of the purposes referred to in paragraph one of this subdivision. It is hereby declared that all of the purposes referred to in this subdivision are for the benefit of the people of the city and for the improvement of their health, welfare, recreation and prosperity, for the promotion of competitive sports for youth and the prevention of juvenile delinquency, and for the improvement of trade and commerce, and are hereby declared to be public purposes.

c. The tracts of land referred to in subdivision a of this section are more particularly described as follows:

1. The area of land bounded on the north by the south side of Northern boulevard, on the east by the west side of One hundred twenty-sixth street, on the south by the north side of Roosevelt avenue, and on the west by the east side of Grand Central parkway.

2. The area of land bounded on the north by the south side of Roosevelt avenue, on the east by the west side of One hundred twenty-sixth street, on the south by lands of the city of New York occupied by the New York city transit authority, and on the west by the east side of Grand Central parkway, excepting from such area of land, the portion thereof fronting on Roosevelt avenue occupied by such authority as a substation.

d. Notwithstanding the foregoing provisions of this section or the provisions of any other law, general, special or local, the commissioner, acting in behalf of the city, is hereby authorized and empowered, without the approval of the board of estimate, to enter into contracts, leases or rental agreements with or grant licenses, permits, concessions or other authorizations to any person or persons, upon such terms and conditions and for such consideration as may be agreed upon by the commissioner and such person or persons, for terms of duration, which, in the case of each such contract, lease, rental agreement, license, permit or other authorization, including renewals, shall not be in excess of one year, whereby such person or persons are granted the right to use, occupy or carry on activities in, the whole or any part of such stadium, grounds, parking areas and other facilities, for any purpose or purposes referred to in subdivision b of this section. Upon the expiration of the terms of duration of any of such contracts, leases, rental agreements, licenses, permits, concessions or other authorizations entered into or granted pursuant to the provisions of this subdivision, or within thirty days prior to such expiration or termination, the commissioner, in accordance with the requirements and conditions of this subdivision, acting in behalf of the city, and without the approval of the board of estimate, may from time to time enter into new, additional or further contracts, leases or rental agreements with, and may grant new, additional or further licenses, permits, concessions or other authorizations to, the same or any other person or persons for any purpose or purposes referred to in subdivision b of this section.

e. Notwithstanding the provisions of section 107.00 of the local finance law, for the purpose of financing and paying the cost of the construction of such stadium, grounds, parking areas and facilities, and the construction of any additions, alterations or improvements thereto or to the equipment thereof, including a roof for such stadium and increased seating capacity therein, the city is hereby authorized and empowered, without providing from current funds any part of such cost or otherwise complying with the provisions of section 107.00 of such law, but upon compliance by the city with all other applicable provisions of the local finance law, to issue bonds and bond anticipation notes and to make expenditures from the proceeds of such bonds and bond anticipation notes or from any fund into which such proceeds are paid.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-15.0 added chap 729/1961 § 1

(World's Fair 1964-1965 Corporation, transit authority provision chap 729/1961 § 2)

**CASE NOTES FROM FORMER SECTION**

¶ 1. Denial of use of Shea stadium by Park Commission for partisan political activity was unreasonable where event in question was of "civil and general interest."-Rupp v. Lindsay, 57 Misc. 2d 946, 293 N.Y.S. 2d 812 [1968].



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-119*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-119 Queens Zoological and Botanical Gardens.

The commissioner may enter into an agreement with New York World's Fair 1964-1965 Corporation and the Queens Botanical Garden Society, Inc. for the operation and maintenance by such Queens Botanical Garden Society, Inc. of the botanical garden and arboretum which was constructed by New York World's Fair 1964-1965 Corporation in Kissena Corridor Park in the borough of Queens on land now under lease from the city of New York to the New York World's Fair 1964-1965 Corporation, and for the adequate keeping, maintenance, extension, preservation, management, and operation of such botanical garden and arboretum for the collection and culture of plants, flowers, shrubs and trees, the advancement of botanical science and knowledge and the prosecution of original researches therein and in kindred subjects, for affording instruction in the same, for the prosecution and exhibition of ornamental and decorative horticulture and gardening, and for the entertainment, recreation and instruction of the people. The term of such agreement shall commence upon the completion of construction of such botanical garden and arboretum. Such agreement shall become effective only upon the approval of the mayor and may provide, in addition to other terms and conditions, for use, with the approval of New York World's Fair 1964-1965 Corporation, of such botanical garden and aboretum for exhibits connected with the World's Fair held in the city of New York during the years nineteen hundred sixty-four-nineteen hundred sixty-five and for membership on the board of directors of Queens Botanical Garden Society, Inc. of the mayor and the commissioner and the president of the borough of Queens, and their successors in office. The commissioner may enter into an agreement with Queens Botanical Garden Society, Inc. for the operation and maintenance by Queens Botanical Garden Society, Inc. of a zoo on the land hereinabove described, or other park land which may be made available for such purpose in the future, and for the adequate keeping, maintenance, extension, preservation, management and operation of such zoo for the exhibition of animals and birds, all for the instruction, entertainment, and recreation of the people. Said agreement may also provide for the construction of such zoo by the

New York World's Fair 1964-1965 Corporation, the city of New York or both. Such agreement shall become effective only upon the approval of the mayor. Upon completion of the construction of said botanical garden and arboretum, the city may annually, in its discretion, appropriate for the Queens Botanical Garden Society, Inc. such sum or sums as it may determine for the construction, keeping, maintenance, extension, preservation, management and operation of the said zoo, botanical garden and arboretum and the activities of the Queens Botanical Garden Society, Inc. in connection therewith. The facilities operated and maintained by said Queens Botanical Garden Society, Inc. pursuant to the agreement or agreements referred to in this section shall be known as and bear the name "Queens Zoological and Botanical Gardens." All references in this section to Queens Botanical Garden Society, Inc. shall be deemed to refer to that corporation under its present name or under any name which shall hereafter be used by it.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-16.0 added chap 913/1961 § 1

Renumbered and amended chap 100/1963 § 438

(formerly § 532-15.0)

Amended chap 661/1964 § 2

(Agreement validated, Botanical society/city/World's Fair Corporation chap 661/1964 § 1)

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-120*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-120 Hall of science.

The commissioner, subject to the approval of the mayor, may enter into an agreement with a nonprofit corporation or association organized or to be organized for the sole purpose of operating and maintaining a scientific exhibit or exhibits, for the construction, occupation, operation and maintenance by such corporation or association of a hall of science or scientific exhibits within Flushing Meadow park in the borough of Queens and for the adequate keeping, maintenance, extension, preservation, management and operation of such hall of science and scientific exhibits for affording instruction in the same and for the exhibition of scientific matters and objects for the entertainment, recreation and instruction of the people. Such contract may provide in addition to other terms and conditions, for use, with the approval of the New York World's Fair 1964-1965 Corporation, of such facilities for scientific exhibits connected with the World's Fair held in the city of New York during the years nineteen hundred sixty-four-nineteen hundred sixty-five as said New York World's Fair 1964-1965 Corporation shall agree to and for the continued use of such facilities and exhibits thereafter and for membership on the board of directors of such corporation or association of the mayor and the commissioner and the president of the borough of Queens, and their successors in office. Upon the making of such contract or agreement, the city may annually, in its discretion, appropriate to the corporation or association maintaining such hall of science and other exhibits such sum or sums as it may determine for the maintenance and support thereof and the activities in connection therewith.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-17.0 added chap 734/1963 § 1



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-121*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-121 High Rock Park Nature Conservation Center.

The commissioner, notwithstanding the provisions of section 15.09 of the parks, recreation and historic preservation law, may enter into an agreement with the Staten Island Institute of Arts and Sciences, for a period of not more than ten years, for the maintenance and operation of a nature conservation center on premises known as High Rock Park. Such agreement shall become effective only upon approval by the mayor. Said agreement shall include a clause providing for its termination if the institute ceases to be a non-profit membership corporation, no part of the net earnings of which inures to the benefit of any member thereof. The conservation center shall serve the entertainment, recreational and educational needs of the people, and necessary incidental and informational services may be rendered. All references in this section to the Staten Island Institute of Arts and Sciences shall be deemed to refer to the corporation under its present name or under any name which shall hereafter be used by it.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-18.0 added chap 369/1967 § 1



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-122*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-122 Bicycle and tricycle areas in parks.

a. Legislative intent.

The city council hereby declares that a drastically high number of adults and children are annually killed and injured by motor vehicles while operating bicycles and tricycles in the streets of our city and countless pedestrians have been injured by the operation of bicycles and tricycles on sidewalks and pedestrian walks in parks.

Although the riding of bicycles and tricycles is healthy and wholesome and a normal activity for developing youngsters, the streets and sidewalks of the city of New York are highly congested and, in most areas, dangerous.

The safety of the children of New York city requires that a maximum number of off-street areas be developed for the operation of bicycles and tricycles in local communities, and it is impossible to adequately meet this problem except by a large centralized riding area in each borough.

It is the intent of the council to assure the broad development of such a program by this legislation.

b. Designation areas. 1. The commissioner shall cause to be created and maintained, in all parks whose total area exceeds five acres, adequate areas appropriately designed for the use of bicycles and of tricycles.

2. Such areas shall be designed and constructed in accordance with plans and specifications approved by the commissioner.

3. For purposes of this section, the word "areas" shall mean and include "bicycle paths" at least one mile long in

parks whose area is greater than twenty-five acres, "bicycle tracks" at least one-quarter of a mile long in parks whose area is greater than five acres, and "tricycle circles" located close to adequate seating space for adults.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-18.0 added LL 55/1967 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 18-123*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-123 Brooklyn Children's Museum in Brower Park.

The commissioner of cultural affairs may enter into an agreement with the Brooklyn Children's Museum, Inc. for the maintenance and operation by the Brooklyn Children's Museum, Inc. of the Brooklyn Children's Museum situated in Brower Park, in the borough of Brooklyn, as the same is presently constructed and established, and as it may be enlarged and improved. Such agreement shall become effective only upon approval by the mayor. Upon the making of such contract, the city may, in its discretion, annually appropriate to the Brooklyn Children's Museum, Inc. such sum or sums of money as it may determine are needed for the maintenance and support of the said Brooklyn Children's Museum and the activities of the Brooklyn Children's Museum, Inc. in connection therewith.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-19.0 added chap 586/1967 § 1

Renumbered LL 36/1968 § 1

(formerly § 532-18.0)

Amended chap 603/1980 § 1



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-124*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-124 Art museum.

The commissioner, subject to the approval of the mayor, may enter into an agreement with a nonprofit corporation or association, organized or to be organized for the purpose of establishing, operating and maintaining an art museum, for the occupation, operation and maintenance by such corporation or association of an art museum in any existing building or buildings or part thereof or in any building or buildings or part thereof hereafter to be constructed in Flushing Meadow park, in the borough of Queens and for the adequate keeping, maintenance, extension, preservation, management and operation of such art museum, for the collection and exhibition of objects of art, the advancement of knowledge concerning art, the prosecution of original researches relating to art and kindred subjects, for affording instruction in the same and for the entertainment, recreation and instruction of the people. Such agreement may provide, in addition to other terms and conditions, for membership on the board of directors or board of trustees of such corporation or association of the mayor and the commissioner and the president of the borough of Queens, and their successors in office. Upon the making of such agreement, the city of New York may annually, in its discretion, appropriate to the corporation or association maintaining such art museum such sum or sums as it may determine for the maintenance and support thereof and the activities in connection therewith.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-20.0 added chap 774/1967 § 1

Renumbered LL 36/1968 § 2

(formerly §532-18.0)



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-125*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-125 Thomas Pell Wildlife Refuge and Sanctuary.

The commissioner shall set aside as a haven and preserve for wildlife, four sections of park lands in the northwestern portion of Pelham Bay Park designated on the official maps of the department as proposed sanitation landfill areas II, III, IV and VI, broadly described as follows:

1. Area II, an irregularly-shaped parcel bounded on the north and northeast by the Hutchinson river parkway and Rock uplands, on the east by the Split Rock golf course, on the south by the New York, New Haven and Hartford railroad tracks and on the west by Bartow road, and running through the center thereof, a substantial portion of Goose creek.

2. Area III, an irregularly-shaped parcel bounded on the north by an area of land south of the Hutchinson parkway and the Bartow road exit from said parkway, on the east by a land area west of Bartow road, on the south by the tracks of the New York, New Haven and Hartford railroad tracks and on the west by the center line of the Hutchinson river, but to include Goose island.

3. Area IV, an irregularly-shaped parcel of land bounded on the north by the New England thruway, on the east by the Hutchinson parkway, and on the south and on the west by the center line of the Hutchinson river.

4. Area VI an irregularly-shaped parcel of land bounded on the north and west by the Hutchinson river, on the east and south by Shore road, said land being known as Tallapoosa west.

Excluding, however, Tallapoosa east in said park lands which has been designated as a landfill area for use by

the department of sanitation.

The commissioner may enter into an agreement with a nonprofit organization for the operation and maintenance by such organization of the areas hereinabove referred to for the adequate keeping, maintenance, management, operation and preservation by such organization of the animals, aquatic animals, migratory and resident fowl and songbirds, fish and other flora and fauna indigenous to the area, to establish collections of specimens and provide interested nature lovers and educational institutions with opportunities for study and research in the areas. Upon the making of such agreement, the city may annually, in its discretion, appropriate to the operating organization such sum or sums as it may determine for the maintenance and support of the Thomas Pell Wildlife Refuge and Sanctuary and the activities of the operating organization in connection therewith. The failure of the commissioner to enter into such an agreement shall in no way alter the status of the abovedescribed areas as wildlife sanctuaries.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-21.0 added LL 102/1967 § 1

Amended LL 82/1968 § 1

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-126*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-126 Hunter Island Marine Zoology and Geology Sanctuary.

The commissioner shall set aside as a zoological and geological haven and preserve, the section of park lands and lands under water in the northeastern portion of Pelham Bay park designated on the official maps of the department as proposed sanitation land fill area V broadly described as follows:

Area V, an irregular N-shaped area of marsh lands and lands under water running from a point where the sand of Orchard beach terminate in Long Island sound at the extreme northern tip of the beach, thence northwesterly to the eastern shore of Hunter island, thence northeast along the high water mark line of the eastern shore of Hunter island to that point of the island which still faces east into Long Island sound, thence in a wide arc going easterly and southerly, through the waters of Long Island sound, including within the arc the islands known as Cat Briars island or One Tree island, and Twin islands, back to the point of beginning.

The commissioner may enter into an agreement with a nonprofit organization for the operation and maintenance by such organization of the areas hereinabove referred to for the adequate keeping, maintenance, management, operation and preservation by such organization of the animals, aquatic animals, migratory and resident fowl and songbirds, fish and other glacial or post glacial flora and fauna indigenous to the area, to establish collections of specimens and provide interested individual nature lovers and educational institutions with opportunities for study and research in the areas. Upon the making of such agreement, the city may annually, in its discretion, appropriate to the operating organization such sum as it may determine for the maintenance and support of the Hunter Island Marine Zoology and Geology Sanctuary and the activities of the operating organization in connection therewith. The failure of the commissioner to enter into such an agreement shall in no way alter the status of the above described areas as a marine zoology and geology sanctuary.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-22.0 added LL 101/1967 § 1



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-127*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-127 Central Park Zoo; Flushing Meadow Zoo; Prospect Park Zoo.

Notwithstanding any other provision of law, the commissioner may enter into agreements with the New York Zoological Society for the planning, maintenance and operation by such society of zoos and zoological parks on the premises known as the Flushing Meadow Zoo, the Prospect Park Zoo and/or the Central Park Zoo, for the transfer of the animal collections and equipment at such zoos to such society and for purposes and programs incidental and related thereto. Such agreements shall become effective upon approval by the board of estimate.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-23.0 added chap 401/1980 § 2

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-128*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-128 Renting of tennis stadium and center in Flushing Meadows-Corona Park.

a. Notwithstanding any other provision of law, general, special or local, the city, acting by the commissioner is hereby authorized and empowered to enter into contracts, long-term leases or rental agreements with, or grant licenses, permits, concessions or other authorizations to, the USTA National Tennis Center Incorporated, its affiliates, successors or mortgagees, or assigns in connection with or pursuant to a mortgage or other financing (including an assignment by a mortgagee) ("NTC") upon such terms and conditions, for such consideration, and for such term of duration as may be agreed upon by the city and the NTC, whereby the NTC is granted the right, for any purpose or purposes referred to in subdivision b of this section, to use, occupy or carry on activities on certain tracts of land described in subdivision c of this section, including the facilities constructed on such tracts of land, being a part of Flushing Meadows-Corona Park and situated in the borough of Queens, city and state of New York, title to which tracts is now in the city, with rights of ingress and egress thereto and therefrom, together with appurtenant rights to use areas within the park other than those described in subdivision c of this section, upon such terms and conditions as agreed upon by the commissioner, for up to sixty days in any calendar year for ancillary parking to support the U.S. Open Tennis Championships or other similar competitive tennis events. Prior to or after the expiration or termination of the terms of duration of any contracts, leases, rental agreements, licenses, permits, concessions or other authorizations entered into or granted pursuant to the provisions of this subdivision and subdivision b of this section, the city, in accordance with the requirements and conditions of this subdivision and subdivision b of this section, may from time to time enter into amended, new, additional or further contracts, leases or rental agreements with, and grant new, additional or further licenses, permits, concessions or other authorizations to the NTC or other person for any purpose or purposes referred to in subdivision b of this section; provided however, that any such lease entered into with a person other than the NTC shall not exceed a period of more than one year and shall not be renewable; and provided further that upon the expiration of such one year

period, the city may not enter into any further leases for the lands and facilities described in this section.

b. Any contract, lease, rental agreement, license, permit, concession or other authorization referred to in subdivision a of this section may grant to the NTC or other person, the right to use, occupy or carry on activities in, the whole or any part of such tracts of land, including such facilities constructed on such tracts of land, (1) for any purpose or purposes which is of such nature as to furnish to, or foster or promote among, or provide for the benefit of, the people of the city, recreational use and activities including entertainment, amusement, education, enlightenment, cultural development or betterment, and improvement of trade and commerce, including professional, amateur and scholastic sports and athletic events, theatrical, musical or other cultural and entertainment presentations, and meetings, assemblages, conventions and exhibitions, including those held for business or trade purposes, and other events of charitable, civic, community and general public interest, and/or (2) for any charitable, business or commercial purpose which aids in the operation of the facilities constructed on such tracts of land and which does not interfere with the accomplishment of the purposes referred to in paragraph (1) of this subdivision. Any such lease, rental agreement, license, permit, concession or other authorization shall contain provisions with respect to: the establishment of a fund by the NTC to be used by the city, with the approval of the commissioner after consultation with the borough president, for park improvement purposes; the operation of expanded public programs designed to meet the needs of the community, and to encourage broad participation by the public in the sport of tennis as agreed to by the commissioner; and the implementation of non-discrimination and affirmative action policies. It is hereby declared that all of the purposes referred to in this subdivision are for the benefit of the people of the city and for the improvement of their health, welfare, recreation and prosperity, for the promotion of competitive sports for youth and the prevention of juvenile delinquency, lessening of the burdens of government, and for the improvement of trade and commerce, and are hereby declared to be public purposes.

c. The tracts of land referred to in subdivision a of this section are more particularly described as follows:

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in Flushing Meadows-Corona Park in the borough of Queens, city and state of New York bounded and described as follows:

1. BEGINNING at a point being the corner formed by the intersection of the southeasterly side of the Long Island Rail Road R.O.W. (Flushing and North Side Division) with the northeasterly side of the Grand Central Parkway, said Point of Beginning being N.Y.C. Monument No. 23945 as laid out on N.Y.C. Alteration Maps numbers 4164, 4179 and 4496;

Running thence North 36°-13'-30" East, along the southeasterly side of the Long Island Rail Road R.O.W., a distance of 1,223.44 feet to a point;

Running thence North 49°-26'-52" East, a distance of 245.50 feet to a point of curvature;

Running thence along a curve, bearing to the left and having a central angle of 13°-13'-20" and a radius of 610.00 feet, a distance of 140.77 feet to a point of tangency;

Running thence North 36°-13'-33" East, a distance of 211.45 feet to a point;

Running thence South 54°-01'-05" East, a distance of 245.89 feet to a point;

Running thence South 35°-58'-51" West, a distance of 7.98 feet to a point;

Running thence South 54°-01'-05" East, a distance of 39.78 feet to a point;

Running thence North 35°-46'-36" East, a distance of 8.27 feet to a point;

Running thence South 54°-01'-05" East, a distance of 25.80 feet to a point (not a point of curvature);

Running thence along a curve, bearing to the left and having a central angle of 58°-23'-39", a radius of 130.00 feet and a radial bearing of North 65°-23'-12" East, a distance of 132.49 feet to a point (not a point of tangency);

Running thence South 11°-06'-58" East, a distance of 853.90 feet to a point of curvature;

Running thence along a curve, bearing to the right and having a central angle of 68°-12'-53" and a radius of 18.79 feet, a distance of 22.37 feet to a point of reverse curvature;

Running thence along a curve, bearing to the left and having a central angle of 18°-37'-21" and a radius of 485.48 feet, a distance of 157.79 feet to a point of tangency;

Running thence South 38°-28'-34" West, a distance of 485.81 feet to a point;

Running thence North 51°-38'-40" West, a distance of 8.99 feet to a point;

Running thence South 38°-06'-51" West, a distance of 340.83 feet to a point (not a point of curvature);

Running thence along a curve, bearing to the right and having a central angle of 84°-29'-16", a radius of 40.00 feet and a radial bearing of South 44°-03'-16" West, a distance of 58.98 feet to point (not a point of tangency);

Running thence South 38°-32'-31" West, a distance of 185.86 feet to a point;

Running thence North 55°-21'-03" West, a distance of 14.76 feet to a point;

Running thence South 38°-45'-41" West, a distance of 32.45 feet to a point (not a point of curvature);

Running thence along a curve, bearing to the right and having a central angle of 5°-34'-27", a radius of 7,000.00 feet and a radial bearing of North 33°-38'-33" East, a distance of 681.01 feet to a point of tangency;

Running thence North 50°-47'-00" West, a distance of 403.24 feet to the POINT OR PLACE OF BEGINNING.

The area of this parcel is 1,825,541.05 sq. ft. (41.91 acres) and the total perimeter is 55527.37 feet.

2. BEGINNING at a point being the following courses and distances from the corner formed by the intersection of the southeasterly side of the Long Island Rail Road R.O.W. (Flushing and North Side Division) with the northeasterly side of the Grand Central Parkway, said Point of Beginning being N.Y.C. Monument No. 23945 as laid out on N.Y.C. Alteration Maps numbers 4164, 4179 and 4496;

(1) Running thence North 36°-13'-30" East, along the southeasterly side of the Long Island Rail Road R.O.W., a distance of 1,223.44 feet to a point;

(2) Running thence North 49°-26'-52" East, a distance of 245.50 feet to a point of curvature;

(3) Running thence along a curve, bearing to the left and having a central angle of 13°-13'-20" and a radius of 610.00 feet, a distance of 140.77 feet to a point of tangency;

(4) Running thence North 36°-13'-33" East, a distance of 460.50 feet to a point;

(5) Running thence South 53°-51'-28" East, a distance of 89.31 feet to the POINT OR PLACE OF BEGINNING;

Running thence North 35°-59'-23" East, a distance of 168.81 feet to a point (not a point of curvature);

Running thence along a curve, bearing to the left and having a central angle of 5°-13'-58", a radius of 588.03 feet and a radial bearing of North 57°-54'-08" West, a distance of 53.70 feet to a point of tangency;

Running thence North 26°-51'-55" East, a distance of 67.58 feet to a point of curvature;

Running thence along a curve, bearing to the right and having a central angle of 26°-02'-29" and a radius of 329.01 feet, a distance of 149.54 feet to a point (not a point of tangency);

Running thence North 54°-51'-58" East, a distance of 30.77 feet to a point (not a point of curvature);

Running thence along a curve, bearing to the right, having a central angle of 113°-46'-56", a radius of 15.62 feet and a radial bearing of South 36°-25'-54" East, a distance of 31.03 feet to a point (not a point of tangency);

Running thence South 01°-03'-39" East, a distance of 71.24 feet to a point (not a point of curvature);

Running thence along a curve, bearing to the right, having a central angle of 25°-55'-13", a radius of 1,000 feet and a radial bearing of North 88°-41'-48" West, a distance of 452.39 feet to a point (not a point of tangency);

Running thence North 53°-51'-28" West, a distance of 237.41 feet to the POINT OR PLACE OF BEGINNING.

The area of this parcel is 78,284.99 sq. ft. (1.80 acres) and the total perimeter is 1,262.48 feet.

3. BEGINNING at a point being the following courses and distances from the corner formed by the intersection of the southeasterly side of the Long Island Rail Road R.O.W (Flushing and North Side Division) with the northeasterly side of the Grand Central Parkway, said Point of Beginning being N.Y.C. Monument No. 23945 as laid out on N.Y.C. Alteration Maps numbers 4164, 4179 and 4496;

(1) Running thence North 36°-13'-30" East, along the southeasterly side of the Long Island Rail Road R.O.W., a distance of 1,223.44 feet to a point;

(2) Running thence North 49°-26'-52" East, a distance of 245.50 feet to a point of curvature;

(3) Running thence along a curve, bearing to the left and having a central angle of 13°-13'-20" and a radius of 610.00 feet, a distance of 140.77 feet to a point of tangency;

(4) Running thence North 36°-13'-33" East, a distance of 460.50 feet to a point;

(5) Running thence South 53°-51'-28" East, a distance of 401.06 feet to a point (not a point of curvature);

(6) Running thence along a curve, bearing to the left, having a central angle of 00°-59'-45", a radius of 1,073.50 feet and a radial bearing of N 62°-09'-41" West, a distance of 18.66 feet to the POINT OR PLACE OF BEGINNING:

Running thence along the same curve, bearing to the left, having a central angle of 10°-34'-58", a radius of 1,073.50 feet and a radial bearing of North 63°-09'-27" West, a distance of 198.28 feet to a point;

Running thence South 77°-26'-40" East, a distance of 69.89 feet to a point;

Running thence South 52°-56'-05" East, a distance of 240.12 feet to a point;

Running thence South 37°-03'-55" West, a distance of 147.20 to a point (not a point of curvature);

Running thence along a curve, bearing to the left, having a central angle of 4°-37'-36", a radius of 2,600.00 feet and a radial bearing of South 10°-56'-00" West, a distance of 209.95 feet to a point of reverse curvature;

Running thence along a curve, bearing to the right, having a central angle of 60°-37'-23" and a radius of 15.00 feet, a distance of 15.87 feet to a point of reverse curvature;

Running thence along a curve, bearing to the left, having a central angle of 16°-53'-47" and a radius of 145.00 feet, a distance of 42.76 feet to a point of reverse curvature;

Running thence along a curve bearing to the right, having a central angle of 66°-48'-33" and a radius of 15.00 feet, a distance of 17.49 feet to POINT OR PLACE OF BEGINNING.

The area of this parcel is 56,975.79 sq. ft. (1.31 acres) and the total perimeter is 941.56 feet.

**HISTORICAL NOTE**

Section amended ch. 442/1993 § 1 eff. July 26, 1993.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-24.0 added chap 1048/1981 § 1

**NOTE**

Provisions of ch. 442/1993:

§ 2 If the city enters into any lease, rental agreement, license, permit, concession or other authorization pursuant to section one of this act, the lands specified in section three of this act shall be dedicated as park lands.

§ 3. The lands required by this act to be dedicated as park lands are as follows:

The property known as "Powell's Cove", tax blocks 3961, 3984 and 3986, and portions of tax blocks 3960, 3982, 3983, 3985 and 3987 on the tax map of the city of New York for the borough of Queens, generally bounded by 11th Avenue, 131st Street, 135th Street, and United States Pierhead line, consisting of 31 acres, more or less.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-128.1*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-128.1 Snug Harbor.

a. Notwithstanding any other provision of law, general, special or local the city, acting by the commissioner of parks and recreation and the commissioner of cultural affairs with the approval of the board of estimate, is hereby authorized and empowered to transfer, grant, demise or let to the Snug Harbor Cultural Center, Inc. or other not-for-profit corporation or corporations, or a local development corporation or corporations, or any combination thereof, their successors or assigns (individually or collectively, herein referred to as "NPC") by contract, lease, license or other instrument, upon such terms and conditions as shall be agreed upon between the city and NPC, the right, for any purpose or purposes referred to in subdivisions b and c of this section, to use, occupy, license, lease or carry on or cause to be carried on activities in or on the whole or any part of the tracts of land described in subdivision d of this section, including the buildings and other facilities thereon, which tracts are situated in the borough of Staten Island and are commonly known as Snug Harbor.

b. Any contract, lease, license, or other instrument referred to in subdivision a of this section may authorize or grant to NPC the right to use, occupy, license, lease and carry on or cause to be carried on activities in or on the whole or any part of the tracts of land described in subdivision d of this section for any purpose or purposes which furnish, foster or promote for the benefit of the people of the city, cultural development, education, recreation, historic preservation of buildings and improvement of business and commerce, including: theatrical, musical, artistic presentations and exhibitions; meetings, assemblages, conventions and conferences; telecommunication systems; events of civic, community and general public interest; and general business or commercial purposes which aid the other purposes set out in this subdivision, provided, however, that nothing herein shall grant to NPC the right to conduct any business or commerce, or contract with any other party for the same, unless such business or commerce is compatible

with and conducted in conjunction with the use of Snug Harbor cultural center, as a multi-purpose cultural center, and further provided that nothing herein shall permit the erection or maintenance of telecommunication towers or other above ground apparatus for telecommunication transmission systems on the grounds of Snug Harbor. Subject to the limitations set forth in subdivision c of this section, such land may be used for the purpose of providing residences and work spaces for artists affiliated with the NPC for the duration of such affiliation. It is hereby declared that all of the purposes referred to in this subdivision are for the benefit of the health, welfare and prosperity of the people of the city and are public purposes.

c. Except as hereinafter provided, the tracts of land described in subdivision d of this section shall not be used, occupied, licensed or leased for the purpose of housing. Such land may be used to provide residences for artists who are affiliated with the NPC and who through their work, exhibits, lectures or writings contribute to the goals of the NPC. Artists shall only be entitled to occupy such residences for the duration of their affiliation with the NPC and any lease or occupancy permit of a dwelling unit to an artist shall specify that the tenancy or occupancy shall terminate upon the termination of the artist's affiliation with the NPC. Notwithstanding any other provision of law, such dwelling units shall not be subject to regulation or control pursuant to the emergency housing rent control act, the emergency tenant protection act of nineteen seventy-four or any local laws enacted pursuant thereto, the emergency housing rent control law, the rent stabilization law of nineteen hundred sixty-nine or any other law which confers rights of occupancy upon tenants which are inconsistent with the intent of this subdivision to permit the NPC to provide residences for artists only for the duration of their affiliation with the NPC.

The provisions of this subdivision shall not be construed to prohibit the NPC from providing residential accommodations to persons employed by the NPC where such residence is necessary for the maintenance or protection of the property such as a resident caretaker, supervisor of maintenance or supervisor of security.

d. The tracts of land referred to in subdivisions a, b and c of this section are more particularly described as follows:

Beginning at a point formed by the intersection of the southerly line of Richmond Terrace and the westerly line of Tysen Street as shown on borough president of Staten Island map #3861, said point of beginning having coordinates S 4888.33, W 15824.79. Running thence:

1) South 03° 42' 57" East, 485.63 feet along the westerly line of Tysen Street to the northerly line of Fillmore Street.

2) South 86° 24' 09" West, along the northerly line of Fillmore Street, 100.59 feet.

3) North 06° 33' 33" West, 139.83 feet.

4) South 87° 58' 30" West, 50.00 feet.

5) South 06° 31' 23" East, 141.20 feet to the northerly line of Fillmore Street.

6) South 86° 24' 09" West, along the northerly line of Fillmore Street, 46.06 feet to a point of curvature.

7) Southerly, curving to the left on the arc of a circle with a radius of 7.50 feet, an angle of 93° 45' 01", 12.27 feet to a point of tangency.

8) South 7° 20' 52" East, 359.97 feet.

9) South 6° 51' 31" East, 300.02 feet.

10) South 7° 00' 45" East, 416.19 feet to a point on the northerly line of Henderson Avenue.

11) South 72° 23' 50" West, along the northerly line of Henderson Avenue, 1447.71 feet.

12) South 81° 13' 07" West, along the northerly line of Henderson Avenue, 122.79 feet to the easterly line of Kissel Avenue.

13) North 9° 03' 54" West, along the easterly line of Kissel Avenue, 1917.41 feet to the southerly line of Snug Harbor Road.

Thence, easterly along the southerly lines of Snug Harbor Road and Richmond Terrace as in use the following 22 courses and distances:

1) North 81° 52' 30" East, 343.00 feet.

2) North 74° 30' 34" East, 22.48 feet to a point of curvature.

3) Northerly, curving to the left on the arc of a circle with a radius of 50.00 feet, an angle of 39° 04' 12", 34.10 feet to a point of compound curvature.

4) Northerly, curving to the left on the arc of a circle with a radius of 200.00 feet, an angle of 09° 22' 30", 32.73 feet.

5) North 26° 03' 52" East, 41.69 feet.

6) North 22° 56' 18" East, 75.00 feet.

7) North 19° 30' 48" East, 75.29 feet.

8) North 16° 59' 24" East, 53.98 feet to a point of curvature.

9) Easterly, curving to the right on the arc of a circle with a radius of 75.00 feet, an angle of 61° 42' 53", 80.78 feet to a point of tangency.

10) North 78° 42' 17" East, 44.75 feet.

11) North 82° 23' 05" East, 75.33 feet.

12) North 85° 01' 47" East, 75.08 feet.

13) North 86° 52' 08" East, 83.22 feet to a point of curvature.

14) Easterly, curving to the right on the arc of a circle with a radius of 900.00 feet, an angle of 7° 33' 52", 118.82 feet to a point of compound curvature.

15) Easterly, curving to the right on the arc of a circle with a radius of 450.00 feet, an angle of 12° 50' 35", 100.87 feet to a point of tangency.

16) South 72° 43' 25" East, 91.81 feet to a point of curvature.

17) Easterly, curving to the right on the arc of a circle, with a radius of 1460.00 feet, an angle of 14° 29' 21", a distance of 369.21 feet to a point of reverse curvature.

18) Easterly, curving to the left on the arc of a circle with a radius of 180.00 feet, an angle of 28° 00' 03", 78.96 feet to a point of tangency.

19) South 83° 22' 07" East, 58.01 feet.

20) South 89° 57' 40" East, 25.00 feet.

21) North 88° 49' 32" East, 220.28 feet to the westerly line of Tysen Street as in use.

22) South 03° 42' 57" East, along the westerly line of Tysen Street as in use, 46.90 feet to the point or place of beginning.

Beginning at a point formed by the intersection of the southerly line of Richmond Terrace and the easterly line of Snug Harbor Road, the intersection of said streets forming an interior angle of 70° 43' 30" as shown on the borough president of Staten Island map #3887, said point of beginning having coordinates S 4714.62, W 17955.22. Running thence easterly along the southerly line of Richmond Terrace, N 89° 41' 08" E, 727.73 feet to a point on Snug Harbor Road.

Thence the following 5 courses and distances along Snug Harbor Road:

1) South 18° 21' 55" West, 24.95 feet.

2) South 22° 56' 18" West, 179.68 feet to a point of curvature.

3) Westerly, curving to the right on the arc of a circle with a radius of 90.00 feet, an angle of 58° 56' 12", 92.53 feet to a point of tangency.

4) South 81° 52' 30" West, 472.31 feet.

5) North 22" 02' 30" West, 296.46 feet to the point or place of beginning.

Beginning at a point on the northerly line of Richmond Terrace, generally opposite the prolongation of the westerly line of Tysen Street as shown on the president of the borough of Staten Island map #3887, said point of beginning having coordinates S 4788.43, W 15831.26. Running thence westerly along the northerly line of Richmond Terrace the following 9 courses and distances:

1) South 89° 00' 30" West, 212.27 feet to a point of curvature.

2) Westerly, curving to the right on the arc of a circle with a radius of 220.00 feet, an angle of 25° 23' 59", 97.53 feet to a point of tangency.

3) North 65° 35' 31" West, 235.43 feet to a point of curvature.

4) Westerly, curving to the left on the arc of a circle with a radius of 1680.00 feet, an angle of 12° 45' 26", 374.06 feet to a point of compound curvature.

5) Westerly, curving to the left on the arc of a circle with a radius of 120.00 feet, an angle of 11° 40' 19", 24.45 feet to a point of compound curvature.

6) Westerly, curving to the left on the arc of a circle with a radius of 1680.00 feet, an angle of 4° 29' 58", 131.93 feet to a point of reverse curvature.

7) Westerly, curving to the right on the arc of a circle with a radius of 720.00 feet, an angle of 7° 44' 03", 97.19 feet.

8) South 86° 39' 38" West, 291.90 feet.

9) South 88° 24' 46" West, 701.54 feet.

Thence northerly, North 01° 19' 01" East, 59.39 feet to a point on the southerly line of the Staten Island Rapid Transit Railway.

Thence easterly along the southerly line of the Staten Island Rapid Transit Railway, the following 12 courses and distances:

1) North 89° 31' 08" East, 338.03 feet.

2) South 01° 19" 01" West, 15.00 feet.

3) North 89° 31' 08" East, 383.31 feet.

4) North 32° 53' 35" East, 17.96 feet.

5) North 89° 31' 08" East, 396.00 feet to a point of curvature.

6) Easterly, curving to the right on the arc of a circle with a radius of 1131.00 feet, an angle of 18° 58' 00", 374.40 feet to a point of tangency.

7) South 69° 57' 32" East, 264.42 feet to a point of curvature.

8) Easterly, curving to the left on the arc of a circle with a radius of 1448.00 feet, an angle of 5° 41' 55", 144.01 feet.

9) South 66° 56' 46" East, 134.55 feet.

10) South 03° 41' 50" East, 2.00 feet.

11) South 88° 57' 04" East, 112.19 feet.

12) South 03° 41' 50" East, 6.00 feet to the point or place of beginning.

Beginning at a point on the U.S. Pierhead and Bulkhead line in Kill Van Kull, approved by the secretary of war, October 30, 1915, said point of beginning having coordinates South 4497.61, West 16082.50, and being 234.38 feet west of a point formed by the extension of the westerly line of Tysen Street with the U.S. Pierhead and Bulkhead line; running thence westerly along the northerly line of the Staten Island Rapid Transit Railway, the following 10 courses and distances:

1) South 03° 41' 50" East, 197.07 feet.

2) North 77° 38' 47" West, 132.04 feet.

3) North 69° 57' 32" West, 264.42 feet to a point of curvature.

4) Westerly, curving to the left on the arc of a circle with a radius of 1161.00 feet an angle of 18° 58' 00", 384.33 feet to a point.

5) South 89° 31' 08" West, 338.00 feet.

6) North 00° 28' 52" West, 15.00 feet.

7) South 89° 31' 00" West, 449.31 feet.

8) South 01° 19' 01" West, 15.00 feet.

9) South 89° 31' 08" West, 338.03 feet.

10) North 01° 19' 01" East, 106.33 feet to the U.S. Pierhead and Bulkhead line.

Thence easterly along the U.S. Pierhead and Bulkhead line the following 2 courses and distances:

1) North 87° 27' 41" East, 560.68 feet.

2) South 85° 27' 28" East, 1309.86 feet to the place or point of beginning.

Beginning at a point on the northerly line of the lands of the Staten Island Rapid Transit Railway Company, being distant 88.00 feet from the northerly line of Richmond Terrace and generally on a prolongation of the westerly line of Tysen Street as indicated on the president of the borough of Staten Island map #3887, said point of beginning having coordinates South 4700.61, West 15836.93, thence:

1) North 84° 54' 35" West along the northerly line of the lands of the Staten Island Rapid Transit Railway, 113.13 feet.

2) North 03° 41' 50" West, 183.73 feet to the U.S. Pierhead and Bulkhead line approved by the secretary of war on October 30, 1915.

3) South 85° 27' 28" East along said U.S. Pierhead and Bulkhead line, 112.98 feet.

4) South 03° 41' 50" East, 184.83 feet to the point or place of beginning.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-25.0 added chap 756/1984 § 1

(special provision chap 756/1984 § 2)



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-128.2*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-128.2 Bryant Park.

a. Notwithstanding the provisions of section three hundred eighty-three of the New York city charter and section twenty of the general city law or any other law prohibiting the alienation of park lands, the city, acting by the commissioner with the approval of the board of estimate, is hereby authorized and empowered to lease to Bryant Park Restoration Corporation ("BPRC"), a not-for-profit corporation organized under the laws of the state of New York for the purpose of assisting the city in restoring and maintaining Bryant Park, for the purposes referred to in subdivision b of this section, upon such terms and conditions and for such duration as shall be agreed upon by the city, The New York Public Library, Astor, Lenox and Tilden Foundations ("NYPL") and BPRC, all or part of the tract of land situated in the borough of Manhattan known as the west terrace of the New York Public Library (the "West Terrace"), and more particularly described as follows:

ALL THAT CERTAIN PLOT, piece or parcel of land, comprising a portion of that land known as Bryant Park, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City and State of New York, bounded and described as follows:

BEGINNING at a point lying along the south side of West 42nd Street, 482 feet west of the intersection formed by the said south side of West 42nd Street and the west side of Fifth Avenue, and running thence easterly along the south side of West 42nd Street 119 feet to a point lying along said southerly side of West 42nd Street; thence southerly, along the rear wall of the New York Public Library Building, 455 feet to the northerly side of West 40th Street; thence westerly along the northerly side of West 40th Street 119 feet; thence northerly 455 feet to the point or place of BEGINNING.

Notwithstanding the foregoing provision, such grant shall not include any portion of the building erected, constructed, equipped and furnished pursuant to chapter five hundred fifty-six of the laws of eighteen hundred ninety-seven (the "NYPL Building"), including appurtenances thereto, except upon the written approval of NYPL.

b. The grant referred to in subdivision a of this section may authorize BPRC to sublease all or any portion of the West Terrace for the construction of a structure which may be used for the operation of a restaurant and related purposes, and for such other uses as may be consistent with the purposes of BPRC and NYPL, upon such terms and conditions, for such duration and for such consideration as shall be agreed upon by the city, BPRC and NYPL; provided, however, that no portion of any such structure shall extend beyond sixty feet west of the western most portion of the NYPL Building. It is hereby declared that all of the purposes referred to in this subdivision are for the benefit of the people of the city and are public purposes.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 532-26.0 added chap 875/1984 § 1

33 of 40 DOCUMENTS

Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-129*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-129 Fines for unlawful cutting of trees on department property.

a. It shall be unlawful for any individual, firm, corporation, agent, employee or person under the control of such individual, firm or corporation to cut, remove or in any way destroy or cause to be destroyed, any tree or other form of vegetation on public property under the jurisdiction of the commissioner without acquiring written consent from the commissioner. The foregoing provision shall not apply to department employees who are engaged in the proper and authorized performance of their assigned duties.

b. Any individual, firm, corporation, agent, employee or person under the control of such individual, firm or corporation violating the provisions of subdivision a of this section concerning a tree shall be liable to arrest and upon conviction thereof shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than fifteen thousand dollars or by imprisonment of not more than one year or by both such fine and imprisonment for each such violation. Such individual, firm, corporation, agent, employee or person under the control of such individual, firm or corporation shall also be liable for a civil penalty of not more than ten thousand dollars for each such violation which may be recovered in a proceeding before the environmental control board. A proceeding to recover any civil penalty authorized pursuant to this section shall be commenced by the service of a notice of violation returnable to the environmental control board. The environmental control board shall have the power to impose the civil penalties prescribed herein.

Any individual, firm, corporation, agent, employee or person under the control of such individual, firm or corporation violating the provisions of subdivision a of this section concerning any other form of vegetation shall be liable to arrest and upon conviction thereof shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars or by imprisonment of not more than ninety days or by both such fine and

imprisonment for each such violation.

c. Any individual, firm, corporation, agent, employee or person under the control of such individual, firm or corporation found to be guilty of violating the provisions of subdivision a of this section or section 10-148 of this code by a court of competent jurisdiction or by the environmental control board shall be denied the opportunity to obtain written consent from the commissioner or from an agency having control of public property to cut, remove or in any way destroy or cause to be destroyed, any tree or other form of vegetation on public property under the jurisdiction of the commissioner, or such agency, for a maximum of two years from the date of conviction, or from the date the civil penalty was imposed.

**HISTORICAL NOTE**

Section amended L.L. 7/1996 § 2, eff. Feb. 11, 1996

Section added chap 907/1985 § 1

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 533-1.0 added LL 67/1982 § 2

**CASE NOTES**

¶ 1. Defendant was charged with a misdemeanor, cutting "a tree under the jurisdiction" of the NYC Parks Department without a permit, Ad Cd §18-129(a), after cutting off a limb from a tree standing between the curb and sidewalk in front of his home. The tree being on "public property" is an essential part of the offense. While the street may be a "park street" that is a street abutting a park, the sidewalks of such park streets may not fall under the jurisdiction of the Parks Department. People v. Rementeria, 150 Misc. 2d 930 [1991].



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-130*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-130 Ward's and Randall's islands; development into park.

a. There being a shortage of parks and park areas within the city to provide the necessary facilities for fresh air and recreation for the growing population of such city and more particularly for residents of the boroughs of Manhattan, Bronx and Queens; and the creation and establishment of such parks being essential to the health, comfort and welfare of the citizens of the state; and it appearing to the legislature to be necessary and proper that city parks be created and established on the islands known as Ward's and Randall's, within such city, and that the inmates and patients in the various state and city institutions now located on such islands be removed therefrom, excepting the lands on Ward's island presently occupied by the Manhattan state hospital other than parcels one and two hereinafter described and that the buildings and structures of such institutions be demolished for the purpose of such parks; the provisions hereinafter prescribed are enacted and their necessity in the public interest is hereby declared as a matter of legislative determination.

b. In order that the state may reconstruct, modernize and rebuild some or all of the building and facilities of Manhattan state hospital on Ward's island, and continue to maintain such hospital, so as to furnish modern facilities for treatment and care of mental patients of the metropolitan district to the benefit of its residents, the city is hereby authorized to extend the lease executed between the city and the state of New York pursuant to the provisions of chapter one hundred thirty-nine of the laws of nineteen hundred and eight, as amended by chapter six hundred ninety-six of the laws of nineteen hundred and thirteen, for a period not exceeding fifty years beyond its present termination date with respect to any or all of the lands now occupied by or used in connection with Manhattan state hospital on Ward's island except the lands hereinafter described as parcel one and parcel two. The department of mental health is hereby directed to remove the remaining inmates on or before April seventh, nineteen hundred fifty-nine from all the buildings of the

Manhattan state hospital located on that part of Ward's island described as follows:

PARCEL 1

Beginning at the intersection of the shore line of Harlem River with the northerly boundary line of property in the southwest portion of the island, now under the jurisdiction of the Department of Parks of the City of New York, which boundary line was established by the consent of the Governor, dated April 20, 1938, pursuant to Chapter 23 of the laws of 1938, and filed in the Department of Parks and the Department of Mental Health, as shown on map entitled "Index Map of Wards Island", dated April 28, 1936 accompanying said consent, thence generally easterly along said boundary line to its intersection with the westerly line of the right-of-way of the Triborough Bridge; thence generally northerly along said westerly right-of-way line to its intersection with the southwesterly line of Morgan Avenue; thence northwesterly along the southwesterly line of Morgan Avenue to its intersection with the southeasterly line of Scholer Street; thence southwesterly along the southeasterly line of Scholer Street to its intersection with a straight line which is 25 feet southwesterly from and parallel to Building No. 103; thence northwesterly along said line to its intersection with the shore line of Harlem River; thence southwesterly along the shore line of Harlem River to the point or place of beginning.

PARCEL 2

Beginning at the intersection of the westerly line of the right-of-way of the New York Connecting Railroad with the shore line of Little Hell Gate as shown on the map referred to in Parcel 1, thence generally southerly along said westerly right-of-way line to its intersection with the shore line of the East River; thence southwesterly along said shore line of the East River to its intersection with the northerly boundary line of park property in the southwest portion of the island, as defined in Parcel 1; thence generally northwesterly along said boundary line to its intersection with the easterly line of the right-of-way of the Triborough Bridge; thence generally northerly along said easterly right-of-way line to its intersection with the northeasterly line of Morgan Avenue; thence southeasterly, generally, along the northeasterly line of Morgan Avenue to its intersection with the southeasterly line of Macy Avenue; thence northeasterly along the southeasterly line of Macy Avenue and its prolongation to its intersection with the southeasterly prolongation of the northeasterly line of Pinel Avenue; thence northwesterly along the northeasterly line of Pinel Avenue to its intersection with the northeasterly line of the cinder road on the northeast side of Buildings Nos. 95, 96, 97 and 98; thence northwesterly along said northeasterly line of said cinder road as prolonged, to its intersection with the easterly line of the right-of-way of the Triborough Bridge; thence generally northerly along said easterly right-of-way line to its intersection with the shore line of Little Hell Gate; thence easterly along said shore line to the point or place of beginning, and such property and equipment used in or in connection with such hospital, as it may desire, to the Pilgrim state hospital on Long Island, or to other state hospitals, in which it shall establish suitable quarters and accommodations for them, within the amounts of appropriations made for such purpose by the legislature. The lease heretofore executed between the city of New York and the state of New York, pursuant to the provisions of chapter one hundred thirty-nine of the laws of nineteen hundred eight, as amended by chapter six hundred ninety-six of the laws of nineteen hundred thirteen, shall be deemed terminated within the meaning and intent of such lease and statute to the extent that such lease relates to that part of Ward's island hereinabove described, when the governor shall certify in writing to the mayor that such inmates, property and equipment have been so transferred, and that the buildings and structures on Ward's island within the above described area are no longer necessary for the purposes of the Manhattan state hospital.

c. The city shall proceed as soon as possible after the governor shall have so certified to the mayor, as hereinbefore provided, to raze all of the buildings, structures and other improvements of the Manhattan state hospital and all other structures, buildings and improvements on that part of Ward's island described in subdivision b, except those required for park purposes, and except those connected with the present bridge now owned by the New York, New Haven and Hartford Railroad Company, now located at Ward's island and those connected with the proposed city sewage disposal plant as authorized by chapter six hundred eighty-nine of the laws of nineteen hundred twenty-seven and the structures of Triborough Bridge and Tunnel Authority. The city may, however, at any time prior to such

certification by the governor, commence the work of transforming the above described part of the island into a city park and of razing all or such part of such buildings, structures and improvements as may no longer be required for the purposes of such hospital, if the governor consents thereto in writing. Such consent shall specify generally what work is consented to and specifically what buildings, structures and improvements, or parts thereof, may be razed. Copies of each such consent shall be filed with the department of parks and recreation of the city and the department of mental health. No structure, building or improvement shall be erected by the city or the state on Ward's island, except such as are necessary to the proper functioning of the Manhattan state hospital or to the purposes or functions of the sewage disposal plant, established by the city on such island, pursuant to the provisions of chapter six hundred eighty-nine of the laws of nineteen hundred twenty-seven, or except such as may be necessary for the construction, reconstruction, maintenance and operation of the structures of Triborough Bridge and Tunnel Authority, or the present bridge now owned by the New York, New Haven and Hartford Railroad Company, now located on Ward's island or except such as may be consented to by the governor as hereinbefore provided.

d. When the buildings and structures of the Manhattan state hospital affected by this section shall have been removed as hereinbefore provided, all of Randall's island and that part of Ward's island described in subdivision b shall be devoted exclusively to the purposes of city parks; and the city is hereby directed to transform the same into parks as soon thereafter as possible, and the same shall henceforth be used for no other purposes. There shall be excluded, however, from the operation of this section all of the land necessary for the continuance of the railroad bridge on such islands, the land necessary for the city sewage disposal plant, established by such city, as authorized by chapter six hundred eighty-nine of the laws of nineteen hundred twenty-seven, and the land deemed necessary by the Triborough Bridge and Tunnel Authority for the construction, reconstruction, maintenance and operation of the structures of Triborough Bridge and Tunnel Authority, provided, however, that there shall be provided by such city convenient means of access from such Triborough Bridge at convenient locations to such parks located on such islands, and convenient connections between the two islands.

e. Notwithstanding the provisions of subdivisions b, c and d, the city is hereby authorized to lease to the people of the state of New York the lands on Ward's island hereinafter described by amending the extension of lease dated December eleventh, nineteen hundred fifty-three, executed between the city of New York and the state of New York pursuant to the provisions of chapter one hundred one of the laws of nineteen hundred fifty-two, so as to include such lands within the terms and provisions of such extension of lease.

Beginning at a point on the southeasterly line of Scholer Street, where it would be intersected by the continuation easterly in a straight line of the northerly boundary line of "Parcel 1A" as released to the City of New York by the consent of the Governor dated January 18, 1950; thence continuing generally easterly along the further prolongation easterly of said boundary line to its intersection with the westerly line of the right-of-way of the Triborough Bridge; thence generally northerly along said westerly right-of-way line to its intersection with the southwesterly line of Morgan Avenue; thence northwesterly along the southwesterly line of Morgan Avenue to its intersection with the southeasterly line of Scholer Street; thence southwesterly along the southeasterly line of Scholer Street to the point or place of beginning of the parcel herein described.

f. Notwithstanding the provisions of subdivisions b, c, d, and e, the city is hereby authorized to lease to the people of the state of New York, the lands on Ward's island hereinafter described by amending the extension of lease dated December tenth, nineteen hundred sixty-two, executed between the city and the state of New York pursuant to the provisions of chapter five hundred twenty-three of the laws of nineteen hundred sixty-two, so as to include such lands within the terms and provisions of such extension of lease.

All that land now used by the city department of parks and recreation on the southeasterly portion of Ward's island and generally bounded by the Triborough Bridge right-of-way on the west, the shore line of the Hell Gate channel of the East River on the south and southeast and the lands under lease to the state of New York for Manhattan state hospital on the northeast and north, constituting 24 acres, more or less.

g. Notwithstanding the provisions of subdivisions b, c, d, e, and f of this section, in order that the state may reconstruct, modernize and rebuild some or all of the buildings and facilities of the Manhattan psychiatric center and the Kirby forensic psychiatric center on Ward's Island, and continue to maintain said hospitals, so as to furnish modern facilities for treatment and care of patients with mental illness of the metropolitan district and to benefit the health, welfare and safety of its residents, the city of New York is hereby authorized to enter into an agreement for the renewal or further extension of the lease executed between the city of New York and the state of New York pursuant to the provisions of chapter one hundred one of the laws of nineteen hundred fifty-two and chapter five hundred twenty-four of the laws of nineteen hundred sixty-two, for a period not exceeding fifty years beyond its present termination date with respect to any of the lands now occupied by or used in connection with the Manhattan psychiatric center, the Kirby forensic psychiatric center and related programs. Neither the provisions of section one hundred ninety-seven-c of the New York city charter, relating to a uniform land use review procedure, nor the provisions of any other local law of like or similar import shall apply to the renewal or extension of said lease.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. g added chap 58/2009 § O2, eff. Apr. 7, 2009 and retroactive to

Apr. 1, 2009. [See Note 1]

**DERIVATION**

Formerly § H51-7.0 added chap 929/1937 § 1

Sub c amended chap 23/1938 § 1

Subs b, c, d amended chap 921/1946 § 1

Subs b, c, d amended chap 922/1946 § 1

Sub b first par amended chap 624/1948 § 1

Sub b first par amended chap 132/1949 § 1

Sub b first par amended chap 67/1950 § 1

Sub b first par amended chap 172/1951 § 1

Sub a amended chap 101/1952 § 1

Sub b first par amended chap 101/1952 § 1

Sub b first par amended chap 305/1953 § 1

Sub b first par amended chap 368/1954 § 1

Sub e added chap 523/1962 § 1

Renumbered chap 100/1963 § 1324

(formerly § H41-7.0)

Sub f added chap 774/1969 § 1

**NOTE**

1. Provisions of L.L. chap 58/2009:

Part O

Section 1. The commissioner of mental health and the city of New York are hereby authorized to extend, for a period not exceeding fifty years, the lease of certain portions of Ward's Island authorized by chapter 2 of the laws of 1896, as amended by chapter 380 of the laws of 1900, chapter 139 of the laws of 1908, chapter 696 of the laws of 1913, chapter 101 of the laws of 1952, chapter 491 of the laws of 1952, and chapter 524 of the laws of 1962 for the purposes of the Manhattan psychiatric center, the Kirby forensic psychiatric center and the promotion of the public health, welfare and safety.

. . . . . .

§ 3. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2009.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-131*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-131 Posting of signs.

a. The commissioner shall be required to post signs pursuant to sections 10-158 and 10-158.1 of this code, for the vessel regulation zone and the "no wake area" established by such sections.

b. 1. The commissioner shall be required to establish a telephone reporting system so that the public can notify the department of any accident or hazardous condition which may occur or exist within park property. The commissioner shall have signs posted in all public parks, playgrounds, including jointly operated playgrounds, beaches and pools which shall contain the telephone number for reporting any accident or hazardous condition that occurs or exists within such public facility.

2. The commissioner shall be required to maintain a record of reports of such accidents or hazardous conditions by borough and service district which shall be provided to the council and mayor on an annual basis. Such report shall include any action taken by the department in response to such reported accident or hazardous condition.

3. Such notice of accident which the commissioner shall receive according to the provisions of this section shall not be sufficient notice as required under article four of the general municipal law.

c. The commissioner shall post the following at all comfort stations at all bathing beaches under the jurisdiction of the department, on its official website, and at such other places or times as the commissioner shall deem appropriate or as required by law, rule or regulation:

1. The dates and the results of departmental inspections of the bathing beach at which such information is

posted. Such information shall be posted within three days of the completion of the inspection cycle in which such inspection was made.

2. The availability of information regarding bathing beaches from the department of health and mental hygiene, which shall include, but not be limited to, the following:

(i) a statement of the availability of information posted pursuant to paragraph three of this subdivision on the department of health and mental hygiene's official website and provided to the 311 citizen service center;

(ii) if a particular bathing beach is under advisory or closed, the reason for such advisory or closure;

(iii) an explanation of how to file a beach-related illness complaint;

(iv) any other information the commissioner of health and mental hygiene shall deem appropriate or as required by law, rule or regulation.

3. The commissioner of health and mental hygiene shall make the information in subparagraphs ii through iv of paragraph two of this subdivision available on its official website and to the 311 citizen service center. In addition, the commissioner of health and mental hygiene shall make available on its official website and to the 311 citizen service center the information set forth in subparagraphs i through vi of this paragraph, and shall make the information in subparagraphs i, ii and iv of this paragraph available within twenty-four hours of receiving the results of any test performed, or by the end of the business day following receipt of the results of any test performed, whichever is later.

(i) the single day enterococci geometric mean for samples taken at a particular bathing beach by the department of health and mental hygiene;

(ii) the enterococcus bacteria thirty day geometric mean for such particular bathing beach;

(iii) an explanation as to the enterococcus bacteria level that could affect a closure at the particular bathing beach;

(iv) dates and results of any inspections or tests made pursuant to New York city health code article one hundred sixty-seven;

(v) an explanation as to the weather and other conditions that could result in issuing an advisory or closing the particular bathing beach;

(vi) any other information the commissioner of health and mental hygiene shall deem appropriate or as required by law, rule or regulation.

4. The commissioner of health and mental hygiene shall make the information required by paragraphs two and three of this subdivision, and such other information deemed appropriate by the commissioner of health and mental hygiene, accessible on the official department website for a period of at least one year. In addition, on or before the first day of November of each year, the commissioner of health and mental hygiene shall forward a combined report of the dates and results of all inspections of all bathing beaches and the dates and reasons for any advisory or closure, and such other information deemed appropriate by the commissioner of health and mental hygiene, for the Friday preceding the last Monday of May until the Friday after the first Monday of September of each year, to the mayor, the public advocate and the speaker of the council.

d. The commissioner shall post the dates and results of departmental inspections of property under the jurisdiction of the department on its official website within seven days of the completion of the inspection cycle in which such inspection was made, except that information regarding the inspections of bathing beaches shall be posted within three days of the completion of the inspection cycle in which such inspection was made, in accordance with

paragraph one of subdivision c of this section. The results of each inspection shall be accessible on the official department website for a period of at least one year. In addition, the commissioner shall forward a combined report of such inspection results to the mayor, the public advocate and the speaker of the council for each fiscal year by the first day of August of the next succeeding fiscal year.

**HISTORICAL NOTE**

Section amended L.L. 29/2005 § 2, eff. Apr. 4, 2005. [See Note 1]

Section added L.L. 48/1990 § 3 eff. August 16, 1990. [See Note after

§ 10-158.]

Subd. a separately amended L.L. 117/2005 § 3, eff. Mar. 29, 2006. [See

§ 10-158.1 Note 1]

**NOTE**

1. Provisions of L.L. L.L. 29/2005:

Section 1. Declaration of legislative findings and intent. As a way to increase public awareness of beach and park cleanliness and to ensure greater transparency and accountability in government, the Council finds that the Department of Parks and Recreation (DPR) ought to publish inspection data for parks and beaches on its official website. Bathing beach cleanliness data will be made available by posting results of water quality sampling obtained by the Department of Health and Mental Hygiene on its official website and having information posted at all bathing beaches operated by the City of New York. This information will inform the public of bathing beach water quality data, including acceptable bathing levels. In addition, the beach posting provisions require that DPR post the date and results of the last inspection of the beach and ancillary areas.

This law also requires DPR to post on its official website the date and results of all inspections of all DPR properties, including, but not limited to parks and beaches, and to provide the public with an easy-to-use mechanism to search for the ratings of their local park property. In addition, this law will correct a technical error in the Administrative Code of the City of New York, in that two sections are numbered § 18-131. To correct this, both sections have been combined under the title "Posting of signs."

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Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-131 Emergency reporting signs. [Repealed]

**HISTORICAL NOTE**

Section repealed L.L. 29/2005 § 3, eff. Apr. 4j, 2005.

Section added L.L. 14/1991 § 1, eff. Mar. 27, 1991.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-132*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-132 Displaying a POW/MIA flag over public property.

1. Until such time as all members of the United States Armed Forces listed either as missing in action or prisoners of war are accounted for by the United States government, the commissioner shall assure, subject to subdivisions 2 and 3 of this section, that the Prisoner of War/Missing in Action (POW/MIA) flag is flown over all public property under the jurisdiction of the commissioner whenever the American flag is flown over such property.

2. Within sixty days following the effective date of the local law that added this section, the POW/MIA flag shall be flown in twenty-five percent of all parks under the jurisdiction of the commissioner, including all parks under the jurisdiction of the commissioner that bear the name of a veteran of the United States Armed Forces or that include the word "Memorial" in the park name, whenever the American flag is flown over such property.

3. Within three years following the effective date of the local law that added this section, the POW/MIA flag shall be flown over all public property under the jurisdiction of the commissioner whenever the American flag is flown over such property.

4. The commissioner shall submit to the Mayor and the Speaker of the City Council an annual report indicating all public property under the jurisdiction of the commissioner over which the POW/MIA flag is flown. Such reporting requirement shall terminate upon full compliance with the requirements set forth in subdivision 3 of this section, at which time the commissioner shall submit a final report to the Mayor and to the Speaker of the City Council indicating all public property under the jurisdiction of the commissioner over which the POW/MIA flag is flown.

**HISTORICAL NOTE**

Section added L.L. 32/2003 § 2, eff. May 23, 2003. [See Note 1]

NOTE 1. Provisions of L.L. 32/2003: Section 1. Legislative intent. The Prisoner of War/Missing in Action (POW/MIA) flag was designed to honor and express the United States' gratitude to those members of the United States Armed Forces who have been or remain prisoners of war, and those who remain missing in action. the POW/MIA flag is a powerful symbol of our nation's concern and commitment to determining, as fully as possible, the fates of American military personnel still imprisoned or missing overseas. It is the Council's intent to require the POW/MIA flag to be flown over every piece of property under the jurisdiction of the department of parks and recreation, whenever the American flag is flown over such property. Furthermore, although it is the Council's desire to require the department of parks and recreation to fully implement this program immediately, given New York City's current fiscal constraints, this program will be implemented over a three-year period.

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*NYC Administrative Code 18-133*

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Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-133 Adopt-A-Park Program.

a. Definitions. For the purposes of this section, "sponsor" shall mean the person(s) or group(s) that have entered into an agreement with the department with respect to the maintenance, renovation and agreement requirements provided for in the Adopt-A-Park program.

b. The commissioner is authorized to enter into agreements with one or more individuals, corporations, partnerships or other entities, other than political candidates and their campaign organizations, to sponsor any park, playground, beach, pool, recreation center, ballfield, green space, greenstreet, vehicle, equipment, structure or other property under the jurisdiction of the department, except as provided in subdivision g of this section. Such sponsor may elect to be recognized by a sign at or on the area sponsored which shall not be larger than the standard sign used by the department. The commissioner shall erect such signs in a manner that best preserves the aesthetic quality of the sponsored area. Where the erection of such a sign is impossible, requires approval by another governmental entity or is otherwise prohibited by law, the department and the sponsor may agree to another form of recognition.

c. Sponsorship agreements may be entered into for a period of one to eight years from the date of the agreement. Nothing herein shall prohibit more than one sponsor at a particular site, and a sponsor may enter into agreements with the department to sponsor more than one site.

d. The department and the sponsor may renew an agreement for a term which shall be at the discretion of the commissioner, but is not to exceed the limits designated in subdivision c of this section. The existing sponsor may apply for renewal of the agreement no less than thirty days before the expiration of the agreement.

e. Nothing herein shall be construed to mean that the property or structure sponsored has been renamed for the sponsor or gives the sponsor or an agent or member thereof any authority to sell or display merchandise or use the sponsored area in any manner inconsistent with the New York city charter or any statute, law, rule or regulation. No sponsorship shall impede or impair in any way any concession or lease agreement between the department and any other individual or entity.

f. (1) Sponsors shall make a sponsorship payment to be determined by the commissioner, which shall reflect the size and nature of the sponsored area and the maintenance, level of use, security and program costs or any portion thereof to be undertaken or provided for by the sponsor. Such sponsorship payments shall be treated as private categorical grants and shall be used solely by the department for the sponsored area for park maintenance, capital projects, security, recreation, art and educational programs and the acquisition and development of parkland and related structures or facilities. Any grant in the amount of five thousand dollars or more shall be separately identified.

(2) Notwithstanding the provisions of paragraph one of this subdivision, the commissioner may enter into a sponsorship agreement at a reduced sponsorship payment or no sponsorship payment with one or more organizations or individuals who undertake the responsibility to perform uncompensated volunteer assistance of beautification and/or clean-up work consistent with departmental standards.

(3) Any sponsorship agreement shall hold the city harmless from liability for any damage or injury arising from such sponsorship and shall provide for indemnification of the city by the sponsor in the event that any judgment or other financial obligation is imposed upon the city with respect to such sponsorship.

g. (1) The provisions of this section shall not apply to any park or facility under the jurisdiction of the department that has a trust, conservancy, or partnership with the department whose annual contributions exceed five hundred thousand dollars to the park or facility.

(2) The commissioner may only enter into sponsorships with those individuals or groups in a manner consistent with the integrity of the park, playground, facility or property.

h. The comptroller shall have the power to audit and investigate all matters relating to the finances and the financial operations of the program.

**HISTORICAL NOTE**

Section added L.L. 55/2003 § 2, eff. Dec. 3, 2003. [See Note 1]

**NOTE**

1. Provisions of L.L. 55/2003:

Section 1. Declaration of legislative findings and intent. Due to the increased cost of maintenance and the necessity to increase revenue for the preservation of our precious parkland, particularly neighborhood parks, open space and urban forest, the Council believes it is appropriate to create a source of funding through community involvement and direct financial giving. This program is not intended to rename any park property or structure, but to provide another mechanism whereby individuals, community groups, businesses and corporations can help the city preserve its precious land and recreational programs. Through local community commitment, this program is designed to provide another avenue of assistance for all parks, from small playgrounds and greenstreets to beachfronts, pools and recreation centers. The revenue generated through this program is intended to supplement all allocations and sources of revenue for the Department of Parks and Recreation.

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*NYC Administrative Code 18-134*

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Title 18 Parks

CHAPTER 1 DEPARTMENT OF PARKS AND RECREATION

§ 18-134 Annual report on non-governmental funding for parks.

Beginning December 1, 2009 and annually thereafter, the commissioner shall submit a report to the council for the immediately preceding fiscal year on funding and donations provided by non-governmental sources to parks under the jurisdiction of the department. Such report shall include (i) the amount of funding allocated and the value of goods donated by organizations or individuals to the department by park where such funding or goods are designated for a particular park, or by service district or borough if there is no such designation, provided that such funding and value is more than five thousand dollars; and (ii) the amount of funding allocated and the value of goods donated by organizations and individuals for each park where such information is provided by such organization or individual exempt under applicable provisions of the Internal Revenue Code who file IRS Form 990 based on their having annual gross receipts of more than twenty-five thousand dollars, or for each service district or borough where such information is so designated. Such report, to the extent practical, shall list organizations and individuals allocating such funds or donating such goods, provided that any such organization or individual allocating such funds or donating such goods anonymously shall be listed without identifying information.

**HISTORICAL NOTE**

Section added L.L. 28/2008 § 1, eff. June 30, 2008.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 18-201*

Administrative Code of the City of New York

Title 18 Parks

CHAPTER 2 SUMMER CAMPS FOR CHILDREN

§ 18-201 Summer camps for children.

a. The board of estimate, within the amounts appropriated therefor, is authorized to establish camps in spaces provided therefor in parks adjacent to the city under the jurisdiction and control of the state council of parks, recreation and historic preservation. Such camps shall be used to furnish free instruction and maintenance of children between the ages of six and sixteen years and shall be under the jurisdiction of such agency as may be designated by the board.

b. Such agency shall provide opportunity for children to receive instruction which shall not exceed ten hours per week in camp sanitation, elementary hygiene, first aid to the injured, life saving, swimming and physical training and such other similar subjects as it may deem proper. Such agency shall prescribe rules and regulations for admission to such camps and the conduct and discipline thereof.

c. Such camps shall be operated between July first and August thirty-first of each year. Children shall be entitled to free instruction and maintenance in any such camp for a period of only two weeks during any one year.

d. Such agency shall make an annual report to the mayor on or before the fifteenth day of February of matters relating to carrying out the provisions of this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 67-4.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 29

(formerly § 70-4.0)



Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-101 Definitions.

Whenever used in this title:

a. "Commissioner" shall mean the commissioner of transpor- tation.

b. "Department" shall mean the department of transportation.

c. "Street" has the meaning ascribed thereto in subdivision thirteen of section 1-112 of this code.

d. "Sidewalk" shall mean that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, but not including the curb, intended for the use of pedestrians.

**HISTORICAL NOTE**

Section amended LL 104/1993 § 1, eff. Jan. 27, 1994

Section added chap 907/1985 § 1

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*NYC Administrative Code 19-101.1*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-101.1 Department of design and construction.

Any power granted by this chapter to the commissioner of transportation or the department of transportation related to construction or other work shall be performed by the department of design and construction in accordance with chapter fifty-five of the charter unless otherwise directed by the mayor pursuant to such chapter. Where the commissioner of transportation or the department of transportation is authorized by this chapter to promulgate specifications relating to construction or other work, such promulgation shall be done in consultation with the department of design and con- struction.

**HISTORICAL NOTE**

Section added L.L. 77/1995 § 13, eff. Nov. 23, 1995

**CASE NOTES**

¶ 1. Only the New York City Department of Design and Construction can enforce the safety requirements of municipal construction contracts. The Department of Transportation is without jurisdiction to issue citations for safety violations. HHM Assocs. v. New York City Environmental Control Board, check title, N.Y.L.J., May 7, 1999, page 30, col. 1 (Sup.Ct. New York Co.).

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*NYC Administrative Code 19-102*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-102 Unlawful use or opening of street.

Except as otherwise provided by law, no person shall remove, open or otherwise distrub the pavement of, or excavate in, a public street, or use any part of a public street so as to obstruct travel therein (i) without a permit from the commissioner, and (ii) unless such removal, opening or other distrubance of the pavement or such excavation or use is carried out in accordance with the provisions of this subchapter and of section 24-521 of the code, the rules of the department in relation thereto and the terms and conditions of such permit.

**HISTORICAL NOTE**

Section added L.L. 104/1993 § 1, eff. Jan. 27, 1994.



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***** Current through December 2009 ****

*NYC Administrative Code 19-103*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-103 Permits.

a. In addition to any of the requirements specified in this subchapter and except as hereinafter specifically provided, all permits issued by the commissioner pursuant to this subchapter shall be subject to the provisions of this section and any rules promulgated pursuant thereto. All applications for permits shall be submitted to the commissioner in such form and shall contain such information as the commissioner shall prescribe.

b. Each permit shall be subject to such reasonable conditions as the commissioner may determine are necessary to protect public safety and to safeguard the interests of the city.

c. The commissioner may require that an applicant for a permit deposit cash and/or a bond or other form of security with the city in an amount which the commissioner determines may be necessary to cover and pay all of the expenses, costs and liability that the city may incur as a result of the activity for which the permit is to be issued, to insure prompt compliance with the terms and conditions of the permit or to otherwise safeguard the interests of the city.

d. The commissioner may suspend review of applications for permits pending (i) payment by an applicant of outstanding fines, civil penalties or judgments imposed or entered against such applicant by a court or the environmental control board pursuant to this subchapter, (ii) payment by an applicant of outstanding fees or other charges lawfully assessed by the commissioner against such applicant pursuant to this subchapter and/or (iii) satisfactory compliance by an applicant with a request for corrective action or order issued by the commissioner

pursuant to this subchapter.

e. 1. The commissioner may, after giving the permittee notice and an opportunity to be heard, revoke or refuse to renew a permit: (a) for failure to comply with the terms or conditions of such permit or the provisions of this subchapter or of section 24-521 of the code or the rules or orders of the department in carrying out the activity for which the permit was issued;

(b) whenever there has been any false statement or any misrepresentation as to a material fact in the application or accompanying papers upon which the issuance of the permit was based; or

(c) whenever a permit has been issued in error and the conditions are such that the permit should not have been issued.

2. Notwithstanding the foregoing provision, if the commissioner determines that an imminent peril to life or property exists, the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to such revocation. The permittee shall have an opportunity to be heard, in accordance with the rules of the department, within five days after such revocation.

f. The commissioner may refuse to issue a permit to an applicant (i) who has exhibited a pattern of disregard for the provisions of this subchapter, of section 24-521 of the code, the rules or orders of the department in relation thereto or the terms or conditions of permits issued pursuant to such provisions, or (ii) who has been found liable by a court or in a proceeding before the environmental control board for a violation of any provision of this subchapter, of section 24-521 of the code, of a rule or order of the department in relation thereto or of a term or condition of a permit issued pursuant to such provision, which violation caused an imminent peril to life or property.

g. The commissioner, consistent with article twenty-three-A of the correction law, may refuse to issue a permit if the applicant or any officer, principal, director or stockholder of such applicant owning more than ten percent of the outstanding stock of the corporation has been convicted of a crime which in the judgment of the commissioner has a direct relationship to fitness or ability to perform the activity for which the permit is required.

h. 1. If the commissioner finds that a permittee or any employee, agent, independent contractor or other person engaged in performing an activity for which a permit has been issued has violated the terms or conditions of such permit or any provision of this subchapter or of section 24-521 of the code relating to the activity for which the permit has been issued or any order issued by or rule promulgated by the commissioner pursuant thereto or that a condition exists in any street which is in violation of a provision of this subchapter or of section 24-521 of the code or any order issued by or rule promulgated by the commissioner pursuant thereto, unless the condition is an imminent threat to life or safety, the commissioner may (i) notify the permittee or other responsible person of the condition found by the commissioner to constitute such violation and request that action be taken to correct the condition in such a manner and within such period of time as shall be set forth in such request, and (ii) afford such permittee or other responsible person an opportunity to contest the commissioner's finding in a manner to be set forth in the rules of the department. The commissioner may assess a fee for the administrative expense and the expense of additional inspections which the department may incur as a result of such condition.

2. The provisions of this subdivision shall not be construed to limit the power of the commissioner to take any other action authorized pursuant to thhis subchapter with respect to any violation, including but not limited to, the commencement of an action or proceeding in a court or before the environmental control board or to require that the commissioner resort to the procedure set forth in this subdivision as a prerequisite to the commencement of an action or proceeding in a court or before the environmental control board or the taking of any other action authorized pursuant to this subchapter with respect to a violation.

i. As used in this section, the term "permit" includes a license.

**HISTORICAL NOTE**

Section renumbered and amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

(formerly §§19-102, 19-149, 19-159)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692-2.0 added chap 100/1963 § 517

Formerly 19-149 required deposits to cover costs of restoration of pavement after excavations. Added by chap 907/1985 § 1 it was deleted by LL 104/1993 § 1 and generally incorporated into § 19-103. Section 19-149 was derived from § 693-3.0 added chap 929/1937 § 1, renumbered and amended chap 100/1963 § 127 (formerly § 83-3.0), Sub d added LL 40/1963 § 1.

Formerly 19-159 required the transportation commissioner to record receipts of moneys received and allow public inspection. Added by chap 907/1985 § 1 it was deleted by LL 104/1993 § 1 and generally incorporated into § 19-103. Section 19-159 was derived from § 692-1.0 added chap 100/1963 § 516.

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***** Current through December 2009 ****

*NYC Administrative Code 19-104*

Administrative Code of the City of New York

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§ 19-104 Revocable consents.

The issuance of revocable consents by the commissioner pursuant to this subchapter shall be subject to the provisions of chapter fourteen of the charter and the rules adopted by the commissioner pursuant thereto.

**HISTORICAL NOTE**

Section added L.L. 104/1993 § 1, eff. Jan. 27, 1994.

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***** Current through December 2009 ****

*NYC Administrative Code 19-105*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-105 Rules.

The commissioner may promulgate rules to carry out the provisions of this subchapter and the policies and procedures of the department in connection therewith.

**HISTORICAL NOTE**

Section added L.L. 104/1993 § 1, eff. Jan. 27, 1994.

**CASE NOTES**

¶ 1. A corporate defendant charged with a violation of this section can be served with appearance tickets by means of service upon the Secretary of State. Personal service of the ticket is unnecessary. Defendant actually received the appearance tickets. People v. New York Paving, Inc., 155 Misc.2d 934, 519 N.Y.S.2d 318 (Sup.Ct. Queens Co. 1992).

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*NYC Administrative Code 19-106*

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§ 19-106 Right of entry.

The commissioner may enter in the day time upon any lands, tenements, hereditaments and waters which he or she shall deem necessary to be surveyed, used or converted, for the purpose of laying out and surveying streets, bridges, tunnels and approaches to bridges and tunnels.

**HISTORICAL NOTE**

Section renumb. & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-103)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692-3.0 added chap 100/1963 § 518

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*NYC Administrative Code 19-107*

Administrative Code of the City of New York

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§ 19-107 Temporary closing of streets.

a. (i) Except as otherwise provided by law, it shall be unlawful for any person to close any street, or a portion thereof, within the jurisdiction of the commissioner, to pedestrian or vehicular traffic without a permit from the commissioner.

(ii) The commissioner may temporarily close or may issue a permit to temporarily close to pedestrian or vehicular traffic any street, or a portion thereof, within his or her jurisdiction, when, in his or her judgment, travel therein is deemed to be dangerous to life, in consequences of there being carried on in such street activities such as building operations, repairs to street pavements, sewer connections, or blasting for the purpose of removing rock from abutting property, or upon advice from the police commissioner, fire commissioner or commissioner of the office of emergency management that such closure will promote or protect safety or life, or when such closure may be necessary for a public purpose. In such event, the commissioner shall make available to the community board and council member in whose district such street is located information regarding any such closure which continues beyond five business days, state the reason or reasons for such closure and the estimated date for the street, or any portion thereof, to reopen.

b. In the event that a publicly mapped street that is used for vehicular or vehicular and pedestrian access, for which vehicular access is fully closed for more than one hundred eighty consecutive days, the commissioner shall issue or cause to be issued a community reassessment, impact and amelioration (CRIA) statement that has been approved by the commissioner or other government entity initiating the street closure which shall be delivered to both the

community board and the council member in whose district the street is located on or before the two hundred tenth day of the closure. Such CRIA statement shall contain the following: the objectives of the closure and the reasons why the continued street closure is necessary to attain those objectives, which in the case of a closure initiated by a local law enforcement agency for security reasons shall be satisfied by a statement from the local law enforcement agency that the street has been closed and will remain closed for security reasons; identification of the least expensive alternative means of attaining those objectives and the costs of such alternatives, or a statement and explanation as to the unavailability of such alternatives, which in the case of a closure initiated by a local law enforcement agency for security reasons shall be satisfied by a statement from the law enforcement agency that there are no alternative means available; how the continued street closure will impact access and traffic flow to and within the surrounding community, including but not limited to, access to emergency vehicles, residences, businesses, facilities, paratransit transportation and school bus services; and any recommendations to mitigate adverse impact and increase access to and within the area. In the case of a closure initiated for security reasons, the police department shall ensure that the CRIA statement does not reveal non-routine investigative techniques or confidential information or potentially compromises the safety of the public or police officers or otherwise potentially compromise law enforcement investigations or operations, provided that the issuance of the CRIA statement shall not be delayed beyond the required time period. The requirement for the issuance of a CRIA statement as described in this subdivision may be satisfied by delivery of an environmental assessment statement, environmental impact statement, or similar document required by law to be prepared in relation to the street closure. Prior to the issuance of a CRIA statement, the commissioner, in the case of a closure for which a permit issued by the department is required, shall hold at least one public forum, publicized in advance, in any affected community at which the community may register its input concerning any potential adverse impacts of the street closure, including but not limited to concerns regarding timeliness of emergency vehicle response and traffic congestion resulting in a potential increase in noise and any other adverse conditions caused by the closure. In the case of a street closure effectuated for security reasons by a local law enforcement agency, such law enforcement agency shall hold the public forum provided herein. Following the public forum(s), the council member in whose district the street closure is located may forward to the government entity which held the public forum(s) issues raised at the public forum(s) by the participants. The government entity which held the public forum(s) shall make its best efforts to respond to the issues raised, utilizing the expertise of other city agencies if appropriate, and shall provide such response to be appended to the CRIA statement. In the case that an environmental assessment statement, environmental impact statement, or similar document is substituted in lieu of the CRIA statement, as provided for above, the public forum provisions provided herein shall still apply.

c. For purposes of this section, a "street closure" shall not include a street closure undertaken by a federal or state governmental entity.

**HISTORICAL NOTE**

Section amended L.L. 24/2005 § 1, eff. Sept. 24, 2005. [See Note 1]

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-104)

Section added 907/1985 § 1

**DERIVATION**

Formerly § 692-4.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 47

(formerly § 82d-1.0)

**NOTE**

1. Provisions of L.L. L.L. 24/2005:

§ 2. This local law shall take effect one hundred eighty days after it is enacted into law and shall apply to any street closures which commence after the day this local law is enacted into law, except those street closures related to construction pursuant to a project for which a bid has been issued by the city prior to the effective date of this local law, and provided further that it shall apply to those closures initiated by a local law enforcement agency for security reasons, which, if closed prior to the enactment of this local law, shall be deemed to have commenced on the date of enactment of this local law. However, if the government entity responsible for issuing the community reassessment, impact and amelioration (CRIA) statement described in subdivision b for such closure initiated by a local law enforcement agency for security reasons and in effect on the date of enactment of this local law is unable to complete such statement within two hundred ten days of the date of enactment of this local law, the commissioner shall so notify the council member in whose district the street closure is located and the time within which to issue the CRIA statement shall be extended to no more than one hundred eighty additional days, provided that a public forum is held within the first two hundred ten days. In addition, the commissioner of transportation may take any actions necessary prior to such effective date for the implementation of this local law, and shall adopt any necessary rules including, but not limited to, rules that may require a public or private entity seeking permission for a street closure to prepare the CRIA statement.

**CASE NOTES**

¶ 1. This section does not provide for indemnification in favor of the City against Con Edison. The statute provides only that a contractor, such as Con Edison, is responsible for its own negligence. City of New York v. Consolidated Edison Co., 198 A.D.2d 31, 603 N.Y.S.2d 47 (1st Dept. 1993).

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Administrative Code of the City of New York



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*NYC Administrative Code 19-108*

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§ 19-108 Display of permit.

A copy of any permit issued pursuant to this subchapter shall be kept on the site of the opening or use or at the designated field headquarters of the work with respect to which the permit was issued and shall be presented upon demand of a police officer or any authorized officer or employee of the department or of any other city agency.

**HISTORICAL NOTE**

Section added L.L. 104/1993 § 1, eff. Jan. 27, 1994.

**CASE NOTES**

¶ 1. Fines assessed against construction company pursuant to State Penal Law §80.10 for violating Ad Cd. §§19-105, 19-157 are reduced because the exceed the amount authorized by the administrative code. Ad Cd §19-108 states that violators of §19-105 shall be fined not more than $100 and violators of §19-157 fined between $50 and $500. Ad Cd §1-112(10) defines person to include a corporation making language of city ordinance a special corporate fine within the meaning of Penal Law §80.10. People v. Causeway Constr. Co., 164 Misc. 2d 393 [1995].

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*NYC Administrative Code 19-109*

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SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-109 Protection at work site.

a. Protective measures. Any person who removes, opens or otherwise disturbs the pavement of or excavates in a public street or uses any part of a public street so as to obstruct travel therein shall provide barriers, shoring, lighting, warning signs or other protective measures in accordance with the rules of the department, so as to prevent danger to persons and property, and such barriers, shoring, lighting warning signs or other protective measures shall be maintained in accordance with such rules until the work shall be completed, or the danger removed.

b. Required signs. Legible signs shall be displayed at the site of such work in accordance with the rules of the department, indicating thereon the name of the permittee, the name of the person for whom the work is being done and the names of any contractors, when employed.

c. Disturbance, prohibited. It shall be unlawful to throw down, displace or remove any barrier shoring, plate or warning sign or to extinguish or remove any light thereon or on any obstruction in any street, without the written consent of the commissioner or without the consent of the person superintending the work or materials protected thereby.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-106)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 19-105 dealt with placing notices of street excavation at nearby intersections. Added by chap 907/1985 § 1 it was deleted by LL 104/1993 § 1 and generally incorporated into § 19-109. Section 19-105 was derived from § 692-5.0 added chap 929/1937 § 1, renumbered and amended chap 100/1963 § 48 (formerly § 82d-2.0).

Formerly 19-106 added chap 907/1985 § 1

Formerly 692-6.0 added chap 929/1937 § 1, renumbered chap 100/1963 § 49 (formerly § 82d-3.0). Subs d, e, g amended chap 100/1963 § 49

Formerly 19-154 required protections at excavations like fences or guard rails. Added by chap 907/1985 § 1 it was deleted by LL 104/1993 § 1 and generally incorporated into § 19-109. Section 19-154 was derived from § 693a-2.0 added LL 43/1961 § 1, renumbered chap 100/1963 § 129 (formerly § 83-4.1).

**CASE NOTES FROM FORMER SECTION 19-106**

¶ 1. In action to recover for injuries sustained when plaintiff fell into an unguarded hole left in sidewalk by defendant's removal of pole supporting a sign, defendant should have been permitted to plead that the hole was made under a permit from the City, in order to meet a possible claim that it had committed an absolute nuisance.-Nuccio v. L.I.R.R., 262 App. Div. 763, 27 N.Y.S. 2d 655 [1941].

¶ 2. Plaintiff **held** barred by contributory negligence from recovering for injuries sustained when she fell over a two-inch rubber hose temporarily placed across the sidewalk for purpose of delivering fuel oil to premises abutting the sidewalk, it being broad daylight and the hose lying flat upon the ground and in plain view.-Levine v. Vijack Coal Corp., 102 (147) N.Y.L.J. (12-27-39) 2325, Col. 5 M.

¶ 3. Plaintiff who was injured when he fell into a highway excavation five feet long, three feet wide and four feet deep made by gas company's employees on crosswalk at street intersection in the course of repairing a gas leak in a transmission main, **held** entitled to damages from the gas company on ground the company was negligent in failing to take adequate precautions to warn person using the sidewalk at night of the excavation it had made in close proximity to the curb. The presence of stanchions located five feet apart with a piece of white tape an inch in width stretched between them was not a "fence or railing" within meaning of Administrative Code § 82d-3.0, requiring such a fence or railing about an excavation as will prevent danger to persons traveling the streets.-Baer v. Consol. Edison Co., 130 (118) N.Y.L.J. (12-18-53) 1503, Col. 5 F.

¶ 4. Where the defendant had been issued a permit to excavate a sidewalk and as a result of the negligent backfilling of the excavation a child was caused to fall and sustain injuries and both the licensee and the City had been held liable, the City was entitled to recover over against the licensee.-Sims v. Consolidated Edison Co., 133 (107) N.Y.L.J. (6-2-55) 7, Col. 7 T.

¶ 5. A subcontractor in charge of installation of underground electrical conduit system for a utility, pursuant to a city permit, failed to erect suitable barriers and warnings and as a result a motorist ran into an excavation. **Held:** the City as well as the utility and the contractor was liable but the City could recover back against the utility and the contractor.-Williams v. Consolidated Edison Company, 143 (3) N.Y.L.J. (1-6-60) 11, Col. 7 M.

¶ 6. Work mentioned in Ad Cd §19-106 such as digging down, paving or obstructing a public street must be obtained under contract with the city or by permission of the city for the city to be liable. Petrucci v. City of New York, 167 Ad 2d 29 [1991].

**CASE NOTES FROM FORMER SECTION 19-105**

¶ 1. Court properly instructed jury that it could find some evidence of negligence from failure of defendant to place a suitable notice of obstructions in a conspicuous place even though the Department of Highways never prescribed the form of the notice since in the absence of a prescribed form the intent of the statute requires the posting of a reasonably suitable notice.-Shulman v. Consolidated Edison Co., 85 App. Div. 186 [1982].

¶ 2. Section 19-105 of the Administrative Code of the City of New York which requires the posting of notices regarding unsafe conditions and obstructions created by the excavation of roadways and/or sidewalk cuts is not unconstitutionally vague because the terms "unsafe conditions" and "obstructions" have an accepted meaning long recognized in law and life thereby giving sufficient notice to defendant as to what is required to avoid liability. People v. Consolidated Edison Co., 146 Misc. 2d 547.



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***** Current through December 2009 ****

*NYC Administrative Code 19-110*

Administrative Code of the City of New York

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§ 19-110 Liability for damage.

In all cases where any person shall engage in any activity for which a permit is required pursuant to this subchapter, such person shall be liable for any damage which may be occasioned to persons, animals or property by reason of negligence in any manner connected with the work.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-107)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692-7.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 50

(formerly § 82d-4.0)

**CASE NOTES FROM FORMER SECTION**

¶ 1. The City issued a permit for the opening of an area. The plaintiff fell over an obstruction of uneven cobblestone left by the excavation contractor. **Held:** the City was equally liable with the permit holder and the contractor, since the obstruction was noticeable for a month. However, the City was entitled to recover on its cross-complaint against the permit holder and the contractor, since the knowledge of the City, if any, was constructive.-Sobel v. the City of New York, 9 N.Y. 2d 187, 213 N.Y.S. 2d 36, 173 N.E. 2d 771 [1961].

¶ 2. Where city through its Department of Highways temporarily repaired potholes in area of accident but there was then a cave-in condition city was entitled to recover from co-defendant in the total amount of recoveries in favor of plaintiffs in their negligence action although city had constructive but not actual notice of the condition which caused the accident.-Meyer v. City of N.Y., 48 A.D. 2d 930, 370 N.Y.S. 2d 17 [1975].

¶ 3. City is not entitled to indemnification from the municipal transit authority pursuant to Ad Cd §19-107 which provides that those performing work for the city shall be answerable for damage from careless performance. City is not negligent because city did not contract or give permission for the work. Petrucci v. City of NY 167 Ad2d 29 [1991].

**CASE NOTES**

¶ 1. See Fernandez v. Highbridge Realty Assoc., 49 AD3d 318, 853 N.Y.S.2d 71 (1st Dept. 2008), reported as note 5 under § 7-210.



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***** Current through December 2009 ****

*NYC Administrative Code 19-111*

Administrative Code of the City of New York

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§ 19-111 Curbs.

All curbs for the support of sidewalks hereafter to be laid shall be of the material or materials, dimensions and construction required in department specifications for such work, which shall be prescribed by the commissioner and kept on file in his or her office.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-109)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692a-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 52

(formerly § 82d1-1.0)



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***** Current through December 2009 ****

*NYC Administrative Code 19-111*

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§ 19-111 Gutter stones. [Repealed]

**HISTORICAL NOTE**

Section repealed L.L. 104/1993 § 1, eff. Jan. 27, 1994

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692a-2.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 53

(formerly § 82d1-2.0)

Sub b amended chap 100/1963 § 53



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***** Current through December 2009 ****

*NYC Administrative Code 19-112*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

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§ 19-112 Ramps on curbs.

In the construction and installation of all new and reconstructed curbs at corner located street intersections and pedestrian crosswalks not located at street intersections, provision shall be made for the installation of the following: two ramps at corners located at street intersections and one ramp at pedestrian crosswalks not located at street intersections. Such ramps shall be no less than four feet wide and shall blend to a common level with the roadway. If a common level is unobtainable, then the lip of such ramps shall not exceed a maximum of five-eights of an inch and shall have a rounded edge. The slope of such ramp shall not exceed eight per cent. This section shall apply to all construction of new curbs and to all replacement of existing curbs. The commissioner shall have discretion to waive one of the two mandatory ramps at corners located at street intersections where any of the following obstacles exists preventing construction of such ramp within an intersection: fire hydrants, light poles, traffic signals, fire alarms, or free-standing police alarms, underground vaults, tunnels, utility maintenance holes (manholes), chambers or where the gradient of the street on which the ramp is to be located or an intersecting street exceeds a gradient of 1:8. The commissioner may waive the construction of both such ramps where the existence of underground vaults, tunnels, utility maintenance holes (manholes) and chambers would either prevent the safe construction of such ramps or render impossible the construction of such ramps to proper specifications without removal of said underground installations. A certification to such effect shall be made part of the engineering design documents for such construction, and a copy thereof shall be filed with the city clerk. Curbs for non-pedestrian routes, such as, but not limited to, service paths for highways and pedestrian restricted traffic islands shall not be subject to the provisions of this section.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-110)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692a-1.1 added LL 51/1975 § 1



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*NYC Administrative Code 19-113*

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CHAPTER 1 STREETS AND SIDEWALKS

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§ 19-113 Construction generally.

Streets of twenty-two feet in width and upward shall have sidewalks on each side thereof. The materials and construction of streets, including the width of the sidewalks thereon, shall fully conform to department specifications for such work, all of which shall be prescribed by the commissioner and kept on file in his or her office.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692a-4.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 55

(formerly § 82d1-4.0)



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***** Current through December 2009 ****

*NYC Administrative Code 19-114*

Administrative Code of the City of New York

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§ 19-114 Excavations or embankments near landmarks.

The commissioner shall cause a covenant to be incorporated in all contracts hereafter made by him or her for constructing, regulating or repairing any street, requiring the contractor to obtain the permit required pursuant to section 3-508 of the code and to take such other precautions for the care and preservation of monuments, bolts and other landmarks as the commissioner may direct.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692b-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 103

(formerly § 82d7-23.0 sub b)

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***** Current through December 2009 ****

*NYC Administrative Code 19-115*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-115 Paving, generally.

All streets shall be paved and arched in full accordance with department specifications for such work, which shall be prescribed by the commissioner and kept on file in his or her office.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692c-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 60

(formerly § 82d3-1.0)



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-116*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-116 Paving by abutting owners.

The commissioner may issue a permit to allow any person or persons to pave the street opposite to his, her or their property, where the same shall extend from the intersection of one cross street to the intersection of another. Such work shall be done in conformity with the rules and specifications of the commissioner and subject to such conditions as he or she may impose.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692c-2.0 added chap 929/1937 § 1

Amended LL 19/1959 § 1

Renumbered and amended chap 100/1963 § 61

(formerly § 82d3-2.0)



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***** Current through December 2009 ****

*NYC Administrative Code 19-117*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-117 Licensing of vaults.

a. Limitation. It shall be unlawful for any person to erect or build, or cause or permit any vault to be made without a license issued by the commissioner pursuant to this section or a revocable consent issued pursuant to chapter fourteen of the charter and the rules adopted by the commissioner pursuant thereto. All vaults shall be constructed in accordance with the provisions of the building code of the city of New York. A license issued pursuant to this section shall not authorize the construction of a vault which extends further than the line of the sidewalk or curbstone of any street.

b. Licenses. Every application for a license to erect a vault shall be in writing, signed by the person making the same, and shall state the intended length and width of such vault and the number of square feet of ground which is required therefor.

c. Compensation. Upon receiving such license the applicant therefor shall forthwith pay to the commissioner such sum as the commissioner shall certify in the license to be a just compensation to the city for such privilege, calculated at the rate of not less than thirty cents, nor more than two dollars, per foot, for each square foot of ground mentioned as required for such vault.

d. Measurement. In the case of a new vault, before the arching or covering thereof shall be commenced, the person to whom the license for such vault shall have been granted shall cause the same to be measured by a city surveyor. Such surveyor shall deliver to the commissioner, a certificate, signed by the surveyor, specifying the

dimensions of the vault. The certificate shall be accompanied by a diagram showing the square foot area of the vault, including its sustaining walls, and indicating its location relative to the building and curb lines and to the nearest intersecting street corner. In the case of an existing vault, the person claiming the right to the use thereof shall furnish a like certificate and diagram in respect thereof, but in such case the measurement shall exclude the sustaining walls.

e. Refunds. If, from subsequent measurements, it shall appear that less space has been taken than that paid for, the licensee shall be entitled to receive a certificate from the commissioner showing the difference. Upon the presentation of such certificate of difference to the comptroller, the comptroller shall pay a rebate to the licensee, the amount of which shall be the difference in money between the space fee originally paid and the fee for space actually taken.

f. Unauthorized encroachments. If it shall appear that the vault or cistern occupies a grater number of square feet than shall have been so paid for, the owner thereof shall, in addition to the penalty imposed for such violation pursuant to section 19-149 or 19-150 of this subchapter, forfeit and pay twice the sum previously paid for each square foot of ground occupied by the vault over and above the number of square feet paid for as aforesaid.

g. Responsibility. The master builder who shall complete or begin the construction of a vault, and the owner or person for whom the same shall be excavated or constructed shall be subject to the provisions and payments of this section and sections 19-118, 19-119, and 19-120 of this subchapter and to the penalties for violations thereof, severally and respectively.

h. Exemption. Openings over which substantial and securely fixed gratings of metal or other noncombustible material have been erected in accordance with the provisions of this section and sections 19-118, 19-119 and 19-120 of this subchapter, shall be exempted from payment of fees for licenses for vaults, provided such openings be used primarily for light and ventilation, and provided such gratings are of sufficient strength to sustain a live load of three hundred pounds per square foot and are constructed with at least forty percent of open work.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692e-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 62

(formerly § 82d5-1.0)

Sub a amended LL 76/1968 § 46

Sub i added LL 54/1977 § 62

**CASE NOTES FROM FORMER SECTION**

¶ 1. The right of the property owner to maintain a vault under the sidewalk in front of the premises is a temporary privilege revocable at will by the City, and may be converted into a nuisance whenever municipal authorities exercise the power to direct its removal.-Rosenthal v. West, 78 N.Y.S. 2d 398 [1948], rev'd on other grounds, 274 App. Div. 442, 84 N.Y.S. 2d 452 [1948].

¶ 2. Maintenance of vault under sidewalk in front of the premises constituting the subject matter of the contract of

sale, without payment of the license fee imposed by the City for the privilege of maintenance of the vault, was a violation of law, and, under contract clause requiring conveyance of the premises free of any violations "against or affecting the premises" it was the duty of the seller, and the buyer, to pay the balance due on the license.-Rosenthal v. West, 274 App. Div. 442, 84 N.Y.S. 2d 452 [1948].

¶ 3. Where the judgment established that the immediate cause of the injuries to plaintiff resulting from a fall into a broken and uncovered coal hole in front of defendant J's building was the affirmative wrongdoing of defendants D and O, who had backed their truck onto the sidewalk and over the coal hole, breaking the cover, and the City had been held liable for suffering an improper condition to continue after it knew or should reasonably have known about it, the City was guilty merely of passive negligence, and was entitled to be indemnified by defendants D and O. When the City authorized maintenance of the coal hole and granted a permit for that purpose, it did not thereby create an unreasonable danger to person or property, and was not thereby guilty of active negligence.-City of N.Y. v. Jordon, 123 (16) N.Y.L.J. (1-24-50) 291, Col. 7 F.



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***** Current through December 2009 ****

*NYC Administrative Code 19-118*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-118 Construction.

All vaults shall be constructed of materials conforming to the requirements of the building code of the city of New York, and so that the outward side of the grating or opening into the street shall be either within twelve inches of the outside of the curbstone of the sidewalk, or within twelve inches of the coping of the area in front of the house to which such vault shall belong.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692e-2.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 63

(formerly § 82d5-2.0)

Sub a amended LL 76/1968 § 47



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***** Current through December 2009 ****

*NYC Administrative Code 19-119*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-119 Vault openings; protection of.

It shall be unlawful for any person to remove or insecurely fix, or cause, procure, suffer or permit to be removed or to be insecurely fixed, so that the same can be moved in its bed, any grate or covering or aperture of any vault or chute under any street. However, the owner or occupant of the building with which such vault is connected, may remove such grate or covering for the proper purpose of such vault or chute. The opening or aperture shall be inclosed, while such grate or covering be removed, with a strong box or curb at least twelve inches high, firmly and securely made. Openings of more than two square feet of superficial area shall be inclosed at such times with strong railings not less than three feet high, to be approved by the commissioner. Such grates or coverings shall not in any case be removed until after sunrise of any day and shall be replaced before one-half hour after sunset.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692e-3.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 64

(formerly § 82d5-3.0)

**CASE NOTES FROM FORMER SECTION**

¶ 1. An action to recover for injuries sustained when plaintiff tripped over a lock two inches high on cellar door on sidewalk in front of defendant's premises, did not come within ordinance relating to vault roofs in sidewalks.-King v. Bredger, 256 App. Div. 1086, 11 N.Y.S. 2d 257 [1939].

**CASE NOTES**

¶ 1. The statute applies not only to vaults under a street but also to cellar doors under a sidewalk. Lowenstein v. The Normandy Group, LLC d/b/a Il Pomodoro Restaurant 2008 NY Slip Op. 4439, 2008 N.Y. App. Div. Lexis 4164 (App. Div. 1st Dept.).

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*NYC Administrative Code 19-120*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-120 Vault covers must afford secure footing.

The commissioner may order the removal and replacement of vault covers which are broken or present a slippery surface in the manner provided in the rules of the department.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692e-4.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 65

(formerly § 82d5-4.0)



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***** Current through December 2009 ****

*NYC Administrative Code 19-121*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-121 Construction and excavation sites; storage of materials and equipment on street.

a. Permit. It shall be unlawful for any person to obstruct, or cause to be obstructed, any portion of a street with construction materials or equipment, unless authorized by a permit issued by the commissioner.

b. Conditions. In addition to any other conditions which may be set forth in such permit or in the rules of the department, the following conditions shall apply:

1. Any permit granted pursuant to this section shall be posted in a conspicuous place on or near the material or equipment or kept on the site or in the designated field headquarters of the work with respect to which the permit was issued so as to be readily accessible to inspection.

2. Sidewalks, gutters, crosswalks and driveways shall at all times be kept clear and unobstructed, and all dirt, debris and rubbish shall be promptly removed therefrom. The commissioner may authorize encumbrance of the sidewalk with equipment or material in a manner which will not prevent the safe passage of pedestrians on such sidewalk.

3. The outer surface of such construction material or equipment shall be clearly marked with high intensity fluorescent paint, reflectors, or other marking which is capable of producing a warning glow when struck by the headlamps of a vehicle or other source of illumination.

4. All construction material and equipment shall have printed thereon the name, address and telephone number of the owner thereof.

5. In a street upon which there is a surface railroad, construction materials or equipment shall not be placed nearer to the track than five feet.

6. The street under such construction material or equipment shall be shielded by wooden planking, skids or other protective covering approved by the commissioner.

7. Construction material or equipment shall not obstruct a fire hydrant, bus stop or any other area as set forth in the rules of the department the obstruction of which would impair the safety or convenience of the public.

c. Removal of unauthorized obstructions. The commissioner may remove any construction material or equipment placed in or upon any street in violation of this section, the rules of the department or the terms or conditions of a permit issued pursuant to this section. If the identity and address of the owner is reasonably ascertainable, notice of the removal shall be sent to the owner within a reasonable period of time after the removal. If such material or equipment is not claimed within thirty days after its removal, it shall be deemed to be abandoned. If the equipment is a vehicle, its disposition shall be governed by section twelve hundred twenty-four of the vehicle and traffic law. All other unclaimed material or equipment may be sold at public auction after having been advertised in the City Record and the proceeds paid into the general fund or such unclaimed material or equipment may be used or converted for use by the department or by another city agency or by a not-for-profit corporation engaged in the construction of subsidized housing. Material or equipment removed pursuant to this subdivision shall be released to the owner or other person lawfully entitled to possession upon payment of the costs of removal and storage as set forth in the rules of the department and any fines or civil penalties imposed for the violation or, if an action or proceeding for the violation is pending in court or before the environmental control board, upon the posting of a bond or other form of security acceptable to the department in an amount which will secure the payment of such costs and any fines or civil penalties which may be imposed for the violation.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

(formerly §§19-122, 19-125, 19-147)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692f-1.0 added chap 929/1937 § 1

Sub f added LL 172/1939 § 1

Amended LL 74/1960 § 1

Renumbered and amended chap 100/1963 § 89

(formerly § 82d7-10.0)

Sub b pars 2, 3 added LL 9/1984 § 1

Sub f par a amended LL 9/1984 § 2

Formerly 19-125 dealt with contractors paving a street incumbering sidewalks with material without a permit.

Added by chap 907/1985 § 1 it was deleted by LL 104/1993 § 1 and generally incorporated into § 19-121. Section 19-125 was derived from § 692f-7.0 added chap 929/1937 § 1, amended LL 172/1939 § 2, renumbered and amended chap 100/1963 § 90 (formerly § 82d7-11.0).

Formerly 19-147 dealt with unlawfully taking up a sidewalk, but did not apply to persons making repairs. Added by chap 907/1985 § 1 it was deleted by LL 104/1993 § 1 and generally incorporated into § 19-121. Section 19-147 was derived from § 693-1.0 added chap 929/1937 § 1, renumbered chap 100/1963 § 58 (formerly § 82d1-7.0), Sub a amended chap 100/1963 § 58.

**CASE NOTES FROM FORMER SECTION 692f-1.0**

¶ 1. The Department of Highways does not have the power under the terms of this section to suspend a permit once validly issued.-People v. Psaty and Fuhrman, Inc., 39 Misc. 2d 435, 240 N.Y.S. 2d 830 [1963].

¶ 2. The owners of property under construction, obtained a permit for use of a roadway to store building materials and for use of a crane extending into the roadway. The permits were violated in that the crane extended too far into the roadway and building materials were stored in excess of the allowable 8 feet of the roadway. Summonses issued by police officers were served upon the individual who violated the Code. **Held:** civil penalty could be exacted from the permitttee who violated a non-delegable duty.-City of N.Y. v. Benenson, 41 Misc. 2d 20, 244 N.Y.S. 2d 653 [1963].

¶ 3. A civil penalty can be imposed upon an employee who violates this section and this sanction can be imposed even though he has not been criminally convicted for its violation as the legislature intended to provide both criminal sanctions and civil penalties. His prior acquittal of the criminal charge against him is not admissible in the subsequent civil action to prove innocence.-City of N.Y. v. Carolla, 48 Misc. 2d 140, 264 N.Y.S. 2d 408 [1965].

CASE NOTES FROM FORMER §19-122 ¶ 1. "Owner" of receptacles provided to builders for the collection of construction and demolition debris is not required to get street use permit pursuant to Ad Cd §19-122 because subdivision a requires a "builder" to obtain a permit as distinguished from the owner of the receptacle. Furthermore, such dumpsters must be proved to contain building debris and not just ordinary garbage. People v. Flag Container Service Inc., 150 Misc. 2d 523 [1991]. ¶ 2. Owners and builders can be held criminally liable by the terms of §19-122 which prohibits the placement of building equipment on asphalt pavement without protective planking violations of §19-122 can be made by "Any person . . .", §19-122(f). The failure of the permit to include planking requirement does not shield defendant from violating this requirement. People v. Allied Sanit. Inc., 156 Misc. 2d 85 [1993].

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-122 Removal of debris.

Any person other than the commissioner of environmental protection or the commissioner of design and construction, who may hereafter pave or cause to be paved any street, shall remove the sand, dirt, rubbish or debris from such street and every part thereof, within seven days after the pavement shall have been completed. In addition to any penalties which may be imposed for violation of this section, either commissioner may cause such sand, dirt, rubbish or debris to be removed at the expense of the party neglecting or refusing so to do, who shall be liable for the amount expended by the city. This section shall be so construed as to apply to the removal of all sand, dirt, rubbish or debris collected in any part of any and all streets covered by any pavement so done or laid, or excavation that may have been made, or other work done in pursuance thereof.

**HISTORICAL NOTE**

Section amended L.L. 77/1995 § 14, eff. Nov. 23, 1995.

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-123)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692f-2.0 added chap 929/1937 § 1

Amended LL 50/1942 § 4

Renumbered and amended chap 100/1963 § 79

(formerly § 82d6-11.0)



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***** Current through December 2009 ****

*NYC Administrative Code 19-123*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-123 Commercial refuse containers.

It shall be unlawful for any person using a commercial refuse container or the owner or lessee thereof to place or to permit the placement of such container on any street unless the owner of such container has obtained a permit therefor from the commissioner and unless such container is in compliance with the provisions of this section and the rules of the department in relation thereto. Commercial refuse containers may be placed temporarily on the street for such purposes and in such manner as the commissioner shall prescribe. Such containers shall not be used for the deposit of putrescible waste. The name and address of the owner of the container and the permit number shall be posted on the container in the manner provided in the rules of the department. The container shall be painted with a phosphorescent substance, in a manner to be set forth in the rules of the department, so that the dimensions thereof shall be clearly discernible at night. The street under such container shall be shielded by wooden planking, skids or other protective covering approved by the commissioner. The provisions of this section which require the owner of a container to obtain a permit prior to the placement of such container on the street shall not apply to containers which are specifically authorized to be placed on the street under a permit issued pursuant to section 19-121 of this subchapter.

**HISTORICAL NOTE**

Section added L.L. 104/1993 § 1, eff. Jan. 27, 1994.

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***** Current through December 2009 ****

*NYC Administrative Code 19-124*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-124 Canopies.

a. Permit required. It shall be unlawful to erect or maintain a canopy over the sidewalk without a permit granted by the commissioner, and unless such canopy is erected and maintained in accordance with this section and the rules of the department. Such canopies may be erected and maintained:

1. In connection with the entrance to a building or place of business within a building by or with the consent of the owner of the building.

2. In connection with a sidewalk cafe licensed by the commissioner of consumer affairs. Such canopies shall be constructed of a noncombustible frame, covered with flameproof canvas or cloth, approved slow-burning plastic, sheet metal or other equivalent material, securely fastened to the face of the building and supported by posts in the ground or in the sidewalk, located between the building line and the curb line, and not less than eight feet above the sidewalk.

b. Permit conditions. A permit may be issued by the commissioner to erect and maintain a canopy over the sidewalk of any street, in accordance with the rules of the department if deemed by the commissioner as adequate in respect to public safety and convenience and the special circumstances of the particular street or streets. Evidence of the issuance of such permit in a form prescribed by the commissioner shall be displayed at all times and in such manner as the commissioner may direct. No such permit may be issued in streets listed as "restricted streets" in the rules of the department, nor where such permit would extend a non-conforming use in a residence district, as defined by the zoning

resolution of the city.

c. Permit fees. Prior to the issuance of such permit, each applicant shall pay to the commissioner an annual fee as set forth in the rules of the department, except that the fee for a permit for a canopy in connection with a sidewalk cafe licensed by the commissioner of consumer affairs shall be twenty-five dollars.

d. Term; transferability.

1. Each permit shall expire one year from the date of issuance thereof unless sooner revoked by the commissioner.

2. A permit issued hereunder shall not be transferable from person to person or from the location for which it is originally issued.

e. Advertising prohibited. It shall be unlawful to paint, print, stencil or otherwise erect, attach or maintain any advertising sign, picture, flag, banner, side curtain or other device upon any canopy except that it shall be lawful to paint, imprint or stencil directly upon a canopy, within the character and area limitations prescribed by the zoning resolution of the city, the house or street number and/or firm name or duly filed trade name limited to identification and excluding any descriptive words contained in such firm name or duly filed trade name tending to advertise the business conducted in such premises.

f. Obstructing of egress prohibited. No part of any canopy shall be located beneath a fire escape or so located as to obstruct operation of fire escape drop ladders or counterbalanced stairs or so as to obstruct any exit from a building.

g. Violations. The owner or agent of any building and the owner, lessee, tenant, manager or agent in charge of any portion of a building for the use or benefit of which an awning or canopy is erected or maintained shall be liable for a violation of this section.

h. Rules. The commissioner may, except as otherwise provided by law, make rules for the design, construction and maintenance of canopies within the lines of any street and for the removal, storage and disposal of unauthorized canopies as he or she may deem necessary for the safety and convenience of the public.

i. Removal of unauthorized canopies. 1. Notwithstanding any provision of law the commissioner may serve an order upon the owner of any premises requiring such owner to remove or to cause to be removed any unauthorized canopy fastened to or erected in front of his or her building, within a period to be designated in such order. Upon the owner's failure to comply with such order as and within the time specified therein, the department may remove such canopy or cause the same to be removed, the cost of which shall be due and payable and shall constitute a lien against the premises to which such canopy may be attached or in front of which it may be erected when the amount thereof shall have been definitely computed by such department and an entry of the amount thereof shall have been entered in the office of the city collector in the book in which such charges against the premises are to be entered. A notice thereof, stating the amount due and the nature of the charge shall be mailed by the city collector, within five days after such entry, to the last known address of the person whose name appears on the records in the office of the city collector as being the owner or agent or as the person designated by the owner to receive tax bills, or where no name appears, to the premises addressed to either the owner or the agent. If such charge is not paid within ninety days from the date of entry, it shall be the duty of the city collector to collect and receive interest thereon at the rate that would be applicable to a delinquent tax on such property, to be calculated to the ate of payment from the date of entry. Such charge and the interest thereon shall continue to be, until paid, a lien on the premises. Such charge and interest shall be collected and the lien thereof may be foreclosed in the manner provided by law for the collection and foreclosure of the lien of such taxes, sewer rents, sewer surcharges and water rents due and payable to the city, and the provisions of law applicable to the collection and foreclosure of the lien of such taxes, sewer rents, sewer surcharges and water rents shall apply to such charge and the interest thereon and the lien thereof.

2. Service of an order upon an owner pursuant to the provisions of this section shall be made personally upon such owner or by certified mail addressed to the last known address of the person whose name appears upon the records in the office of the city collector as being the owner of the premises or as the agent of such owner or as the person designated by the owner to receive the tax bills or, if no such name appears, at the address set forth as the address of the owner in the last recorded deed with respect to such premises. A copy of such order shall also be filed in the clerk's office of each county where the property is situated and posted in a conspicuous place on the premises.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692f-6.0 added chap 929/1937 § 1

Sub a amended LL 18/1939 § 1

Sub a amended LL 41/1957 § 1

(Drop awnings provision LL 41/1957 § 2)

Renumbered and amended chap 100/1963 § 83

(formerly § 82d7-4.0)

Amended LL 32/1968 § 6

Amended LL 8/1974 § 2

**CASE NOTES FROM FORMER SECTION**

¶ 1. Plaintiff, who proved that defendant's metal awning bar which he struck was not six feet in the clear above the sidewalk as required by Administrative Code § 82d7-4.0, and that defendant had knowledge of such defective condition for at least three or four days before the accident, made out a prima facie case, and the issues should have been submitted to the jury.-Steinhardt v. Winter, 264 App. Div. 232, 35 N.Y.S. 2d 231 [1942].

¶ 2. City was not enjoined from enforcing provisions of the Administrative Code against an awning maintained by plaintiff for advertising purposes, on ground that, although awning was maintained in violation of law, the City's method of enforcement of laws involved was unconstitutional. The City apparently followed a policy of enforcing alleged violations of law whenever such were called to its attention. There was no showing that the manner of enforcement was intentionally unequal or discriminatory.-Park Check Cashiers, Inc. v. City of N.Y., 149 (8) N.Y.L.J. (1-11-63) 15, Col. 3 F.

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*NYC Administrative Code 19-125*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-125 Posts and poles.

a. General provisions. It shall be unlawful for any person to erect any post or pole in any street unless under a permit or revocable consent of the commissioner.

b. Flagpole sockets. It shall be permissible, by and with a permit of the commissioner and with the permission of the owners of abutting property, for any organization of military, naval and marine war veterans to place in sidewalks near the curb, at suitable distances apart, sockets to be used only for the placing therein of stanchions or poles on which to display American flags to be used on patriotic occasions, public celebrations, or in connection with public parades.

c. Barber poles. The commissioner may grant permits for the placement of barber poles, not exceeding eight feet in height above the sidewalk level, and other emblematic signs within the stoop-lines or fastened to the railing of any stoop, by or with the consent of the occupant of the ground floor thereof, but not beyond five feet from the house line or wall of any building where the stoop-line extends further, except on streets where the stoop-lines have been abolished.

d. Ornamental lamp-posts. It shall be permissible by and with a revocable consent granted by the commissioner and with the permission of the owner of the abutting property to install ornamental posts, surmounted by lamps, on sidewalks, near the curb in front of hotels, places of worship, theatres, railroad stations, places of business, apartment houses and places of public assemblage. No such post shall exceed in dimensions at the base more than eighteen inches in diameter, if circular in form, or, if upon a square base, no side thereof shall exceed eighteen inches. Each bulb

installed and maintained on each of the lamp-posts to be erected shall be lighted and remain lighted every night, during the hours in which public street lamps are illuminated. The installation and maintenance of such poles and lamps and the power supplied shall be at the expense of the person to whom the consent is granted.

e. Notwithstanding any provision of law to the contrary, any business subject to the provisions of subdivision a of this section, and any organization of military, naval and marine war veterans subject to the provisions of subdivision b of this section which displays the flag of the United States on its property or on patriotic occasions, public celebrations, or in connection with public parades shall be required to obtain a permit or revocable consent for the erection of a post or pole for such display but shall be exempt from any fee normally charged by the department for the maintenance or erection of a post, flagpole or flagpole socket for that purpose.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-126)

Section added Chap 907/1985 § 1

Subd. e added L.L. 31/1998 § 1, eff. July 13, 1998.

**DERIVATION**

Formerly § 692f-8.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 91

(formerly § 82d7-12.0)

Subs a, b amended chap 100/1963 § 91

Sub d added LL 54/1977 § 63

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-126*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-126 Building, structure and crane moving.

a. It shall be unlawful for any person to use, move, or remove, or to cause or permit to be used, moved or removed, or to aid or assist in using, moving or removing, any building, structure, or crane, used in connection with the construction, repair or demolition of buildings or other structures within the building line into, along or across any street, without a permit from the commissioner.

b. The applicant for such a permit, where there are car tracks or overhead wire construction, must obtain and file with the application the consent of the company affected.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-128)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692f-10.0 added chap 929/1937 § 1

Amended LL 3/1941 § 1

Renumbered and amended chap 100/1963 § 93

(formerly § 82d7-14.0)

**CASE NOTES FROM FORMER SECTION**

¶ 1. The regulatory provisions of this section did not prohibit the driving of a crane from place to place. The provisions are limited to the movement of a crane on a construction or demolition site only.-People v. Blasoff, 138 (103) N.Y.L.J. (11-26-57) 7, Col. 6 T.



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***** Current through December 2009 ****

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-127 Use of hand trucks on the streets.

It shall be unlawful for any person to use hand trucks for commercial purposes upon any street unless each hand truck shall have attached thereon a sign or plate displaying the name and address of the owner of the hand truck, in letters not less than one inch in size.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-130)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692f-11.0 added LL 92/1955 § 1

Renumbered chap 100/1963 § 95

(formerly § 82d7-15.1)

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-128 Public telephone booths. [Repealed]

**HISTORICAL NOTE**

Section repealed L.L. 68/1995 § 1, eff. Mar. 2, 1996. Provisions transferred to §§ 23-401-23-408

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994 (formerly §19-131)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692f-12.0 added LL 78/1959 § 1

Renumbered chap 100/1963 § 96 (formerly § 82d7-15.2)

Sub b amended chap 100/1963 § 96



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***** Current through December 2009 ****

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-128 Damaged or missing signs.

a. For the purposes of this section, the phrase "priority regulatory sign" shall mean a stop sign, yield sign, do not enter sign, or one way sign.

b. The department shall maintain a log of notices regarding priority regulatory signs that are missing or damaged to the extent that any such sign is not visible or legible to a motorist who must obey or rely upon such sign. Such log shall include the date and time such notice was received and the date and time on which such priority regulatory sign or one way sign was repaired or replaced, or the date on which a determination was made that repair or replacement was not warranted and the reason for such determination.

c. The department shall within three business days of receiving notice that a stop sign, yield sign or do not enter sign is missing or damaged to the extent that such sign is not visible or legible to a motorist who must obey or rely upon such sign either (i) repair or replace such sign or (ii) make a determination that repair or replacement is not warranted.

d. The department shall within seven business days of receiving notice that a one way sign is missing or damaged to the extent that such sign is not visible or legible to a motorist who must obey or rely upon such sign either (i) repair or replace such sign or (ii) make a determination that repair or replacement is not warranted.

**HISTORICAL NOTE**

Section added L.L. 49/2007 § 1, eff. Jan. 7, 2008.



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***** Current through December 2009 ****

*NYC Administrative Code 19-128.1*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-128.1 Newsracks.

a. Definitions. For purposes of this section, the following terms shall have the following meanings:

1. "Newsrack" shall mean any self-service or coin-operated box, container or other dispenser installed, used or maintained for the display, sale or distribution of newspapers or other written matter to the general public.

2. "Person" shall mean a natural person, partnership, corporation, limited liability company or other association.

3. "Sidewalk" shall mean that portion of a street between the curb lines or the lateral lines of a roadway and the adjacent property lines, but not including the curb, intended for the use of pedestrians.

4. "Crosswalk" shall mean that part of a roadway, whether marked or unmarked, which is included within the extension of the sidewalk lines between opposite sides of the roadway at an intersection.

5. "Crosswalk area" shall mean that area of the sidewalk bounded by the extension of the lines of a crosswalk onto the sidewalk up to the building or property line.

6. "Corner area" shall mean that area of a sidewalk encompassed by the extension of the building lines to the curb on each corner.

7. "Board" shall mean the environmental control board of the city of New York.

8. "Close proximity" shall mean a distance adjacent to an area designed to facilitate safe ingress or egress that will reasonably permit and protect such safe ingress or egress.

b. Requirements. It shall be a violation for any person to place, install or maintain a newsrack on any sidewalk unless such newsrack is in compliance with the provisions of this section.

1. The maximum height of any newsrack containing a single publication shall be fifty inches. The maximum width of any such newsrack shall be twenty-four inches. The maximum depth of any such newsrack shall be twenty-four inches.

2. No newsrack shall be used for advertising or promotional purposes, other than announcing the name and/or website of the newspaper or other written matter offered for distribution in such newsrack.

3. Each newsrack used to sell newspapers or other written matter shall be equipped with a coin return mechanism in good working order so as to permit a person to secure a refund in the event that the newsrack malfunctions.

4. The owner or person in control of each newsrack shall affix his or her name, address, telephone number, and email address, if any, on the newsrack in a readily visible location and shall conform such information to any changes required to be reported to the department in accordance with the provisions of subdivision c of this section. In no event shall a post office box be considered an acceptable address for purposes of this paragraph.

5. Subject to the limitations set forth in this section, newsracks shall be placed near a curb.

6. A newsrack shall not be placed, installed or maintained: (a) within fifteen feet of any fire hydrant; (b) in any driveway or within close proximity of any driveway; (c) in any curb cut designed to facilitate street access by disabled persons or within two feet of any such curb cut; (d) within close proximity of the entrance or exit of any railway station or subway station; (e) within any bus stop; (f) within a crosswalk area; (g) within a corner area or within five feet of any corner area; (h) on any surface where such installation or maintenance will cause damage to or will interfere with the use of any pipes, vault areas, telephone or electrical cables or other similar locations; (i) on any cellar door, grating, utility maintenance cover or other similar locations; (j) on, in or over any part of the roadway of any public street; (k) unless eight feet of sidewalk width is preserved for unobstructed pedestrian passage; (l) in any park or on any sidewalk immediately contiguous to a park where such sidewalk is an integral part of the park design, such as the sidewalks surrounding Central Park or Prospect Park; (m) on any area of lawn, flowers, shrubs, trees or other landscaping or in such a manner that use of the newsrack would cause damage to such landscaping; or (n) where such placement, installation or maintenance endangers the safety of persons or property. Any limitation on the placement or installation of newsracks pursuant to this paragraph shall be no more restrictive than necessary to ensure the safe and unobstructed flow of pedestrian and vehicular traffic, and otherwise to assure the safety of persons and property.

7. Every newsrack shall be placed or installed in a manner that will ensure that such newsrack cannot be tipped over.

c. Notification to city of location of newsrack. 1. (a) Where a newsrack has been placed or installed on a sidewalk before the effective date of this section, the owner or person in control of such newsrack shall, within sixty days after such effective date, submit to the commissioner a form identifying: (i) the address of such newsrack; (ii) the name of the newspaper(s) or written matter to be offered for distribution in such newsrack; and (iii) the name, address, telephone number, and email address of the owner or person in control of such newsracks; and representing that such newsracks comply with the provisions of this section.

(b) Any other owner or person in control of a newsrack shall, prior to placing or installing such newsrack on a

sidewalk, submit to the commissioner a form providing the information in clauses (ii) and (iii) of subparagraph (a) of this paragraph.

2. Subsequent to the initial notification requirements set forth in paragraph one of this subdivision, the owner or person in control of any newsrack shall submit the information set forth in subparagraph a of such paragraph once a year to the commissioner in accordance with a notification schedule to be established by the commissioner. However, if the number of newsracks owned or controlled by such owner or person increases or decreases by ten percent or more of the number of newsracks that have been included in the most recent notification required to be submitted by such owner or person, such owner or person shall also be required to submit the information set forth in such paragraph within seven days of such change, and provided, further, that such owner or person shall advise the department of any change in his or her name or address within seven days of such change.

3. Notification to the city, as required by paragraphs 1 and 2 of this subdivision, may be submitted to the department electronically.

d. Indemnification and insurance. 1. Each person who owns or controls a newsrack placed or installed on any sidewalk shall indemnify and hold the city harmless from any and all losses, costs, damages, expenses, claims, judgments or liabilities that the city may incur by reason of the placement, installation or maintenance of such newsrack, except to the extent such damage results from the negligence or intentional act of the city.

2. Each person who owns or controls a newsrack on any sidewalk shall maintain a general liability insurance policy naming the city of New York, and its departments, boards, officers, employees and agents as additional insureds for the specific purpose of indemnifying and holding harmless those additional insureds from and against any and all losses, costs, damages, expenses, claims, judgments or liabilities that result from or arise out of the placement, installation and/or the maintenance of any newsrack. The minimum limits of such insurance coverage shall be no less than three hundred thousand dollars combined single limit for bodily injury, including death, and property damage, except that any person who maintains an average of one hundred or more newsracks at any one time shall maintain such minimum insurance coverage of one million dollars. An insurance certificate demonstrating compliance with the requirements of this subdivision shall be submitted annually by December 31st to the commissioner by the person who owns or controls such insured newsracks. Should said policy be called upon to satisfy any liability for damages covered by said policy, the policy must be of such a nature that the original amount of coverage is restored after any payment of damages under the policy. Failure to maintain a satisfactory insurance policy pursuant to this subdivision or failure to submit an annual insurance certificate to the commissioner pursuant to this subdivision, shall be deemed a violation of this section subject to subparagraph b-1 of paragraph one of subdivision f of this section.

e. Maintenance, continuous use, repair and removal. 1. Any person who owns or is in control of a newsrack shall certify once every four months to the commissioner on forms prescribed by the commissioner that each newsrack under his or her ownership or control has been repainted, or that best efforts have been made to remove graffiti and other unauthorized writing, painting, drawing, or other markings or inscriptions at least once during the immediately preceding four month period. Such person shall maintain a log in which the measures and the dates and times when they are taken are recorded in accordance with a format approved or set forth by the commissioner. Such person shall maintain records for a period of three years documenting the use of materials, employees, contractors, other resources and expenditures utilized for the purpose of demonstrating the repainting or best efforts of such person to remove such graffiti or other unauthorized writing, painting, drawing, or other markings or inscriptions. Such person shall, solely for the purposes of complying with the provisions of this paragraph, make such log and such records, and only such log and such records, available to the department for inspection and copying during normal and regular business hours and shall deliver copies to the department upon its request. Such inspection may only be conducted by the department once per certification period. If the department determines that such certification, log and records do not accurately demonstrate that an owner or person in control of a newsrack has repainted or used best efforts for such purposes as required by this paragraph, or upon a determination by the department that an owner or such person failed to comply with any other provision of this paragraph, the department shall issue a notice of violation in accordance with subparagraph b-1 of

paragraph one of subdivision f of this section.

2. Any person who owns or is in control of a newsrack shall use best efforts to ensure that each newsrack under his or her ownership or control is not used as a depository for the placement of refuse and shall be required to remove any refuse placed within such newsrack within forty-eight hours of receipt of a notice of correction from the commissioner as provided in subparagraph a of paragraph one of subdivision f of this section regarding such condition.

3. In no event shall the owner or person in control of a newsrack fail to keep such newsrack supplied with written matter for a period of more than seven consecutive days without securing the door so as to prevent the deposit of refuse therein. In no event shall such newsrack remain empty for a period of more than thirty consecutive days.

4. Any newsrack that has been damaged or is in need of repair shall be repaired, replaced or removed by the owner or person in control of such newsrack within seven business days of receipt of a notice of correction from the commissioner as provided in subparagraph a of paragraph one of subdivision f of this section regarding such damage or need for repair. If such newsrack has been damaged, or if it is in a state of disrepair, such that it constitutes a danger to persons or property, it shall be made safe within a reasonable time following receipt of such a notice of correction from the commissioner regarding such condition.

5. Any damage to city property resulting from the placement, installation, maintenance or removal of a newsrack shall be repaired promptly by the owner or person in control of such newsrack. If a newsrack is removed from its location on a sidewalk, the owner or person in control of such newsrack shall be responsible for restoring the sidewalk and any other affected city property to the condition existing prior to installation of that newsrack.

f. Enforcement. 1. (a) Whenever any newsrack is found to be in violation of any provision of subdivision b of this section or paragraphs two, three, four or five of subdivision e of this section, the commissioner shall issue a notice of correction specifying the date and nature of the violation and shall send written notification, by regular mail, to the owner or person in control of the newsrack. In addition, the commissioner may send a copy of such notice of correction to a person designated by such owner or person to receive such notice, and/or the commissioner may send such notice by electronic mail to such owner or such person specifying the date and nature of the violation. However, failure to send a copy by regular or electronic mail will not extend the time period within which such owner or other person is required by any provision of this section to take action, nor will such failure result in the dismissal of a notice of violation issued pursuant to any provision of this section. The commissioner shall cause photographic evidence of such violation to be taken. Such evidence shall be sent by regular mail together with the notice of correction. Except as otherwise provided for the removal of refuse in paragraph two of subdivision e of this section, such person shall within seven business days from the date of receipt of notification via regular mail cause the violation to be corrected. For the purposes of this section, a notice of correction shall be deemed to have been received five days from the date on which it was mailed by the commissioner.

(b) If an owner or other person in control of a newsrack fails to comply with a notice of correction issued pursuant to subparagraph a of this paragraph or an order by the commissioner to remove served pursuant to paragraph three of this subdivision, a notice of violation returnable to the board shall be served on such owner or person in control of such newsrack. No notice of violation shall be issued for the failure to comply with a notice of correction issued pursuant to subparagraph a of paragraph one of this subdivision unless the commissioner has caused a second inspection of the violation to take place within a period of time that commences on the day after the applicable period for correcting such violation expires and ends fourteen days after such day. In addition, the commissioner may send to such owner or other person in control of such newsrack, by electronic mail, photographic evidence of such violation taken at such second inspection. Failure to send such photographic evidence by electronic mail will not result in the dismissal of a notice of violation issued pursuant to any provision of this section.

(b-1) Failure by an owner or a person in control of a newsrack to comply with subdivision c or d of this section, failure by such owner or person to certify or failure to accurately demonstrate that such owner or person has repainted

or used best efforts to remove graffiti and other unauthorized writing, painting, drawing, or other markings or inscriptions, as required by paragraph one of subdivision e of this section, shall be a violation and shall be subject to the applicable penalties provided in paragraph six of this subdivision. A proceeding to recover any civil penalty authorized by this subparagraph shall be commenced with service on such owner or person of a notice of violation returnable to the board. The commissioner shall not be required to issue a notice of correction before issuing or serving a notice of violation pursuant to this subparagraph.

(c) If the return date of a notice of violation issued pursuant to subparagraph b or b-1 of this paragraph is more than five business days after the service of such notice, the board shall, upon the request of the respondent, in person at the office of the board, provide a hearing on such violation prior to such return date and no later than five business days after the date of such request. At the time set for such hearing, or at the date to which such hearing is continued, the board shall receive all evidence relevant to the occurrence or non-occurrence of the specified violation(s), the compliance or noncompliance with any of the provisions of this section, and any other relevant information. Such hearing need not be conducted according to technical rules relating to evidence and witnesses. Oral evidence shall be taken only on oath or affirmation. Within five business days after the conclusion of the hearing, the board shall render a decision, based upon the facts adduced at said hearing, whether any violations of this section have occurred. The decision shall be in writing and shall contain findings of fact and a determination of the issues presented. The board shall send to the owner or person in control of the newsrack by regular mail, a copy of its decision and order.

2. (a) If the board renders a decision upholding the finding of a violation against the respondent upon default or after a hearing held pursuant to paragraph one of this subdivision, other than a decision finding a violation of the provisions of paragraph one of subdivision e of this section, and the violation is not remedied within seven days of receipt of the decision of the board, the commissioner or his or her designee is authorized to provide for the removal of such newsrack and any contents thereof to a place of safety. For purposes of this subparagraph, a decision shall be deemed to have been received five days from the date on which it was mailed. If such newsrack and any contents thereof are not claimed within thirty days after their removal by a person entitled to their return, they shall be deemed to be abandoned and may be either sold at a public auction after having been advertised in the City Record, the proceeds thereof being paid into the general fund, used or converted for use by the department or another city agency, or otherwise disposed of, and the owner or person in control shall be liable to the City for the costs of removal and storage and shall be subject to a civil penalty pursuant to subparagraph a of paragraph six of subdivision f of this section. Newsracks and the contents thereof that are removed pursuant to this subparagraph shall be released to the owner or other person lawfully entitled to possession upon payment of the costs for removal and storage and any civil penalty or, if an action or proceeding concerning the violation is pending, upon the posting of a bond or other form of security acceptable to the department in an amount that will secure the payment of such costs and any penalty that may be imposed hereunder.

(b) If the board renders a decision upholding the finding of a violation against the respondent for having failed to certify, or having failed to accurately demonstrate that such respondent repainted or used best efforts to remove graffiti and other unauthorized writing, painting, drawing, or other markings or inscriptions or having failed to comply with any other provision of paragraph one of subdivision e of this section, the board shall impose a penalty in accordance with subparagraph b of paragraph six of this subdivision.

3. The commissioner may, upon notice, serve an order upon the owner or other person in control of a newsrack requiring such person to remove or cause to be removed such newsrack within seven business days of receipt of such order where such removal is required because the site or location at which such newsrack is placed is used or is to be used for public utility purposes, public transportation, or public safety purposes, or when such newsrack unreasonably interferes with construction activities in nearby or adjacent buildings, or if removal is required in connection with a street widening or other capital project or improvement. If such person does not remove such newsrack within seven business days of receipt of such order, the provisions contained in subparagraphs b and c of paragraph one of this subdivision and subparagraph a of paragraph two of this subdivision regarding issuance of a notice of violation and alternatives for removal, storage, abandonment, disposal, and release, shall apply.

4. Notwithstanding any other provision of law to the contrary, if a newsrack has been deemed to have been abandoned in accordance with this paragraph, the commissioner, his or her designee, an authorized officer or employee of any city agency or a police officer is authorized to provide for the removal of such newsrack and it may either be sold at public auction after having been advertised in the City Record, the proceeds thereof being paid into the general fund, used or converted for use by the department or another city agency, or otherwise disposed of. A newsrack shall be deemed to have been abandoned for purposes of this paragraph if the name, address or other identifying material of the owner or other person in control of such newsrack is not affixed to such newsrack as required by paragraph four of subdivision b of this section and such owner or other person has not submitted to the commissioner the information required in clauses (ii) and (iii) of subparagraph a of paragraph one of subdivision c of this section.

5. (a) Where emergency circumstances exist and the commissioner or his or her designee gives notice to the owner or other person in control of a newsrack to remove such newsrack, such person shall comply with such notice. For the purposes of this paragraph, emergency circumstances shall mean circumstances which present an imminent threat to public health or safety.

(b) If any owner or other person in control of a newsrack does not remove such newsrack when directed to do so pursuant to the provisions of subparagraph a of this paragraph, or if circumstances are such that public safety requires the immediate removal of a newsrack and it is not reasonable to give the owner or other person in control of such newsrack notice prior to removal, the commissioner or his or her designee may provide for the removal of such newsrack to a place of safety. Unless an administrative proceeding brought pursuant to subparagraph c of this paragraph has terminated in favor of such owner or other person in control of such newsrack, such owner or other person in control of such newsrack may be charged with the reasonable costs of removal and storage payable prior to the release of such newsrack and the contents thereof.

(c) If an owner or other person in control of a newsrack fails to comply with a notice issued pursuant to subparagraph a of this paragraph to remove such newsrack, a notice of violation returnable to the board shall be served on such owner or person in control of such newsrack. If the newsrack has been removed by the city pursuant to subparagraph b of this paragraph, such notice of violation shall be served immediately after removal, and, if the return date of the notice of violation is more than five business days after the service of such notice, the board shall, upon the request of the respondent, in person at the office of the board, provide a hearing on such violation prior to such return date and no later than five business days after the date of such request. The hearing shall take place under the provisions set forth in subparagraphs b and c of paragraph one of this subdivision and a decision shall be rendered by the board within five business days after the conclusion of the hearing. If a decision is rendered at such hearing that emergency circumstances did not exist, such newsrack shall be returned within ten days to the location from which it was removed by the commissioner or his or her designee. If a decision is rendered against the respondent upon default or after a hearing that such emergency circumstances existed, such newsrack and the contents thereof shall be released to the owner or other person lawfully entitled to possession. If, after a board decision that removal was proper, such newsrack and any contents thereof are not claimed within thirty days after the date of removal by a person entitled to their return, such newsrack and any contents thereof shall be deemed abandoned and may be either sold at a public auction after having been advertised in the City Record, the proceeds thereof being paid into the general fund, used or converted for use by the department or another city agency, or otherwise disposed of.

6. (a) Any owner or person in control of a newsrack found to be in violation of any provision of this section shall, after a board decision has been issued upon default or after a hearing, be subject to a civil penalty in the amount of (i) no less than fifty dollars and no more than one hundred dollars for each violation for a specific newsrack of any of the provisions of paragraphs two, three, four or five of subdivision e of this section or paragraph four of subdivision b of this section, except that a person found in violation of any of such provisions after a decision of the board issued on default shall be subject to a penalty of no less than one hundred dollars and no more than five hundred dollars; (ii) no less than five hundred dollars and no more than four thousand dollars for each violation of paragraph one of subdivision c of this section; and (iii) no less than one hundred dollars and no more than five hundred dollars for each violation of paragraphs one, two, three, five, six and seven of subdivision b of this section.

(b) Any owner or person in control of one or more newsracks found by the board to have failed to certify, or to have failed to accurately demonstrate that such owner or person repainted or used best efforts to remove graffiti and other unauthorized writing, painting, drawing, or other markings or inscriptions, as required by paragraph one of subdivision e of this section, or failed to comply with any other requirements of such paragraph, or failed to comply with any provision of paragraph two of subdivision c of this section, or failed to maintain insurance as required by subdivision d of this section, shall be liable for a civil penalty determined in accordance with the number of newsracks such person owns or controls as follows:

Number of newsracks owned or controlled by such person A violation of paragraph one of subdivision e, paragraph two of subdivision c or subdivision d of this section

Up to and including ninety-nine newracks Two hundred fifty to five hundred dollars

More than ninety-nine and less than two hundred fifty newsracks Three hundred seventy-five to seven hundred fifty dollars

More than two hundred forty-nine and less than five hundred newsracks Seven hundred fifty to one thousand five hundred dollars

More than four hundred ninety-nine and less than seven hundred fifty newsracks One thousand one hundred twenty-five to two thousand two hundred fifty dollars

More than seven hundred forty-nine and less than one thousand newsracks One thousand five hundred to three thousand dollars

One thousand or more newsracks Two thousand to four thousand dollars

7. The commissioner shall remove or cause to be removed from any sidewalk for a period of three consecutive months, every newsrack and the contents thereof under the ownership or control of any person who repeatedly violates any provision or provisions of this subdivision. For purposes of this paragraph, a person shall be deemed to have repeatedly violated this section if such person has been determined by the board, upon default or after a hearing, to have violated the provisions of this section ten or more times within any six-month period and that such person has failed to pay three or more civil penalties imposed during that same time period. For purposes of this paragraph, a person shall also be deemed to have repeatedly violated this section if such person is determined by the board, upon default or after a hearing, to have failed to make the certification required by paragraph one of subdivision e of this section or to have failed to accurately demonstrate that such person repainted or used best efforts to remove graffiti and other unauthorized writing, painting, drawing, or other markings or inscriptions as required by such paragraph in each of two consecutive certification periods in any two year period or three times in any two-year period. The department shall maintain a record of all persons who repeatedly violate any provision or provisions of this subdivision. In the event that the commissioner removes or causes to be removed all newsracks and the contents thereof under the ownership or control of any person based upon this paragraph, such person shall be permitted to replace all such newsracks at the locations from which they were removed upon payment in full of all outstanding civil penalties imposed for violations of this section and the reasonable costs of removal and storage, provided that such newsracks meet the requirements of this section. If any newsracks or contents thereof removed pursuant to this paragraph are not claimed within thirty days after the expiration of the three-month removal period, such newsracks or the contents thereof shall be deemed abandoned and may be either sold at public auction after having been advertised in the City Record, the proceeds thereof being paid into the general fund, used or converted for use by the department or another city agency or otherwise disposed of.

8. In giving any notice of correction or serving any commissioners order required under this section, except as otherwise provided by law, the commissioner may rely on the validity of any address (a) posted on the newsrack pursuant to paragraph four of subdivision b of this section as the address of the owner or person in control of the

newsrack or (b) submitted to the department pursuant to subdivision c of this section, and shall provide such notice by regular mail. If the owner of a newsrack or person in control of a newsrack shall have failed to comply with paragraph four of subdivision b or with subdivision c of this section, the commissioner shall make reasonable efforts to ascertain the identity and address of the owner or person in control of such newsrack for the purpose of giving any required notice, and having done so, may take action as if any required notice had been given.

9. Nothing in this section shall preclude the immediate removal of a newsrack when otherwise authorized by law.

g. Severability. If any subdivision, paragraph, subparagraph, sentence or clause of this section is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this section.

**HISTORICAL NOTE**

Section added L.L. 23/2002 § 2, eff. Feb. 23, 2003. [See Note 1]

Subd. b par 4 amended L.L. 36/2004 § 1, eff. Sept. 10, 2004. [See Note 2]

Subd. c amended (Note: par 3 inadvertently omitted from amendment) L.L. 36/2004 § 2, eff. Sept. 10, 2004. [See Note 2]

Subd. d par 2 amended L.L. 36/2004 § 3, eff. Sept. 10, 2004. [See Note 2]

Subd. e amended L.L. 36/2004 § 4, eff. Sept. 10, 2004. [See Note 2]

Subd. f amended L.L. 36/2004 § 5, eff. Sept. 10, 2004. [See Note 2]

**NOTE**

1. Provisions of L.L. 23/2002:

Section 1. Declaration of legislative findings and intent. The Council finds that the unregulated placement and maintenance of newsracks on the City's sidewalks present an inconvenience and danger to the safety and welfare of persons using such sidewalks, including pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, traffic control and emergency services. Further, the proliferation of unregulated newsracks has a deleterious impact on the appearance of such sidewalks and the City in general. The Council recognizes, however, that the dissemination of newspapers and other written matter is in the public interest, and that any governmental action with respect to such dissemination must be consistent with the protection accorded a free press by the First Amendment to the United States Constitution. To accommodate these interests in a complementary and mutually advantageous manner, the Council adopts this local law.

. . . . . .

§ 3. Notwithstanding any other provision of law, a newsrack placed or installed on any sidewalk as of the effective date of this local law may continue to remain in such location until sixty days after the effective date of this local law. Thereafter, any such newsrack may remain in such location only if such newsrack is in compliance with the provisions of this local law.

§ 4. Notwithstanding the provisions of any other law, no person shall be subject to the imposition of criminal liability for any violation of section 19-128.1 of the administrative code of the city of New York as added by section two of this local law.

§ 5. This local law shall take effect one hundred and eighty days after its enactment into law, except that the commissioner of transportation shall be authorized to take such administrative actions deemed necessary to effectuate the provisions of this local law prior to its effective date.

2. Provisions of L.L. 36/2004:

§ 6. This local law shall take effect sixty days after its enactment into law, except that the commissioner of transportation shall be authorized to take such administrative actions deemed necessary to effectuate the provisions of this local law prior to its effective date.

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*NYC Administrative Code 19-129*

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CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-129 Board or plank walks.

It shall be unlawful for any person to construct or lay down in any street, a board or plank walk, except sidewalk bridges as defined in section 27-1021 of the code, without a permit from the commissioner.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-132)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692f-13.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 97

(formerly § 82d7-16.0)



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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-130 Balustrades.

It shall be unlawful for any person to place or to expose to show or for sale, upon any balustrade that now is or hereafter may be erected upon any street, any goods, wares, merchandise or manufacture of any description.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-135)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692f-16.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 100

(formerly § 82d7-20.0)



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*NYC Administrative Code 19-131*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-131 Restrictions on Clinton avenue.

a. The two strips of land, each twenty feet in width, which were added to each side of Clinton avenue in the borough of Brooklyn between Gates avenue and Willoughby avenue pursuant to chapter two hundred fifty-seven of the laws of eighteen hundred ninety-nine shall not be added to the traveled portion of Clinton avenue, but shall be reserved and preserved as ornamental courtyards for the benefit and improvement of such avenue.

b. Any building erected and completed before the first of March in the year eighteen hundred ninety-nine, or before that date so far erected that its foundations or walls were carried up so far as the level of the street, and any piazza or appurtenant structure erected before such date may remain or be completed with all rights as though this section had not been passed; but in case any such building is destroyed, or removed from such courtyard space, the right reserved therefor shall be at an end.

c. The several parts of such court-yard space as adjoin the several lots fronting thereon may be used and occupied by the owners of such lots respectively for the following purposes:

1. Grass, shade trees, shrubbery, statuary, fountains, walks, paths, pavements, sewer, gas, electric and other house connections, and low ornamental fences, and

2. Ingress and egress, and

3. Stoops, porches and piazzas, provided they are open at either end and are not less than ten feet from the line of such avenue as established prior to the enactment of chapter two hundred fifty-seven of the laws of eighteen hundred ninety-nine, and

4. Steps and approaches to a house, provided they are in usual form and do not interfere with the general intent of this section, and

5. Such other purposes as are usual and proper for a plot fronting on a street and appurtenant to a residence, hotel, apartment house or other dwelling-house.

d. Nothing shall be erected, done or allowed on such court-yard space, that will interfere with its open and ornamental character, or that is not in accordance with the above uses and purposes.

e. This section shall not affect the title, or the right to possession of the several lots or plots of land in such two strips of land, except as the use thereof is limited and restricted as provided in this section.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-137)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692h-2.0 added LL 42/1939 § 1

Renumbered chap 100/1963 § 68

(formerly § 82d6-1.1)



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§ 19-132 Restrictions on First place, Second place, Third place and Fourth place in the borough of Brooklyn.

The buildings to be erected upon the lots fronting upon first place, second place, third place and fourth place in the borough of Brooklyn, shall be built on a line thirty-three feet five inches and a quarter of an inch back from the sides or lines of such places as they are now established by the map of the city, and the intervening space of land shall be used for courtyards only.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-138)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692h-3.0 added LL 41/1939 § 1

Amended LL 50/1942 § 3

Renumbered chap 100/1963 § 69

(formerly § 82d6-1.2)

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SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-133 Removal of unauthorized projections and encroachments.

a. The commissioner may serve an order upon the owner of any premises requiring such owner to remove or alter any unauthorized projection or encroachment, on or in front of his premises, within a period to be specified in such order. Such order shall be served personally, or by leaving it at the house or place of business of the owner, occupant or person having charge of the house or lot in front of which the projection or encroachment may be, or by posting such order thereon.

b. At any time after the expiration of the time specified for that purpose in the order, if such encroachment or projection shall not then have been removed or altered, the commissioner may remove or alter or cause such encroachment or projection to be removed or altered at the expense of the owner or constructor thereof, who shall be liable to the city for all expenses that it may incur by such removal or alteration, together with the penalties prescribed by this subchapter for the violation of such order, to be recovered with costs of suit.

c. 1. In addition to any otheer remedies or penalties, whenever such removal, alteration, repair and restoration is undertaken by the commissioner he or she may certify separately the costs and expense of such removal, alteration, repair and restoration to the commissioner of finance. The commissioner of finance shall, upon the certificate of the commissioner, charge the amount of such costs and expenses against the property upon and with respect to which the work was performed. Every such charge shall be a lien upon the property or premises in respect to which the same shall have been made, which lien shall have priority over all other liens and incumbrances except taxes and assessments for

other public or local improvements, sewer rents, water rents and interest or penalty thereon levied or charged pursuant to law. Such lien shall be enforced in all respects in the manner provided by law for the enforcement of liens of taxes, assessments, sewer rents and water rents and interest or penalties thereon.

2. As an alternative to the remedy prescribed in paragraph one of this subdivision, the commissioner may in his or her discretion institute, through the corporation counsel, any appropriate action or proceeding at law against such owner for the recovery of the costs and expenses of such removal, alteration, repair and restoration, undertaken by the commissioner, as provided herein.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-140)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692h-5.0 added chap 929/1937 § 1

Sub c added LL 36/1956 § 1

Renumbered and amended chap 100/1963 § 74

(formerly § 82d6-6.0)

**CASE NOTES FROM FORMER SECTION**

¶ 1. Title to real property was not marketable where a certain stairway and other adjuncts of the property encroached upon a City street, even though the building proper was entirely within the metes-and-bounds description. A purchaser accepting such property would face the possibility of having great expense to remove the encroachments at any time upon demand of the Borough President.-Dukas v. Tolmach, 2 App. Div. 2d 57, 153 S. 2d 392 [1956].

¶ 2. Where the City contracted to sell premises free and clear of liens and encumbrances, a six-foot encroachment of a bay window over the street rendered the title unmarketable, and the purchaser could recover its down payment. The city's contention that any realistic use of the property by a purchaser would entail demolition of the buildings thereon, including the bay window, was rejected, in view of the fact that the notice of sale was silent on this question.-Ossining Associates, Inc. v. City of New York, 6 App. Div. 2d 621, 180 N.Y.S. 2d 43 [1958], aff'd 7 N.Y. 2d 865, 196 N.Y.S. 2d 997, 164 N.E. 2d 868 [1959].



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CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-134 Certain extensions and projections not removable.

a. If the front or other exterior wall of any building standing on the twenty-fifth day of May, eighteen hundred ninety-nine in the county of New York as then constituted, shall extend ten inches or less upon any street, such wall shall be removable, only if an action or proceeding for the removal of such wall was instituted by or in behalf of the city within the period of one year from such date, and notice of pendency of such action or proceeding was duly filed in the office of the clerk of the county of New York, and duly indexed against the owner and the premises. If a structure, or part of a building standing on the thirteenth day of May, eighteen hundred ninety-six, in such county, known as a baywindow or oriel window, shall extend twelve inches or less upon any street, such structure shall be removable only if an action or proceeding for its removal was instituted by or in behalf of the city within one year from such date, and notice of pendency of such action or proceeding was duly filed in the office of the clerk of the county of New York, and duly indexed against the owner and the premises.

b. If the front or other exterior wall of any building standing on the seventeenth day of May, eighteen hundred ninety-seven in the city of Brooklyn, as then constituted, shall extend four inches or less upon any street, such wall shall be removable only if an action or proceeding for the removal of such wall was instituted by or in behalf of the city of Brooklyn or its successor, within the period of one year from such date, and notice of pendency of such action or proceeding was duly filed in the office of the clerk of the county of Kings, and duly indexed against the owner of the premises.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-141)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692h-6.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 75

(formerly § 82d6-7.0)



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CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-135 Projections prohibited.

It shall be unlawful to build, erect or make areas, steps or other projections (except those indicated in subdivisions a, b, c, d and f of section 27-313 of the code) beyond the building line, upon the following streets:

1. Grand Boulevard and Concourse, in the borough of The Bronx, between East One hundred sixty-first street and Mosholu Parkway.

Exception. In that section of the Grand Boulevard and Concourse located within a business use district, areas (meaning open spaces below the ground level immediately outside of the structure and enclosed by substantial walls) may project beyond the building line at most one-fifteenth of the width of the street or a maximum of five feet, provided that every such area is covered over at the street level by an approved grating of metal or other incombustible material of sufficient strength to carry safely the pedestrian street traffic.

2. Newkirk avenue, between Flatbush avenue and Coney Island avenue, in the borough of Brooklyn, and on all streets in the borough of Brooklyn where projections are prohibited by law.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-142)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 692h-7.0 added chap 929/1937 § 1

Op par amended LL 4/1939 § 2

Renumbered chap 100/1963 § 76

(formerly § 82d6-8.0)

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CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-136 Obstructions.

a. It shall be unlawful for any person to hang or place any goods, wares or merchandise, or suffer, maintain or permit the same to be hung or placed, at a greater distance than three feet in front of his or her house, store or other building and a greater height than five feet above the level of the sidewalk, or to lease or permit any other person to use any space on the sidewalk located adjacent to such house, store or other building for the purpose of selling or displaying any merchandise.

1. Such an obstruction is hereby forbidden in front of a house, store or other building facing any street market, except upon a permit from the commissioner of small business services.

2. Wares or merchandise in process of loading, unloading, shipment, or being received from shipment, may be transferred from trucks or other vehicles over the sidewalk by the use of skids, or by backing up trucks on the sidewalks while so doing.

3. Household furniture may be temporarily placed on a sidewalk for the purpose of loading or unloading the same, during daylight and without unreasonable delay; but, in any such case a passageway shall be kept open within the stoopline of the building, abutting on the sidewalk so obstructed, for the free movement of pedestrians.

4. Storekeepers and peddlers may sell and display coniferous trees during the month of December and palm

branches, myrtle branches, willow branches, and citron during the months of September and October on a sidewalk; but in any such case the permission of the owner of the premises fronting on such sidewalk shall be first obtained and a passageway shall be kept open on the sidewalk so obstructed for the free movement of pedestrians.

5. Such an obstruction is hereby forbidden on Mermaid avenue between West 17th street and West 37th street, of the borough of Brooklyn.

6. Such an obstruction is hereby forbidden on all sidewalks less than ten feet in width in the fifth ward of the borough of Queens.

7. Such an obstruction is hereby forbidden from the building line on Avenue U between Coney Island avenue and Stuart street in the borough of Brooklyn.

8. Such an obstruction is hereby forbidden from the building line on Steinway street between 34th avenue and Astoria boulevard south in the borough of Queens.

9. Such an obstruction is hereby forbidden from the building line on 31st street between 23rd avenue and 21st avenue in the borough of Queens.

10. Such an obstruction is hereby forbidden from the building line on Ditmars boulevard between 28th street and Steinway street in the borough of Queens.

11. Such an obstruction is hereby forbidden from the building line on 23rd avenue between 28th street and Steinway street in the borough of Queens.

12. Such an obstruction is hereby forbidden from the building line on 30th avenue between 25th street (Crescent street) and 45th street in the borough of Queens.

13. Such an obstruction is hereby forbidden from the building line on 31st avenue between 25th street (Crescent street) and 45th street in the borough of Queens.

14. Such an obstruction is hereby forbidden from the building line on Broadway between 25th street (Crescent street) and 45th street in the borough of Queens.

15. Such an obstruction is hereby forbidden from the building line on 71st avenue between Queens boulevard and Burns street in the borough of Queens.

16. Such an obstruction is hereby forbidden from the building line on Austin street between Ascan avenue and Yellowstone boulevard in the borough of Queens.

17. Such an obstruction is hereby forbidden from the building line on Queens boulevard between Union turnpike and 63rd drive, in the borough of Queens.

18. Such an obstruction is hereby forbidden from the building line on 63rd drive between 9th street and Alderton street in the borough of Queens.

19. Such an obstruction is hereby forbidden from the building line on Myrtle avenue between Wyckoff avenue and Cooper avenue in the borough of Queens.

20. Such an obstruction is hereby forbidden from the building line on Fresh Pond road between Myrtle avenue and Metropolitan avenue in the borough of Queens.

21. Such an obstruction is hereby forbidden from the building line on Jamaica avenue between 177th street and

Queens boulevard in the borough of Queens.

22. Such an obstruction is hereby forbidden from the building line on 165th street betweeen 177th street and Queens boulevard in the borough of Queens.

23. Such an obstruction is hereby forbidden from the building line on New York boulevard between Archer avenue and Jamaica avenue in the borough of Queens.

24. Such an obstruction is hereby forbidden from the building line on Farmers boulevard between Liberty avenue and Merrick boulevard in the borough of Queens.

25. Such an obstruction is hereby forbidden from the building line on Montague street and the Promenade in the borough of Brooklyn.

26. Such an obstruction is hereby forbidden from the building line on Fulton street from Flatbush avenue to Adams street in the borough of Brooklyn.

27. Such an obstruction is hereby forbidden from the building line on Manhattan avenue from Greenpoint avenue to Nassau avenue, in the borough of Brooklyn.

28. Such an obstruction is hereby forbidden from the building line on Queens Boulevard between 57th Avenue and Grand Avenue in the borough of Queens.

b. It shall be unlawful for any person, directly or indirectly, to use any portion of a sidewalk or courtyard, established by law, between the building line and the curb line for the parking, storage, display or sale of motor vehicles.

c. 1. Except as otherwise hereinafter provided, in addition to the streets designated pursuant to subdivision a of this section, such an obstruction shall be prohibited on any street at such time where either general vending or food vending has been prohibited by local law or by the street vendor review panel pursuant to section 20-465.1 of this code and any rules promulgated thereunder.

2. As chairperson of the street vendor review panel established pursuant to section 20-465.1 of this code, the commissioner of the department of small business services or his or her designee may recommend that in specified areas of the city the provisions of subdivision a of this section or paragraph one of this subdivision which prohibit such obstructions shall not apply. In making such a recommendation, such commissioner or his or her designee shall consider (a) whether such obstructions are intrinsic to the operation of businesses within such areas and such businesses constitute an essential part of the unique historical and commercial nature of such area and (b) the measures which shall be taken to ameliorate the danger to the public health, safety and welfare in such areas which may be caused, in whole or in part, by the maintenance of such obstructions. Such commissioner may from time to time review, modify or revoke such recommendations. A recommendation by the commissioner or his or her designee pursuant to this paragraph shall be effective upon the report of such recommendation to the council and the approval of such recommendation by the council pursuant to local law. Notice of any recommendation made by the commissioner or his or her designee shall be published in the City Record and mailed to each community board not less than thirty days prior to such commissioner's report to the council.

3. Notice of any hearing held pursuant to paragraph two of this subdivision shall be published in the City Record and shall be mailed to each affected community board and the department of city planning not less than thirty days prior to the date of such hearing.

4. On the following streets where general vending has been prohibited by the street vendor review panel pursuant to section 20-465.1 of this code and any rules promulgated thereunder, the provisions of paragraph one of this

subdivision shall not apply:

(a) Thirteenth avenue between 39th street and 44th street in the borough of Brooklyn;

(b) Newkirk Plaza between Foster avenue and Newkirk avenue in the borough of Brooklyn;

(c) Eighty-sixth street between Bay Parkway and 23rd avenue in the borough of Brooklyn;

(d) West 4th street between Sixth avenue and Seventh avenue in the borough of Manhattan;

(e) Delancey street between Orchard street and Essex street in the borough of Manhattan.

5. The provisions of subdivision a of this section which prohibit the hanging or placement of any goods, wares or merchandise in front of a house, store or other building shall not apply to the following streets:

(a) Delancey street between Essex street and Allen street in the borough of Manhattan, provided that no goods, wares or merchandise be hung or placed at a greater distance than seven feet in front of a house, store or other building or a greater height than five feet above the level of the sidewalks;

(b) Rivington street between Essex street and Allen street in the borough of Manhattan, provided that no goods, wares or merchandise be hung or placed at a greater distance than five feet in front of a house, store or other building or a greater height than five feet above the level of the sidewalk;

(c) Essex street between Delancey street and Stanton street in the borough of Manhattan, provided that no goods, wares or merchandise be hung or placed at a greater distance than five feet in front of a house, store or other building or a greater height than five feet above the level of the sidewalk;

(d) Orchard street between Delancey street and Houston street in the borough of Manhattan, provided that no goods, wares or merchandise be hung or placed at a greater distance than five feet in front of a house, store or other building or a greater height than five feet above the level of the sidewalk;

(e) Avenue of the Americas between 25th street and 30th street in the borough of Manhattan, provided that no goods, wares or merchandise be hung or placed at a greater distance than three feet in front of a house, store or other building or at a greater distance than five feet from the curb towards the building line or a greater height than five feet above the level of the sidewalk.

d. In any area where such obstructions are not prohibited pursuant to the provisions of this section, the use of the public space for the display of goods, wares or merchandise shall, in addition to the restrictions set forth in subdivision a of this section, be subject to the following additional restrictions:

1. Except as otherwise provided in paragraph four of subdivision a of this section, only the goods, wares or merchandise of a commercial establishment which is located adjacent to such public space may be displayed in such public space.

2. Except as otherwise provided in paragraph four of subdivision a of this section, the goods, wares or merchandise displayed in the public space shall be of the same type or kind which are displayed within the premises of the commercial establishment located adjacent to such space.

e. 1. Where exigent circumstances exist and a police officer or other authorized officer or employee of any city agency gives notice to any person who displays any goods, wares or merchandise pursuant to subdivision a of this section to temporarily remove or otherwise disassemble such display, such person shall comply with such notice and shall not continue to maintain such display. For the purposes of this subdivision, exigent circumstances shall include, but not be limited to, unusually heavy pedestrian or vehicular traffic, the existence of obstructions in the public space,

and accident, fire or other emergency situation, a parade, demonstration or other such event at or near the location of such stand.

2. If any person who displays any goods, wares or merchandise pursuant to subdivision a of this section does not remove or otherwise disassemble such display when directed to do so by a police officer or other authorized officer or employee of the city in accordance with the provisions of paragraph one of this subdivision, such officer or employee is authorized to provide for the removal of such person's goods, wares or merchandise and such display to any garage, automobile pound or other place of safety, and the owner or other person lawfully entitled to the possession of such goods, wares and merchandise and such display may be charged with reasonable costs for removal and storage payable prior to the release of such goods, wares or merchandise and such display.

f. In the event that any seizure made pursuant to this section shall include any perishable items or food products which cannot be retained in custody without such items or food products becoming unwholesome, putrid, decomposed or unfit in any way, they may be delivered to the commissioner of health for disposition pursuant to the provisions of section 17-323 of the code.

g. Any person who sells or displays or who permits the sale or display of any goods, wares or merchandise in a public space in violation of any of the provisions of this section other than subdivision j of this section shall be considered to be an unlicensed general vendor or an unlicensed food vendor and shall be subject to the penalty and enforcement provisions of either subchapter twenty-seven of chapter two of title twenty or subchapter two of chapter three of title seventeen of this code, whichever is applicable. The provisions of sections 19-149, 19-150 and 19-151 shall not apply to such violations.

h. In addition to police officers, officers and authorized employees of the department, the department of consumer affairs, the department of health and mental hygiene, and the department of sanitation shall have the power to enforce the provisions of this section, other than subdivision j of this section, relating to the sale and display of goods, wares or merchandise in the public space.

i. The provisions of this section shall not be construed to apply to obstructions authorized in connection with temporary activities conducted under any permit issued by the city or any agency thereof.

j. Fixed stand coin operated rides. 1. For purposes of this subdivision, "fixed stand coin operated ride" shall mean a coin operated ride on a stationary stand which provides an up and down rocking and/or circular motion for the enjoyment of not more than two people at a time.

2. Notwithstanding any inconsistent provision of this section, a fixed stand coin operated ride may be placed on a sidewalk adjacent to any commercial establishment, including those located on particular streets or in particular locations enumerated in paragraphs five through twenty-eight of subdivision a of this section and any particular streets or locations added to subdivision a of this section by local law on or after January 16, 1996, provided that (i) no portion of such ride shall extend further than five feet from the building line and a width of at least nine and one-half feet shall be maintained on the sidewalk in front of such ride without obstructing pedestrian movement; (ii) such ride shall not be bolted to the sidewalk or chained to a lamppost or other street furniture; (iii) such ride shall be removed from its location on a sidewalk adjacent to a commercial establishment between the hours of 11:00 p.m. and 7:00 a.m. on every day of the week, including Sundays and holidays; and (iv) such ride is in compliance with any other law and with any rules promulgated by the commissioner for purposes of protecting the health, safety, convenience and welfare, and to safeguard the interests of the city.

3. No more than three fixed stand coin operated rides may be placed in front of any commercial establishment.

4. If a fixed stand coin operated ride is placed on the sidewalk in violation of the provisions of this subdivision, any authorized officer or employee of the department or the department of consumer affairs, or member of the police department, is authorized to provide for the removal of such fixed stand coin operated ride to any garage, automobile

pound or other place of safety, and such ride may be subject to forfeiture upon notice and judicial determination. If a forfeiture hearing is not commenced, the owner or other person lawfully entitled to the possession of such ride may be charged with reasonable costs for removal and storage payable prior to the release of such device; provided, however, that a fixed stand coin operated ride that is not claimed within thirty days after its removal shall be deemed to be abandoned and may be sold at a public auction after having been advertised in the City Record, the proceeds thereof being paid into the general fund or such unclaimed fixed stand coin operated ride may be used or converted for use by the department or by another city agency or by a not-for-profit corporation.

5. The provisions of subdivision e of this section and sections 19-149, 19-150 and 19-151 of this subchapter shall apply to fixed stand coin operated rides placed on sidewalks.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

(formerly §19-145)

Section added chap 907/1985 § 1.

Subd. a par 1 amended L.L. 34/2002 § 10, eff. Nov. 7, 2002.

Subd. a par 4 amended L.L. 17/1984.

Subd. a par 28 added L.L. 1/1995 § 1, eff. Jan. 5, 1995.

Subd c par 1 amended L.L. 14/1995 § 4, eff. Feb. 3, 1995.

Subd. c par 2 amended L.L. 34/2002 § 11, eff. Nov. 7, 2002.

Subd c par 2 amended L.L. 14/1995 § 4, eff. Feb. 3, 1995.

Subd c pars 4, 5 added L.L. 97/1985 § 2

(legislative findings, exemptions should be granted, L.L. 97/1985

§ 1).

Subd. d open par amended L.L. 14/1995 § 5, eff. Feb. 3, 1995.

Subd. g amended L.L. 72/1995 § 1, eff. Jan. 16, 1996.

Subd. h amended L.L. 22/2002 § 36, eff. July 29, 2002 and deemed in

effect as of July 1, 2002.

Subd. h amended L.L. 72/1995 § 1, eff. Jan. 16, 1996.

Subd. j amended L.L. 78/2001 § 1, eff. Dec. 27, 2001.

Subd. j added L.L. 72/1995 § 2, eff. Jan. 16, 1996.

Subd. j pars 2, 3 amended L.L. 4/1997 § 1, eff. Jan. 23, 1997.

**DERIVATION**

Formerly § 692h-10.0 added chap 929/1937 § 1

Sub a par 4 added LL 68/1938 § 1

Sub a par 4 added LL 39/1939 § 1

Sub a par 5 added LL 99/1939 § 1

Sub a par 6 renumbered LL50/1942 § 6

(formerly par 4 added LL 39/1939 § 1)

Sub a par 7 added LL 61/1951 § 1

Renumbered chap 100/1963 § 94

(formerly § 82d7-15.0)

Sub a pars 14-33 added LL 27/1979 § 1

Sub c added LL 18/1980 § 2

Amended LL 13/1984 § 2

(Note subs b, c omitted)

Sub c repealed LL 15/1984 § 3

Subs c, d, e, f, g, h added LL 15/1984 § 4

Sub a par 4 amended LL 17/1984 § 1

Sub i added LL 81/1984 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Charter § 42 (b), prohibiting City Council from passing any local law authorizing an obstruction or encroachment upon any street or sidewalk, except the temporary occupation thereof for erection, demolition or repair of buildings and for erection of booths, stands or displays or maintenance of sidewalk cafes under license, **held** to require licenses for all the enumerated classifications of temporary obstructions, including the erection of booths, stands or displays. Hence Administrative Code § 82d7-15.0(4), authorizing storekeepers and peddlers to sell and display Christmas trees, holiday decorations and toys on sidewalk upon obtaining consent of owner of abutting premises, was invalid as in violation of Charter § 42 (b), requiring a license.-People (McLees) v. Berner; People (Desmond) v. Traeg, 170 Misc. 501, 10 N.Y.S. 2d 339 [1939].

¶ 2. That defendants had displayed their wares upon the sidewalk without a license in reliance on § 82d7-15.0(4) did not exonerate them inasmuch as such statute was a nullity. The reliance, however, might be considered in connection with the penalty.-Id.

¶ 3. Administrative Code § 82d7-15.0, making it unlawful for any person to place goods or merchandise or "suffer, maintain or permit the same" to be placed at a greater distance than three feet in front of his house, store or other building, inferentially permitted the display of merchandise within the three-foot line, and such was the accepted construction.-People v. Friedman, 16 N.Y.S. 2d 925 [1940].

¶ 4. However, § 82d7-15.0 permits only the owner of the abutting premises to display merchandise, and the owner may not authorize others to maintain stands on a rental basis.-Id.

¶ 5. Furthermore, § 82d7-15.0 merely permits the **display,** but not the sale, of goods by the owner.-Id.

¶ 6. Administrative Code § 82d7-15.0, when construed so as to permit owners of stores to maintain stands in front thereof for display purposes but not to permit the use thereof by third persons, **held** not unconstitutional as discriminatory, since the use permitted was a reasonable one, as was also the classification of those entitled to such use, and furthermore it had had the legal sanction for more than a century.-Id.

¶ 7. Articles of furniture placed in front of store for display purposes by proprietor of second-hand furniture store, would not seem to be a "stand", which is defined as a "framework" on which something is supported or displayed, as article in a museum or goods in a store.-People v. Gerand, 21 N.Y.S. 2d 428 [1940].

¶ 8. Commissioner of Licenses was without authority to issue rules and regulations entirely restricting the displaying of goods on the sidewalks in certain areas, inasmuch as such power would permit the Commissioner to over-ride the specific provisions of the Administrative Code authorizing maintenance of displays of prescribed dimensions.-Id.

¶ 9. The parking of a truck across a sidewalk for an unnecessarily long time could be negligence. The owner of a coal truck parked about 45 minutes when it took only about 20 minutes to unload could have been liable for injuries suffered by an infant who walked into the road to get past the truck and while in the road was struck by an automobile.-Bolkin v. Levy, 286 App. Div. 819, 142 N.Y.S. 2d 17 [1955].

¶ 10. The owner of multiple dwellings may maintain an injunction action to restrain a nuisance occasioned by an adjacent laundry which parks its trucks upon the sidewalk giving access to plaintiff's premises without proving any particular quantum of special damage. It is immaterial that the laundry had indulged in this practice for ten years and for a period long before plaintiff acquired ownership of his property. It is also immaterial that plaintiff may have had an administrative remedy in the form of Police Department action. However, the defendant should not be restrained from conducting reasonable loading and unloading operations which might block the sidewalk for limited periods.-Graceland Corp. v. Consolidated Laundries Corp., 7 App. Div. 2d 89, 180 N.Y.S. 2d 644 [1958], aff'd, 6 N.Y. 2d 900, 190 N.Y.S. 2d 708, 160 N.E. 2d 926 [1959].

¶ 11. Complaint for parking and displaying automobiles in front of a dealer's building dismissed for insufficiency of proof. The cars were located in an area formerly classified as the "courtyard", 20 feet in depth, between the 19-foot sidewalk and the building.-People v. Silverman, 16 Misc. 2d 158, 183 N.Y.S. 2d 700 [1959].

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***** Current through December 2009 ****

*NYC Administrative Code 19-137*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-137 Land contour work.

a. As used in this section.

1. The term "land contour work" means clearing, grubbing, grading, filling or excavating vacant lots and other land areas but does not include minor work which does not change surface drainage patterns.

2. The term "clearing" means removing surface encumbrances from a land area, including but not limited to fences, trees, logs, stumps, brush, stones, vegetation and earth.

3. The term "grubbing" means the removal of root systems incident to surface growths of trees and vegetation.

4. The term "grading" means leveling, sloping, raising, lowering or otherwise changing the existing surface of land area.

5. The term "excavation" means removal of material, regardless of its nature, from below the existing ground surface.

6. The term "filling" means the deposition, leveling or compacting of organic or inorganic material at or in a vacant lot or land area for a purpose relating to the composition, contour, use, or proposed use of the land or for the purpose of disposing of material removed from another lot or land area.

b. It shall be unlawful for any person to perform or cause, procure, suffer or permit to be performed any land contour work, except as provided in subdivision c hereof, without a written permit from the commissioner.

c. Subdivision b hereof shall not apply: 1. To land contour work performed in connection with or in the course of the erection of one or more buildings or other structures or in connection with land uses pursuant to a permit therefor issued by the department of buildings, provided however that, (a) such permit specifically authorizes such land contour work, and (b) such land contour work is performed entirely within the lot lines of the building site for which such permit is issued. In such cases where water courses, drainage ditches, conduits or other means of carrying off water exist on the property and are to be altered or relocated, the commissioner of buildings shall consult with the commissioner of environmental protection concerning the means of disposal of surface water prior to issuance of a permit.

2. to land contour work which consists only of making improvements to a land area on which a one or two-family house already exists and which does not result in any change in the surface runoff pattern of such land area.

d. No condition shall be created or maintained as the result of land contour work that will interfere with existing drainage unless a substitute therefor is provided which is satisfactory to the commissioner and the commissioner of environmental protection in accordance with criteria established by such commissioners in consultation with the department of health and mental hygiene. Watercourses, drainage ditches, conduits and other like or unlike means of carrying off water or disposing of surface water shall not be obstructed by refuse, waste, building materials, earth, stones, tree stumps, branches or by any other means that may interfere with surface drainage or cause the impoundment of surface waters either within or without the area on which contour work is performed. All excavations shall be drained and the drainage maintained as long as the excavation continues or remains. Where necessary, pumping shall be used. Fill material shall consist of inert, inorganic matter. It shall be unlawful to deposit garbage, waste paper, lumber or other organic material in land fill. The provisions of this section shall not prevent placement of organic matter for fill by the department of sanitation in locations under the jurisdiction of such department. The commissioner shall have the power, in consultation with the commissioner of buildings to adopt rules concerning the type of material that may be used for fill on land not mapped as park land. The commissioner shall enforce compliance with the provisions hereof, and shall make immediate complaint to the corporation counsel of any violation thereof. In addition, the commissioner of buildings shall similarly enforce compliance with the provisions hereof with respect to any land contour work performed pursuant to a permit issued by the commissioner of buildings, and in addition thereto shall inform the department of any failure to comply with a department of buildings violation order relating to the provisions hereof.

e. 1. Whenever the department shall determine that a condition has been created, or has resulted by reason of land contour work which violates any provision of subdivision (d) hereof, the department may serve an order in the manner prescribed in paragraph two of this subdivision upon the owners of the land upon which such condition has been created or has occurred, to correct such condition within the time designated in such order. Upon the owner's failure to comply with any order of the department as and within the time specified therein by such department, such department may perform such work or cause the same to be performed, the cost of which shall be due and payable and shall constitute a lien upon the land to which such order pertains, when the amount thereof shall have been finally computed by such department and an entry of the amount thereof shall have been entered in the office of the city collector in the book in which such charges against the premises are to be entered. A notice thereof, stating the amount due and the nature of the charge shall be mailed by the city collector, within five days after such entry, to the last known address of the person whose name appears on the records in the office of the city collector as being the owner or agent or as the person designated by the owner to receive tax bills, or where no name appears, to the premises addressed to either the owner or agent. If such charge is not paid within ninety days from the date of entry, it shall be the duty of the city collector to collect and receive interest thereon at the rate that would be applicable to a delinquent tax on such property, to be calculated to the date of payment from the date of entry. Such charge and the interest thereon shall continue to be, until paid, a lien on the premises on which such work was performed. Such charge and interest shall be collected and the lien thereon may be foreclosed in the manner provided by law for the collection and foreclosure of the lien of taxes, sewer rents, sewer surcharges and water rents due and payable to the city, and the provisions of law

applicable to the collection and foreclosure of the lien of such taxes, sewer rents, surcharges and water rents shall apply to such charge.

The provisions of section 11-307 of the code applicable to the payment of assessments shall also apply to charges heretofore or hereafter established pursuant to this section.

2. Service of an order upon an owner pursuant to the provisions of this section shall be made personally upon such owner or by certified mail addressed to the last known address of the person whose name appears upon the records in the office of the city collector as being the owner of the premises or as the agent of such owner or as the person designated by the owner to receive the tax bills or, if no such name appears, to the address set forth as the address of the owner in the last recorded deed with respect to such premises. A copy of such order shall also be filed in the clerk's office of each county where the property is situated and shall be posted in a conspicuous place on the premises.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-146)

Section added chap 907/1985 § 1

Subd. d amended L.L. 22/2002 § 37, eff. July 29, 2002 and deemed in

effect as of July 1, 2002.

**DERIVATION**

Formerly § 692i-1.0 added LL 4/1969 § 2



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***** Current through December 2009 ****

*NYC Administrative Code 19-138*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-138 Injury to or defacement of streets.

a. Breaking or injuring. It shall be unlawful for any person to break or otherwise injure any street. There shall be no penalty for a violation of this section in case of an accidental breaking of or injury to a street which is repaired to the satisfaction of the commissioner, within forty-eight hours after such break or injury.

b. Defacing. Except as otherwise provided by law, it shall be unlawful for any person to deface any street by painting, printing or writing thereon, or attaching thereto, in any manner, any advertisement or other printed matter.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-148)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 693-2.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 59

(formerly § 82d1-8.0)

Sub a amended chap 100/1963 § 59

**CASE NOTES FROM FORMER SECTION §19-148**

¶ 1. Transit authority had a duty not to "break or otherwise injure any sidewalk or foot path" pursuant to Ad Cd §19-148 and it was breach of duty to cause a defective sidewalk. Petrucci v. City of NY 167 AD 2d 29 [1991].

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*NYC Administrative Code 19-139*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-139 Excavations for private purposes.

Notice to public service corporations. The person by whom or for whose benefit any excavation is to be made in any street shall give notice thereof in writing, to any corporation whose pipes, mains or conduits are laid in the street about to be disturbed by such excavation, at least forty-eight hours before commencing the same; and shall, at his or her expense, sustain, secure and protect such pipes, mains or conduits from injury, and replace and pack the earth wherever the same shall have been removed, loosened or disturbed, under or around them, so that they shall be well and substantially supported. If any such person shall fail to sustain, secure and protect such pipes, mains or conduits from injury, or to replace and pack the earth under or around them, as the provisions of this section require, then the same may be done by the corporation to whom the same may belong, and the cost thereof, and all damages sustained by such corporation thereby shall be paid by such person, and, in default thereof, such corporation may maintain an action against him therefor.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-150)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 693-4.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 131

(formerly § 83-6.0)

**CASE NOTES FROM FORMER SECTION**

¶ 1. Public utility had no cause of action in negligence against defendant for damage to an underground conduit when it failed to advise defendant of location of its subsurface structures after defendant had given it the notice required by this section as the defendant did not have actual or constructive notice of the location of the utility's subsurface structure. Con. Edison v. T.J.N. Construction Corp., 52 Misc. 2d 788, 276 N.Y.S. 2d 979 [1967].



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***** Current through December 2009 ****

*NYC Administrative Code 19-140*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-140 Duties of police.

All police officers shall be vigilant in the enforcement of the provisions of this subchapter and section 24-521 of the code and report, through proper channels, and violation thereof to the commissioner. Police officers, on observing or being informed of the opening of or excavating in any street, shall require the person making such opening or excavation to exhibit a permit therefor, and, if none has been given, or if the exhibition thereof be refused, the officer shall report the same to the commissioner.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-151)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 693-5.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 133

(formerly § 83-9.0)

Sub a amended LL 4/1969 § 3

(§ number and heading laid out as "Duties of police")

Sub b amended LL 14/1985 § 1



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***** Current through December 2009 ****

*NYC Administrative Code 19-141*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-141 Property owners may voluntarily lay sidewalks.

Any owner of property, upon obtaining a permit from the commissioner, may lay a sidewalk in front of such owner's premises, of such material and in such a manner as may be prescribed by such commissioner. Heating pipes or electric cables for the purpose of melting snow and ice may be incorporated in the construction of sidewalks with the approval of the commissioner.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-152.1)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 230-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 57

(formerly § 82d1-6.0)

Sub a amended LL 28/1963 § 1



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***** Current through December 2009 ****

*NYC Administrative Code 19-142*

Administrative Code of the City of New York

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CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-142 Workers on excavations.

A person to whom a permit may be issued, to use or open a street, shall be required, before such permit may be issued, to agree that none but competent workers, skilled in the work required of them, shall be employed thereon, and that the prevailing scale of union wages shall be the prevailing wage for similar titles as established by the fiscal officer pursuant to section two hundred twenty of the labor law, paid to those so employed. No permit shall be issued until such agreement shall have been entered into with the department, and all such permits hereafter issued shall include therein a copy of this provision. When permits are issued to utility companies or their contractors, the power to enforce this provision shall be vested with the comptroller of the city of New York consistent with the provisions of section two hundred twenty of the labor law.

**HISTORICAL NOTE**

Section amended chap 576/1999 § 1, eff. Dec. 1, 1999.

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27,

1994. (Formerly §19-153)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 693a-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 128

(formerly § 83-4.0)

**CASE NOTES FROM FORMER SECTION**

¶ 1. Although Administrative Code § 83-4.0, requiring that the prevailing scale of union wages shall be paid to those employed in making street excavations, was subject to attack as being invalid for vagueness in failing to define the "prevailing scale of union wages" or provide a method to ascertain it, the Court would endeavor to construe the statute so as to sustain its validity and carry out the legislative intent, and the reasonable inference therefore was that the Legislature intended that the parties would themselves employ such legal methods as they believed would determine the prevailing rate of union wages (231 N.Y. 51).-Larkin v. Consol. Tel. & Elec. Subway Co., 193 Misc. 1001, 85 N.Y.S. 2d 631 [1948].

¶ 2. In action under Administrative Code § 83-4.0 to recover alleged difference between the claimed prevailing scale of union wages and the union scale of wages paid to plaintiff, defense alleging that plaintiff was represented by unions certified by the National Labor Relations Board as the sole and exclusive agents to bargain collectively for all weekly employees of defendant, that pursuant to collective bargaining contracts made by defendant with such unions and arbitration awards growing out of such contracts and approval by appropriate governmental agencies, the contracts and awards thus fixed and determined the plaintiff's union scale of wages during the period and constituted the prevailing scale of union wages for the life of the contracts, **held** sufficient.-Id.

¶ 3. Defense alleging that defendant paid and plaintiff received without protest the wages paid him in accordance with such collective bargaining contracts and thereby waived any claim under the statute, **held** sufficient, as plaintiff could voluntarily waive the benefit of the statute, and whether by his conduct he intended to so waive his rights thereunder presented a question for trial determination.-Id.

¶ 4. Defense pleading that if and insofar as the statute and permits issued pursuant thereto require payment of a scale of wages higher than the union scale fixed by the collective bargaining contracts, the statute and permits were invalid as in contravention of the public policy expressed by Constitution Art. I, § 17, and inconsistent with the National and State Labor Relations Acts, **held** sufficient.-Id.

¶ 5. To construe § 83-4.0 as over-riding the wage fixation as determined by the collective bargaining contracts, would result in a discriminatory interference with the rights of defendant's employees to bargain collectively, and would require defendant to pay plaintiff more than was due him under such contract and would unjustly discriminate in his favor, and such legislation would be invalid (Const. Art. I, § 11).-Id.



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***** Current through December 2009 ****

*NYC Administrative Code 19-143*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-143 Excavations for public works.

a. Notice to public service corporations. Whenever any street shall be regulated or graded, in which the pipes, mains or conduits of public service corporations are laid, the contractor therefor shall give notice thereof in writing to such corporations, at least forty-eight hours before breaking ground therefor. Such provision shall be included in every contract for regulating or grading any street in which the pipes, mains or conduits of public service corporations shall be laid at the time of making such contract.

b. Public service corporations shall protect their property. Public service corporations whose pipes, mains or conduits are about to be disturbed by the regulating or grading of any street, shall, on the receipt of the notice provided for in the preceding subdivision, remove or otherwise protect and replace their pipes, mains and conduits, and all fixtures and appliances connected therewith or attached thereto, where necessary, under the direction of the commissioner.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-155 subds a, b)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 693a-3.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 130

(formerly § 83-5.0)

Sub c added LL 14/1985 § 2, and became § 19-144

**CASE NOTES FROM FORMER SECTION**

¶ 1. Even if it were assumed that Administrative Code § 83-5.0 does not apply to private water companies, plaintiff private water company which had been obliged to remove and relocate its mains, pipes and other facilities in certain public streets to permit construction and laying of pipes and other facilities for the City's water supply system, might not recover from the City the costs and expenses incurred, since in the construction and extension of its water works system the city acted in a governmental rather than a proprietary capacity.-Jamaica Water Supply Co. v. City of N.Y., 280 App. Div. 834, 114 N.Y.S. 2d 79 [1952], aff'd, 304 N.Y. 917, 110 N.E. 2d 739 [1953].

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-144 Issuance of permit to open street within five years after completion of city capital construction project requiring resurfacing or reconstruction of such street.

All persons having or proposing to install facilities in, on or over any street shall be responsible for reviewing the city's capital budget, capital plan and capital commitment plan. Such persons shall make provision to do any work, except emergency work, which requires the opening or use of any street prior to or during the construction of any capital project requiring resurfacing or reconstruction proposed in such budget or plan for such street. No permit to use or open any street, except for emergency work, shall be issued to any person within a five year period after the completion of the construction of a capital project set forth in such budget or plan relating to such street requiring resurfacing or reconstruction unless such person demonstrates that the need for the work could not have reasonably been anticipated prior to or during such construction. Notwithstanding the foregoing provision, the commissioner of transportation may issue a permit to open a street within such five year period upon a finding of necessity therefor, subject to such conditions as the commissioner may establish by rule, which shall include appropriate guarantees against the deterioration of the restored pavement.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-155 subd c)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § Added as Subd. c of § 83-5.0 (693a-3.0) by LL 14/1985 §2 see derivation to § 19-143



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***** Current through December 2009 ****

*NYC Administrative Code 19-145*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-145 Pavements improperly relaid.

a. If any pavement which has been removed shall not be relaid to the satisfaction of the commissioner, he or she may cause an order to be served upon the person by whom such pavement was removed, or if such removal was for the purpose of making a connection between any house or lot, or for any sewer or pipes in the street, or for constructing vaults, or otherwise improving any house or lot, upon the owner or occupant of such house or lot, requiring such person, or the owner or occupant of such house or lot, to have such pavement properly relaid within five days after service of such order.

Such order may be served upon the owner or occupant of a house or lot by leaving the same with any person of adult age upon the premises, or posting the same thereupon.

b. The cost of repaving such pavement shall be collected as follows:

1. The commissioner shall certify to the comptroller the cost of such work with a description of the lot or premises to improve which such removal was made.

2. The comptroller shall certify the cost of such work to the city collector, who shall collect the same in the same manner that arrears and water rates are collected.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-156)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 693b-1.0 added chap 929/1937 § 1

Number and § heading amended LL 50/1942 § 9

Renumbered and amended chap 100/1963 § 125

(formerly § 83-1.0)

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CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-146 Prevention of disturbances of street surface.

a. It shall be unlawful for any person, without being previously authorized by a permit of the commissioner:

1. To fill in or raise, or cause to be filled in or raised, any street or any part thereof;

2. To take up, remove, or carry away, or cause to be taken up, removed or carried away, any asphalt or asphalt blocks, concrete, flagstones, turf, stone, gravel, sand, clay or earth from any street or part thereof.

b. If any person shall violate this section, the commissioner shall take immediate steps to prevent such disturbances of the surface of the street, and shall forthwith restore such flagging or pavement, as nearly as may be practicable, to the condition in which it was before such taking or removal, at the expense of the party removing the same, to be recovered as penalties are recovered.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-157)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 693b-2.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 126

(formerly § 83-2.0)

Sub c amended LL 14/1985 § 3

**CASE NOTES FROM FORMER SECTION 19-157**

¶ 1. Amount of fines imposed against corporations for violations of §§19-105 and 19-157 are established therein and supersede those fines imposed by Penal Law §80.10(1). People v. Causeway Constr. Co., 164 Misc. 2d 393 [1995].



*NYC Administrative Code 19-147*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-147 Replacement of pavement and maintenance of street hardware.

a. General provisions. Whenever any pavement, sidewalk, curb or gutter in any street shall be taken up, the person or persons by whom or for whose benefit the same is removed shall restore such pavement, sidewalk, curb or gutter to its proper condition to the satisfaction of the commissioner of transportation.

b. Rock refills. Whenever rock is excavated, not more than one-third of the total excavation shall be refilled with the broken stone, which must be in pieces not exceeding six inches in their largest dimension, mingled with clean earth and sand, and restored in such manner as to insure the thorough and compact filling of all spaces.

c. Restoration in certain cases. Whenever any pavement in any street shall be taken up, or any paving stones in a street shall have been removed in violation of this subchapter or of section 24-521 of the code, the person or persons by whom or for whose benefit the pavement was taken up or paving stones removed shall forthwith return such stones to their former places, and shall otherwise restore the pavement to its normal condition to the satisfaction of the commissioner.

d. Maintenance of street hardware. All utility maintenance hole (manhole) covers, castings, and other street hardware shall be maintained flush with the existing surrounding grade. All loose, slippery or broken utility maintenance hole (manhole) covers, castings and other street hardware shall be replaced at the direction of and to the satisfaction of the commissioner.

e. Payment of cost. If the pavement, sidewalk, curb, gutter or street hardware is not properly restored, replaced or maintained to the satisfaction of the commissioner pursuant to subdivisions a, b, c and d of this section, the commissioner may restore, replace or maintain the pavement, sidewalk, curb, gutter or street hardware to its proper condition and the person or persons by whom or for whose benefit the same was removed shall be liable for the cost and expense of the restoration.

f. Rules. The commissioner is hereby authorized to establish such rules as, in his or her judgment, shall be deemed necessary for the purpose of carrying out the provisions of this section.

g. Reasonable notice of improper or inadequate restoration of pavement or maintenance of street hardware. Except where the condition of the pavement or hardware is an imminent danger to life or safety, reasonable notice of improper or inadequate restoration of pavement or maintenance of street hardware shall be given to a person by ordinary mail. In the case of utilities such notice may be oral or written and shall be given to a person or at a place designated by the utility and the utility shall respond within twenty-four hours.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-158)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 693b-3.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 132

(formerly § 83-7.0)

Amended LL 14/1985 § 4

**CASE NOTES**

¶ 1. Where it can be established that current conditions are substantially similar to those that existed on the date of the accident, even though a long period of time has elapsed between the date of an accident and the expert's inspection of the site, an expert can testify that asphalt rising one and a half inch above a manhole cover casting was a violation of Admin. Code § 19-147. Oboler v. City of New York, 31 A.D.3d 308, 819 N.Y.S.2d 34 (1st Dept. 2006).



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-148*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-148 Safeguards against collision with posts, pillars and columns in streets.

a. Every post, pillar or supporting column of a superstructure, including supporting columns of railroad structures, located at such points in the roadways of streets as to constitute a menace to vehicular traffic turning or going into the part of the street at or near the point of such location, shall be striped from its base to a point at least twelve feet high with reflectors or reflectorized lights, in such manner as shall be determined by the commissioner. At night, where directed by the commissioner, there shall be displayed a light of sufficient illuminating power to be visible at a distance of two hundred feet, on an arm or bracket extending from such post, pillar or supporting column, or suspended from the superstructure. The striping and lighting of such posts, pillars or supporting columns covered by this section shall be maintained to the satisfaction of the commissioner.

b. The commissioner shall have power to direct an order to the owner or operator of a superstructure requiring compliance with the provisions of this section.

**HISTORICAL NOTE**

Section renumbered & amended L.L. 104/1993 § 1, eff. Jan. 27, 1994. (formerly §19-161)

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 883b-2.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 102

(formerly § 82d7-22.0)



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-149*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-149 Criminal penalties.

a. Any person who violates any of the provisions of this subchapter or of section 24-521 of the code or any order issued by or rule promulgated by the commissioner pursuant thereto or the terms or conditions of any permit issued pursuant thereto or who causes, authorizes or permits such violation shall be guilty of a violation and upon conviction thereof shall be punishable by a fine of not more than five thousand dollars, or imprisonment for not more than fifteen days, or both such fine and imprisonment for each violation.

b. Any person who knowingly violates any of the provisions of this subchapter or of section 24-521 of the code or any order issued by or rule promulgated by the commissioner pursuant thereto or the terms or conditions of any permit issued pursuant thereto or who knowingly causes, authorizes or permits such violation shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine of not more than seven thousand five hundred dollars, or by imprisonment not exceeding sixty days, or both such fine and imprisonment for each violation.

c. In the case of a continuing violation, each day's continuance shall be a separate and distinct offense.

**HISTORICAL NOTE**

Section added L.L. 104/1993 § 1, eff. Jan. 27, 1994.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-150*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-150 Civil penalties.

a. In addition to or as an alternative to the penalties set forth in section 19-149, any person who violates any of the provisions of this subchapter, or of section 24-521 of the code, or any order issued by or rule promulgated by the commissioner pursuant thereto or the terms or conditions of any permit issued pursuant thereto, or who causes, authorizes or permits such violation shall be liable for a civil penalty for each violation. In the case of a continuing violation, each day's continuance shall be a separate and distinct offense.

b. 1. Except as provided in subdivision c of this section, such civil penalty shall be determined in accordance with the following schedule:

| Section of the Administrative Code | Maximum Civil Penalty (dollars) |
|---|---|
| 19-102 | 5,000 |
| 19-107 | 5,000 |
| 19-109 subd(a) | 5,000 |
| 19-109 subd(c) | 1,000 |
| 19-111 | 1,000 |
| 19-112 | 1,000 |
| 19-113 | 1,000 |
| 19-115 | 1,000 |

| | |
|---|---|
| 19-116 | 1,000 |
| 19-117 subd(a) | 5,000 |
| 19-119 | 5,000 |
| 19-121 subd(a) | 5,000 |
| 19-121 subd(b) para (5) & (7) | 5,000 |
| 19-121 subd(b) para (2), (3) & (6) | 1,000 |
| 19-122 | 1,000 |
| 19-123 | 5,000 |
| 19-126 | 5,000 |
| 19-128 | 1,000 |
| 19-133 | 1,000 |
| 19-135 | 1,000 |
| 19-137 | 1,000 |
| 19-138 | 1,000 |
| 19-139 | 5,000 |
| 19-141 | 1,000 |
| 19-144 | 5,000 |
| 19-145 | 5,000 |
| 19-146 | 1,000 |
| 19-147 | 1,000 |
| 19-148 | 1,000 |
| 24-521 | 5,000 |
| All other Provisions of this subchapter and rules or orders relating thereto | 500 |

Note: Reference to an administrative code provision is intended to encompass the penalties for violations of the rules or orders made or of the terms or conditions of permits issued pursuant to such code provision.

2. The civil penalties provided for in this subdivision may be recovered in a proceeding before the environmental control board or in an action in any court of competent jurisdiction.

3. The environmental control board shall have the power to impose the civil penalties provided for in this subdivision. A proceeding before such board shall be commenced by the service of a notice of violation returnable before such board.

c. In addition to the civil penalty determined in accordance with subdivision b of this section an additional civil penalty may be recovered in the amount of the expense, if any, incurred by the city to restore or replace pavement unlawfully removed, taken up or broken or to remedy any other unsafe condition on any street resulting from such violation. Such additional civil penalty may be recovered in an action or proceeding in any court of competent jurisdiction.

**HISTORICAL NOTE**

Section added L.L. 104/1993 § 1, eff. Jan. 27, 1994.

**DERIVATION**

Formerly § This section is a consolidation of §§ 19-108, 19-112, 19-121, 19-127, 19-134 and 19-144, all added by chap 907/1985 § 1 and repealed by LL 104/1993 § 1. Section 19-108 was formerly § 692-8.0 added chap 929/1937 § 1, renumbered and amended chap 100/1963 § 51 (formerly § 82d-5.0). Section 19-112 was formerly § 692a-3.0 added chap 929/1937 § 1, renumbered and amended chap 100/1963 § 54 (formerly § 82d1-3.0). Section 19-121 was formerly § 692e-5.0 added chap 929/1937 § 1, renumbered LL 50/1942 § 2 (formerly § 82d-5.0), renumbered and

amended chap 100/1963 § 66 (formerly § 82d5-5.0). Section 19-127 was formerly § 692f-9.0 added chap 929/1937 § 1, renumbered and amended chap 100/1963 § 92 (formerly § 82d7-13.0). Section 19-134 was formerly § 692f-15.0 added chap 929/1937 § 1, Sub a amended LL 50/1942 § 7, renumbered chap 100/1963 § 99 (formerly § 82d7-18.0), Sub a amended chap 100/1963 § 99, Sub a amended LL 18/1980 § 1. Section 19-144 was formerly § 692h-9.0 added chap 929/1937 § 1, renumbered and amended chap 100/1963 § 78 (formerly § 82d6-10.0).

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-151*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-151 Enforcement.

a. In addition to police officers, authorized officers and employees of the department of transportation and of other city agencies who are designated by the commissioner shall have the power to enforce the provisions of this subchapter and the rules and orders of the commissioner in relation thereto and to issue summonses and appearance tickets returnable in the criminal court and notices of violation returnable before the environmental control board for violations thereof.

b. In addition to the orders specifically referred to in this subchapter, the commissioner shall have the power to issue any other orders which may be necessary or appropriate (i) to enforce compliance with any of the provisions of this subchapter or of section 24-521 of the code, the rules of the department in relation thereto or the terms or conditions of any permit issued pursuant thereto, or (ii) to remedy any condition found to exist on any street which is in violation of any of the provisions of this subchapter or of section 24-521 of the code, the rules of the department in relation thereto or the terms or conditions of any permit issued pursuant thereto. Such orders shall be served in the manner provided by the rules of the department. The commissioner shall afford the persons to whom such order is directed an opportunity to be heard in accordance with the rules of the department.

c. The commissioner may request the corporation counsel to institute any action or proceeding that may be appropriate or necessary to restrain, correct or abate a violation of this subchapter or of section 24-521 of the code or the rules of the department in relation thereto or to compel compliance with any order issued by the commissioner

thereunder or with the terms or conditions of any permit issued pursuant to this subchapter. Such actions and proceedings may be instituted by the corporation counsel in any court of appropriate jurisdiction. In such actions or proceedings the city may apply for restraining orders, preliminary injunctions or other provisional remedies. The court to which such application is made may make any or all of the orders specified as may be required in such application, with or without notice, and may make such other or further orders or directions as may be necessary to render the same effectual.

d. If the commissioner finds that any work in violation of this subchapter or of section 24-521 of the code, the rules of the department or the terms or conditions of a permit issued pursuant to this subchapter creates an imminent danger to life or safety, he or she may issue an order to cease and desist. Such order shall be given orally or in writing to the persons executing the work and shall require immediate compliance therewith. The order may also require such persons to execute such work or take such action as the commissioner determines may be necessary to remove the danger or otherwise make the street reasonably safe, including but not limited to filling in an excavation and repairing, restoring or replacing the pavement thereon or removing construction material or equipment or dirt, debris or rubbish therefrom.

e. In addition to any other remedies or penalties set forth in this subchapter, upon the failure to comply with an order issued by the commissioner to remedy any condition on any street which is in violation of this subchapter, or of section 24-521 of the code, the rules of the department in relation thereto or the terms or conditions of a permit issued pursuant to this subchapter, including an order to cease and desist, within the time set forth in such order, the commissioner may execute the work required to be executed in such order. All costs and expenses of the city for such work may be recovered from the persons who are found to be liable for the violation. Before undertaking to execute any work required by an order, other than work required by an order to cease and desist, the commissioner shall afford the persons to whom such order is directed an opportunity to be heard in accordance with the rules of the department.

f. The provisions of sections 19-149 and 19-150 shall be construed to provide that a permittee or a person for whose benefit any activity for which a permit is required pursuant to this subchapter is performed shall be liable with his or her employee, agent or independent contractor for a violation of the provisions of this subchapter or of section 24-521 of the code or any order issued by or rule promulgated by the commissioner pursuant thereto or the terms or conditions of any permit issued pursuant thereto which is committed by such employee, agent or independent contractor in the course of performing the activity for which a permit was issued to such permittee or the activity which benefited such person. Notwithstanding the foregoing provision in any action or proceeding against a person who owns or leases real property for a violation arising out of work in a street which benefited the real property owned or leased by such person, it shall be an affirmative defense by such owner or lessee that the work which was the subject of such violation was performed by a licensed master plumber as defined in subdivision e of section 26-141 of the administrative code under a permit issued by the department or by an operator of an underground facility as defined in 12 NYCRR 53-1.5.

**HISTORICAL NOTE**

Section added L.L. 104/1993 § 1, eff. Jan. 27, 1994.

**DERIVATION**

Formerly § 19-143 required notifying the Corporation Counsel of all encroachments on the streets. Added by chap 907/1985 § 1 it was deleted by LL 104/1993 § 1 and generally incorporated into § 19-151. Section 19-143 was derived from § 692h-8.0 added chap 929/1937 § 1, renumbered and amended chap 100/1963 § 77 (formerly § 82d6-9.0).

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-152*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-152 Duties and obligations of property owner with respect to sidewalks and lots.

a. The owner of any real property, at his or her own cost and expense, shall (1) install, construct, repave, reconstruct and repair the sidewalk flags in front of or abutting such property, including but not limited to the intersection quadrant for corner property, and (2) fence any vacant lot or lots, fill any sunken lot or lots and/or cut down any raised lots comprising part or all of such property whenever the commissioner of the department shall so order or direct. The commissioner shall so order or direct the owner to reinstall, construct, reconstruct, repave or repair a defective sidewalk flag in front of or abutting such property, including but not limited to the intersection quadrant for corner property or fence any vacant lot or lots, fill any sunken lot or lots and/or cut down any raised lots comprising part or all of such property after an inspection of such real property by a departmental inspector. The commissioner shall not direct the owner to reinstall, reconstruct, repave or repair a sidewalk flag which was damaged by the city, its agents or any contractor employed by the city during the course of a city capital construction project. The commissioner shall direct the owner to install, reinstall, construct, reconstruct, repave or repair only those sidewalk flags which contain a substantial defect. For the purposes of this subdivision, a substantial defect shall include any of the following:

1. where one or more sidewalk flags is missing or where the sidewalk was never built;

2. one or more sidewalk flag(s) are cracked to such an extent that one or more pieces of the flag(s) may be loosened or readily removed;

3. an undermined sidewalk flag below which there is a visible void or a loose sidewalk flag tht rocks or seesaws;

4. a trip hazard, where the vertical grade differential between adjacent sidewalk flags is greater than or equal to one half inch or where a sidewalk flag contains one or more surface defects of one inch or greater in all horizontal directions and is one half inch or more in depth;

5. improper slope, which shall mean (i) a flag that does not drain toward the curb and retains water, (ii) flag(s) that must be replaced to provide for adequate drainage or (iii) a cross slope exceeding established standards;

6. hardware defects which shall mean (i) hardware or other appurtenances not flush within 1/2" of the sidewalk surface or (ii) cellar doors that deflect greater than one inch when walked on, are not skid resistant or are otherwise in a dangerous or unsafe condition;

7. a defect involving structural integrity, which shall mean a flag that has a common joint, which is not an expansion joint, with a defective flag and has a crack that meets such common joint and one other joint;

8. non-compliance with DOT specifications for sidewalk construction; and

9. patchwork which shall mean (i) less than full-depth repairs to all or part of the surface area of broken, cracked or chipped flag(s) or (ii) flag(s) which are partially or wholly constructed with asphalt or other unapproved non-concrete material; except that, patchwork resulting from the installation of canopy poles, meters, light poles, signs and bus stop shelters shall not be subject to the provisions of this subdivision unless the patchwork constitutes a substantial defect as set forth in paragraphs (1) through (8) of this subdivision.

a-1. An owner of real property shall bear the cost for repairing, repaving, installing, reinstalling, constructing or reconstructing any sidewalk flag in front of or abutting his or her property, including but not limited to the intersection quadrant for corner property, deemed to have a substantial defect which is discovered in the course of a city capital construction project or pursuant to the department's prior notification program, wherein the department receives notification of a defective sidewalk flag(s) by any member of the general public or by an employee of the department. However, with respect to substantial defects identified pursuant to the prior notification program, the sidewalk must be deemed to be a hazard prior to the issuance of a violation for any substantial defect contained in subdivision a of this section for any sidewalk flag on such sidewalk. For purposes of this subdivision, a hazard shall exist on any sidewalk where there is any of the following:

1. one or more sidewalk flags is missing or the sidewalk was never built;

2. one or more sidewalk flag(s) is cracked to such an extent that one or more pieces of the flag(s) may be loosened or readily removed;

3. an undermined sidewalk flag below which there is a visible void;

4. a loose sidewalk flag that rocks or seesaws;

5. a vertical grade differential between adjacent sidewalk flags greater than or equal to one half inch or a sidewalk flag which contains one or more surface defects of one inch or greater in all horizontal directions and is one half inch or more in depth; or

6. cellar doors that deflect greater than one inch when walked on, are not skid resistant or are otherwise in a dangerous or unsafe condition.

b. All such work shall be done in accordance with such specifications and regulations prescribed by the department.

c. Whenever the department shall determine that a sidewalk flag should be installed, constructed, reconstructed, or repaved, or that a vacant lot should be fenced, or a sunken lot filled or a raised lot cut down, it may order the owner of the property abutting on such sidewalk flag or the owner of such vacant, sunken or raised lot by issuing a violation order to perform such work. Such order shall provide a detailed explanation of the inspection and the sidewalk defects according to sidewalk flags including a detailed diagram of the property and defects by type. The order shall also inform the owner of the existence of the borough offices within the department together with an explanation of the procedures utilized by the borough office as provided for in paragraph eighteen of subdivision a of section twenty-nine hundred three of the New York city charter as well as a complaint and appeal process, including the right to request a reinspection and then the right to appeal by filing a notice of claim with the office of the comptroller of the city of New York and thereafter a petition for appeal and commence a proceeding to review and/or correct the notice of account and/or the quality of the work performed under the direction of or by the department as provided herein and the procedures as to how to appeal by filing a notice of claim with the office of the comptroller of the city of New York and how to file a petition and commence a proceeding to review and/or correct the notice of account and/or the quality of the work performed as provided herein and the location, where the forms may be obtained. Such order shall specify the work to be performed, an estimate of the cost of the work to repair the defects and the order shall also specify a reasonable time for compliance, provided that the time for compliance shall be a minimum of forty-five days. The department shall, by appropriate regulations, provide for a reinspection by a different departmental inspector than the inspector that conducted the first or original inspection upon request of the property owner to the appropriate borough office. Where appropriate, the department shall notify the property owner of the date of reinspection at least five days prior to the reinspection date. Such inspector conducting the reinspection shall conduct an independent inspection of the property without access to the reports from the first inspection. The inspector conducting the reinspection shall file a new report and the department shall issue a new order to the owner specifying the results of the reinspection with a detailed diagram of the property and defects by type. Such order shall also advise the owner of the procedures utilized by the borough office as provided for in paragraph eighteen of subdivision a of section twenty-nine hundred three of the New York city charter and also of the right to challenge the notice of account and/or the quality of the work performed by filing a notice of claim with the office of the comptroller and thereafter a petition and commence a proceeding to review and/or correct the notice of account and/or the quality of the work performed under the direction of or by the department as provided in sections 19-152.2 and 19-152.3 of the code and specify the procedures as to how to appeal by filing a notice of claim with the office of the comptroller of the city of New York and how to file a petition and commence a proceeding to review and/or correct the notice of account and/or the quality of the work performed and the location where the forms may be obtained.

d. If the department has been notified in writing of the existence of a defective, unsafe, dangerous or obstructed condition of a sidewalk pursuant to subdivision (c) of section 7-201 of the code, and the department determines that such condition constitutes an immediate danger to the public, it may notify the property owner that such condition constitutes an immediate danger to the public and direct such owner to repair same within ten days of the service of the notice.

e. Upon the owner's failure to comply with such order or notice within forty-five days of service and filing thereof, or within ten days if such period is fixed by the department pursuant to subdivision d of this section, the department may perform the work or cause same to be performed under the supervision of the department, the cost of which, together with administrative expenses, as determined by the commissioner, but not to exceed twenty percent of the cost of performance, shall constitute a debt recoverable from the owner by lien on the property affected or otherwise. Upon entry by the city collector, in the book in which such charges are to be entered, of the amount definitely computed as a statement of account by the department, such debt shall become a lien prior to all liens or encumbrances on such property, other than taxes. An owner shall be deemed to have complied with this subdivision if he or she obtains a permit from the department to perform such work as specified in the order within the time set forth therein and completes such work within ten days thereafter.

f. Service of a notice or order by the department upon an owner pursuant to the provisions of this section shall

be made upon such owner or upon his or her designated managing agent personally or by certified or registered mail, return receipt requested, addressed to the person whose name appears on the records of the city collector as being the owner of the premises. If the records of the city collector show that a party, other than the owner, has been designated to receive tax bills for such property, the notice shall be mailed to such party as well as to the owner of record, at his or her last known address, or, if it is a multiple dwelling, service upon the owner or managing agent may be made in accordance with section 27-2095 of the code. If the postal service returns the order with a notation that the owner refused to accept delivery of such notice, it may be served by ordinary mail and posted in a conspicuous place on the premises.

g. A copy of such notice or order shall also be filed in the office of the clerk of each county where the property is situated, together with proof of service thereof.

h. Nothing contained in this section shall impair or diminish the power of the city to install, construct, reconstruct, repave or repair sidewalk flags or to fence vacant lots or to fill sunken lots or to cut down raised lots or to enter into contracts with the owners of premises abutting on streets for such installation, construction, reconstruction, repaving or repair of sidewalk flags or fencing of vacant lots or filling of sunken lots, or cutting down of any raised lots, in accordance with the rules of the procurement policy board. Nor shall anything contained in this section affect or impair any act done or right accrued or accruing, or acquired, or liability incurred prior to the effective date of this section, but the same may be enjoyed or asserted as fully and to the same extent as if this section had not been enacted.

i. After the work has been performed or after inspection by the department in the case where the work was performed under the direction of the department a notice of such account, stating the amount due and the nature of the charge, shall be mailed by the city collector, within five days after such entry, to the last known address of the person whose name appears on the records of the city collector as being the owner or agent or as the person designated by the owner to receive tax bills or, where no name appears, to the premises, addressed to either the owner or the agent. Such notice shall also inform the addressee of the existence of a complaint and appeal process including the procedures utilized by the borough office as provided for in paragraph eighteen of subdivision a of section twenty-nine hundred three of the New York city charter the right to appeal the amount due and the quality of work performed under the direction of or by the department by filing a notice of a claim with the office of the comptroller of the city of New York and thereafter by filing a petition and commence a proceeding to review and/or correct the notice of such account and/or the quality of the work performed under direction of or by the department as provided in section 19-152.2 and 19-152.3 of the code and the location where the forms may be obtained. The owner shall only be responsible for the cost of reinstalling, constructing, reconstructing, repaving or repairing defective sidewalk flags ordered or directed by the department, not an entire sidewalk if the entire sidewalk lacks defects.

j. If such charge is not paid within ninety days from the date of entry, it shall be the duty of the city collector to charge and receive interest thereon, to be calculated to the date of payment from the date of entry.

(1) Except as otherwise provided in paragraph (2) of this subdivision, interest shall be charged at the rate of interest applicable to such property for real property taxes pursuant to section 11-224 of the code.

(2) With respect to any parcel on which the annual tax is not more than two thousand seven hundred fifty dollars, other than a parcel which consists of vacant or unimproved land, interest shall be charged at the rate determined pursuant to subdivision p or at the rate of eight and one-half percent whichever is lower.

k. Such charge and interest shall be collected and the lien thereof may be foreclosed in the manner provided by law for the collection and foreclosure of the lien of taxes, sewer rents, sewer surcharges and water charges due and payable to the city, and the provisions of chapter four of title eleven of the code shall apply to such charge and the interest thereon and the lien thereof.

l. In addition to collecting the charge for the cost of installation, construction, repaving, reconstruction and

repair of sidewalk, fencing of a vacant lot, filling of a sunken lot and/or cutting down any raised lot as a lien, the city may maintain a civil action for recovery of such charge against a property owner who is responsible under this section for such work in the first instance, provided, however, that in the event that the department performs the work without duly notifying such person in the manner prescribed in subdivision f, the cost to the city of performing such work shall be prima facie evidence of the reasonable cost thereof.

m. Upon application in writing of either (i) an owner of real property which is improved by a one, two, three, four, five or six family house: or (ii) an owner of real property which has an assessed valuation of no more than thirty thousand dollars, upon which a charge in excess of two hundred fifty dollars but not in excess of five thousand dollars has been entered pursuant to this section, the commissioner of finance may agree with the owner to divide the charge into four annual installments. Each installment shall be as nearly equal as may be. The first installment thereof shall be due and payable upon approval of the application and each succeeding installment shall be due and payable on the next ensuing anniversary date of the date of entry of the charge, together with interest thereon from the date of entry at the rate determined pursuant to subdivision p, or at the rate of eight and one-half percent per annum, whichever is lower. The commissioner may require owners of parcels making application pursuant to this subdivision to furnish satisfactory proof of their eligibility. In the event that the owner fails to make payment of any installment within thirty days of the due date, the commissioner may declare such installment agreement to be null and void and the balance of the charge shall become immediately due and payable with interest at the rate prescribed in subdivision j of this section to be calculated from the date of entry to the date of payment. The installments not yet due with interest to date of payment may be paid at any time. The city may not enforce a lien against any owner who has entered into an agreement with the commissioner of finance pursuant to this section provided that he or she is not in default thereunder. No installment shall be a lien or deemed an encumbrance upon the title to real property charged until it becomes due as herein provided. In the event that the city shall acquire, by condemnation or otherwise, any property upon which installments are not due, such installments shall become due as of the date of acquisition of title by the city and shall be set off against any award that may be made for the property acquired, with interest to the date of acquisition of title.

n. All orders or notices served by the commissioner in connection with the installation, construction, reconstruction, repavement or repair of sidewalks, fencing of vacant lots, filling of sunken lots or cutting down of raised lots and all charges arising out of the performance of such work by the department subsequent to January first, nineteen hundred seventy-seven are hereby legalized, validated, ratified and confirmed as though such orders, notices and charges were made pursuant to this section.

o. Repealed.

p. On or before the first day of June, nineteen hundred eighty-six, and on or before the first day of June of each succeeding year, the director of the office of management and budget shall determine and certify the city's cost of debt service, expressed as a percentage and rounded to the nearest one-tenth of a percentage point and shall transmit copies of such certification to the city council and the commissioner of finance. The percentage so determined and certified shall be the rate of interest applicable for purposes of paragraph (2) of subdivision j and subdivision m during the ensuing fiscal year of the city, provided, however, that for the period beginning on February third, nineteen hundred eighty-five and ending on June thirtieth, nineteen hundred eighty-six, the applicable rate of interest shall be eight and one-half percent per annum. Any rate determined pursuant to this subdivision shall apply to charges, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect. For the purposes of this subdivision, the city's cost of debt service shall be the average rate of interest paid by the city during the first ten months of the fiscal year in which the determination is made on general obligation bonds issued by the city during such period with a maturity of four years or if no general obligation bonds with a maturity of four years are issued during such period, on general obligation bonds with a maturity of no less than three nor more than five years.

q. Notwithstanding any inconsistent provision of this section, the amount charged an owner for sidewalk

reconstruction performed or caused to be performed by the department in connection with a city capital construction project for street or sewer reconstruction shall be determined according to the average city expenditure for such sidewalk reconstruction projects in the borough where such reconstruction is performed. Such average expenditure shall be computed by the commissioner.

r. The department shall keep record of all complaints submitted and work ordered and performed under this section and shall issue a public report for a minimum of three years containing such information including the number of complaints heard each year according to category, the number of reinspections performed, and the dispositions of such reinspections.

s. The provisions of sections 19-149, 19-150 and 19-151 shall not apply to orders issued pursuant to this section.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994

Section added chap 907/1985 § 1

Subd. a amended L.L. 64/1995 § 1, eff. Aug. 4, 1995

Subd. a amended ch. 813/1992 § 3, eff. Nov. 5, 1992

Subd. a-1 added L.L. 64/1995 § 2, eff. Aug. 4, 1995

Subd. c first sentence amended L.L. 64/1995 § 3, eff. Aug. 4, 1995

Subd. c amended ch. 813/1992 § 4, eff. Nov. 5, 1992

Subd. e amended ch. 813/1992 § 5, eff. Nov. 5, 1992

Subd. f amended ch. 813/1992 § 6, eff. Nov. 5, 1992

Subd. h amended ch. 813/1992 § 7, eff. Nov. 5, 1992

Subd. i amended ch. 813/1992 § 8, eff. Nov. 5, 1992

Subd. j amended L.L. 67/1985 § 2

Subd. m amended L.L. 67/1985 § 1

Subd. o repealed L.L. 64/1995 § 4, eff. Aug. 4, 1995

Subd. o amended ch. 813/1992 § 9, eff. Nov. 5, 1992

Subd. o amended L.L. 67/1985 § 3

Subd. p added L.L. 67/1985 § 4

Subd. q added L.L. 48/1987 § 1

Subd. r added ch. 813/1992 § 10, eff. Nov. 5, 1992

**DERIVATION**

Formerly § 693-6.0 added LL 70/1980 § 1

Sub m amended LL 69/1984 § 1

Sub o added LL 69/1984 § 2

**CASE NOTES**

¶ 1. Notice was sent to property owners that a sidewalk needed repairs. Although they were given only a few days between delivery and commencement of work by a city contractor this is not reason enough to defeat city lien. There was no challenge to the need for repairs or the amount of the bill and petitioners' entire attack is procedural. Petitioners argument that due process was violated because property is taken without notice is incorrect because petitioner is not deprived of any property until the city commences an action after the bill goes unpaid, prove it performed the work and the cost was reasonable. Alizio v. City of N.Y., 146 Misc 2d 214 [1990].

¶ 2. St. Jacques v. City of New York, 215 A.D.2d 75, 633 N.Y.S.2d 97, 633 N.Y.S.2d 97, aff'd 88 N.Y.2d 920, 646 N.Y.S.2d 787 (1996), aff'd 1996 Westlaw 303060 (New York Court of Appeals). A police officer who fell on the sidewalk while chasing a suspect sued the City, alleging that the sidewalk was defective. The general rule is that in the absence of a statutory violation that increases the risks inherent in police work, a police officer is unable to recover against either the City or a private property owner. The officer contended that § 19-152 constitutes such a violation, but the court held that the statute did not create an affirmative duty on the City to keep its sidewalks in good repair, and that the injury arose from the ordinary risks inherent in police work. Thus, the action against the City was dismissed.

¶ 3. Where an owner failed to perform needed sidewalk repairs, the City was permitted to engage an independent contractor to complete the work, subject to statutory protections against overbilling by contractors. Lenox Terrace Development Associates v. Riccio, 200 A.D.2d 362, 606 N.Y.S.2d 183 (1st Dept. 1994).

¶ 4. Administrative Code §19-152, can form a predicate for a claim under General Municipal Law 205-e, which provides for recovery by injured police officers against the municipality. These provisions are part of a well-developed body of law and imposes a clear legal duty on the city to take appropriate steps to keep the sidewalks in safe repair. Gonzalez v. Iacovello, 93 N.Y.2d 539, 693 N.Y.S.2d 486 (1999).

¶ 5. The statute does not impose any affirmative sidewalk maintenance duty on either the City or its contractor. Herrera v. City of New York, 8 A.D.3d 139, 779 N.Y.S.2d 27 (1st Dept. 2004).

¶ 6. See King v. Alltom Properties, 16 Misc.3d 1125(A), 2007 WL 2333086 (Sup.Ct. Kings Co), discussed in note 3 to Adm. Code § 7-210.

¶ 7. See Manning v. City of New York, 16 Misc.3d 1132(A), 2007 WL 2446562 (Table)(Sup.Ct. Richmond Co.), discussed in Note 7 to Admin. Code § 7-210.



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***** Current through December 2009 ****

*NYC Administrative Code 19-152.2*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-152.2 Claim process.

a. A claim against the department arising from the city's performance pursuant to section 19-152 of the code shall be initiated within one year from the date of entry of a notice of account by filing a notice of claim with the office of the comptroller of the city of New York. The claim forms shall be provided to property owners upon request at no cost.

b. If the office of the comptroller determines that the final work was improper, the office of the comptroller shall notify the department. The department shall pursue corrective measures and shall issue and mail a new notice within thirty days of such determination, stating when the same will be corrected and by whom, by mail addressed to the person whose name appears on the records of the city collector as being the owner of the premises. If the records of the city collector show that a party other than the owner has been designated to receive the tax bills for such property, the notice shall be mailed to such party as well as to the owner of record, at his or her last known address, or if it is a multiple dwelling, service upon the owner or managing agent may be made in accordance with section 27-2095 of the code.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added ch. 813/1992 § 11, eff. Nov. 5, 1992.

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***** Current through December 2009 ****

*NYC Administrative Code 19-152.3*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-152.3 Appeal process to small claims assessment review part.

a. If an owner of property claiming to be aggrieved does not secure satisfaction with the office of the comptroller, such owner of property may file a petition for appeal and commence a proceeding to review and/or correct the notice of account and/or the quality of the work performed with the small claims assessment review part in the supreme court. The petition for appeal forms shall be provided to property owners upon request, at no cost. A fee of twenty-five dollars shall be paid upon filing of each petition, which shall be the sole fee required for petitions pursuant to this section. Such petition shall contain an allegation that at least thirty days have elapsed since the notice of claim, based on section 7-201 of the code upon which such action is founded, was presented to the office of the comptroller for adjustment, and that the comptroller has neglected or refused to make an adjustment, or payment thereof for thirty days after such presentment.

b. The petition for an appeal form shall be prescribed by the department after consultation with the office of court administration. Such form shall require the petitioner to set forth his name, address and telephone number, a description of the real property for which the appeal is sought, the types of property defects or a description of the violations, a concise statement of the ground or grounds upon which the review is sought and any such information as may be required by the department and the office of court administration. No petition for an appeal form shall relate to more than one parcel of real property. The petition may be made by a person who has knowledge of the facts stated therein and who is authorized in writing by the property owner to file such petition. Such written authorization must be made a part of such petition and bear a date within the same calendar year during which the petition was filed.

c. The petitioner shall personally deliver or mail by certified mail, return receipt requested a copy of the petition within seven days from the date of filing with the clerk of the supreme court to the commissioner of the department or a designee of the commis- sioner.

d. The chief administrator of the courts shall appoint a panel of small claims hearing officers within the small claims assessment review program in the supreme court selected from persons requesting to serve as such hearing officers who have submitted resumes of qualifications to hear the proceedings relating to sidewalks and lots. Hearing officers to be appointed to the panel shall be qualified by training, experience, and knowledge of real property improvement and valuation practices and provisions of state and local law governing real property improvements, liabilities and assessments, but need not be attorneys at law. The chief administrator of the court shall randomly assign a hearing officer or hearing officers to conduct an informal hearing on the petition for appeal with the applicants for small claims and a representative of the department. Hearing officers assigned shall be familiar with the department and shall not possess any conflict of interest as defined by the public officers law with regard to the petitions heard. Hearing officers shall be compensated for their services in accordance with a fee schedule established by the chief administrator of the courts.

e. The small claims proceedings shall be held within thirty days after the date of filing the petition. Such proceeding, where practicable, shall be held at a location within the county in which the real property subject to review is located. The petitioner and the department shall be advised by mail of the time and place of such proceeding.

f. The petitioner need not present expert witnesses nor be represented by an attorney at such hearing. Such proceedings shall be conducted on an informal basis in such manner as to do substantial justice between the parties according to the rules of substantive law. The petitioner shall not be bound by statutory provisions of rules of practice, procedure, pleading or evidence. The hearing officer shall be empowered to compel the department and any other party who performed the work to produce records and other evidence relevant and material to the proceeding. All statements and presentation of evidence made at the hearing by either party shall be made or presented to the hearing officer who shall assure that decorum is maintained at the hearing. The hearing officer shall consider the best evidence presented in each particular case. Such evidence may include but shall not be limited to, photographs of the sidewalk or lots, construction contracts or bills from licensed firms that performed the work to correct the alleged violations. The hearing officer may, if he deems it appropriate, view or inspect the real property subject to review. The petitioner shall have the burden of proving entitlement to the relief sought.

g. All parties are required to appear at the hearing. Failure to appear shall result in the petition being determined upon inquest by the hearing officer based upon the available evidence submitted.

h. The hearing officer shall determine all questions of fact and law de novo.

i. The hearing officer shall make a decision in writing with respect to the petition for appeal within thirty days after conclusion of the hearing conducted with respect thereto. The hearing officer's decision may grant the petition in full or in part or may deny the petition. If the hearing officer grants the petition in full or in part, the hearing officer shall award the petitioner costs against the respondent in an amount equal to the fee paid by the petitioner to file the petition for appeal. The hearing officer may award the petitioner costs against the respondent in an amount equal to the fee paid by the petitioner to file the petition for appeal where he deems it appropriate.

j. If the hearing officer grants the petition in full or in part, the hearing officer shall order the department and the city collector, where appropriate, to change or correct their records to reflect the determination or order the work corrected and reinspected by a departmental inspector after the work was performed.

k. The decision of the hearing officer shall state the findings of fact and the evidence upon which it is based. Such decisions shall be attached to and made part of the petition for appeal and shall be dated and signed.

l. The hearing officer shall promptly transmit the decision to the clerk of the court, who shall file and enter it and

the hearing officer shall promptly mail a copy of the decision to the petitioner or the commissioner of the department or the designee of the commissioner and to the city collector, where appropriate.

m. No transcript of testimony shall be made of a small claims review hearing. The hearing officer's decision of a petition of appeal shall not constitute precedent for any purpose or proceeding involving the parties or any other person or persons.

n. A petitioner to an action pursuant to this section may seek judicial review pursuant to article seventy-eight of the civil practice law and rules provided that such review shall be maintained against the same parties named in the small claims petition.

o. The chief administrator of the courts shall adopt such rules of practice and procedure, not inconsistent herewith as may be necessary to implement the appeal procedures hereby established. Such rules shall provide for the scheduling of evening hearings where practicable, the availability of petition forms, and the procedures for the filing of decisions rendered by hearing officers pursuant to the provisions of this section.

p. If in the final order in any proceeding, it is determined that the amount due was excessive or improper and ordered or directed that the same be corrected, the city collector shall issue and mail a new notice of such account stating the new amount owed to the person whose name appears on the records of the city collector as being the owner of the premises. If the records of the city collector show that a party other than the owner has been designated to receive the tax bills for such property, the notice shall be mailed to such party as well as to the owner of record, at his or her last known address, or, if it is a multiple dwelling, service upon the owner or managing agent may be made in accordance with section 27-2095 of the code. If such charge is not paid within ninety days from the date of entry, it shall be the duty of the city collector to charge and receive interest thereon, to be calculated to the date of payment from the date of entry. Where appropriate, if in the final order in any proceeding, it is determined that the amount due was excessive or improper and the owner of the property is entitled to a refund for the excessive amount, the hearing officer shall promptly order and direct such refund within thirty days.

q. If in the final order in any proceeding, it is determined that the final work was improper and ordered or directed that the same be corrected, the department shall issue and mail a new notice of such within thirty days stating when the same will be corrected and by whom, by mail, addressed to the person whose name appears on the records of the city collector as being the owner of the premises. If the records of the city collector show that a party other than the owner has been designated to receive the tax bills for such property, the notice shall be mailed to such party as well as to the owner of record, at his or her last known address, or, if it is a multiple dwelling, service upon the owner or managing agent may be made in accordance with section 27-2095 of the code.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added ch. 813/1992 § 11, eff. Nov. 5, 1992.



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***** Current through December 2009 ****

*NYC Administrative Code 19-153*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 1 CONSTRUCTION, MAINTENANCE, REPAIR, OBSTRUCTION AND CLOSURE OF STREETS

§ 19-153 Inspection, testing and repair of electrical-related infrastructure.

a. The provisions of this section shall only apply to electrical-related infrastructure located in the city of New York capable of emitting stray voltage. For purposes of this section, the following terms shall have the following meanings: 1. "Local electric corporation" shall mean an electric corporation as defined in paragraph 13 of section 2 of the public service law, or its successor provision, that owns and operates transmission and distribution systems for the provision of electrical service in the city of New York.

2. "Stray voltage" shall mean any unintended electrical potentials between contact points that may be encountered by humans or animals.

3. "Voltmeter" shall mean an instrument that measures differences of electric potential in volts.

4. "Non-conductive protective material" shall mean any casing or material of sufficient composition or thickness to adequately obstruct the unintended flow of electricity.

b. All local electric corporations shall, where practicable and appropriate for the protection of public safety, utilize non-conductive protective materials to insulate their electrical-related infrastructure to prevent stray voltage.

c. All local electric corporations shall establish and implement written guidelines and procedures for the annual

inspection or testing of each category of its electrical-related infrastructure used to provide electrical service and for the repair of such infrastructure if required. Such guidelines and procedures shall include the annual inspection of each category of its electrical-related infrastructure located on, above or below any sidewalk used to provide electrical service and the repair of such infrastructure if required. Such guidelines and procedures shall also include the annual testing of each category of its electrical-related infrastructure in any location other than on, above or below a sidewalk used to provide electrical service and the repair of such infrastructure if required. Each inspection and testing period shall be comprised of an uninterrupted twelve month period concluding on November 30 of each year. Such local electric corporations shall establish such inspection and testing schedules and procedures for at least the following categories of electrical-related infrastructure: transformers, switching and protective devices, regulators and capacitors, overhead and underground cables, wires and conductors, above and below ground utility and connection boxes, manhole covers, metal plates, gratings and poles.

d. Each piece of electrical-related infrastructure included in the list of categories of such infrastructure set forth in subdivision c of this section that has been found to emit stray voltage shall be repaired or made safe within twenty-four hours of discovery or knowledge of such condition by the local electric corporation that owns and operates the infrastructure, or a contractor or subcontractor thereof, in a manner that completely eliminates the emission of any such stray voltage.

e. Upon completion of the annual inspection, testing and repair program mandated by subdivision c of this section, all local electric corporations shall provide the council, the department and the public service commission with a written report no later than January 15 of each year. Such report shall state that each piece of its electrical-related infrastructure has been inspected where required, tested where required, and, if necessary, repaired during the immediately preceding inspection and testing period. Such report shall indicate each location at which stray voltage was found and shall state that in each such instance, each repair was completed in accordance with accepted professional standards and that no public safety hazard exists. Such report shall include a detailed account of all types of non-conductive protective materials utilized to insulate such local electric corporation's electrical-related infrastructure during the period being reported upon, as well as any planned changes in the types of non-conductive protective materials to be employed during the next reporting period to meet the mandate set forth in subdivision b of this section with an explanation for any proposed change. Such report shall also include a complete list of all inspections, tests and repairs for the detection and elimination of stray voltage conducted outside the course of the inspection and testing schedules required by subdivision c of this section, such as those initiated in response to consumer complaints, including the nature and location of the condition complained of, whether the complaint was founded, what repair work was undertaken and to what category of electrical-related infrastructure and the amount of time taken from receipt of the complaint to completely eliminate any stray voltage.

f. The department shall conduct random tests, by utilizing a voltmeter, of the electrical-related infrastructure of any local electric corporation for the purposes of detecting stray voltage and shall maintain written reports of the results of each such test. Commencing with the twelve month inspection and testing period beginning on December 1, 2004, the department shall conduct at least two hundred fifty such tests at random sites during each twelve month inspection and testing period. The reports created pursuant to this testing shall be forwarded to the public service commission and to the local electric corporation whose sites and department tests.

g. All local electric corporations shall establish and implement an educational campaign aimed at informing the public of how to identify and protect themselves from the dangers of stray voltage potentially emanating from their electrical-related infrastructure. The campaign shall utilize the information from the annual report of inspections, tests and repairs required by this section to alert the public to the locations most frequently documented as having had stray voltage.

**HISTORICAL NOTE**

Section added L.L. 44/2004 § 2, eff. Oct. 14, 2004. [See Note 1]

**NOTE**

1. Provisions of L.L. 44/2004:

Section 1. Declaration of legislative findings and intent. The Council finds that an ongoing state of danger exists on the streets and sidewalks of the City of New York in the form of stray voltage emanating from electrical-related infrastructure. This danger became immediately apparent on January 16, 2004 when Jodie S. Lane was tragically killed when she stepped on an electrically charged metal plate while walking her two dogs in Manhattan. The stray voltage that led to Ms. Lane's death prompted an examination of the state of the electrical-related infrastructure in the City for purposes of determining the incidence of stray voltage emanating from that infrastructure and the extent of the danger posed to New Yorkers in simply traversing the City's streets and sidewalks as they go about their daily routine. The examination found hundreds of cases of stray voltage throughout the five boroughs that were potentially harmful to the public. It is believed that the stray voltage was subsequently eliminated at these locations, but the widespread nature of these findings and the propensity for numerous additional cases of stray voltage in the future has demonstrated the necessity for the Council to act in an effort to protect New Yorkers from the dangers associated with stray voltage.

By requiring the New York City Department of Transportation to test for stray voltage in accordance with the provisions of this local law, the Council does not intend to impose any liability on the City or the New York City Department of Transportation for failure to detect stray voltage or to eliminate its source. The Council merely intends for the New York City Department of Transportation to provide an inependent check on the stray voltage inspection, testing and repair program mandated by this local law in an effort to further safeguard New Yorkers from the dangers of stray voltage.

It is further the Council's intent that the local action manifested in this local law is necessary until such time as the New York State Public Service Commission, or its successor, adopts rules or regulations imposing obligations upon electric corporations to conduct annual inspections, tests and repairs of its electrical-related infrastructure to detect and eliminate stray voltage.



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***** Current through December 2009 ****

*NYC Administrative Code 19-162*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-162 Permissible parking for certain purposes.

1. Notwithstanding any local law or regulation to the contrary, but subject to the provisions of the vehicle and traffic law, it shall be permissible for a bus owned, used or hired by public or nonpublic schools to park at any time, including overnight, upon any street or roadway, provided said bus occupies a parking spot in front of and within the building lines of the premises of the said public school or nonpublic school.

2. Notwithstanding the department of transportation regulation prohibiting parking in front of private driveways, it shall be permissible for the owner or lessor of the lot accessed by such driveway to park a passenger vehicle registered to him or her at that address in front of such driveway, provided that such lot does not contain more than two dwelling units and, further provided that such parking does not violate any other provision of the vehicle and traffic law or local law, rule or regulation concerning the parking, stopping, or standing of motor vehicles. The hearing officer shall dismiss any notice of violation issued to the owner of such passenger vehicle upon receipt from the owner, in person or by mail, of a copy of the vehicle registration containing the same address as that at which the ticket was given or other suitable evidence showing compliance with the law. The director of the bureau shall set forth the proof required in the case of lots where confusion may arise including, but not limited to, corner lots or lots with dual addresses.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 883b-3.0 added LL 7/1971 § 1

Amended LL 64/1984 § 1

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.



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***** Current through December 2009 ****

*NYC Administrative Code 19-162.1*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-162.1 Permissible parking for members of the clergy; houses of worship and hospitals.

a. For the purposes of this section the following terms shall have the following meanings:

1. The term "member of the clergy" as used in this section means a clergyman or minister as defined in the religious corporations law including, but not limited to a pastor, rector, priest, rabbi or imam who officiates at or presides over services on behalf of a religious corporation or association of any denomination. Such term shall not include clergy who derive their principal income from any other occupation or profession or who do not officiate at or preside over services on behalf of a religious corporation or association of any denomination.

2. The term "passenger car" as used in this section means a motor vehicle designed and used for carrying not more than fifteen people, including the driver. Such term shall not include a vehicle licensed to operate pursuant to chapter five of this title or a commercial vehicle as defined in section 19-170 of this code.

3. The term "house of worship" as used in this section means a building or space owned or leased by a religious corporation or association of any denomination or used by a religious corporation or association of any denomination pursuant to the written permission of the owner thereof, which is used by members principally as a meeting place for divine worship or other religious observances presided over by a member of the clergy and which is classified in occupancy group F-1(b) pursuant to article eight of subchapter three of chapter one of title twenty-seven of this code. Such term shall not include a dwelling unit as defined in the housing maintenance code.

4. The term "hospital" as used in this section means a general hospital, nursing home or hospice in-patient facility certified pursuant to the public health law or a psychiatric center established pursuant to section 7.17 of the mental hygiene law.

b. Notwithstanding any local law or rule to the contrary, it shall be permissible for a member of the clergy to park a passenger car which is owned, registered or leased by such member of the clergy and displays an appropriate department permit, in an available space where parking is prohibited by a posted sign (i) for a period of up to four hours upon the roadway adjacent to the house of worship at whose services such member of the clergy officiates or presides as noted on such permit or, (ii) for a period of up to three hours on the roadway adjacent to a hospital when such member of the clergy is performing official duties at such hospital. It shall not be permissible for a member of the clergy to park where parking is prohibited by rule or where stopping or standing are prohibited by posted sign or rule.

c. An application for a permit to be issued pursuant to this section, and such supporting documentation as may be required by the commissioner, shall be submitted on behalf of a member of the clergy by the religious corporation or association at whose services the member of the clergy officiates or presides. Such religious corporation or association shall certify on a form provided by the department that the member of the clergy on whose behalf the application is made will use such permit only while performing official duties at the house of worship at whose services such member of the clergy officiates or presides or while performing such official duties at a hospital and that such member of the clergy otherwise qualifies for the benefits of this section. Only one permit shall be issued to any religious corporation or association and shall include on the front side thereof the license plate numbers of up to three vehicles owned, registered or leased by members of the clergy on whose behalf such religious corporation or association submitted an application. In accordance with the criteria set forth in this subdivision for the issuance of a permit, the commissioner shall add, delete or substitute license plate numbers as may be applied for by a religious corporation or association.

d. Where a permit issued pursuant to this section is used for a purpose other than official duties as set forth in this section or by a person other than the member of the clergy indicated in an application such permit may be rescinded. The member of the clergy who engaged in or allowed such unauthorized use of the permit shall not be eligible for inclusion in an application pursuant to this section. The commissioner shall promulgate such rules as may be necessary for the implementation of this section and shall set such fee as may be appropriate for the issuance of permits pursuant to this section.

**HISTORICAL NOTE**

Section added L.L. 73/1996 § 2, eff. Dec. 12, 1996. [See Note]

**NOTE**

Provisions of L.L. 73/1996 § 1:

Section 1. Legislative findings and intent. It is hereby found that many members of the clergy are frequently called upon to respond to emergencies or situations which warrant immediate attention during the course of performing their official duties. In these instances, many members of the clergy are burdened with the task of locating permissible parking, often delaying their ability to attend to someone in a hospital or to perform an official function.

It is also hereby found that under current New York city traffic rules limited exemptions from parking restrictions exist for doctors and dentists, governmental employees and representatives of certain not-for-profit organizations while these persons are engaged in the performance of their official duties but that there is no analogous exemption from parking restrictions for members of the clergy.

It is the intent of this local law to alleviate a burden on members of the clergy who perform a vital and invaluable public service in the city of New York.

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.



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***** Current through December 2009 ****

*NYC Administrative Code 19-162.2*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-162.2 Permissible parking for emergency ambulance service vehicles operating for volunteer ambulance services.

a. For purposes of this section the following terms shall have the following meanings:

1. "volunteer emergency medical technician" shall mean an individual who meets the minimum requirements established by regulations pursuant to section three thousand two of the public health law and who is responsible for the administration or supervision of initial emergency medical care and transportation of sick or injured persons and who performs such services without the receipt or expectation of monetary compensation.

2. "volunteer ambulance service" shall mean a registered or certified volunteer ambulance service as defined in section three thousand four of the public health law.

3. "emergency ambulance service vehicle" shall mean a vehicle which is an appropriately equipped motor vehicle owned or operated by an ambulance service as defined in section three thousand one of the public health law and used for the purpose of transporting emergency medical personnel and equipment to sick or injured persons and which is transporting a certified first responder.

4. "certified first responder" shall mean an individual who meets the minimum requirements established by regulations pursuant to section three thousand two of the public health law and who is responsible for administration of initial life saving care of sick and injured persons.

b. The commissioner shall issue an annual on-street parking permit for a vehicle authorized by a volunteer ambulance service to operate as an emergency ambulance service vehicle. The volunteer ambulance service shall submit an application for each permit requested on such form as the commissioner shall determine and shall certify that the permit is necessary for the performance by a volunteer emergency medical technician of his or her duties on behalf of that volunteer ambulance service.

c. The volunteer ambulance service shall specify the requested geographic territory for each permit, which may not exceed the primary operating territory listed on the department of health and mental hygiene ambulance service registration or certification pursuant to section three thousand four of the public health law.

d. Such parking permit shall only be used for the purpose of parking a specified emergency ambulance service vehicle where parking is prohibited by sign or rule, and only while such vehicle is on standby for use by a volunteer emergency medical technician to respond to medical emergencies.

e. The license plate number of the vehicle and the name, address and telephone number where the volunteer ambulance service can be reached shall be written on the face side of the permit.

f. Notwithstanding any other provision of law, such parking permit shall not authorize the parking of a motor vehicle in a bus stop, a taxi-stand, within fifteen feet of a fire hydrant, a fire zone, a driveway, a crosswalk, a no stopping zone, a no standing zone, or where the vehicle would be double-parked.

g. Any misuse of such permit shall be sufficient cause for revocation of said permit.

h. Notwithstanding any other provision of law, no vehicle bearing an annual on-street parking permit issued pursuant to this section may be towed when such vehicle is being used in accordance with the purpose for which such permit was issued, except in public safety emergencies to be determined by the police department.

**HISTORICAL NOTE**

Section added L.L. 40/1997 § 1, eff. Oct. 15, 1997.

Subd. c amended L.L. 22/2002 § 38, eff. July 29, 2002 and deemed in

effect as of July 1, 2002.

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-163*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-163 Holiday suspensions of parking rules.

a. All alternate side of the street parking rules shall be suspended on the following holidays: Christmas, Yom Kippur, Rosh Hashanah, Ash Wednesday, Holy Thursday, Good Friday, Ascension Thursday, Feast of the Assumption, Feast of All Saints, Feast of the Immaculate Conception, first two days of Succoth, Shemini Atzareth, Simchas Torah, Shevuoth, Purim, Orthodox Holy Thursday, Orthodox Good Friday, first two and last two days of Passover, the Muslim holidays of Eid Ul-Fitr and Eid Ul-Adha, Asian Lunar New Year, the Hindu festival of Diwali on the day that Lakshmi Puja is observed, and all state and national holidays.

b. Each year, as soon as possible after the days of observance of the Muslim holidays of Eid Ul-Fitr and Eid Ul-Adha have been fixed pursuant to religious law and tradition, the commissioner shall designate the three days applicable to each of the aforementioned holidays as days upon which alternate side of the street parking rules shall be suspended.

c. The date of the Asian Lunar New Year shall be the first day of the second lunar month after the winter solstice in the preceding calendar year.

**HISTORICAL NOTE**

Section amended L.L. 32/2002 § 1, eff. Nov. 7, 2002.

Section heading amended L.L. 33/2002 § 1, eff. Nov. 7, 2002.

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section amended L.L. 82/1992 § 1, eff. Oct. 23, 1992.

Section amended chap 580/1990 § 1 eff. July 18, 1990.

Section added chap 907/1985 § 1

Subd. a amended L.L. 103/2005 § 1, eff. Dec. 8, 2005.

Subd. a amended L.L. 33/2002 § 1, eff. Nov. 7, 2002.

**DERIVATION**

Formerly § 883b-4.0 added LL 27/1977 § 4

Amended LL 9/1980 § 1

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-163.1 Suspension of parking rules during snowfalls.

All alternate side of the street parking rules shall be suspended during any snowfall that causes the department of sanitation to suspend its street sweeping operations, provided that the department may reinstate alternate side of the street parking rules after twenty-four hours if it determines, after consulting with the department of sanitation, that alternate side of the street parking is necessary to immediately commence curbside snow removal.

**HISTORICAL NOTE**

Section added L.L. 68/2008 § 1, eff. Jan. 28, 2009.

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.



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***** Current through December 2009 ****

*NYC Administrative Code 19-164*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-164 Special parking for wheelchair accessible vans.

Any wheelchair accessible van licensed by the taxi and limousine commission actually in the process of boarding or discharging wheelchair passengers or escorting wheelchair passengers to and from their destination, shall be permitted to park in any area in which a vehicle with a special vehicle identification permit is permitted to park.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 883b-5.0 added LL 48/1981 § 1

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.

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*NYC Administrative Code 19-165*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-165 Parking of motor vehicles at night.

a. It shall be unlawful for any person to park a motor vehicle during the period from one-half hour after sunset to one-half hour before sunrise on the streets of the city without displaying lights, unless said vehicle is equipped with a reflector as provided for in the vehicle and traffic law of the state of New York.

b. Nothing herein shall be construed to increase the number of hours of parking permitted by any laws or traffic regulations of the city nor to permit parking of vehicles where now prohibited by any law or regulations of any agency in the city.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 435-14.0 added LL 73/1940 § 1

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-166*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-166 Unlawful use or possession of official cards.

Any person who without permission of the commissioner of transportation:

1. Makes or engraves, or causes or procures to be made or engraved, or willingly aids or assists in making or engraving, a plate or other means of reproducing or printing the resemblance or similitude of an official department of transportation special vehicle identification card or any other official card issued by the department of transportation; or

2. Has in his or her possession or custody any implements, or materials, with intent that they shall be used for the purpose of making or engraving such a plate or means of reproduction; or

3. Has in his or her possession or custody such a plate or means of reproduction with intent to use, or permit the same to be used, for the purpose of taking therefrom any impression or copy to be uttered; or

4. Has in his or her possession or custody any impression or copy taken from such a plate or means of reproduction, with intent to have the same filled up and completed for the purpose of being uttered; or

5. Makes or engraves, or causes or procures to be made or engraved, or willingly aids or assists in making or engraving, upon any plate or other means of reproduction, any figures or words with intent that the same may be used for the purpose of altering any genuine card hereinbefore indicated or mentioned; or

6. Has in his or her custody or possession any of the cards hereinbefore mentioned, or any copy or reproduction thereof; is guilty of an offense punishable by a fine of not less than two hundred fifty dollars, or imprisonment for not more than thirty days, or both.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 885-1.0 added LL 9/1972 § 2

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.



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***** Current through December 2009 ****

*NYC Administrative Code 19-167*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-167 Dimensions and weights of vehicles operated in the city.

[Repealed]

**HISTORICAL NOTE**

Section repealed L.L. 104/1993 § 1, eff. Jan. 27, 1994

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 883b-6.0 added LL 20/1983 § 2

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.



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***** Current through December 2009 ****

*NYC Administrative Code 19-167*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-167 Suspending the activation of parking meters on Sundays.

Notwithstanding any other provision of law, no person parking a vehicle at a parking meter is required to activate such meter on a Sunday and no notice of violation or summons may be issued solely for the failure to activate such parking meter on a Sunday.

**HISTORICAL NOTE**

Section added L.L. 90/2005 § 1, eff. Nov. 10, 2005. [See Note 1]

**NOTE**

1. Provisions of L.L. L.L. 90/2005:

§ 2. This local law shall take effect thirty days after its enactment into law [vetoed Aug. 25, 2005, overridden Oct. 11, 2005], except that, the commissioner of transportation shall take all actions necessary for its implementation prior to such effective date.

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.



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***** Current through December 2009 ****

*NYC Administrative Code 19-167.1*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-167.1 Parking at broken or missing meters or muni-meters.

a. A person shall be allowed to park at a missing or broken meter up to the maximum amount of time otherwise lawfully permitted at such meter.

b. If all muni-meters in a parking field or on a block are missing or broken, a person shall be allowed to park in such parking field or on such block up to the maximum amount of time otherwise lawfully permitted by such muni-meters in such controlled parking field or block. For the purposes of this subdivision, "muni-meter" shall mean an electronic parking meter that dispenses timed receipts that must be displayed in a conspicuous place on a vehicle's dashboard.

**HISTORICAL NOTE**

Section added L.L. 59/2008 § 1, eff. Mar. 1, 2009.

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.



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***** Current through December 2009 ****

*NYC Administrative Code 19-168*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-168 Fishing from public bridges.

(a) The commissioner shall be authorized to post on any public bridge within the city, signs prohibiting fishing therefrom. The commissioner shall post and maintain such signs on bridges selected at his or her discretion.

(b) It shall be unlawful for any person to fish, by any means whatsoever, from any public bridge within the city where a sign prohibiting such conduct has been posted.

(c) Violation of this section shall be punishable by a fine of not more than fifty dollars nor less than fifteen dollars for each violation thereof.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 883b-8.0 added LL 7/1985 § 1

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.

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*NYC Administrative Code 19-169*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-169 Removal of vehicles parked in front of a private driveway.

a. Subject to the provisions of this section an owner of a lot containing no more than two dwelling units, or his or her lessee, may cause any vehicle which is parked in front of his or her private driveway and which blocks the entry or egress of a vehicle from such property to be removed by a person licensed to engage in towing pursuant to subchapter thirty-one of chapter two of title twenty of the code, where a person authorized to issue a notice of parking violation has issued such a notice and affixed it to such unlawfully parked vehicle; the issuance of such a notice shall constitute authorization to the owner of such property, or his or her lessee, to arrange for removal of such unlawfully parked vehicle, and such removal shall be deemed to be at the request of the person who issued the notice.

b. Where the owner of such property, or his or her lessee, requests a police officer to arrange for removal of any such unlawfully parked vehicle, such vehicle shall be removed at the direction of the police department by the next available towing company participating in the rotation tow program established pursuant to section 20-519 of the code. Nothing in this section shall be construed to preclude an owner of such property, or his or her lessee, acting pursuant to this section, from arranging for the removal of such unlawfully parked vehicle by a tow operator of such person's choice. The commissioner of consumer affairs shall promulgate a regulation establishing performance standards for licensees in order to insure that vehicles summonsed under this section are towed as expeditiously as possible.

c. 1. No vehicle may be removed pursuant to this section without the express written authorization issued to a person licensed to engage in towing pursuant to subchapter thirty-one of chapter two of title twenty of the code by the

owner of such property, or his or her lessee. Such authorization shall include the location of the vehicle to be removed, the make, model, color and license plate number of such vehicle and a statement that such vehicle was removed pursuant to a notice of parking violation and shall be signed by the owner of such property, or his or her lessee, prior to removal.

2. A vehicle may not be removed if it is occupied by any person.

3. Notwithstanding any other provision of law, a vehicle which is removed shall be taken directly to a facility for storage maintained by the person licensed to engage in towing pursuant to subchapter thirty-one of chapter two of title twenty of the code who has removed such vehicle and which is within ten miles from the point of removal. If no such facility is available, the closest available facility for storage maintained by a person so licensed shall be utilized. Such facility for storage must be a secure place for safekeeping vehicles.

4. Any person who removes a vehicle pursuant to this section shall within thirty minutes of the vehicle's arrival at a facility for storage notify the local police precinct having jurisdiction over the area of such removal of the storage site, the time the vehicle was removed, the location the vehicle was removed from, the make, model, color and license plate number of the vehicle, the name of the person who signed an authorization for the removal and the fact that such vehicle was removed pursuant to a notice of parking violation and shall obtain the name of the person at such police precinct to whom such information was reported and note such name on a trip record together with the date and time that the vehicle was removed.

5. If the registered owner or other person in control of the vehicle arrives at the scene prior to removal of the vehicle and such vehicle is connected to any apparatus for removal, the vehicle shall be disconnected from such apparatus and such person shall be allowed to remove the vehicle without interference upon payment of a reasonable service fee of not more than one-half of the charge allowed for removal as provided in paragraph eight of this subdivision, for which a receipt shall be given.

6. The registered owner or other person in control of a vehicle which has been removed pursuant to this section shall have the right to inspect the vehicle before accepting its return. No release or waiver of any kind which would release the person or company removing the vehicle from liability for damages may be required from any such owner or other person as a condition of release of the vehicle to such person. A detailed, signed receipt showing the legal name of the person or company removing the vehicle must be given to the person paying the removal and storage charges at the time of payment.

7. Any person who removes a vehicle pursuant to this section shall comply with the notice provisions of subdivision two of section one hundred eighty-four of the lien law.

8. Notwithstanding the charges permitted to be collected under subdivision c of section 20-519 of this code, a person who removes a vehicle pursuant to section 19-169 of this code may collect the following charges from the owner or other person in control of such vehicle, payable before the vehicle is released: one hundred dollars for removal and the first three days of storage; ten dollars per day for storage thereafter, except that no charge may be collected for removal or storage of a vehicle pursuant to this section by a person who is not licensed to engage in towing pursuant to subchapter thirty-one of chapter two of title twenty of the code.

9. This section does not apply to law enforcement, firefighting, rescue squad, ambulance, or other emergency vehicles which are marked as such.

10. When an owner of property, or his or her lessee, improperly causes a vehicle to be removed, such person shall be liable to the owner or other person in control of the vehicle for the cost of removal, transportation and storage and for any damage resulting from the removal, transportation and storage of the vehicle.

d. No person licensed pursuant to subchapter thirty-one of chapter two of title twenty of the code shall refuse,

without justifiable grounds, a request by any person acting pursuant to this section to remove a vehicle unlawfully blocking a private driveway. Any person who violates this subdivision shall be punished as follows: for the first violation, a fine of one hundred dollars; for the second violation within a period of twelve months of the date of a first violation, a fine of two hundred dollars; and for any additional violations within a period of twenty-four months of the date of a first violation, a fine of five hundred dollars.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section amended L.L. 22/1988 § 1.

Section added chap 907/1985 § 1

Subd. a amended L.L. 28/1987 § 8.

Subd. b pars. 1, 3, 8 amended L.L. 28/1987 § 9.

**DERIVATION**

Formerly § 883b-8.0 added LL 31/1985 § 1

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.

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*NYC Administrative Code 19-169.1*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-169.1 Removal of vehicles improperly parked on private property.

a. Notwithstanding any other provision of law, where a licensed tow operator removes a vehicle because it is parked on private property in a manner inconsistent with posted instructions, and such removal is pursuant to a contract between the owner of the private property and the licensed tow operator for the removal of any such improperly parked vehicles, such tow operator may collect the following charges from the vehicle owner or other person in control of such vehicle, payable before the vehicle is released: up to but not more than one hundred dollars for removal and the first three days of storage; up to but not more than ten dollars per day for storage thereafter; except that no charge may be collected for removal or storage of a vehicle pursuant to this section by a person who is not licensed to engage in towing pursuant to subchapter thirty-one of chapter two of title twenty of this code.

b. No owner or operator of parking facilities on private property shall tow or cause to be towed from such private property any motor vehicle unless such owner or operator shall conspicuously post and maintain upon such private property a sign stating the name, address and telephone number of the tow operator, the hours of operation for vehicle redemption, towing and storage fees of the tow operator and the hours vehicles are prohibited from parking and subject to tow.

c. No vehicle shall be removed by a tow operator from private property without express written authorization by the owner of the private property or his or her agent as designated in the contract between the owner of the private property and the tow operator. Such authorization shall be required for each vehicle removed, and shall include the

location, make, model, color and license plate number of the vehicle to be removed.

d. A vehicle may not be removed if it is occupied by any person.

e. Notwithstanding any other provision of law, a vehicle which is removed shall be taken directly to a facility for storage maintained by the person licensed to engage in towing pursuant to subchapter thirty-one of chapter two of title twenty of the code who has removed such vehicle and which is within city limits and no more than ten miles from the point of removal. If no such facility is available, the closest available facility for storage within New York city maintained by a person so licensed shall be utilized. Such facility for storage must be a secure place for safekeeping vehicles.

f. Any person who removes a vehicle pursuant to this section shall, within thirty minutes of the vehicle's arrival at a facility for storage, notify the local police precinct having jurisdiction over the area from which the vehicle was removed, as to the storage site, the time the vehicle was removed, the location from which the vehicle was removed, the name of the person who authorized the removal, and the fact that the removal was pursuant to a contract with the owner of the private property, and shall obtain the name of the person at such police precinct to whom such information was reported and note such name on a trip record together with the time and date that the vehicle was removed.

g. If the registered owner or other person in control of a vehicle arrives at the scene prior to the removal of the vehicle, and such vehicle is connected to any apparatus for removal, the vehicle shall be disconnected from such apparatus and such registered owner or other person in control of such vehicle shall be allowed to remove the vehicle from the premises without interference upon payment of a reasonable service fee of not more than one-half of the charge allowed for removal as provided in subdivision a of this section, for which a receipt shall be given. Each tow operator shall carry a legible copy of this sectiion with this paragraph highlighted, and shall show it to a vehicle owner, or other person in control of the vehicle, who arrives at the scene prior to the removal of a vehicle.

h. The registered owner or other person in control of a vehicle which has been removed pursuant to this section shall have the right to inspect the vehicle before accepting its return. No release or waiver of any kind which would release the person or company removing the vehicle from liability for damages may be required from any such owner or other person as a condition of release of the vehicle to such person. A detailed, signed receipt showing the legal name of the person or company removing the vehicle must be given to the person paying the removal and storage charges at the time of payment.

i. When an owner of private property, his or her agent as designated in the contract with the tow operator, or a tow operator contracting with such owner causes a vehicle to be removed in violation of this section, there shall be no charge to the owner or other person in charge of the vehicle for the cost of removal and storage. Such person who has violated this section shall be liable to the owner or other person in control of the vehicle for any amounts actually paid for removal, transportation and storage of the vehicle, as well as for any damage resulting from the removal, transportation and storage of the vehicle.

j. Any person who violates this section shall be punished as follows: for the first violation, a fine of two hundred and fifty dollars; for the second violation within a period of twelve months of the date of the first violation, a fine of five hundred dollars; and for any additional violations within a period of twenty-four months of the date of a first violation, a fine of one thousand dollars.

k. No person may, under authority of this section, cause the removal of any ambulance, police vehicle, fire vehicle, civil defense emergency vehicle, emergency ambulance service vehicle, environmental emergency response vehicle, sanitation patrol vehicle, hazardous materials emergency vehicle or ordinance disposal vehicle of the armed forces of the United States.

l. Authorized officers and employees of the department and the department of consumer affairs and members of the police department shall have the power to enforce the provisions of this section and any rules promulgated

hereunder.

m. The commissioner of consumer affairs is authorized to promulgate such rules as the commissioner deems necessary to effectuate the provisions of this section.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added L.L. 21/1991 § 1, eff. May 4, 1991.

Subds. l, m added L.L. 94/1997 § 1, eff. Dec. 30, 1997.

**CASE NOTES**

¶ 1. In Sweeney v. Bruckner Plaza, 57 A.D.3d 347, 869 NYS3d 453 (1st Dept. 2008), the court refused to dismiss an action brought under §19-169.1. Plaintiff, a quadriplegic, commenced an action to recover for personal injuries allegedly sustained when he traveled a long distance in cold weather to retrieve his vehicle, which had been towed from defendant's parking lot. Allegedly, plaintiff developed pneumonia after his ordeal. The basis for liability was that the defendant had failed to list the name and location of the towing pound. The majority opinion is scant on facts, but the dissenting opinion gives somewhat more detail. Apparently, plaintiff had parked in a handicapped spot in the lot but his vehicle did not display the proper handicapped decal, as a result the car was towed. Allegedly, a tow truck driver erroneously told plaintiff that the pound was only about two blocks away from the shopping center, when in fact the distance was about 1.2 miles. The court said that there was at least an arguable causal connection between the violation (failure to list the location of the pound) and the injury allegedly sustained by plaintiff as a result of the long trip (note-the opinion is not clear as to how plaintiff managed to make the trip at all).

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.

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*NYC Administrative Code 19-169.2*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-169.2 Booting of improperly parked motor vehicles.

a. Definitions. For the purposes of this section, the following terms shall have the following meanings:

1. "Boot" or "booting" shall mean the act of placing on a parked motor vehicle a mechanical device that is designed to be attached to the wheel or tire or other part of such vehicle so as to prohibit its usual manner of movement;

2. "Person" shall mean any individual, partnership, corporation, association, firm or other business entity; and

3. "Private street" shall mean every way or place in private ownership that is used for vehicular travel by the owner and those having express or implied permission of the owner or that may be used by the public for vehicular travel.

b. Except as provided in paragraph two of subdivision a of section 20-531 of this code, no person shall engage in booting unless such person is licensed by the department of consumer affairs pursuant to subchapter 32 of chapter 2 of title 20 of this code and any rules promulgated pursuant thereto.

c. 1. No motor vehicle may be booted unless a sufficient number of signs is conspicuously posted and maintained by the owner of the property in the form, manner and location prescribed by rule of the commissioner of consumer affairs and this subdivision. Such signs shall contain such information as the commissioner of consumer

affairs shall prescribe in such rule including, but not limited to, the word "warning," the name, business address, business telephone number and license number of the person authorized by the property owner to boot the vehicle, the hours during which and the circumstances under which vehicles are prohibited from parking on such property and are subject to booting or towing, if applicable, the fees to be charged for booting and the telephone number of the office within the department of consumer affairs responsible for receiving complaints regarding booting. The word "warning" on such signs shall be in letters not less than five inches high and shall be in the color red and the lettering on such signs stating the hours during which and the circumstances under which vehicles are prohibited from parking on such property and are subject to booting shall be not less than two inches high. The lettering on such signs which provides the name, business address, business telephone number, and license number of the person authorized to boot the vehicle, the fees to be charged for booting and the department of consumer affairs telephone complaint number, shall be not less than three-fourths of an inch high.

2. Notwithstanding paragraph one of this subdivision, the provisions of this subdivision shall be satisfied with respect to a private street if (i) a sign containing the information required by this subdivision is posted and maintained by the owner of such private street at each place where such private street intersects a public street and such signs are situated in such a manner as to be readily visible and readable by the operator of a motor vehicle traveling from a public street onto such private street, and (ii) there are also a sufficient number of signs on every other private street that is in the same ownership stating that vehicles parked on such street without the permission of such owner may be booted and containing the business telephone number of the person authorized by the owner to boot the vehicle, which signs are readily visible and readable by an operator of a motor vehicle traveling on such street.

3. No charge for the release of a vehicle that has been booted in excess of that which is contained in the signs required by this subdivision may be imposed.

4. No motor vehicle shall be booted by a person licensed by the department of consumer affairs pursuant to subchapter thirty-two of chapter two of title twenty of this code and any rule promulgated pursuant thereto unless such licensee has been authorized to boot such motor vehicle pursuant to a written contract between such licensee and the owner, lessee, managing agent or other person in control of the property on which such motor vehicle is parked. Such contract shall also provide that such owner, lessee, managing agent or other person in control of the property shall be liable for any violation by such licensee or his or her employees or agents of any of the provisions of this section or of subchapter thirty-two of chapter two of title twenty of this code or of any rules promulgated pursuant to this section or such subchapter.

5. An owner, lessee, managing agent or other person in control of property who has entered into a written contract with a person licensed by the department of consumer affairs pursuant to subchapter thirty-two of chapter two of title twenty of this code authorizing such licensee to boot motor vehicles parked on such property shall be liable for any violation by such licensee or such licensee's employees or agents of the provisions of this section, of subchapter thirty-two of chapter two of title twenty of this code or of any rules promulgated pursuant to this section or such subchapter.

6. Paragraphs four and five of this subdivision shall not apply to the booting of motor vehicles on a private street.

d. In addition to the provisions of subdivision c of this section, no motor vehicle may be booted (1) unless such vehicle is unlawfully parked; (2) where such vehicle is occupied by any person or live animal; (3) when such vehicle is parked on the roadway side of a vehicle stopped, standing or parked at the curb; (4) where such vehicle is parked in a fire lane, or in front of or immediately adjacent to a fire hydrant, fire connection or building emergency exit; (5) unless the express written authorization of the owner of a private driveway blocked by such vehicle has been obtained, which authorization includes the location, make, model, color and license plate number of such vehicle; (6) if such vehicle is an ambulance, correction vehicle, police vehicle, fire vehicle, civil defense emergency vehicle, emergency ambulance service vehicle, environmental emergency response vehicle, sanitation patrol vehicle, hazardous materials emergency

vehicle, ordinance  disposal vehicle of the armed forces of the United States; and (7) where such vehicle bears a special vehicle identification parking permit issued in accordance with the provisions of paragraph 15 of subdivision a of section 2903 of the New York city charter or issued in accordance with the provisions of section 1203-a of the vehicle and traffic law, or "MD" New York registration plates.

e. Immediately after a vehicle is booted, the person booting such vehicle, the owner of the property where such vehicle was booted, or an employee or agent of such person or owner, shall affix at the rear-most portion of the window adjacent to the driver's seat of such vehicle a sticker measuring eight and one-half inches by eleven inches containing a warning that any attempt to move the vehicle may result in damage to the vehicle, and stating the time the vehicle was booted and the name, business address and the license number of the person who booted such vehicle as well as a business telephone number which will facilitate the dispatch of personnel responsible for removing the boot.

f. No release or waiver of any kind purporting to limit or avoid liability for damages to a vehicle that has been booted shall be valid. In addition, any person who booted a vehicle, or other person authorized to accept payment of any charges for such booting, shall provide a signed receipt to the individual paying the booting charges at the time such charges are paid. Such receipt shall state the name, business address, business telephone number and license number of the person who has booted such vehicle as such information appears on the license to engage in booting, and such receipt shall also include a telephone number for the office within the department of consumer affairs responsible for receiving complaints with respect to booting.

g. No charge shall be imposed for the booting of a vehicle when any person has committed a violation of this section, subchapter thirty-two of chapter two of title twenty of this code or any rules promulgated pursuant to this section or such subchapter with respect to such vehicle, and any such unlawful charge shall be reimbursed by any person liable for a violation of this section.

h. Any person who has booted a motor vehicle shall release such vehicle within thirty minutes of receiving a request for such vehicle's release; provided, however, that payment of any charge for booting is made at or prior to the time of such vehicle's release. The owner or person in control of a vehicle which has been booted by a licensee or such licensee's employee or agent shall be permitted to pay any charge for booting at the location where such vehicle was booted and the licensee, or other person authorized to accept payment, shall accept such payment in person by credit card in accordance with generally accepted business practices.

i. Any person who violates any provision of this section or any rule promulgated pursuant thereto shall be liable for a civil penalty of not less than five hundred nor more than one thousand dollars.

j. Authorized employees of the department, or the department of consumer affairs, or any police officer, shall have the power to enforce the provisions of this section and any rules promulgated pursuant thereto and the department of consumer affairs shall be authorized to impose the civil penalties provided for in this section, may arrange for the redress of any injuries caused by violations of this section and may otherwise provide for compliance with the provisions and purposes of this section.

k. The commissioner of consumer affairs is authorized to promulgate such rules as the commissioner deems necessary to effectuate the provisions of this section.

l. The provisions of this section shall not apply to the booting of a motor vehicle by:

1. The city, any other governmental entity, or a person acting under the direction of the city or such governmental entity, where such booting is authorized by any other provision of law or any rule or regulation promulgated pursuant thereto; or

2. Any person who has a lien pursuant to section 184 of the lien law and who detains such motor vehicle in his or her lawful possession.

**HISTORICAL NOTE**

Section added L.L. 24/1995 § 2, eff. July 9, 1995. See Note.

Subd. c par 1 amended L.L. 90/1997 § 1, eff. Jan. 16, 1998.

Subd. c pars 4, 5, 6 added L.L. 88/1997 § 1, eff. Jan. 16, 1998.

Subd. g amended L.L. 88/1997 § 2, eff. Jan. 16, 1988.

**NOTE**

Provisions of L.L. 24/1995 § 1

Section 1. Legislative findings and intent. It is hereby found and declared that the booting of motor vehicles by private persons should be regulated in order to alleviate some of the problems motorists have experienced and to give motorists a forum in which to have their complaints heard and addressed. In 1994, the Department of Consumer Affairs received complaints from consumers who maintained that their vehicles had been legally parked when the boots were applied, that no signs had been posted indicating that vehicles would be booted if they were improperly parked or that the booting personnel were abusive and unresponsive. By far, the largest portion of these complaints concerned the booting of motor vehicles on private parking lots serving stores and other business establishments where motorists were forced not only to pay high booting charges to have their vehicles released, but also to pay charges for both the booting and the subsequent towing of their vehicles. Since booting is currently an unlicensed activity, the Department of Consumer Affairs has been unable to mediate any of these consumer complaints and to award restitution to consumers where appropriate. This local law would authorize the Department of Consumer Affairs to license private persons who boot motor vehicles and thereby hear and respond to complaints and impose sanctions for any violation of this law. It would also establish certain standards that would govern booting activities, thereby helping to ensure that licensed companies do not wrongfully boot motor vehicles or engage in booting in such a manner as to endanger the public safety. The Council further finds that the licensing of booting companies will protect the public from undue inconvenience and potential damage to vehicles.

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.

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*NYC Administrative Code 19-170*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-170 Limitation on parking of commercial vehicles.

a. When parking is not otherwise restricted, no person shall park a commercial vehicle in excess of three hours. For purposes of this section, the term commercial vehicle shall mean a motor vehicle designed, maintained, or used primarily for the transportation of property.

b. Notwithstanding the foregoing, no person shall park a commercial vehicle on a residential street from 9 p.m. to 5 a.m. For the purpose of this subdivision, residential streets are defined as those streets, or parts thereof, which are located within a residential district under the zoning resolution. Where a commercial vehicle is parked in violation of this subdivision, it shall be an affirmative defense to said violation, with the burden of proof on the person who received the summons, that he or she was actively engaged in business at the time the summons was issued at a premises located within three city blocks of where the summons was issued. This subdivision shall not apply to vehicles owned or operated by gas or oil heat suppliers or gas or oil heat systems maintenance companies, the agents or employees, thereof, or any public utility.

c. A violation of this section shall be punishable by the monetary fine authorized for violation of the rules and regulations of the commissioner in paragraph one of subdivision a of section twenty nine hundred and three of the New York City Charter.

d. Any commercial vehicle parked in violation of subdivision a or b of this section shall be subject to

impoundment by the department. Any motor vehicle impounded pursuant to the provisions of this subdivision shall not be released until all applicable towing and storage fees have been paid. The commissioner shall be authorized to promulgate regulations concerning the procedure for the impoundment of vehicles.

e. The sanctions and fees provided for in this section shall be in addition to any other sanctions, fees or remedies provided by law or regulation.

**HISTORICAL NOTE**

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section amended L.L. 62/1990 § 1, eff. Oct. 26, 1990.

Section added L.L. 25/1988 § 1.

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.



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***** Current through December 2009 ****

*NYC Administrative Code 19-171*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-171 Horse drawn cab stands. [Repealed]

**HISTORICAL NOTE**

Section repealed L.L. 2/1994 § 5, retro. to Jan. 1, 1994.

Section amended L.L. 104/1993 § 1, eff. Jan. 27, 1994.

Section added L.L. 89/1989 § 2 [See Note after § 20-381.1]. (Expires November 21, 1993)

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-171 Helmet requirement for persons under the age of fourteen operating scooters.

a. Definitions. For the purposes of this section:

(1) The term "public highway" means any highway, road, street, roadway, sidewalk, avenue, alley, public place, public driveway or any other public way.

(2) The term "scooter" means a device propelled by muscular power, consisting of a footboard between end wheels and an upright handle attached to a front wheel or to the footboard.

(3) The term "wearing a helmet" means having a helmet of good fit fastened securely upon the head with the helmet straps.

b. This section is applicable to the operation of a scooter upon any public highway or any private road open to public motor vehicle traffic, and within a park or other area under the jurisdiction of the commissioner of parks and recreation.

c. No person less than fourteen years of age shall operate a scooter unless such person is wearing a helmet meeting the standards of the American National Standards Institute (ANSI Z 90.4 bicycle helmet standards), the Snell Memorial Foundation's standards for protective headgear for use in bicycling, the American Society of Testing and

Materials (ASTM) standards for bicycle helmets, the Safety Equipment Institute standards for bicycle helmets, or the United States Consumer Product Safety Commission standards for bicycle helmets.

d. It is a traffic infraction to violate the provisions of this section punishable, upon conviction, by a civil penalty of not more than fifty dollars. Such traffic infractions shall be heard and determined in accordance with article 2-A of the vehicle and traffic law. A hearing officer shall waive the civil penalty for which the parent or guardian of a person who violates the provisions of this section would be liable if such parent or guardian supplies proof that between the date of violation and the appearance date for such violation such parent or guardian purchased or rented a helmet that meets the requirements of this section. A hearing officer may waive the civil penalty for which the parent or guardian of a person who violates the provisions of this section would be liable if he or she finds that due to reasons of economic hardship such parent or guardian was unable to purchase or rent a helmet. A waiver of the civil penalty shall not apply to a second or subsequent conviction under this section.

e. The parent or guardian of a person less than fourteen years of age shall be liable for a violation of this section by such person less than fourteen years of age. A summons for a violation of this section by a person less than fourteen years of age shall only be issued to the parent or guardian of such person if the violation occurs in the presence of such parent or guardian and where such parent or guardian is eighteen years of age or more. Such summons shall only be issued to such parent or guardian and shall not be issued to the person less than fourteen years of age.

f. The failure of any person to comply with the provisions of this section shall not constitute contributory negligence or assumption of risk, and shall not in any way bar, preclude or foreclose an action for personal injury or wrongful death by or on behalf of such person, nor in any way diminish or reduce the damages recoverable in any such action.

g. The department of health and mental hygiene shall distribute informational materials through the department's school health program, which shall include information explaining the hazards of operating scooters without protective headgear. These informational materials shall be printed in multiple languages and shall be made available to any member of the public upon request.

h. The police department and the department of parks and recreation shall enforce the provisions of this section.

**HISTORICAL NOTE**

Section added L.L. 5/2001 § 1, eff. Apr. 3, 2001.

Subd. g amended L.L. 22/2002 § 39, eff. July 29, 2002 and deemed in

effect as of July 1, 2002.

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.

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*NYC Administrative Code 19-171.1*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-171.1 Multi-passenger wheeled device and motorized pedicab prohibited.

a. Definitions. For purposes of this section:

1. "Motorized pedicab" shall mean a wheeled device that is designed and constructed to transport or carry passengers, that is propelled in whole or in part by other than human power, and that is operated to transport passengers for hire.

2. "Multi-passenger wheeled device" shall mean a wheeled device with three or more wheels that is designed and constructed to permit seating by more than two people, that is propelled by human power, and that is designed to permit propulsion by more than two individuals simultaneously.

3. "Owner" shall mean any person who possesses with good legal title, or possesses under a lease, reserve title contract, conditional sales agreement or vendor's agreement or similar agreement one or more motorized pedicabs or multi-passenger wheeled devices in the city of New York.

4. "Tandem bicycle" shall mean a wheeled device that is constructed so that its wheels are aligned in a straight line, one behind the other, permitting operation by two or more people.

b. It shall be unlawful to operate, or cause to be operated, any motorized pedicab or multi-passenger wheeled

device, other than a tandem bicycle, on any street, sidewalk, highway, bridge, tunnel or park within New York City.

c. Any person who violates subdivision b of this section may be issued a notice of violation and shall be subject to a civil penalty that shall not be: (1) less than two hundred nor more than five hundred dollars for the first violation; (2) less than five hundred nor more than one thousand dollars for the second violation committed within a one year period; (3) less than one thousand nor more than four thousand dollars for the third violation committed within a one year period. Such penalty may be recovered in a proceeding before the environmental control board.

d. A person who violates subdivision b of this section shall be guilty of a misdemeanor, punishable by a fine of not more than two hundred fifty dollars or imprisonment of up to sixteen days, or by both such fine and imprisonment.

e. Where a police or peace officer or an authorized employee of a department designated by the commissioner serves a summons or notice of violation for violation of this section on a person operating a multi-passenger wheeled device or motorized pedicab, such multi-passenger wheeled device or motorized pedicab may be seized. Any device seized pursuant to this subdivision shall be delivered into the custody of the police department. The environmental control board shall hold a hearing to adjudicate the violation of subdivision b of this section on an expedited schedule and shall render its determination accordingly.

f. The owner of a multi-passenger wheeled device or motorized pedicab seized pursuant to subdivision e of this section shall be eligible to obtain release of such device prior to the hearing provided for in such subdivision, if such owner has not been found liable for a violation of subdivision b of this section within a five year period prior to the violation resulting in seizure. The multi-passenger wheeled device or motorized pedicab shall be released to such owner upon the posting of an all cash bond in a form satisfactory to the commissioner in an amount satisfactory to cover the maximum civil penalties which may be imposed for a violation of subdivision b of this section and all reasonable costs for removal and storage of such device.

g. Where the environmental control board finds that there was no violation of subdivision b of this section, the owner shall be entitled forthwith to possession of the multi-passenger wheeled device or motorized pedicab without charge or to the extent that any amount has been previously paid for release of the device, such amount shall be refunded.

h. Where the board, after adjudication of the violation of subdivision b of this section, finds a violation of such subdivision, then (i) if the multi-passenger wheeled device or motorized pedicab is not subject to forfeiture pursuant to paragraph one of subdivision j, the police department shall release such device to its owner upon payment of all applicable civil penalties and all reasonable costs of removal and storage; or (ii) if the multi-passenger wheeled device or motorized pedicab is subject to forfeiture pursuant to paragraph one of subdivision j of this section, the police department may release such device to its owner upon payment of all civil penalties and all reasonable costs of removal and storage, or may commence a forfeiture action within ten days after the written demand by such owner for such device.

i. The department shall establish by rule the time within which multi-passenger wheeled devices or motorized pedicabs that are not redeemed may be deemed abandoned and the procedures for disposal.

j. 1. In addition to any other penalty or sanction provided for in this section, a multi-passenger wheeled device or motorized pedicab seized pursuant to subdivision e of this section, and all rights, title and interest therein shall be subject to forfeiture to the city upon notice and judicial determination thereof if the owner of such multi-passenger wheeled device or motorized pedicab has been found liable at least two times within a five-year period for violation of subdivision b of this section.

2. A forfeiture action pursuant to this subdivision shall be commenced by the filing of a summons with a notice or a summons and complaint in accordance with the civil practice law and rules. Such summons with notice or a summons and complaint shall be served in accordance with the civil practice law and rules on the owner of such

multi-passenger wheeled device or motorized pedicab. A multi-passenger wheeled device or motorized pedicab which is the subject of such action shall remain in the custody of the police department or other appropriate agency pending the final determination of the forfeiture action.

3. Any person who receives notice of the institution of a forfeiture action who claims an interest in the multi-passenger wheeled device or motorized pedicab subject to forfeiture may assert a claim in such action for the recovery of such device or satisfaction of such owner's interest in such device.

4. Forfeiture pursuant to this subdivision shall be made subject to the interest of a person who claims an interest in such device pursuant to subdivision three of this subdivision, where such person establishes that: (i) such multi-passenger wheeled device or motorized pedicab was operated in violation of this section without the knowledge of such person, or if such person had knowledge of such operation, that such person did not consent to such operation by doing all that could reasonably have been done to prevent such operation, or (ii) that the operation of such multi-passenger wheeled device or motorized pedicab in violation of this section was conducted by any person other than such person claiming an interest in the device, while such device was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state.

5. The police department, after judicial determination of forfeiture, shall, by public notice of at least five days, sell such forfeited multi-passenger wheeled device or motorized pedicab at public sale. The net proceeds of any such sale shall be paid into the general fund of the city.

6. In any forfeiture action commenced pursuant to this subdivision, where the court awards a sum of money to one or more persons in satisfaction of such person's interest in the forfeited device, the total amount awarded to satisfy such interest or interests shall not exceed the amount of the net proceeds of the sale of the forfeited device after deduction of the lawful expenses incurred by the city, including reasonable costs of removal and storage of the device between the time of the seizure and the date of sale.

k. The penalties provided by subdivisions c, d, e and j of this section shall be in addition to any other penalty imposed by any other provision of law or rule promulgated thereunder.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 3, eff. Apr. 23, 2007.

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.



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*NYC Administrative Code 19-172*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-172 Private streets; names, restrictions of.

a. It shall be unlawful for any private street or thoroughfare to bear a name similar to a street or thoroughfare officially named.

b. Any person convicted of a violation of the provisions of this section shall be punished by a fine of not more than ten dollars, imprisonment for not more than ten days, or both.

**HISTORICAL NOTE**

Section added L.L. 104/1993 § 1, eff. Jan. 27, 1994.

**DERIVATION**

Formerly § 19-160 added chap 907/1985 § 1

Formerly § 883b-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 85

(formerly § 82d7-6.0)

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.



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***** Current through December 2009 ****

*NYC Administrative Code 19-173*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-173 Subway gratings; sweeping into.

a. It shall be unlawful for any person to sweep any substance from a sidewalk or other place into a grating used for the purpose of ventilating any subway railroad.

b. Any person convicted of a violation of this section shall be punished by a fine of not more than fifty dollars, imprisonment for not more than ten days, or both.

**HISTORICAL NOTE**

Section added L.L. 104/1993 § 1, eff. Jan. 27, 1994.

**DERIVATION**

Formerly § 19-133 added chap 907/1985 § 1

Formerly § 692f-14.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 98

(formerly § 82d7-17.0)

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.

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*NYC Administrative Code 19-174*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-174 Passengers boarding horse drawn cabs.

a. The commissioner shall designate by rule specific locations on the streets, avenues and roadways which shall be the sole locations where passengers may board horse drawn cabs if such passengers have not prearranged such horse drawn cab rides in accordance with the provisions of subdivision b of this section and any rules promulgated pursuant thereto.

b. (1) Horse drawn cabs may accept passengers on a prearranged basis in areas and at times that are not restricted pursuant to section 20-381.1 of the code. Such prearranged rides shall commence in front of hotels and restaurants that have obtained the approval of the owner of the premises at which such hotel or restaurant is located.

(2) This subdivision shall not be construed to permit the operation, parking, stopping or standing of any horse drawn cab in any area at any time where or when such operation, parking, stopping or standing is prohibited by any other law or rule.

c. The department shall annually review existing locations of horse drawn cab stands and any proposals by the department and any written proposals by others to establish or eliminate horse drawn cab stands and shall report the results of such review to the mayor and the council. This report shall include a list of those locations proposed to be added or eliminated, those considered by the department, the reasons why any proposal was not considered and the reasons why the department did or did not establish or eliminate a horse drawn cab stand at each proposed location that

was considered. Such report shall be submitted to the mayor and the council within sixty days after the close of the fiscal year.

**HISTORICAL NOTE**

Section added L.L. 2/1994 § 6, retro. to Jan. 1, 1994

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.



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***** Current through December 2009 ****

*NYC Administrative Code 19-175*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-175 Variance for special events.

a. Notwithstanding the provisions of section 20-381.1 of the code, the owner or operator of a horse drawn cab may apply for a variance from the provisions of section 20-381.1 for the limited purpose of carrying out a contract to provide a horse drawn cab for the filming of a movie, television show or commercial, or for a wedding, parade, or other special event as shall be defined by the commissioner by rule. The commissioner shall grant such variance when he or she determines that the issuance of such variance would not have an adverse effect on vehicular or pedestrian congestion, commencement of theatrical productions or public safety.

b. A variance application shall be in such form as prescribed by the commissioner and shall be submitted to the commissioner no fewer than three business days prior to the date of the event for which the variance is requested.

c. The commissioner may require the payment of an application processing fee in an amount to be established by rule.

d. The commissioner shall issue a document specifying the variance. Whenever a horse drawn cab is being operated in accordance with a duly issued variance, such variance shall be carried by the driver of such horse drawn cab and shall be produced upon the demand of any police, traffic, parks or other enforcement officer authorized to enforce section 20-381.1 of the code.

e. Use of a variance by any person other than the person to whom it was issued, or for any purpose other than the purpose for which it was issued, shall subject the person using such variance to a civil penalty of not less than five hundred dollars.

**HISTORICAL NOTE**

Section added L.L. 2/1994 § 7, retro. to Jan. 1, 1994.

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.



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***** Current through December 2009 ****

*NYC Administrative Code 19-175.1*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 2*1 PARKING AND OTHER USES OF STREETS

§ 19-175.1 Publication of parking restrictions.

a. The commissioner shall make available on a website information regarding parking restrictions implemented by the department in the city of New York. Such website shall be searchable by each city block.

b. Whenever there is a change in parking restrictions adopted by the department at any time after the department has completed such sign information system referred to in subdivision a of this section, and implemented by the department using conventional signage, defined as mounted metal signs, whether permanent or for construction, the commissioner shall update such website as soon as practicable to display the new parking restrictions.

c. No fee shall be charged for the use of the existing website or separately created website referred to in subdivision a of this section which contains the parking restriction information required pursuant to this section.

d. The commissioner is directed to place a notice on such website advising members of the public to check posted street signs for compliance with laws and rules.

**HISTORICAL NOTE**

Section added L.L. 58/2007 § 1, eff. Sept. 1, 2009.

**FOOTNOTES**

1

[Footnote 1]: * Subchapter 2 designated LL 104/1993 § 1, eff. Jan. 27, 1994.



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***** Current through December 2009 ****

*NYC Administrative Code 19-176*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 3 PEDESTRIAN RIGHTS AND SAFETY

§ 19-176 Bicycle operation on sidewalks prohibited.

a. For purposes of this section:

(1) The term "bicycle" shall mean a two or three wheeled device upon which a person or persons may ride, propelled by human power through a belt, a chain or gears, with such wheels in a tandem or tricycle, except that it shall not include such a device having solid tires and intended for use only on a sidewalk by a child.

(2) The term "sidewalk" shall mean that portion of the street, whether paved or unpaved, between the curb lines or the lateral lines of a roadway and the adjacent property lines, intended for the use of pedestrians. Where it is not clear which section is intended for the use of pedestrians the sidewalk will be deemed to be that portion of the street between the building line and the curb.

(3) The term "child" shall mean a person less than fourteen years of age.

b. No person shall ride a bicycle upon any sidewalk unless permitted by an official sign. A person who violates this subdivision may be issued a notice of violation and shall be liable for a civil penalty of not more than one hundred dollars which may be recovered in a proceeding before the environmental control board.

c. A person who violates subdivision b of this section in a manner that endangers any other person or property

shall be guilty of a misdemeanor, punishable by a fine of not more than one hundred dollars or imprisonment for not more than twenty days or both such fine and imprisonment. Such person shall also be liable for a civil penalty of not less than one hundred dollars nor more than three hundred dollars, except where a hearing officer has determined that where there was physical contact between the rider and another person, an additional civil penalty of not less than one hundred dollars nor more than two hundred dollars may be imposed. Such civil penalties may be recovered in a proceeding before the environmental control board. Enforcement agents shall indicate on the summons or notice of violation issued pursuant to this subdivision whether physical contact was made between the rider and another person. Any person who violates any provision of this subdivision more than once within any six month period shall be subject to the imposition of civil penalties in an amount that is double what would otherwise have been imposed for the commission of a first violation. It shall be an affirmative defense that physical contact between a rider and another person was in no way the fault of the rider.

d. Where a summons or notice of violation is issued for a violation of subdivision c of this section, the bicycle may be seized and impounded.

e. A bicycle impounded pursuant to this section shall be released to the owner or other person lawfully entitled to possession upon payment of the costs of removal and storage as set forth in the rules of the police department and proof of payment of any fine or civil penalty for the violation or, if a proceeding for the violation is pending in a court or before the environmental control board, upon the posting of a bond or other form of security acceptable to the police department in an amount which will assure the payment of such costs and any fine or civil penalty which may be imposed for the violation. If the court or the environmental control board finds in favor of the defendant or respondent, the owner shall be entitled forthwith to possession of the bicycle without charge or to the extent that any amount has been previously paid for release of the bicycle, such amount shall be refunded. The police department shall establish by rule the time within which bicycles which are not redeemed may be deemed abandoned and the procedures for disposal.

f. The owner of a bicycle shall be given the opportunity for a post seizure hearing within five business days before the environmental control board regarding the impoundment. The environmental control board shall render a determination within three business days after the conclusion of the hearing. Where the board finds that there was no basis for the impoundment, the owner shall be entitled forthwith to possession of the bicycle without charge or to the extent that any amount has been previously paid for release of the bicycle, such amount shall be refunded.

g. Upon the impoundment of a bicycle, the rider shall be given written notice of the procedure for redemption of the bicycle and the procedure for requesting a post seizure hearing. Where the rider of a bicycle is not the owner thereof notice provided to the rider shall be deemed to be notice to the owner. Where the defendant or respondent is less than eighteen years old such notice shall also be mailed to the parent, guardian or where relevant, employer of the respondent, if the name and address of such person is reasonably ascertainable.

h. In any proceeding under this section it shall be an affirmative defense that the defendant or respondent was less than fourteen years old at the time the violation was committed.

i. The provisions of this section may be enforced by the police department or designated employees of the department, the department of sanitation, the department of parks and recreation.

**HISTORICAL NOTE**

Section added L.L. 6/1996 § 1, eff. Mar. 12, 1996.

Subd. b amended L.L. 14/2002 § 1, eff. July 10, 2002.

Subd. c amended L.L. 14/2002 § 2, eff. July 10, 2002.

Subd. d added L.L. 14/2002 § 3, eff. July 10, 2002.

Subd. e relettered (former subd. d) L.L. 14/2002 § 3, eff. July 10, 2002.

Subd. f relettered (former subd. e) L.L. 14/2002 § 3, eff. July 10, 2002.

Subd. g relettered (former subd. f) L.L. 14/2002 § 3, eff. July 10, 2002.

Subd. h added L.L. 14/2002 § 4, eff. July 10, 2002.

Subd. i relettered and amended (former subd. g) L.L. 14/2002 § 4, eff.

July 10, 2002.

**CASE NOTES**

¶ 1. In one case, a defendant was stopped for violation of Sec. 19-176, which prohibits persons from riding bicycles on sidewalks. After the police arrested defendant, they searched him and found an illegal firearm. Defendant then sought to suppress the fruits of the search, claiming that the search violated the Fourth Amendment to the Constitution. The court, however, held that the ordinance constituted a traffic infraction. Thus, the police had the right to make a warrantless arrest if they had probable cause to believe that defendant had violated the ordinance. Since the search was incident to a lawful arrest, the motion to suppress the firearms evidence was denied (note-ordinarily, the police might have just issued a summons for a traffic infraction, but they arrested defendant when he was unable to produce satisfactory identification). United States v. McFadden, 238 F.3d 98 (2d Cir. 2001).



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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 3 PEDESTRIAN RIGHTS AND SAFETY

§ 19-176.1 Reckless operation of roller skates, in-line skates and skateboards prohibited.

a. For purposes of this section:

(1) The term "in-line skate" shall mean a manufactured or assembled device consisting of an upper portion that is intended to be secured to a human foot, with a frame or chassis attached along the length of the bottom of such upper portion, with such frame or chassis holding two or more wheels that are longitudinally aligned and used to skate or glide, by means of human foot and leg power while having such device attached to each such foot or leg.

(2) The term "reckless operation" shall mean operating roller skates, in-line skates or a skateboard on a public street, highway or sidewalk in such a manner as to endanger the safety or property of another.

(3) The term "roller skate" shall mean a manufactured or assembled device consisting of a frame or shoe having clamps or straps or both for fastening, with a pair of small wheels near the toe and another pair at the heel mounted or permanently attached thereto, for skating or gliding by means of human foot and leg power.

(4) The term "sidewalk" shall mean that portion of the street, whether paved or unpaved, between the curb lines or the lateral lines of a roadway and the adjacent property lines, intended for the use of pedestrians. Where it is not clear which section is intended for the use of pedestrians the sidewalk will be deemed to be that portion of the street between the building line and the curb.

(5) The term "skateboard" shall mean a device consisting of a platform usually curved upwards at each end, to which are mounted or permanently attached two swiveling frames, each of which is used to support and guide a pair of small wheels, which device glides or is propelled by means of human foot or leg power.

b. No person shall engage in the reckless operation of roller skates, in-line skates or a skateboard.

c. A violation of subdivision b of this section shall be a traffic infraction and shall be punishable in accordance with section 1800 of the vehicle and traffic law. Any person who is found guilty of the reckless operation of roller skates, in-line skates or a skateboard shall be subject to a fine of not less than fifty dollars nor more than one hundred dollars.

d. The provisions of this section shall be enforced by the department, the police department and the department of parks and recreation.

**HISTORICAL NOTE**

Section added L.L. 43/1996 § 1, eff. Aug. 4, 1996.



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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 3 PEDESTRIAN RIGHTS AND SAFETY

§ 19-176.2 Motorized scooters.

a. For purposes of this section, the term "motorized scooter" shall mean any wheeled device that has handlebars that is designed to be stood or sat upon by the operator, is powered by an electric motor or by a gasoline motor that is capable of propelling the device without human power and is not capable of being registered with the New York State Department of Motor Vehicles. For the purposes of this section, the term motorized scooter shall not include wheelchairs or other mobility aids designed for use by disabled persons, electric powered devices not capable of exceeding fifteen miles per hour or "electric personal assistive mobility devices" defined as self-balancing, two non-tandem wheeled devices designed to transport one person by means of an electric propulsion system.

b. No person shall operate a motorized scooter in the city of New York.

c. Any person who violates subdivision b of this section shall be liable for a civil penalty in the amount of five hundred dollars. Authorized employees of the police department and department of parks and recreation shall have the authority to enforce the provisions of this section. Such penalties shall be recovered in a civil action or in a proceeding commenced by the service of a notice of violation that shall be returnable before the environmental control board. In addition, such violation shall be a traffic infraction and shall be punishable in accordance with section eighteen hundred of the New York state vehicle and traffic law.

d. Any motorized scooter that has been used or is being used in violation of the provisions of this section may be

impounded and shall not be released until any and all removed charges and storage fees and the applicable fines have been paid or a bond has been posted in an amount satisfactory to the police commissioner.

**HISTORICAL NOTE**

Section added L.L. 51/2004 § 2, eff. Mar. 23, 2005. [See Note 1]

**NOTE**

1. Provisions of L.L. 51/2004:

Section 1. Declaration of legislative findings and intent. The Council of the City of New York hereby finds that the operation of motorized scooters in the City presents a growing risk to the life and health of scooter operators, motorists, and pedestrians. The United States Consumer Product Safety Commission reported 4,390 emergency room-treated injuries associated with motorized scooters in the year 2000. Thirty-nine percent of those injured were under 15 years of age.

These motorized scooters come in many forms. A recent manifestation of these devices, one that has been proliferating rapidly in the City, is the so-called "pocket-rocket". Pocket-rockets are relatively inexpensive and are easily obtained, but are very dangerous. Many reach speeds of forty miles per hour or greater while not being equipped to protect the rider properly. This became abundantly clear in the recent tragic death of a 19-year old pocket-rocket rider in Queens on July 29, 2004 when the device struck a pothole at an excessive speed.

Scooters were originally designed for human power and low-speed operation. Their motorized counterparts travel up to forty miles per hour and cannot be maneuvered safely at these speeds. Difficulty of control poses risks to operators, pedestrians and vehicular traffic in the streets of the City. The absence of licensing or safety requirements compounds these risks.

The New York State Vehicle and Traffic Law mandates that registration is required for operating motorized vehicles on public streets. The Department of Motor Vehicles has declared that motorized scooters cannot be registered and therefore should not be allowed on public streets. The Council is enacting this local law to eliminate the significant safety risks posed by the increasing use of motorized scooters.

. . . . . .

§ 4. This local law shall take effect one hundred twenty days after its enactment into law [vetoed Oct. 27, 2004 and overridden Nov. 23, 2004], except that the police commissioner and the commissioners of consumer affairs and parks and recreation shall take such actions as are necessary for its implementation, including the promulgation of rules, prior to such effective date.



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***** Current through December 2009 ****

*NYC Administrative Code 19-177*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

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§ 19-177 Speed Limits[; posting of signs]*.

a. The official2 speed limit for a vehicle in the city of New York shall be thirty miles per hour except where an official sign indicates that a different speed limit is in effect.

b. No person shall drive a vehicle on any street in excess of the speed limit in effect for that street.

c. The commissioner shall post a sign at each exit within the city of New York of each bridge and tunnel having only one terminus in the city of New York that states the speed limit within the city.

**HISTORICAL NOTE**

Section added L.L. 6/1996 § 1, eff. Mar. 12, 1996.

**FOOTNOTES**

2

[Footnote 2]: * Supplied by editor.

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*NYC Administrative Code 19-178*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

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§ 19-178 Truck Weight and Length Limitations.

The commissioner shall post a sign at each exit within the city of New York of each bridge and tunnel having only one terminus in the city of New York that states the limits of truck weight and truck length within the city.

**HISTORICAL NOTE**

Section added L.L. 6/1996 § 1, eff. Mar. 12, 1996.

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*NYC Administrative Code 19-179*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

SUBCHAPTER 3 PEDESTRIAN RIGHTS AND SAFETY

§ 19-179 Traffic calming study.

a. The commissioner shall conduct a study on the feasibility of installing traffic calming measures, including but not limited to, raised crosswalks, traffic circles and protected pedestrian phases in appropriate locations in the city. Within one year of the effective date of this local law, the commissioner shall submit a report of the department's findings to the council.

b. For purposes of this section, the following terms shall have the following meanings:

(1) "traffic calming" shall mean any engineering measure which slows vehicular traffic and accommodates other street users such as pedestrians, bicyclists or children at play.

(2) "raised crosswalks" shall mean crosswalks which are raised several inches above street level in order to slow vehicular traffic.

(3) "traffic circles" shall mean landscaped islands in the middle of intersections which can replace traffic control indications or stop signs on non-arterial streets.

(4) "protected pedestrian phases" shall mean traffic control indications that are adjusted to provide that all conflicting vehicular movements are stopped in order to accommodate pedestrian movement.

**HISTORICAL NOTE**

Section added L.L. 6/1996 § 1, eff. Mar. 12, 1996.



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***** Current through December 2009 ****

*NYC Administrative Code 19-180*

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Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

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§ 19-180 Performance5 indicators.

a. For the purposes of this section, the following terms shall be defined as follows:

1. "Bicycle screen lines" shall mean locations where bicycles are ridden, including but not limited to greenways, roadways and bridge crossings.

2. "Borough screen lines" shall mean locations where roadways cross between boroughs.

3. "City screen lines" shall mean locations where roadways enter the city.

4. "High performance modes" shall mean a form of surface transportation other than automobiles, including buses, ferries, bicycling and walking, that more efficiently uses roadways and waterways to move people.

5. "Key corridors" shall mean major arterial roadways where changes in street operations, such as lane reapportionments, lane reconfigurations, significant adjustments in traffic and parking regulations and changes in traffic signal timing have been completed, are being implemented or are being studied.

b. The department shall develop and monitor performance indicators that will assist in assessing and reducing the amount of traffic on transportation infrastructure and promote high performance modes citywide and within each borough. Such indicators shall include:

1. vehicle volume data at city screen lines, borough screen lines and river crossings.

2. vehicle volume data and other data where appropriate, including but not limited to vehicle speed, bus speed and ridership, pedestrian, bicycle and crash data, on key corridors.

3. vehicle speed data to be determined utilizing available global positioning systems data.

4. bicycle volume data based on bicycle screen lines.

5. ferry volume data based upon information on ridership from city-operated and private ferry services.

c. The performance indicators developed pursuant to this section shall be measured and reported citywide and by borough by the department and submitted in a written report to the council and the mayor by November 1st of each following calendar year. Where such report provides information for a key corridor, such report shall provide performance indicators before and after construction or project implementation. Such report shall include information for each indicator from the prior calendar year and shall describe departmental assessments about the projects where appropriate.

d. All reports required to be submitted pursuant to subdivision c of this section shall be made available on the department's official website within seven days of each such submission.

**HISTORICAL NOTE**

Section added L.L. 23/2008 § 2, eff. June 3, 2008 with special provisions.

[See Note 1]

**NOTE**

1. Provisions of L.L. L.L. 23/2008:

Section 1. Declaration of legislative findings and intent. The New York City Department of Transportation ("DOT") currently measures surface transportation performance through an array of output measures such as the number of traffic lights repaired and the number of potholes filled. While such indicators provide valuable information about the state of New York City's roads and other infrastructure, such indicators do not help to monitor and evaluate many of the broader transportation issues facing New York City. These issues include reducing congestion and promoting modes of surface transportation that generate less pollution and consume less street space per traveler than private automobiles. These "high performance" modes include buses, ferries, bicycling and walking.

The Council finds that requiring DOT to monitor performance indicators will help DOT to reduce automobile traffic and encourage more sustainable means of transportation vital to combating congestion, pollution and improving the City's long term economic health. Requiring DOT to report on these indicators for a major arterial roadway before and after traffic engineering initiatives have been completed will allow DOT and the public to assess the effectiveness of DOT's work.

. . . . . .

§ 3. This local law shall take effect immediately, except that the reporting of information required pursuant to the provisions of paragraphs 2, 3 and 4 of subdivision b of section 19-180 within bill section two shall take effect on January 1, 2009.

**FOOTNOTES**

5

[Footnote 5]: * There are 2 sections 19-180.



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*NYC Administrative Code 19-180*

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Title 19 Transportation

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§ 19-180 Safety audits6 of crash locations involving pedestrians.

a. Within one hundred and eighty days of receiving access to New York state department of motor vehicles traffic crash data involving pedestrian injuries or fatalities for the previous calendar year, the department shall:

1. Identify the twenty highest crash locations based upon a ranking of the total number of crashes involving pedestrians and selected proportionally by borough based upon the percentage of total crashes involving pedestrians in such borough; and

2. Inspect and conduct audits at such locations and, where warranted, make improvements or incorporate improvements into capital projects.

b. Within thirty days of completing the inspections and audits required under paragraph 2 of subdivision a of this section, the department shall send a report noting such inspection and audit and summarizing its recommendations and steps to be taken, including a schedule to implement such recommendations, to the council member and community board in whose district the crash location is located.

c. If any crash location appears on the department's annual list of twenty highest crash locations involving pedestrians in two consecutive years, such location shall be removed from the annual list and replaced by the location with the next highest number of crashes involving pedestrians located within the same borough as the consecutively

appearing location; provided that the department shall continue to monitor such crash data and/or make safety improvements at such removed location until such removed location is no longer one of the highest crash locations.

**HISTORICAL NOTE**

Section added L.L. 11/2008 § 1, eff. May 1, 2008.

**FOOTNOTES**

6

[Footnote 6]: * There are 2 sections 19-180.

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*NYC Administrative Code 19-181*

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CHAPTER 1 STREETS AND SIDEWALKS

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§ 19-181 Safety inspections at locations exhibiting a pattern of crashes involving pedestrians and/or bicyclists.

a. Within ninety days of receiving access to New York state department of motor vehicles traffic crash data involving pedestrians and/or bicyclists, the department shall inspect every location with five or more injuries or fatalities involving pedestrians and/or bicyclists during the prior twelve month period.

b. Within ninety days of notice of a traffic crash involving a fatality, the department shall conduct an inspection of the traffic crash location.

c. The department shall act upon any inspection recommendations, if warranted.

d. The department shall make the results of the inspections required under subdivisions a and b or any actions required by subdivision c of this section available upon request to the public.

**HISTORICAL NOTE**

Section added L.L. 11/2008 § 2, eff. Jan. 1, 2009.



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***** Current through December 2009 ****

*NYC Administrative Code 19-182*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 1 STREETS AND SIDEWALKS

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§ 19-182 Comprehensive study of pedestrian fatalities and serious injuries.

a. The department shall conduct a comprehensive study of all traffic crashes involving a pedestrian fatality or serious injury for the most recent five years where traffic crash data is available. In such study, the department shall analyze the conditions and factors associated with each such traffic crash and identify common factors among the crashes, if any. The department shall use such study to develop strategies to improve pedestrian safety, which may include modifying citywide traffic operations policy, developing pedestrian safety strategies geared towards specific users, prioritizing locations and/or types of roadways or intersections for safety improvements and making recommendations for improving safety at such locations.

b. The comprehensive traffic study required under subdivision a of this section shall be submitted to the mayor and council by the thirtieth day of august,*3 two thousand and nine. The plans, including a schedule for implementing strategies for improving pedestrian safety generated by such study, shall be submitted to the mayor and council by the thirtieth day of november,**4 two thousand and nine.

**HISTORICAL NOTE**

Section added L.L. 11/2008 § 3, eff. May 1, 2008.

**FOOTNOTES**

3

[Footnote 3]: ** Should be "August".

4

[Footnote 4]: ** Should be "November".

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***** Current through December 2009 ****

*NYC Administrative Code 19-200*

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Title 19 Transportation

CHAPTER 2 PARKING VIOLATIONS BUREAU

§ 19-200 Definitions.

Whenever used in this chapter, the following terms shall have the following meanings:

a. "Commissioner" means the commissioner of finance.

b. "Department" means the department of finance.

**HISTORICAL NOTE**

Section added L.L. 25/1994 § 5, eff. July 1, 1994.



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***** Current through December 2009 ****

*NYC Administrative Code 19-201*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 2 PARKING VIOLATIONS BUREAU

§ 19-201 Parking violations bureau created.

There is hereby created in the department a parking violations bureau which shall have jurisdiction of allegations of traffic infractions which constitute a parking violation. For the purpose of this chapter, a parking violation is the violation of any local law, rule or regulation provided for or regulating the parking, stopping or standing of a motor vehicle.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 883a-1.0 added chap 1075/1969 § 4

Amended LL 27/1977 § 3

**CASE NOTES FROM FORMER SECTION**

¶ 1. Production of police officer to substantiate charge before hearing examiner of New York City Parking Violations Bureau was required when summons stated that a car was parked at 10:00 A.M. in an area where parking was prohibited between 7:00 A.M. and 4:00 P.M. and motorist testified that sign specified no parking between 11:00 A.M. and 2:00 P.M.-Heisler v. Atlas, 69 Misc. 2d 911, 331 N.Y.S. 2d 131 [1972].



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***** Current through December 2009 ****

*NYC Administrative Code 19-202*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 2 PARKING VIOLATIONS BUREAU

§ 19-202 Personnel of the bureau.

a. The head of such bureau shall be the director, who shall be appointed by the commissioner. The director may delegate any of the powers and duties conferred upon him or her by this chapter.

b. The commissioner may appoint a deputy director and may employ such officers and employees as may be required to perform the work of the bureau, within the amounts available therefor by appropriation.

c. The commissioner shall appoint senior hearing examiners, not to exceed ten in number. The duties of each senior hearing examiner shall include, but not be limited to: (1) presiding at hearings for the adjudication of charges of parking violations; (2) the supervision and administration of the work of the bureau; and (3) membership on the appeals board of the bureau, as herein provided.

d. The commissioner shall appoint hearing examiners who shall preside at hearings for the adjudication of charges of parking violations. The commissioner may also designate non-compensated hearing examiners as he or she may deem necessary. Every hearing examiner shall have been admitted to the practice of law in this state for a period of at least five years.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 883a-2.0 added chap 1075/1969 § 4

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***** Current through December 2009 ****

*NYC Administrative Code 19-203*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 2 PARKING VIOLATIONS BUREAU

§ 19-203 Functions, powers and duties of the parking violations bureau.

The parking violations bureau shall have the following functions, powers and duties:

a. To accept pleas to, and to hear and determine, charges of parking violations;

b. To provide for penalties other than imprisonment for parking violations, provided however, that monetary penalties shall not exceed fifty dollars for each parking violation, provided that monetary penalties shall not exceed one hundred dollars for each parking violation committed in a space where stopping or standing is prohibited and provided, further, that monetary penalties shall not exceed one hundred fifty dollars for each handicapped parking violation;

c. To adopt rules and regulations not inconsistent with any applicable provision of law to carry out the purposes of this chapter, including but not limited to rules and regulations prescribing the internal procedures and organization of the bureau, the manner and time of entering pleas, the conduct of hearings, and the amount and manner of payment of penalties;

d. To issue subpoenas to compel the attendance of persons to give testimony at hearings and to compel the production of relevant books, papers and other things;

e. To enter judgments and enforce them, without court proceedings, in the same manner as the enforcement of money judgments in civil actions;

f. To compile and maintain complete and accurate records relating to all charges and dispositions;

g. To remit to the commissioner of finance , on or before the fifteenth day of each month, all monetary penalties or fees received by the bureau during the prior calendar month, along with a statement thereof, and, at the same time, to file a duplicate copy of such statement with the comptroller;

h. To prepare and issue a notice of violation in blank to members of the police department, the fire department, the department of transportation and to other officers as the bureau by regulation shall determine. The notice of violation, when filled in and sworn to or affirmed by such designated officers, and served as provided in this chapter, shall constitute notice of the parking violation charged.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended chap 93/2002 § B2, eff. June 24, 2002.

**DERIVATION**

Formerly § 883a-3.0 added chap 1075/1969 § 4

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*NYC Administrative Code 19-204*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 2 PARKING VIOLATIONS BUREAU

§ 19-204 Notice of violation.

a. The notice of violation shall contain information advising the person charged of the manner and the time in which he or she may plead either guilty or not guilty to the charge alleged in the notice. Such notice of violation shall also contain a warning to advise the person charged that failure to plead in the manner and time provided shall be deemed, for all purposes, an admission of liability and that a default judgment may be rendered. The form and wording of the notice of violation shall be prescribed by the director. A copy of each notice of violation served shall be filed and retained by the bureau, and shall be deemed a record kept in the ordinary course of business, and shall be prima facie evidence of the facts contained therein.

b. The notice of violation shall be served personally upon the operator of a motor vehicle who is present at the time of service, and his or her name, together with the license designation as shown by the registration plates on said vehicle, shall be inserted therein. The notice of violation shall be served upon the owner of the motor vehicle if the operator is not present, by affixing such notice to said vehicle in a conspicuous place. Whenever such notice is so affixed, in lieu of inserting the name of the person charged with the violation in the space provided for the identification of said person, the words "owner of the motor vehicle bearing license" may be inserted to be followed by the license designation as shown by the registration plates on said vehicle. Service of the notice of violation by affixation as herein provided shall have the same force and effect and shall be subject to the same penalties for disregard thereof as though the same was personally served with the name of the person charged with the violation inserted therein.

c. For purposes of this section, an operator of a motor vehicle who is not the owner thereof but who uses or operates such vehicle with the permission of the owner, express or implied, shall be deemed to be the agent of such owner to receive notices of violation, whether personally served on such operator or served by affixation in the manner

aforesaid, and service made in either manner as herein provided shall also be deemed to be lawful service upon such owner.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 883a-4.0 added chap 1075/1969 § 4



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***** Current through December 2009 ****

*NYC Administrative Code 19-205*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 2 PARKING VIOLATIONS BUREAU

§ 19-205 Liability.

a. 1. Whenever used in this chapter, the term "owner", shall include: (A) the registered owner of a motor vehicle used or operated in the city of New York, and (B) any person, corporation, firm, agency, association or organization that is the renter or lessor of a motor vehicle used or operated in the city of New York.

2. Whenever used in this chapter, the term "operator" means any person, corporation, firm, agency, association or organization that uses or operates a motor vehicle with or without the permission of the owner, and an owner who operates his or her own motor vehicle.

b. The operator of a motor vehicle shall be primarily liable for the penalties imposed pursuant to this chapter. The owner of the motor vehicle, even if not the operator thereof, shall also be liable therefor, if such motor vehicle was used or operated with his permission, express or implied, but in such case, the owner may recover any penalties paid by him or her from the operator.

c. Notwithstanding any inconsistent provisions of this chapter or of any other provision of law, any person, corporation, firm, agency, association or organization that is the renter or lessor of a motor vehicle shall not be liable for penalties imposed pursuant to this chapter if at the time the notice of violation is served, the registration plate number of the vehicle for which said notice of violation was served and the address of the lessor has been filed by the lessor with the bureau and notice of the service of a notice of violation for a parking violation has not been given to the renter or lessor within ninety days after such service. Such notice shall be given by ordinary mail to the address on file with the bureau.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 883a-5.0 added chap 1075/1969 § 4



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***** Current through December 2009 ****

*NYC Administrative Code 19-206*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 2 PARKING VIOLATIONS BUREAU

§ 19-206 Hearings.

a. Notice of hearing. Whenever a person charged with a parking violation enters a plea of not guilty, the bureau shall advise such person personally or by registered or certified mail, return receipt requested, of the date on which he or she must appear to answer the charge at a hearing. The form and content of such notice of hearing shall be prescribed by the director, and shall contain a warning to advise the person so pleading that failure to appear on the date designated, or on any subsequent adjourned date, shall be deemed, for all purposes, an admission of liability, and that a default judgment may be rendered.

b. Conduct of Hearings. 1. Every hearing for the adjudication of a charge of parking violation shall be held before a senior hearing examiner or a hearing examiner in accordance with rules and regulations promulgated by the bureau.

2. No charge may be established except upon proof by a preponderance of the evidence.

3. The hearing officer shall not be bound by the rules of evidence in the conduct of the hearing, except rules relating to privileged communications.

4. The hearing officer may, in his or her discretion, or at the request of the person charged, issue a subpoena to compel the appearance at a hearing of the officer who served the notice of violation or of other persons to give testimony, and may issue a subpoena duces tecum to compel the production for examination or introduction into evidence, of any book, paper or other thing relevant to the charges.

5. In the case of a refusal to obey a subpoena, the bureau may make application to the supreme court pursuant to section twenty-three hundred eight of the civil practice law and rules, for an order requiring such apppearance, testimony or production of evidence.

6. The hearing officer shall not examine the parking record of a person charged prior to making a determination.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 883a-6.0 added chap 1075/1969 § 4

**CASE NOTES FROM FORMER SECTION**

¶ 1. Parking Violations Bureau was not required to subpoena the officer who issued parking ticket to appear at hearing merely upon petitioner's request without showing any reasonable cause therefor.-In re Raphael (Newman), 167 (6) N.Y.L.J. (1-10-72) 2, Col. 4 F.

¶ 2. Rules contained in Manual for Adjudication distributed by the Parking Violations Bureau and its hearing examiners which provides that the summons is "prima facie evidence of the statements contained therein" have the effect of placing the burden of proof on petitioner which is contrary to the rule in civil proceedings that the charge must be established by a preponderance of the evidence.-Gruen v. Parking Violation Bureau, 58 A.D. 2d 48 [1977].

¶ 3. Petitioner was deprived of procedural due process when the hearing officer took "judicial notice" of the practice of the Parking Violations Bureau to send late notices on all summonses since the decision which was based on the "presumption" of mailing impermissibly shifted the burden of proof on this issue to petitioner.-Finkelman v. Transportation Administration Parking Violations Bureau, 69 A.D. 2d 806 [1979].

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*NYC Administrative Code 19-207*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 2 PARKING VIOLATIONS BUREAU

§ 19-207 Judgments.

a. The hearing officer shall make a determination on the charges, either sustaining or dismissing them. Where the hearing officer determines that the charges have been sustained he or she may examine the parking violations record of the person charged prior to rendering a judgment. Judgments sustaining or dismissing charges shall be entered on a judgment roll maintained by the bureau together with records showing payment and non-payment of penalties.

b. Where an operator or owner fails to enter a plea to a charge of parking violation or fails to appear on a designated hearing date or subsequent adjourned date, as prescribed by this chapter or by rule or regulation of the bureau, such failure to plead or to appear shall be deemed, for all purposes, an admission of liability and shall be grounds for rendering and entering a default judgment. However, after the expiration of the time prescribed for entering a plea or making an appearance, and before such default judgment may be rendered, the bureau shall notify such operator or owner, by ordinary mail (1) of the violation charge, (2) of the impending default judgment, and (3) that a default may be avoided by entering a plea or making an appearance within thirty days of the sending of such notice. Pleas entered or appearances made within that period shall be in the manner prescribed in the notice and not subject to additional penalty or fee. Such notice of impending default judgment shall not be required prior to the rendering and entry thereof in the case of operators or owners who are non-residents of the state of New York. In no case shall a default judgment be rendered or, where required, a notice of impending default judgment be sent, more than two years after the expiration of the time prescribed for entering a plea or making an appearance.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended chap 269/1987 § 1.

**DERIVATION**

Formerly § 883a-7.0 added chap 1075/1969 § 4

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where petitioner sought to have penalties imposed by PVB remitted due to lack of notice, hearing examiner could not presume that PVB had complied with practice of sending late notices on all summonses in absence of evidence as to practices of bureau.-Finkelstein v. Parking Violations Bureau of the City of New York, 179 (30) N.Y.L.J. (2-14-78) 17, Col. 5T.



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***** Current through December 2009 ****

*NYC Administrative Code 19-208*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 2 PARKING VIOLATIONS BUREAU

§ 19-208 Appeals within the bureau.

a. There shall be an appeals board within the bureau which shall consist of three or more senior hearing examiners, as the director shall determine.

b. An appeal from a judgment of any hearing officer shall be submitted to the appeals board, which shall have power to review the facts and the law, but shall not consider any evidence which was not presented to the hearing officer and shall have power to reverse or modify any judgment appealed from for error of fact or law.

c. A party aggrieved by the judgment of a hearing officer may obtain a review thereof by serving upon the bureau within thirty days of the entry of such judgment, a notice of appeal setting forth the reasons why the judgment should be reversed or modified.

d. Appeals shall be made without the appearance of the appellant unless requested by the appellant or the appeals board. Within ten days after a request for an appearance, made by the appellant or the board, the bureau shall advise the appellant, either personally or by registered or certified mail, return receipt requested, of the date on which he or she shall appear. The appellant shall be notified in writing of the decision of the appeals board.

e. The service of a notice of appeal shall not stay the enforcement of a judgment appealed from unless the appellant shall have posted a bond in the amount of the judgment appealed from, at the time of, or before the service of such notice.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 883a-8.0 added chap 1075/1969 § 4

**CASE NOTES FROM FORMER SECTION**

¶ 1. Where examiner found guilt on the wrong date because the summons was illegible his action was arbitrary and capricious and the hearing was not fair and reasonable, and the Appeals Board in affirming the hearing examiner acted illegally and beyond the power granted to it by this section.-Matter of White, Jr. (Mautner) 177 (22) N.Y.L.J. (2-1-77) 5, Col. 2 B.

¶ 2. Where default judgment was entered against defendant for parking violations and he failed to avail himself of the remedies available under this section but moved in the Civil Court by order to show cause to restrain the Parking Violations Bureau from enforcing the judgments and to determine the legality and constitutionality of the procedures of the PVB and to determine the facts in the matter the PVB was granted a writ of prohibition on the ground that the Civil Court has no power to vacate a default judgment of the PVB and was without power to determine the constitutionality of the legislation creating the PVB which was being determined as though it were an action for declaratory judgment.-Voccola v. Shilling, 88 Misc. 2d 103, 388 N.Y.S. 2d 71 [1976].

¶ 3. Where petitioner requested right to appear for appeal and he was not advised within 10 days of the date of which he was to appear for the appeal and no transcript was delivered to petitioner for 3 months after its demand he could commence an article 78 proceeding before receiving notice of hearing on his appeal as against claim that he had failed to exhaust his administrative remedies.-Gruen v. Parking Violation Bureau, 58, A.D. 2d 48 [1977].

¶ 4. Where Parking Violations Bureau Appeals Board held a **de novo** hearing instead of merely reviewing the transcript for errors and affirmed the decision of the hearing officer and petitioner began an Article 78 proceeding, court held that appeals board was limited to a review of the initial hearing for errors of fact or law and could not conduct a **de novo** hearing and hence its determination was void.-Finkleman v. Transportation Administration Parking Violations Bureau, 69 A.D. 2d 806 [1979].



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-209*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 2 PARKING VIOLATIONS BUREAU

§ 19-209 Judicial review.

The order of the appeals board shall be the final determination of the bureau. Judicial review may be sought pursuant to article seventy-eight of the civil practice law and rules.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 883a-9.0 added chap 1075/1969 § 4

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***** Current through December 2009 ****

*NYC Administrative Code 19-210*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 2 PARKING VIOLATIONS BUREAU

§ 19-210 Owner liability for failure of operator to comply with traffic-control indications.

(a) 1. Notwithstanding any other provision of law, the parking violations bureau is hereby authorized and empowered to establish a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic-control indications in accordance with the provisions of this section. The department of transportation, for purposes of implementation of such program, shall be authorized to install and operate traffic-control signal photo violation-monitoring devices at no more than one hundred fifty intersections at any one time.

2. Such demonstration program shall utilize necessary technologies to ensure, to the extent practicable, that photographs produced by such traffic-control signal photo violation-monitoring systems shall not include images that identify the driver, the passengers, or the contents of the vehicle. Provided, however, that no notice of liability issued pursuant to this section shall be dismissed solely because a photograph or photographs allow for the identification of the contents of a vehicle, provided that such city has made a reasonable effort to comply with the provisions of this paragraph.

(b) 1. The owner of a vehicle shall be liable for a penalty imposed pursuant to this section if such vehicle was used or operated with the permission of the owner, express or implied, in violation of subdivision (d) of section eleven hundred eleven of the vehicle and traffic law, and such violation is evidenced by information obtained from a traffic-control signal photo violation-monitoring system; provided, however, that no owner of a vehicle shall be liable for a penalty imposed pursuant to this section where the operator of such vehicle has been convicted of the underlying violation of subdivision (d) of section eleven hundred eleven of the vehicle and traffic law.

2. Notwithstanding any other provision of this section, no owner of a vehicle shall be subject to a monetary fine imposed pursuant to this section if the operator of such vehicle was operating such vehicle without the consent of the owner at the time such operator failed to obey a traffic-control indication. For purposes of this subdivision, there shall be a presumption that the operator of such vehicle was operating such vehicle with the consent of the owner at the time such operator failed to obey a traffic-control indication.

(c) For purposes of this section, "owner" shall mean any person, corporation, partnership, firm, agency, association, lessor, or organization who at the time of the issuance of a notice of violation in which a vehicle is operated:

(1) is the beneficial or equitable owner of such vehicle; or

(2) has title to such vehicle; or

(3) is the registrant or co-registrant of such vehicle which is registered with the department of motor vehicles of this state or any other state, territory, district, province nation or other jurisdiction; or

(4) uses such vehicle in its vehicle renting and/or leasing business; or

(5) is an owner of such vehicle as defined by section one hundred twenty-eight or subdivision (a) of section twenty-one hundred one of the vehicle and traffic law.

(d) For purposes of this section, "traffic-control signal photo violation-monitoring system" shall mean a device installed to work in conjunction with a traffic-control signal which, during operation, automatically produces two or more photographs, two or more microphotographs, a videotape or other recorded images of each vehicle at the time it is used or operated in violation of subdivision (d) of section eleven hundred eleven of the vehicle and traffic law.

(e) A certificate, sworn to or affirmed by a technician employed by the department, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a traffic-control signal photo violation-monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation imposed pursuant to this section.

(f) An owner liable for a violation of subdivision (d) of section eleven hundred eleven of the vehicle and traffic law pursuant to this section shall be liable for monetary penalties in accordance with a schedule of fines and penalties to be promulgated by such bureau. The liability of the owner pursuant to this section shall not exceed fifty dollars for each violation; provided however that such bureau may provide for an additional penalty not in excess of twenty-five dollars for each violation for the failure to respond to a notice of liability within the prescribed time period. Such bureau shall adjudicate liability imposed by this section.

(g) An imposition of liability under this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.

(h) 1. A notice of liability shall be sent by first class mail to each person alleged to be liable as an owner for a violation of subdivision (d) of section eleven hundred eleven of the vehicle and traffic law pursuant to this section. Personal service on the owner shall not be required. A manual or automatic record of mailing prepared in the ordinary course of business shall be prima facie evidence of the facts contained therein.

2. A notice of liability shall contain the name and address of the person alleged to be liable as an owner for a violation of subdivision (d) of section eleven hundred eleven of the vehicle and traffic law pursuant to this section, the registration number of the vehicle involved in such violation, the location where such violation took place, the date and

time of such violation and the identification number of the camera which recorded the violation or other document locator number.

3. The notice of liability shall contain information advising the person charged of the manner and the time in which he or she may contest the liability alleged in the notice. Such notice of liability shall also contain a warning to advise the persons charged that failure to contest in the manner and time provided shall be deemed an admission of liability and that a default judgment may be entered thereon.

4. The notice of liability shall be prepared and mailed by the bureau or its designee.

(i) If an owner receives a notice of liability pursuant to this section for any time period during which the vehicle was reported to the police department as having been stolen, it shall be a valid defense to an allegation of liability for a violation of subdivision (d) of section eleven hundred eleven of the vehicle and traffic law pursuant to this section that the vehicle had been reported to the police as stolen prior to the time the violation occurred and had not been recovered by such time. For purposes of asserting the defense provided by this subdivision it shall be sufficient that a certified copy of the police report on the stolen vehicle be sent by first class mail, return receipt requested, to such bureau.

(j) If the owner liable for a violation of subdivision (d) of section eleven hundred eleven of the vehicle and traffic law pursuant to this section was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator.

(k) An appeal of an adjudication of liability pursuant to this section may be taken in accordance with the provisions of section 19-208.

(l) 1. An owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to subdivision (h) of this section shall not be liable for the violation of subdivision (d) of section eleven hundred eleven of the vehicle and traffic law provided that: A. prior to the violation the lessor has filed with the bureau and paid the required filing fee in accordance with the provisions of section two hundred thirty-nine of the vehicle and traffic law; and

B. within thirty-seven days after receiving notice from the bureau of the date and time of a liability, together with the other information contained in the original notice of liability, the lessor submits to the bureau the correct name and address of the lessee of the vehicle indentified in the notice of liability at the time of such violation, together with such other additional information contained in the rental lease or other contract document, as may be reasonably required by the bureau pursuant to regulations that may be promulgated for such purpose.

2. Failure to comply with subparagraph B or paragraph one of this subdivision shall render the owner liable for the penalty prescribed in this section.

3. Where the lessor complies with the provisions of this subdivision, the lessee of such vehicle on the date of such violation shall be deemed to be the owner of such vehicle for purposes of this section, shall be subject to liability for such violation pursuant to this section and shall be sent a notice of liability pursuant to subdivision (h) of this section.

(m) Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of subdivision (d) of section eleven hundred eleven of the vehicle and traffic law.

(n) On or before September 1, 1989, and every four months thereafter, until such time as the demonstration program authorized in subdivision (a) hereof shall be fully operational, the commissioner of transportation shall submit a written report to the council on the status of said demonstration program. Such report shall include, but not be limited to, the locations selected for inclusion in the demonstration program and the cost to the city, both individually and collectively, of each location included in such demonstration project.

(o) The commissioner shall submit to the governor, the temporary president of the senate, the speaker of the assembly and the council an annual report on the results of the use of a traffic-control signal photo violation-monitoring system on or before June first, two thousand seven and on the same date in each succeeding year in which the demonstration program is operable. Such report shall include, but not be limited to:

1. a description of the locations where traffic-control signal photo violation-monitoring systems were used;

2. within each borough of such city, the aggregate number, type and severity of accidents reported at intersections where a traffic-control signal photo violation-monitoring system is used for the year preceding the installation of such system, to the extent the information is maintained by the department of motor vehicles of this state;

3. within each borough of such city, the aggregate number, type and severity of accidents reported at intersections where a traffic-control signal photo violation-monitoring system is used, to the extent the information is maintained by the department of motor vehicles of this state;

4. the number of violations recorded at each intersection where a traffic-control signal photo violation-monitoring system is used and in the aggregate on a daily, weekly and monthly basis;

5. the total number of notices of liability issued for violations recorded by such systems;

6. the number of fines and total amount of fines paid after first notice of liability issued for violations recorded by such systems;

7. the number of violations adjudicated and results of such adjudications including breakdowns of dispositions made for violations recorded by such systems;

8. the total amount of revenue realized by such city from such adjudications;

9. expenses incurred by such city in connection with the program; and

10. quality of the adjudication process and its results.

(p) It shall be a defense to any prosecution for a violation of subdivision (d) of section eleven hundred eleven of the vehicle and traffic law pursuant to this section that such traffic-control indications were malfunctioning at the time of the alleged violation.

**HISTORICAL NOTE**

Section added L.L. 46/1989 § 1, eff. July 7, 1989 and expires Dec. 1,

2014 per chap 18/2009 § 4.

Subd. (a) amended chap 658/2006 § 6, eff. Sept. 13, 2006 and expires

with section.

Subd. (a) amended L.L. 20/1998 § 1, eff. Apr. 27, 1998.

Subd. (a) amended L.L. 25/1994 § 6, eff. July 1, 1994.

Subd. (a) par 1 amended chap 18/2009 § 2, eff. Apr. 28, 2009.

Subd. (b) amended chap 658/2006 § 7, eff. Sept. 13, 2006 and expires

with section.

Subd. (d) amended chap 658/2006 § 8, eff. Sept. 13, 2006 and expires with section.

Subd. (e) amended chap 658/2006 § 8, eff. Sept. 13, 2006 and expires with section.

Subd. (f) amended L.L. 29/1994 § 1, eff. July 20, 1994.

Subd. (n) amended L.L. 25/1994 § 7, eff. July 1, 1994.

Subd. (o) amended chap 658/2006 § 9, eff. Sept. 13, 2006 and expires with section.

Subd. (o) amended L.L. 14/1992 § 1, eff. Dec. 26, 1991.

Subd. (o) open par amended chap 667/2004 § 3, eff. Oct. 26, 2004 and expires with section.

Subd. (o) open par amended chap 503/1999 § 3, eff. Sept. 28, 1999.

Subd. (o) open par amended L.L. 25/1994 § 8, eff. July 1, 1994.

Subd. (p) added chap 658/2006 § 10, eff. Sept. 13, 2006 and expires with section.

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***** Current through December 2009 ****

*NYC Administrative Code 19-211*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 2 PARKING VIOLATIONS BUREAU

§ 19-211 Additional penalties for parking violations.

In accordance with paragraph b-1 of subdivision two of section two hundred thirty-five of the vehicle and traffic law, the parking violations bureau may adopt a rule providing for the imposition of the additional penalties set forth in the following schedule for failure to respond to a notice of violation for a parking violation:

a. Failure to respond to a notice of violation for a parking violation within thirty days shall result in liability, commencing on the thirty-first day, for an additional penalty in an amount, not to exceed ten dollars, indicated on the notice of violation for a parking violation; where a city has given a second notice pursuant to paragraph a of subdivision two of section two hundred thirty-five of the vehicle and traffic law failure to respond to a notice of violation for a parking violation within forty-five days may result in liability, commencing on the forty-sixth day, for the penalty prescribed above for failure to respond within thirty days and an additional penalty not to exceed twenty dollars; and where a city has given a second notice pursuant to paragraph a of subdivision two of section two hundred thirty-five of the vehicle and traffic law failure to respond to a notice of violation for a parking violation within seventy-five days may result in liability, commencing on the seventy-sixth day, for the penalty prescribed above for failure to respond within thirty days and for a failure to respond within forty-five days and an additional penalty not to exceed thirty dollars.

b. Notwithstanding the foregoing schedule of additional penalties, if an owner makes a plea or appears within twenty days after the issuance of a second notice of violation in accordance with paragraph a of subdivision two of section two hundred thirty-five of the vehicle and traffic law, or prior to such mailing, such additional penalty shall not exceed ten dollars.

**HISTORICAL NOTE**

Section added L.L. 33/1993 § 1 eff. May 5, 1993.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-212*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 2 PARKING VIOLATIONS BUREAU

§ 19-212 Limitation on removal of motor vehicles for purposes of satisfying parking violation judgments.

Notwithstanding any other provision of law, a motor vehicle shall not be removed from any street or other public area solely for the purpose of satisfying an outstanding judgment or judgments for parking violations against the owner unless the total amount of such judgment or judgments, including interest, is greater than three hundred fifty dollars. The provisions of this section shall not be construed to prohibit the removal of a motor vehicle which is illegally parked, stopped or standing.

**HISTORICAL NOTE**

Section amended L.L. 65/2005 § 1, eff. Aug. 10, 2005.

Section amended chap 93/2002 § B3, eff. June 24, 2002.

Section amended L.L. 58/1993 § 1 eff. June 30, 1993. [See Note]

Section added L.L. 33/1993 § 1 eff. May 5, 1993.

**NOTE**

Provisions of L.L. 33/1993 § 2 as amended by L.L. 58/1993 § 2:

§ 2. Where a judgment or judgments have been entered based upon notices of violation issued against a motor vehicle charging that such motor vehicle is parked, stopped or standing in violation of any provision of the vehicle and

traffic law or any law or rule promulgated pursuant to thereto: (a) for a period of ninety days from the effective date of this local law, such motor vehicle shall not be removed from any street or other public area solely for the purpose of satisfying such judgment or judgments unless the total amount of such judgment or judgments exceeds two hundred and fifty dollars: and (b) for a period commencing on the ninety-first day after the effective date of this local law and ending on December 31, 1993, such motor vehicle shall not be removed from any street or other public area solely for the purpose of satisfying such judgment or judgments unless the total amount of such judgment or judgments exceeds one hundred eighty dollars. The provisions of this section shall not be construed to prohibit the removal of a motor vehicle which is illegally parked, stopped or standing.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-301*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 3 FERRIES

§ 19-301 Ferry property; acquisition.

The commissioner may acquire by purchase, condemnation or otherwise as provided in section 22-105 of the code, the title to such wharf property and uplands within the city, as he or she shall deem necessary for the equipment, maintenance or operation of a ferry, the terminal facilities therefor and the approaches thereto, whether or not such wharf property or uplands have previously been taken for a public use.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 704e-1.0 added chap 929/1937 § 1



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-302*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 3 FERRIES

§ 19-302 Ferry property; provisions in leases.

Leases of any ferry or any wharf property necessary for the use of a ferry may provide for the character of transportation service to be furnished by the lessee including the character and speed of the boats to be used, frequency of trips, rates of fare and commutation and freight charges, and may provide for forfeiture of the lease in the event of failure to comply with its provisions in relation thereto.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 704e-2.0 added chap 929/1937 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. City, sued for injuries sustained by passenger on ferry operated by City of New York, **held** subject to examination before trial under statute authorizing examinations before trial in actions against municipal corporations arising out of the operation of a public utility by the municipal corporation.-Seidman v. City of N.Y. 264 App. Div. 359, 35 N.Y.S. 2d 433 [1942].



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-303*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 3 FERRIES

§ 19-303 Ferry fares to be paid over daily.

The commissioner shall pay over daily to the commissioner of finance all moneys collected for ferry fares.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 704e-3.0 added chap 929/1937 § 1

Amended chap 100/1963 § 523



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-304*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 3 FERRIES

§ 19-304 Ferry rates to Staten Island limited.

a. There shall be no rate of ferriage charged for foot passengers by any city owned and operated ferry operating between the borough of Manhattan and the borough of Staten Island.

b. The rate of ferriage to be charged for vehicles owned and operated by persons who are elderly or have a disability on any city owned and operated ferry operating between the borough of Manhattan and the borough of Staten Island shall be one-half of the rate applicable to vehicles operated by other persons.

**HISTORICAL NOTE**

Section amended L.L. 46/1997 § 1, eff. July 4, 1997.

Section amended L.L. 74/1993 § 1, eff. Oct. 8, 1993.

Section added chap 907/1985 § 1

Subd. a amended L.L. 37/1990 § 1 eff. August 1, 1990.

**DERIVATION**

Formerly § 704e-4.0 added chap 929/1937 § 1

Amended LL 42/1975 § 1

Amended LL 5/1978 § 1

(Laid out incorrectly as § 704c-4.0)



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-305*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 3 FERRIES

§ 19-305 Ferry service.

a. Any city owned and operated ferry operating between the Whitehall terminal in the borough of Manhattan and the St. George terminal in the borough of Staten Island shall operate, at a minimum, according to the following schedule: (i) On Monday through Friday, except on legal holidays, a ferry shall depart from the Whitehall terminal in the borough of Manhattan every twenty minutes between 6:30 a.m. and 8:30 a.m.; every fifteen minutes between 8:30 a.m. and 9:30 a.m.; every thirty minutes between 9:30 a.m. and 4:00 p.m.; every twenty minutes between 4:00 p.m. and 5:00 p.m.; every fifteen minutes between 5:00 p.m. and 7:00 p.m.; every twenty minutes between 7:00 p.m. and 8:00 p.m.; every thirty minutes between 8:00 p.m. and 1:30 a.m; and every hour between 2:00 a.m. and 6:00 a.m.

(ii) On Monday through Friday, except on legal holidays, a ferry shall depart from the St. George terminal in the borough of Staten Island at 5:30 a.m.; every twenty minutes between 6:00 a.m. and 7:00 a.m.; every fifteen minutes between 7:00 a.m. and 9:00 a.m.; every thirty minutes between 9:00 a.m. and 3:30 p.m.; every twenty minutes between 3:30 p.m. and 5:30 p.m.; every fifteen minutes between 5:30 p.m. and 7:00 p.m.; every thirty minutes between 7:00 p.m. and 1:00 a.m.; and every hour between 1:00 a.m. and 5:00 a.m.

(iii) On Saturdays, except on legal holidays, service both to and from Manhattan's Whitehall terminal and Staten Island's St. George terminal shall be every hour except between the hours of 6:00 a.m. and 7:00 p.m., in which case service shall be every thirty minutes.

(iv) On Sundays, except on legal holidays, service both to and from Manhattan's Whitehall terminal and Staten Island's St. George terminal shall be every hour except between the hours of 9:00 a.m. and 7:00 p.m., in which case service shall be every thirty minutes.

(v) On legal holidays, service both to and from Manhattan's Whitehall terminal and Staten Island's St. George terminal shall include ferry departures every thirty minutes between the hours of 7:00 a.m. and 7:00 p.m.

b. The schedule of service set forth in subdivision a of this section shall not apply to service disruptions resulting from security concerns, mechanical malfunctions of a ferry, unsafe weather conditions, emergencies or other similar events beyond the control of the department that would prevent compliance with such schedule. In the event of any such disruption in the schedule of service set forth in subdivision a of this section that lasts longer than twenty-four hours, the commissioner or a designee shall submit a written report to the mayor and speaker of the council which shall include the specific reasons for the disruption and the time at which service was restored. If service has not been restored by the time the report must be submitted, the report shall also include the estimated duration of the disruption in service and what, if any, attempts are being made to mitigate the loss of scheduled service. In the event a disruption in the schedule of service lasts longer than seven days, on the eighth day and every seven days thereafter, the commissioner or a designee shall submit a written report to the mayor and speaker of the council that shall include an update on the status of resuming service.

c. The commissioner shall provide the council with comprehensive ferry ridership numbers for each departure time slot on the ferry schedule every two months for a continuous twelve-month period. Such period shall commence upon the installation and implementation of the department's rider counting mechanisms at both Manhattan's Whitehall terminal and Staten Island's St. George terminal or upon the effective date of this subdivision, whichever is later. At the conclusion of the twelve-month period, the commissioner shall, in consultation with the council, consider such ridership information, as well as economic development and mass transportation equity issues, for purposes of adding additional departures in Staten Island ferry service.

**HISTORICAL NOTE**

Section repealed and added L.L. 55/2005 § 2, eff. Aug. 17, 2005 with

special provisions. [See Note 1]

Section added L.L. 11/2005 § 1, eff. May 19, 2005.

**NOTE**

1. Provisions of L.L. L.L. 55/2005:

Section 1. Declaration of legislative findings and intent. The Council of the City of New York hereby finds that, in recognition of the steady population growth in Staten Island over the past several decades and the corresponding increases in ridership levels on the Staten Island Ferry, more frequent service is warranted. Moreover, increased Staten Island Ferry service serves as a necessary first step in minimizing the mass transit inequities currently experienced by Staten Islanders who do not have the option of utilizing the multitude of mass transit options available to residents of the City's other four boroughs. The Council believes that this legislation is a responsible response to the needs of Staten Islanders in the context of safety on the ferries, the City's current fiscal situation and current and foreseeable future staffing levels. The Council looks forward to working with the Mayoral Administration to address issues of mass transportation equity for Staten Islanders and to ensure that fair and safe service levels match the passenger counts that will soon be regularly recorded by the Department of Transportation through the rider-counting mechanisms recently installed at both Whitehall and St. George Terminals.

. . . . . § 3. This local law shall take effect ninety days after it is enacted into law, except for paragraphs (iii), (iv) and (v) of subdivision (a) which shall take effect three hundred sixty days after it is enacted into law or no more than five hundred forty days after it is enacted into law only upon written notice to the council from the commissioner of transportation that such additional time is needed solely due to a shortage of qualified personnel needed to ensure proper ferry service.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-306*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 3 FERRIES

§ 19-306 Temporary citywide boater safety and wake reduction task force.

a. For the purpose of this section the following terms shall be defined as follows:

1. "Hand-powered vessel" means every non-mechanically propelled water craft operating within the city of New York or its territorial waters, including rowboats, kayaks, racing shells*7 canoes, and sailboats.

2. "Hand-powered vessel launch" means any dock, slip or pier located within the city of New York or its territorial waters capable of being utilized by a hand-powered vessel.

3. "Operator" means any person or private or governmental entity that owns or operates a water-borne mechanically-propelled vessel or water-borne hand-powered vessel.

4. "Point of embarkation or disembarkation" means any portal point of entry or exit onto or off of a water-borne vessel, or into or out of the main cabin area of such water-borne vessel.

5. "Wake" shall mean all changes in the vertical height of the water's surface caused by the passage of a water-borne vessel including, but not limited to, such craft's bow wave, stern wake and propeller wash.

6. "Water-borne commercial services facility" means any dock, slip, pier or terminal located within the city of New York or its territorial waters and capable of being utilized by a water-borne vessel, and any concession, ticket purchasing or other facility or amenity available at or on such dock, pier, slip or terminal but excluding hand-powered vessel launches.

7. "Water-borne vessel" means every water craft operating within the city of New York or its territorial waters, including commuter ferries, tugboats, speedboats, motorboats and personal watercraft, but excluding seaplanes.

b. Within ninety days of the effective date of this section, there shall be established a temporary citywide boater safety and wake reduction task force. Such task force shall be comprised of nine members, four of whom shall be appointed by the speaker of the council and five of whom shall be appointed by the mayor. The mayor shall designate one member as the chairperson. To the extent possible, appointments to the task force shall reflect the interests of water-borne vessel operators, the port authority of New York and New Jersey, the United States coast guard and other appropriate regulatory agencies, hand-powered vessel operators, operators of privately-owned piers and marinas within the city of New York, owners of other waterfront property, experts on the waterfront environment, and members of the general public. Each appointed task force member may be removed for cause by the appointing authority and any vacancy shall be filled in the same manner as the appointment was made. The temporary citywide boater safety and wake reduction task force shall be deemed established upon the appointment of four of its members.

c. Members of the task force shall serve without compensation and shall meet when deemed necessary by the chairperson or whenever the department or the department of parks and recreation proposes rules relating to the travel of water-borne vessels on waterways within the territorial waters of New York city, but in no event shall the task force meet less often than three times in every calendar year.

d. The task force shall examine, but need not be limited to, examining the following issues: existing and proposed points of embarkation or disembarkation in the territorial waters of New York city; existing and proposed hand-powered vessel launches; geographic areas where wake impacts are currently or may in the future adversely affect hand-powered or water-borne vessel launches, and/or hand-powered or water-borne vessel users; geographic areas where wake impacts are causing or may cause possible erosion of shore front property and wetlands; community outreach; education, enforcement, and any other activities relating to improvements in boater safety and the reduction of wakes.

e. The task force shall issue a report to the speaker and the mayor within twelve to fifteen months from the establishment of the task force. Such report shall include, but not be limited to, recommendations for minimizing wake impacts on hand-powered or water-borne vessel launches and/or hand-powered or water-borne vessel users; minimizing wake impacts to shore front property; community outreach; education; and enforcement activities. Such report shall be posted on the city's website within seven days from its submission to the speaker and the mayor. The task force shall cease operation one year after the submission of the report.

**HISTORICAL NOTE**

Section added L.L. 117/2005 § 4, eff. Dec. 29, 2005. [See § 10-158.1

Note 1]

**FOOTNOTES**

7

[Footnote 7]: * Comma missing.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-307*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 3 FERRIES

§ 19-307 Use of ultra low sulfur diesel fuel and best available technology for city ferries.

a. For purposes of this section only, the following terms shall have the following meanings:

(1) "City ferry" means any motorized watercraft that is used as a means of commuter passenger mass transportation by water that is owned or operated by the city of New York.

(2) "Retrofit" means the installation of a pollution control device on the exhaust system after the engine, such as a diesel oxidation catalyst.

(3) "Tier 2 air quality standards for marine engines" means the engine exhaust emission standards listed in 40 C.F.R. Sec. 89.112(a) (for marine diesel engines under 37 kW) and listed in 40 C.F.R. Sec.94.2 (a) (for all other marine diesel engines).

(4) "Ultra low sulfur diesel fuel" means diesel fuel that has a sulfur content of no more than fifteen parts per million.

b. As of July 1, 2008, every diesel fuel-powered city ferry shall be powered by ultra low sulfur diesel fuel.

c. (1) Engine upgrades. Diesel fuel-powered city ferries shall utilize the best available technology for reducing the emissions of pollutants through engine upgrades, in accordance with the following schedule:

(i) two such ferries shall utilize such technology by July 1, 2008;

(ii) three such ferries shall utilize such technology by January 1, 2009; (iii) four such ferries shall utilize such technology by January 1, 2010; (iv) five such ferries shall utilize such technology by July 1, 2010;

(v) all such ferries shall utilize such technology by January 1, 2011.

(2) Retrofits on the exhaust system. Diesel fuel-powered city ferries shall utilize the best available technology for reducing the emissions of pollutants through retrofits on the exhaust system, in accordance with a proposed schedule to be developed by the commissioner and submitted to the council by July 1, 2009. Thirty days after any successful demonstration of a technology on a city ferry, the schedule shall be reviewed and revised, if appropriate, and resubmitted to the council. Any such proposed and revised schedule shall require the retrofitting of every city ferry as soon as is possible given manufacturing, dry dock, repair and operational considerations.

d. (1) Any diesel fuel-powered city ferry that is newly purchased or placed in operation after the effective date of this section shall meet the then current United States environmental protection agency's air quality standards, provided that such standards shall be at least as stringent as the United States environmental protection agency's Tier 2 air quality standards for marine engines.

(2) Any engine upgrade kit that is certified by the United States environmental protection agency may be used to achieve Tier 2 air quality standards for marine engines.

(3) Any diesel fuel-powered city ferry that on the day first purchased or newly operated by the city meets the then current United States environmental protection agency's air quality standards for marine engines, provided that such standards shall be at least as stringent as the United States environmental protection agency's Tier 2 air quality standards for marine engines, shall meet the requirements of subdivision c of this section.

(4) Any diesel fuel-powered city ferry that is in use thirty years after being placed into service or at least seven years after the installation of best available technology and cannot be retrofitted, upgraded or repowered to comply with the United States environmental protection agency's Tier 2 air quality standards for marine engines, shall be retired.

e. (1) The commissioner shall make determinations, subject to the written approval of the commissioner of environmental protection, and shall publish a list of such determinations as to the best available technology to be used for each class of city ferry to which this section applies for the purposes of subdivision c of this section. Each such determination, which shall be reviewed and revised as needed but in no event less often than once every six months, shall be based upon the reduction in emissions of particulate matter and the reduction in emissions of nitrogen oxides associated with the use of such technology and shall in no event result in an increase in the emissions of either such pollutant. In determining the best available technology for each class of city ferry, the commissioner shall select technology that has been certified by the United States environmental protection agency or approved by the United States coast guard or such other technology that the commissioner determines is at least as stringent as the United States environmental protection agency Tier 2 air quality standards for marine engines.

(2) The city shall not be required to replace best available technology for reducing the emission of pollutants or other authorized technology utilized for a diesel fuel-powered city ferry in accordance with the provisions of paragraph one of subdivision c of this section within seven years of having first utilized such technology for such ferry.

f. This section shall not apply: (i) where federal or state funding precludes the city from imposing the requirements of this section; or (ii) to purchases that are emergency procurements pursuant to section three hundred fifteen of the charter.

g. Subdivision b of this section shall not apply where the commissioner, subject to the written approval of the commissioner of environmental protection, makes a written finding that a sufficient quantity of ultra low sulfur diesel fuel is not available to meet the requirements of subdivision b of this section or is not technically or operationally feasible; provided that the city, shall maximize its use of ultra low sulfur diesel fuel with a sulfur content of fifteen parts

per million, and further provided that any diesel fuel used that is not ultra low sulfur diesel fuel contains the next lowest sulfur content available. Any finding made pursuant to this subdivision shall expire after six months, at which time the requirements of subdivision b of this section shall be in full force and effect unless the commissioner renews the finding in writing and such renewal is approved in writing by the commissioner of environmental protection.

h. Subdivision c of this section shall not apply to a diesel fuel-powered city ferry where the commissioner makes a written finding, which is approved in writing by the commissioner of environmental protection, that the best available technology for reducing the emission of pollutants as required by that subdivision is unavailable for such city ferry, is not technically, operationally or economically feasible, or is not available on the required time table due to delays in manufacturing such technology or in the availability of dry dock or other repair facilities that are necessary for installing such technology. Where a finding is in effect pursuant to this subdivision, the city shall revise its proposed engine upgrade implementation schedule within thirty days of the grant of renewal of the finding and use the next best available technology for reducing the emission of pollutants that is appropriate for such city ferry. Any finding made pursuant to this subdivision shall expire after six months, at which time the requirements of subdivision c of this section shall be in full force and effect unless the commissioner renews the finding in writing and such renewal is approved in writing by the commissioner of environmental protection.

i. In determining which technology to use for the purposes of subdivision h of this section, the city shall consider the reduction in emissions of particulate matter and the reduction in emissions of nitrogen oxides associated with the use of such technology, which shall in no event result in an increase in the emissions of either such pollutant.

j. (1) On or before October 1, 2009 and every succeeding October 1 thereafter, the mayor shall submit to the comptroller and the council a report regarding the use of ultra low sulfur diesel fuel and the best available technology for reducing the emission of pollutants and such other authorized technology in accordance with this section for diesel fuel-powered city ferries during the immediately preceding fiscal year. The information contained in such report shall also be included in the mayor's preliminary management report and the mayor's management report for the relevant fiscal year and shall include, but not be limited to: (i) the total number of diesel fuel-powered city ferries; (ii) the number of such diesel-fuel powered city ferries that were powered by ultra low sulfur diesel fuel; (iii) the number of such diesel-fuel powered city ferries that utilized the best available technology for reducing the emission of pollutants, including a breakdown by the type of technology used for each ferry model; (iv) the number of such diesel fuel-powered city ferries that utilized other authorized technology in accordance with this section, including a breakdown by the type of technology used for each city ferry model; (v) the number of city ferries purchased or newly operated by the city after the effective date of this section and whether or not emissions from such ferries meet the United States environmental protection agency's marine engine standards in effect at the time of such purchase or operation, and if the emissions from such ferries do not meet such standards, when they can be expected to meet such standards or meet, at a minimum, the United States environmental protection agency's Tier 2 air quality standards for marine engines; (vi) all findings and renewals of such findings issued pursuant to subdivision g of this section, which, for each finding and renewal, shall include, but not be limited to, the quantity of ultra low sulfur diesel fuel needed to power diesel fuel-powered city ferries and any quantity of diesel fuel used that was not ultra low sulfur diesel fuel; and (vii) all findings and renewals of such findings issued pursuant to subdivision h of this section, which shall include, but not be limited to, all specific information submitted by the city upon which such findings and renewals are based and the type of other authorized technology, if any, utilized in accordance with this section in relation to each finding and renewal.

**HISTORICAL NOTE**

Section added L.L. 3/2008 § 1, eff. May 19, 2008. [See Note 1]

**NOTE**

1. Provisions of L.L. L.L. 3/2008:

§ 2. If any section, subdivision, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the constitutionality or validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 3. This local law shall take effect ninety days after enactment, except that the commissioner of transportation shall take all actions necessary, including the promulgation of rules, to implement this local law on or before such effective date.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-401*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 4 REDUCED FARE CONTRACTS

§ 19-401 Authorization of reduced fare contracts.

a. The board of estimate shall have the power, pursuant to section one hundred nineteen-r of the general municipal law, to enter into a contract or contracts with any person, firm or corporation owning and operating a mass transportation facility within the city in order to provide transportation at a reduced fare during specified days and hours for eligible residents of the city who are over sixty-five years of age and not fully employed.

b. Any such contract may provide for reimbursement of the actual or estimated difference between the reduced fare collected from such passengers and the established rate of fare, plus such other administrative costs as may be incurred by the contracting person, firm or corporation.

c. The separate and additional approval of the mayor shall be necessary to the validity of any such contract.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 67-5.0 added LL 58/1969 § 2

(Legislative findings, reduced transit fare for senior citizens LL 58/1969 § 1)



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-501*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-501 Legislative findings.

It is hereby declared and found that the business of transporting passengers for hire by motor vehicle in the city of New York is affected with a public interest, is a vital and integral part of the transportation system of the city, and must therefore be supervised, regulated and controlled by the city.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 2301 added LL 12/1971 § 4

**CASE NOTES**

¶ 1. The constitutionality of the statute, which prohibits commuter vans from dropping off and picking up passengers on bus routes and requires all commuter van passenger service to be performed on a prearranged basis, was upheld by the court. The challenged law bore a rational relationship to a legitimate governmental purpose, i.e. the regulation of transportation and the preventing of conditions dangerous to the public welfare. Ricketts v. City of New York, 722 N.Y.S.2d 25 (App.Div. 1st Dept. 2001).



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-502*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-502 Definitions.

For the purpose of this chapter:

a. "Coach" means a motor vehicle carrying passengers for hire in the city, designed to comfortably seat not more than seven passengers, operating from coach hack stands designated by the commission, and duly licensed as a coach by the commission.

b. "Commission" means the New York city taxi and limousine commission.

c. "Driver" means a person licensed hereunder to drive a licensed vehicle in the city.

d. "Driver's license" means a license for a driver issued by the commission.

e. "Vehicle license" means taxicab license, coach license, wheelchair accessible van license or for-hire vehicle license issued by the commission.

f. "Licensed vehicle" means a taxicab, coach, wheelchair accessible van or for-hire vehicle licensed by the commission.

g. "For-hire vehicle" means a motor vehicle carrying passengers for hire in the city, with a seating capacity of twenty passengers or less, not including the driver, other than a taxicab, coach, wheelchair accessible van, commuter van or an authorized bus operating pursuant to applicable provisions of law. For the purpose of this subdivision, "seating capacity" shall include any plain view location which is capable of accommodating a normal adult is part of an

overall seat configuration and design and is likely to be used as a seating position while the vehicle is in motion.

h. "Medallion" means the metal plate issued by the commission for displaying the license number of a licensed taxicab on the outside of the vehicle.

i. Except as is otherwise provided in subdivision f of section 19-506 "owner" means any person, firm, partnership, corporation or association owning and operating a licensed vehicle or vehicles and shall include a purchaser under a reserve title contract, conditional sales agreement or vendors lien agreement, and a lessee of any such vehicle or vehicles under a written lease or similar contract approved by the commission. Provided, however, that with respect to a commuter van, "owner" means a person, other than a lien holder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person and also includes any lessee or bailee of a vehicle having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days. If a vehicle is sold under a contract of sale which reserves a security interest in the vehicle in favor of the vendor, such vendor or his assignee shall not, after delivery of such vehicle, be deemed to be an owner within the provisions of this subdivision, but the vendee, or his or her assignee, receiving possession thereof, shall be deemed an owner notwithstanding the terms of such contract, until the vendor or his or her assignee shall retake possession of such vehicle. A secured party in whose favor there is a security interest in any vehicle out of his or her possession shall not be deemed to, be an owner within the provisions of this subdivision.

j. "Rate card" means a card, issued by the commission for each vehicle, which displays the vehicle license number, rates of fare, and such other data as the commission may prescribe.

k. "Taximeter" means an instrument or device approved by the commission by which the charge to a passenger for hire of a licensed vehicle is automatically calculated and on which such charge is plainly indicated.

1. "Taxi", "taxicab" or "cab" means motor vehicle carrying passengers for hire in the city, designed to carry a maximum of five passengers, duly licensed as a taxi cab by the commission and permitted to accept hails from passengers in the street.

m. "Wheelchair accessible van" means any motor vehicle equipped with a hydraulic lift or ramps designed for the purpose of transporting persons in wheelchairs or containing any other physical device or alteration designed to permit access to and enable the transportation of physically handicapped persons.

n. "Handicapped transportation service" means one or more motor vehicles for hire or operated by a non-profit organization for carrying passengers for hire in the city by means of a wheelchair accessible van or vans and not permitted to accept hails from prospective passengers in the street.

o. "Central business district of the borough of Manhattan" means that area of the borough of Manhattan lying south of, and including, ninety-sixth street.

p. "Commuter van" means a commuter van service having a seating capacity of at least nine passengers but not more than twenty passengers or such greater capacity as the commission may establish by rule and carrying passengers for hire in the city duly licensed as a commuter van by the commission and not permitted to accept hails from prospective passengers in the street. For purposes of the provisions of this chapter relating to prohibitions against the operation of an unauthorized commuter van service or an unlicensed commuter van and to the enforcement of such prohibitions and to the imposition of penalties for violations of such prohibitions, the term shall also include any common carrier of passengers by motor vehicle not subject to licensure as a taxicab, for-hire vehicle, or wheelchair accessible van or not operating as an authorized bus line pursuant to applicable provisions of law. The commission shall submit to the council the text of any proposed rule relating to the maximum capacity of commuter vans at the time such proposed rule is published in the City Record.

q. "Commuter van service" means a subclassification of common carriers by passengers of motor vehicles as

such term is defined in subdivision seven of section two of the transportation law, that provides a transportation service through the use of one or more commuter vans on a prearranged regular daily basis, over non-specified or irregular routes, between a zone in a residential neighborhood and a location which shall be a work related central location, a mass transit or mass transportation facility, a shopping center, recreational facility or airport. A "commuter van service" shall not include any person who exclusively provides: (1) any one or more of the forms of transporation that are specifically exempted from article seven of the transportation law; or (2) any one or more of the forms of transportation regulated under this chapter other than transportation by commuter vans.

r. "Security interest" means an interest in a vehicle reserved or created by an agreement and which secures pavement or performance of an obligation. The term includes the interest of a lessor under a lease intended as security. A security interest is perfected when it is valid against third parties generally, subject only to specific statutory exceptions.

s.* "Agent"6 means an individual, partnership or corporation that acts, by employment, contract or otherwise, on behalf of one or more owners to operate or provide for the operation of a taxicab in accordance with the requirements of this chapter and any rule promulgated by the commission. The term "agent" shall not include an attorney or representative who appears on behalf of one or more owners before the commission or an administrative tribunal, and taxicab drivers licensed pursuant to this chapter when acting in that capacity.

s.* "Affiliated vehicle" means a for-hire vehicle other than a black car or a luxury limousine which a base station is authorized by the commission to dispatch.

t. "Base station" means a central facility which manages, organizes or dispatches affiliated vehicles licensed under this chapter, not including luxury limousines or black cars.

u. "Black car" means a for-hire vehicle dispatched from a central facility whose owner holds a franchise from the corporation or other business entity which operates such central facility, or who is a member of a cooperative that operates such central facility, where such central facility has certified to the satisfaction of the commission that more than ninety percent of the central facility's for-hire business is on a payment basis other than direct cash payment by a passenger.

v. "Luxury limousine" means a for-hire vehicle which is dispatched from a central facility which has certified to the satisfaction of the commission that more than ninety percent of its for-hire business is on a payment basis other than direct cash payment by a passenger, for which there is maintained personal injury insurance coverage of no less than five hundred thousand dollars per accident where one person is injured and one million dollars per accident for all persons injured in that same accident, whose passengers are charged on the basis of garage to garage service and on a flat rate basis or per unit of time or mileage.

w. "Wheelchair accessible vehicle" shall mean a for-hire vehicle which is designed for the purpose of transporting persons in wheelchairs or containing any physical device or alteration designed to permit access to and enable the transportation of persons in wheelchairs.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. e amended L.L. 76/1986 § 2. [See Note]

Subd. f amended L.L. 76/1986 § 2

Subd. g amended L.L. 70/2001 § 1, eff. Dec. 26, 2001.

Subd. g amended L.L. 76/1986 § 2

Subd. i amended L.L. 115/1993 § 2, eff. Sept. 26, 1994

Subd. i amended L.L. 90/1989 § 2

Subd. o added L.L. 14/1987 § 1

Subds. p, q, r added L.L. 115/1993 § 3, eff. Sept. 26, 1994

Subd. s (laid out first) added L.L. 83/1995 § 1, eff. Mar. 3, 1996

Subd. s (laid out second) added L.L. 51/1996 § 1, eff. Sept. 18, 1996

Subds. t-w added L.L. 51/1996 § 1, eff. Sept. 18, 1996

**DERIVATION**

Formerly § 2302 added LL 12/1971 § 4

Subs m, n added LL 88/1977 § 1

Subs e. f amended LL 88/1977 § 8

Sub g amended LL 17/1980 § 1

**NOTE**

Provisions of L.L. 76/1986 adding legislative intent and other special provisions.

Section 1. Declaration of legislative intent. The council recognizes the value of community-based service provided to the riding public by the city's for-hire vehicle industry including limousines and liveries. The council also recognizes its responsibility to the general public to provide for the safety of for-hire vehicles operating in the city. The council hereby finds that the public safety requires regulation to ensure that for-hire vehicles have adequate liability insurance coverage, are mechanically safe, are driven by responsible drivers and are in compliance with other standards of operation to be set forth by the taxi and limousine commission.

Local legislation adopted by the council has given the taxi and limousine commission authority to regulate nonmedallion for-hire vehicles as well as medallion taxicabs. The council previously has denominated nonmedallion for-hire vehicles as "limousines." The council finds that recent court decisions considering the type of vehicles subject to licensing by the taxi and limousine commission as "limousines" have construed the term "limousine" more narrowly than had been the intent of the council. This local law corrects any ambiguity in the law. Rather than continue to apply the term "limousine" to a variety of for-hire vehicles which offer distinctive types of passenger service, the council hereby determines to use the term "for-hire vehicle" to encompass the separate categories of vehicles for hire subject to the regulatory jurisdiction of the taxi and limousine commission and to define such term with specificity so that future uncertainty as to the council's intent will be eliminated.

§ 11. Notwithstanding any inconsistent provision of chapter five of title nineteen of the administrative code of the city of New York, as amended by this local law, a person holding, as of the effective date of this local law, a valid, unrevoked limousine license for the operation of a vehicle reclassified as a for-hire vehicle pursuant to subdivision g of section 19-502 of such code as amended by section two of this local law may continue to operate such for-hire vehicle or its replacement pursuant to such limousine license up to and including the expiration date of such limousine license. Notwithstanding any inconsistent provision of such chapter, title and code, as amended by this local law, a person

holding, as of the effective date of this local law, a valid, unrevoked limousine-driver's license who operates any vehicles reclassified as for-hire vehicles pursuant to subdivision g of section 19-502 of such code as amended by section two of this local law may continue to operate any such vehicle pursuant to such limousine-driver's license up to and including the expiration date of such limousine-driver's license. Notwithstanding the provisions of subdivision b of section 19-504 of such code, the fee for each for-hire vehicle license issued on or after the effective date of this local law and which expires May thirty-first, nineteen hundred eighty-seven shall be one hundred twenty-five dollars or such lesser amount as the taxi and limousine commission may establish by regulation.

§ 12. If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 13. Not later than the thirtieth day after the date of enactment of this local law the taxi and limousine commission shall submit a written report to the council on its plan for implementing the regulatory authority concerning the licensing, inspection, enforcement, adjudication of violations and administration over the various classes of for-hire vehicles, as provided in section 19-503.1 of the administrative code of the city of New York as added by section three of this local law. Not later than the sixtieth day after such date of enactment the commission shall submit a written report to the council on the status of the hiring of personnel and on other actions taken for the improved enforcement of the provisions of chapter five of title nineteen of such code with regard to all vehicles required to be licensed under such chapter and title.

§ 14. This local law shall take effect ninety days after its date of enactment, provided however that the taxi and limousine commission as of the date of enactment of this local law shall be authorized to promulgate any rule or regulation necessary for the administration of and to issue any license provided for in such local law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on December 9, 1986 and approved by the Mayor on December 22, 1986.

CARLOS CUEVAS, City Clerk, Clerk of the Council.

**CASE NOTES FROM FORMER SECTION**

¶ 1. Subdivision n which requires the licensing and regulating of wheelchair accessible vans is a valid exercise of the city's power to regulate the health and welfare of its citizens; the state has not pre-empted the field, the local law is not inconsistent with state legislation and there is a valid distinction between the needs of the city and those of other parts of the state.-Ambulance and Medical Trans. Asso. of N.Y. v. City of N.Y., 98 Misc. 2d 537 [1979].

¶ 2. Defendant could not be convicted of being an unlicensed limousine operator when vehicle he was operating had five seats and thus could not comfortably seat a maximum of eight persons.-People v. Estes, 101 Misc. 2d 689 [1979], aff'd, 49 N.Y. 2d 719 [1980].

**FOOTNOTES**

6

[Footnote 6]: * There are 2 subdivisions s.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-503*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-503 Rules and regulations.

a. The commission shall promulgate such rules and regulations as are necessary to exercise the authority conferred upon it by the charter and to implement the provisions of this chapter.

b. No rule or regulation promulgated subsequent to the effective date of this local law may be inconsistent with or supersede any provision of this local law and any rule or regulation in effect on the effective date of this local law that is inconsistent with any provision of this local law shall be of no further force and effect.

**HISTORICAL NOTE**

Section amended L.L. 20/1999 § 2, eff. May 26, 1999.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 2303 added LL 12/1971 § 4



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-503.1*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-503.1 For-hire vehicles; special regulations.

a. The commission shall have the authority to promulgate rules and regulations which classify for-hire vehicles according to the nature of the service or services provided and the type of vehicle used and adopt regulations appropriate for each such classification setting forth standards for operation, including but not limited to standards of service, insurance and safety, and promulgate rules imposing reasonable fines, suspension or revocation upon the holder of a license issued pursuant to section 19-511 where such holder has violated any of the provisions of this chapter or a rule of the commission.

b. For the purposes of this chapter, a for-hire vehicle shall not include a motor vehicle carrying fewer than nine passengers which is operated solely for the purpose of carrying passengers from a specific location to a funeral parlour or cemetery and the return of said passengers to a specific location.

**HISTORICAL NOTE**

Section amended L.L. 19/1990 § 1 eff. June 6, 1990

Note this amendment ignored amendment by L.L. 86/1989 § 1. Both

amendements added subd. b's

Section amended L.L. 86/1989 § 1

Section added L.L. 76/1986 § 3

Subd. b (laid out first) repealed L.L. 51/1996 §  2, eff. Sept. 18, 1996

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-504*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-504 General provisions for licensing of vehicles.

a. (1) A taxi-cab, coach, wheelchair accessible van, commuter van or for-hire vehicle shall operate within the city of New York only if the owner shall first have obtained from the commission a taxicab, coach, wheelchair accessible van, commuter van or for-hire vehicle license for such vehicle and only while such license is in full force and effect. Vehicle licenses shall be issued for a term of not less than one nor more than two years and shall expire on the date set forth on the license unless sooner suspended or revoked by the commission. No motor vehicle other than a duly licensed taxicab shall be permitted to accept hails from passengers in the street. No commuter van shall be operated within the city of New York unless it is operated as part of a current, valid authorization to operate a commuter van service duly issued by the commission pursuant to section 19-504.2 of this chapter.

(2) No commuter van license shall be issued unless the following conditions are satisfied:

(i) such commuter van is to be operated as part of a current, valid authorization to operate a commuter van service issued pursuant to section 19-504.2 of this chapter;

(ii) the commission determines that the applicant is fit, willing and able to operate a commuter van;

(iii) the applicant is in compliance with the provisions of section 19-504.3 of this chapter, and the applicant has not engaged in any conduct that would be a basis for suspension or revocation of such license pursuant to rules promulgated by the commission; and

(iv) the applicant has satisfied such other criteria as the commission deems to be in the interest of the safety and

convenience of the public and necessary to effectuate the purposes of this chapter.

b. The license fee for each taxi-cab and coach shall be five hundred fifty dollars annually. The license fee for each wheelchair accessible van and each for-hire vehicle shall be two hundred seventy-five dollars annually. If a license is granted for a period other than one year, the fee shall be prorated accordingly. There shall be an additional fee of twenty-five dollars for late filing of a wheelchair accessible van or for-hire vehicle license renewal application where such filing is permitted by the commission.

c. In the event of the loss, mutilation or destruction of any medallion or vehicle license issued hereunder, the owner may file such statement and proof of the facts as the commission may require, with a fee of twenty-five dollars, at the office of the commission and the commission shall issue a duplicate or substitute medallion or license.

d. Applications for vehicle licenses shall be filed with the commission upon forms which shall be provided by the commission. The date and time of the receipt of each application shall be noted by the commission.

e. Any owner operating a vehicle under a license issued by the commission, or by the New York city police department prior to the effective date of this chapter, shall be entitled to renew such license as a matter of right upon compliance with all the other provisions of this section relating to the licensee's vehicle.

f. All taxicabs now or hereafter licensed pursuant to the provisions of this chapter shall be inspected at an inspection facility operated by the commission at least once every four months, in accordance with a procedure to be established by the commission. All other vehicles now or hereafter licensed pursuant to the provisions of this chapter other than commuter vans shall be inspected at official inspection stations licensed by the commissioner of motor vehicles pursuant to section three hundred three of the vehicle and traffic law at least once every four months in accordance with the regulations of the commissioner of motor vehicles, codified in part seventy-nine of title fifteen of the official compilation of codes, rules and regulations of the state of New York (15 N.Y.C.R.R. part 79). All commuter vans now or hereafter licensed pursuant to the provisions of this chapter shall be inspected and shall meet safety standards as provided in paragraph two of subdivision a of section 19-504.3 of this chapter. The fee payable to the commission for the inspection required for the issuance of a certificate of inspection for a taxicab, inclusive of the issuance of such certificate, shall not exceed thirty-five dollars for taxicabs inspected through June 30, 1991 and fifty dollars for taxicabs inspected on or after July 1, 1991. If any taxicab fails to pass such inspection, it shall be reinspected for no additional fee. If any taxicab fails to pass such reinspection, it shall be reinspected a second time for an additional fee of thirty-five dollars. If any taxicab fails to pass such second reinspection, it shall be reinspected a third time. No additional fee shall be charged for third or subsequent reinspections. The fees payable to the official inspection station for the inspection and the issuance of a certificate of inspection for all other licensed vehicles other than commuter vans shall be the fees charged and collected pursuant to section three hundred five of the vehicle and traffic law. The commission or any other agency authorized by law may conduct on-street inspections of vehicles licensed pursuant to the provisions of this chapter. The date of the inspection of a taxicab and the signature of the persons making the inspection shall be recorded upon the rate card in the space provided therefor. An owner shall be ordered by the commission to repair or replace his or her licensed vehicle where it appears that it no longer meets the reasonable standards for safe operation prescribed by the commission. Upon failure of such owner to have his or her vehicle inspected or to comply with any such order within ten days after service thereof, the license shall be suspended; upon failure of such owner to comply with any such order within one hundred twenty days after service thereof, the license may, at the discretion of the commission, be deemed to have been abandoned by nonuser.

g. The commission shall revoke any license for nonuse in the event it shall determine that the vehicle has not been operated for sixty consecutive days, provided that such failure to operate shall not have been caused by strike, riot, war or other public catastrophe or other act beyond the control of the owner; or in the event the owner has sold his or her vehicle and has failed to replace the vehicle within one hundred and twenty days from the date of sale. However, in the event that it is shown to the commission by competent proof that an owner-driver has been disabled through illness, his or her license shall not be revoked because of such nonuse as provided in this subdivision.

h. A medallion or license may be transferred from one vehicle to another, subject to the approval of the commission and upon payment of such fee as the commission shall require, but not to exceed fifty dollars. A vehicle licensee may change the base communications system with which it is affiliated, subject to the approval of the commission and upon payment of such fee as the commission shall require, but not to exceed fifty dollars.

i. The ratio of the number of taxicab licenses, as determined by the total number of taxicab licenses held by owners of more than one taxicab license and the total number of taxicab licenses held by the owners of one taxicab license, shall remain the same as it exists at the time of the enactment of this section unless or until changed by local law.

j. The commission shall replace the medallion for every taxicab license which is renewed pursuant to this section once every two years, or more frequently at the discretion of the commission. The commission may charge a fee not to exceed ten dollars for each replacement medallion.

k. The commission may charge a fee not to exceed twenty-five dollars per vehicle for the replacement of license plates issued by the New York state department of motor vehicles.

l. Prior to the issuance of a commuter van license, the applicant shall be fingerprinted for the purpose of securing criminal history records from the state division of criminal justice services. The applicant shall pay any processing fee required by the state division of criminal justice services. Fingerprints shall be taken of the individual owner if the applicant is a sole proprietorship; the general partners if the applicant is a partnership; the officers, principals, and stockholders owning more than ten percent of the outstanding stock of the corporation if the applicant is a corporation.

m. The commission shall approve or disapprove an application for a commuter van license within one hundred and eighty days after the completed application is filed. The failure to approve or disapprove such completed application within such time shall be deemed a disapproval of such application.

n. Every commuter van license shall be issued on the condition that the applicant is in compliance with the registration and insurance requirements set forth in section 19-504.3 of this chapter and any rules promulgated pursuant thereto during the time that such license is in effect. Notwithstanding any other provision of law, the failure to comply with either such registration or insurance requirements shall render the commuter van license suspended on and after the date of such noncompliance and during the period of such noncompliance, and any person using such commuter van in the course of operations of a commuter van service during such period of noncompliance shall be deemed to be operating without a license required by this section.

o. The annual license fee for each commuter van license shall be two hundred seventy-five dollars. Commencing two years after the date of enactment of the local law that added this subdivision, the annual license fee for each commuter van shall be an amount equal to the license fee for a for-hire vehicle set forth in subdivision b of this section, as it may be amended. The license fee shall be prorated to the term of the license.

p. A commuter van license shall not be transferable or assignable.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended L.L. 115/1993 § 4, eff. Sept. 26, 1994.

Subd. a amended L.L. 83/1989 § 1. [See Note.]

Subd. a amended L.L. 76/1986 § 4.

Subd. b amended L.L. 57/1991 § 1, eff. July 17, 1991.

Subd. b separately amended L.L. 83/1989 § 1 and L.L. 50/1989 § 1.

Subd. b amended L.L. 76/1986 § 4.

Subd. f amended L.L. 115/1993 § 5, eff. Sept. 26, 1994.

Subd. f amended L.L. 35/1990 § 1 eff. July 1, 1990.

Subd. f amended L.L. 48/1988 § 1.

Subd. h amended L.L. 57/1991 § 1, eff. July 17, 1991

Subd. h amended L.L. 50/1989 § 2.

Subds. j, k amended L.L. 57/1991 § 1, eff. July 17, 1991.

Subds. l-p added L.L. 115/1993 § 6, eff. Sept. 26, 1994.

**DERIVATION**

Formerly § 2304 added LL 12/1971 § 4

Subs b, c, f, h amended LL 19/1975 § 1

Sub a amended LL 88/1977 § 2

Sub j added LL 72/1979 § 1

Sub k added LL 40/1980 § 1

Sub b amended LL 31/1984 § 2

**NOTE**

Provision of L.L. 83/1989 § 2.

§ 2. The chairperson of the taxi and limousine commission shall devise a system for determining the license terms for vehicle licenses issued on or after June first, nineteen hundred eighty-nine for the purpose of staggering license expiration dates throughout the calendar year.

**CASE NOTES FROM FORMER SECTION**

¶ 1. The duties imposed upon the city pursuant to chapter 65 of this code created a special relationship between the city and riders of taxicabs and allegation of negligence by city in failing to properly inspect taxi supported cause of action for personal injury.-Linindoll v. Perrin, 112 Misc. 2d 257 [1981].

**CASE NOTES**

¶ 1. A limousine service sued an entertainer for breach of a contract under which it was to provide exclusive limousine services for her. She sought to impose, as a defense, the fact that plaintiff was not licensed. The court held that although the statute makes it illegal for a limousine service to operate in the City without a license, the plaintiff's failure to have a license does not render the contract invalid. Showcase Limousine v. Carey, 269 A.D.2d 133, modified in part, 273 A.D.2d 20, 716 N.Y.S.2d 551 (1st Dept. 2000), leave to appeal dismissed, 95 N.Y.2d 902, 716 N.Y.S.2d 642 (2000), 703 N.Y.S.2d 22 (App.Div. 1st Dept. 2000).



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***** Current through December 2009 ****

*NYC Administrative Code 19-504.1*

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CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-504.1 Additional taxicab licenses. [Repealed]

**HISTORICAL NOTE**

Section repealed L.L. 28/1996 § 1, eff. Apr. 8, 1996

Section added L.L. 14/1987 § 2

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*NYC Administrative Code 19-504.2*

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§ 19-504.2 Authorization to operate a commuter van service.

a. No person shall operate a commuter van service wholly within the boundaries of the city or partly within the city if the partial operation consists of the pick up and discharge of passengers wholly within the city without first obtaining authorization from the commission.

b. The commission shall not issue or renew an authorization to operate a commuter van service unless the following conditions have been satisfied:

(1) the commission determines that the applicant is fit, willing and able to provide the transportation for which authorization is sought;

(2) the applicant is in compliance with the provisions of section 19-504.3 of this chapter, and the applicant has not engaged in any conduct that would be a basis for suspension or revocation of such authorization pursuant to rules promulgated by the commission; and

(3) the applicant has satisfied such other criteria as the commission deems to be in the interest of the safety and convenience of the public and necessary to effectuate the purposes of this chapter.

c. Prior to the issuance or renewal of an authorization to operate a commuter van service, the applicant shall be fingerprinted for the purpose of securing criminal history records from the state division of criminal justice services. The applicant shall pay any processing fee required by the state division of criminal justice services. Fingerprints shall be taken of the individual owner if the applicant is a sole proprietorship; the general partners if the applicant is a

partnership; the officers, principals, and stockholders owning more than ten percent of the outstanding stock of the corporation if the applicant is a corporation.

d. An application for an authorization to operate a commuter van service or for renewal thereof shall be made to the commission in the form and manner prescribed by the commission.

e. (1) The applicant shall have the burden of demonstrating that the service proposed will be required by the present or future public convenience and necessity. The commission shall not issue an authorization to operate a commuter van service unless the commissioner of transportation determines that the service proposed will be required by the present or future public convenience and necessity. Such determination that the service proposed will be required by the present or future public convenience and necessity shall be in effect for six years after the date of issuance of such authorization, unless such authorization has not been renewed or has been revoked by the commission prior to the end of such six-year period in which case such determination shall be in effect only until the expiration or revocation of such authorization. After the expiration or revocation of such determination of public convenience and necessity, no authorization to operate a commuter van service shall be renewed unless a new determination is made by the commissioner of transportation that the service proposed will be required by the present or future public convenience and necessity.

(2) When such a determination by the commissioner of transportation is required by this subdivision, the application for authorization to operate a commuter van service shall set forth the geographic area proposed to be served by the applicant and the maximum number of vehicles to be operated and the capacity of each such vehicle, and the commission shall forward a copy of such application to the commissioner of transportation.

(3) The commissioner of transportation, after consultation with the state department of transportation, shall make a determination whether the service proposed in the application will be required by the present or future public convenience and necessity. The commissioner of transportation may request that the applicant provide any additional information relevant to such determination. The commissioner of transportation shall notify the New York city transit authority and all council members and community boards representing any portion of the geographic area set forth in the application for the purpose of obtaining comment on the present or future public convenience and necessity for any proposed service. The commissioner of transportation shall provide for publication in the City Record of a notice of any such application and shall allow for public comment on such application for a period not to exceed sixty days after the date of publication of such notice. If any such application is protested by a bus line operating in the city or by the New York city transit authority, and such bus line and/or transit authority has timely submitted objections to the application to the commissioner of transportation, the commissioner shall, in making such determination, evaluate such objections in accordance with the following criteria:

(a) the adequacy of the existing mass transit and mass transportation facilities to meet the transportation needs of any particular segment of the general public for the proposed service; and

(b) the impact that the proposed operation may have on any existing mass transit or mass transportation facilities.

Any determination by the commissioner that a service proposed will be required by the present or future public convenience and necessity shall specify the geographic area where service is authorized and the number of commuter vans authorized to be used in providing such service.

f. (1) The commission, after consultation with the state department of transportation, shall approve or disapprove such application for authorization to operate a commuter van service within one hundred eighty days after the date a completed application has been filed. The failure to approve or disapprove such completed application within such one hundred eighty day period shall be deemed a disapproval of such application.

(2) Any determination by the commission to approve an application for authorization to operate a commuter van

service pursuant to this section shall be in writing and shall be submitted to the council within five days of such determination being made. Within twenty days of such submission the council may adopt a resolution by majority vote of all council members to review that deter- mination.

(3) Within thirty days of the adoption of the council of a resolution pursuant to this subdivision, the council, may act by local law to approve or disapprove the determination of the commission. In the event that the council fails to act by local law within the thirty day period provided for in this paragraph the determination of the commission shall remain in effect.

g. An authorization to operate a commuter van service shall be issued for a term of not less than one nor more than two years and shall expire on the date set forth in such authorization unless sooner suspended or revoked by the commission.

h. The commission shall not issue a temporary authorization to operate a commuter van service. An authorization to operate a commuter van service shall not be assignable or transferable, unless otherwise provided by the commission.

i. In the event of the loss, mutilation or destruction of any authorization to operate a commuter van service the owner shall file such statement and proof of the facts as the commission may require, with a fee not to exceed twenty-five dollars for each authorization, at the offices of the commission, and the commission may issue a duplicate or substitute authorization.

j. No application for authorization to operate a commuter van service shall be approved if the applicant has been found guilty of operating a commuter van service without authorization to operate such commuter van service two times within a six-month period prior to the date of application, provided that such violations were committed on or after the date occurring six months after the effective date of this subdivision.

k. (i) Notwithstanding any other provision of this section, no application for authorization to operate a commuter van service, to increase the number of commuter vans that a commuter van service is authorized to operate, to increase the number of hours during which a commuter van service may operate or to modify the territory within which a commuter van service may operate, other than an application to renew an authorization to operate a commuter van service, shall be accepted or processed and no pending application, other than an application to renew an authorization to operate a commuter van service, shall be approved by the commission for a period of one year from the effective date of this paragraph.

(ii) The department of city planning shall submit to the mayor and the council copies of the final report reflecting the results of a commuter van service policy study currently being conducted under the auspices of the department of city planning, or any similar study, within five business days of its completion.

**HISTORICAL NOTE**

Section added L.L. 115/1993 § 7, eff. Sept. 26, 1994.

Subd. k added L.L. 83/1997 § 3, eff. Oct. 29, 1997. See Note

**NOTE**

Provisions of L.L. 83/1997 § 1:

Section one. Legislative Intent and Findings. In 1993 Local Law 115 was enacted which established a licensing and regulatory structure for the operation of commuter van services, the performance of the drivers who drive for such services and the commuter vans used in such operations. This allowed for licensing and enforcement to be performed by

City agencies. Previously, the licensing and regulation of commuter van services was within the exclusive jurisdiction of the New York State Department of Transportation.

Local Law 115 contained a provision by which the Council could, at its discretion, review those commuter van service applications which were approved by the Taxi and Limousine Commission and could, by local law, either approve or disapprove those determinations. In the two years since the first commuter van service application became subject to Council review the Council has chosen to review each approval of a commuter van service that was presented to it and, in fact, has approved more determinations than it has disapproved. However, the independent analyses conducted by the Council during its review of these applications has disclosed significant weaknesses in the manner in which the Taxi and Limousine Commission and the New York City Department of Transportation, the agencies charged under Local Law 115 with evaluating those applications, meet that obligation. Moreover, it has become readily apparent that the decisions made by those agencies to authorize the operation of a commuter van service in specific geographic areas have been made without the benefit of any comprehensive study having been made of where in the City commuter vans are needed as a complement to existing mass transit services, not as competitors, the number of vans actually necessary to provide this complementary service, the hours during which complementary service is really needed and concerns related to traffic congestion and physical safety as the number of commuter vans proliferates. Recognition of this deficiency led the Department of City Planning to initiate a Commuter Van Service Policy Study this Spring, whose mission includes identifying areas underserved by existing mass transit, and the creation of a Technical Advisory Committee comprised largely of representatives from a number of City, State and Federal agencies. A Final Report is scheduled to be completed by March 31, 1998.

Finally, for many years, even prior to the enactment of Local Law 115, many members of the Council have decried the lack of effective enforcement against those who operate commuter van services without legal authorization and those with legal authorization to operate but who do so in an illegal manner.

For these reasons, it is the strongly held view of the Council that no further applications for authorization to operate or expand the operations of commuter van services should be approved for a period of one year during which period the Final Report of the Department of City Planning should be issued and the Council will have had a reasonable period of time to consider its contents, and/or until the Council has conducted its own study of these issues. During this period the Council will also have a fair and reasonable opportunity to consider regulatory changes which may be appropriate and to undertake any necessary legislative action.

**CASE NOTES**

¶ 1. The court invalidated the call-up provision of § 19-504.2, which granted the City Council the authority to veto a final determination of a City agency. This provision violated the State Enabling Act, the Municipal Home Rule Law and the City Charter, the court said. Ricketts v. City of New York, 722 N.Y.S.2d 25 (App.Div. 1st Dept. 2001).



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***** Current through December 2009 ****

*NYC Administrative Code 19-504.3*

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Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-504.3 Conditions of operation relating to commuter vans.

a. A commuter van service and an owner of a commuter van shall be responsible for compliance with the following provisions and shall be liable for violations thereof:

(1) No commuter van shall be used in the course of operations of a commuter van service unless a commuter van license has been obtained for such vehicle pursuant to section 19-504 of this chapter and such commuter van displays a license identification in the manner prescribed by the commission.

(2) No commuter van shall be used in the course of operations of a commuter van service unless such vehicle (a) is inspected by the state department of transportation as provided under section one hundred forty of the transportation law or any rules or regulations promulgated thereunder or as provided under an agreement between the state department of transportation and the commission entered into pursuant to subparagraph one of paragraph a of subdivision five of section eighty of the transportation law, (b) prominently displays the name of the holder of the authorization and certificate evidencing an inspection, and (c) meets the vehicle safety standards prescribed by rule or regulation of the state commissioner of transportation pursuant to section one hundred forty of the transportation law.

(3) No commuter van shall be used in the course of operations of a commuter van service unless such vehicle is in compliance with the registration requirements of the vehicle and traffic law.

(4) No commuter van shall be used in the course of operations of a commuter van service unless a surety bond or policy of insurance is maintained covering such commuter van conditioned for the payment of all claims and judgments for damages or injuries caused in the operation, maintenance, use or the defective construction of such

commuter van in at least the following amounts unless higher amounts are established by rule of the commission:

(a) if the commuter van has a carrying capacity of twelve passengers or less: for personal injury or death to one person, one hundred thousand dollars; for personal injury or death to all persons in one accident, three hundred thousand dollars, with a maximum of one hundred thousand dollars for each person; and for property damage, fifty thousand dollars.

(b) if the commuter van has a carrying capacity of more than twelve passengers and less than twenty-one passengers: for personal injury or death to one person, one hundred thousand dollars; for personal injury or death to all persons in one accident, five hundred thousand dollars, with a maximum of one hundred thousand dollars for each person; and for property damage, fifty thousand dollars.

(c) if the commuter van has a carrying capacity of more than twenty passengers: for personal injury or death to one person, one hundred thousand dollars; for personal injury or death to all persons in one accident, one million dollars, with a maximum of one hundred thousand dollars for each person; and for property damage, fifty thousand dollars.

(5) No commuter van shall be used in the course of operations of a commuter van service unless the driver holds (a) a commercial driver's license which pursuant to the vehicle and traffic law is valid for the operation of such commuter van for the transportation of passengers for-hire and (b) a commuter van driver's license issued pursuant to section 19-505 of this chapter.

(6) No commuter van that utilizes a two-way radio or other communications system shall be used in the course of operations of a commuter van service unless such commuter van service and the owner of such commuter van are in compliance with all regulations of the federal communications commission applicable to such use.

(7) A commuter van service and an owner of a commuter van shall maintain such records as the commission shall prescribe by rule including, but not limited to, records of requests for service and trips. Such records shall be subject to inspection by authorized officers or employees of the commission during regular business hours.

(8) A commuter van service shall designate each and every driver who operates pursuant to an authorization to operate such commuter van service as agent for service of any and all legal process from the commission which may be issued against such commuter van service. An owner of a commuter van shall designate each and every driver who operates such commuter van as agent for service of any and all legal process from the commission which may be issued against such commuter van owner.

b. A commuter van service shall certify annually in accordance with rules of the commission that such commuter van service is in compliance with title III of the federal americans with disabilities act of 1990 (42 U.S.C. §12101 et seq.) and any regulations promulgated thereunder, as such act and regulations may be amended.

c. A commuter van service shall comply with such provisions of section five of the federal omnibus transportation testing act of 1991 (49 U.S.C. APP. § 2717) and any regulations promulgated thereunder, as that act and regulations may be amended, as are applicable to such commuter van service. A commuter van service shall certify such compliance annually in accordance with rules of the commission.

**HISTORICAL NOTE**

Section added L.L. 115/1993 § 8, eff. Sept. 26, 1994.

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*NYC Administrative Code 19-504.4*

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§ 19-504.4 Renewal, suspension and revocation of authorizations to operate a commuter van service, commuter van licenses and commuter van drivers' licenses.

a. An authorization to operate a commuter van service shall be revoked after the holder of such authorization has had an opportunity for a hearing in accordance with procedures to be established by the commission and upon the occurrence of any one or more of the following conditions:

(1) Where each commuter van comprising a number of commuter vans equaling at least thirty percent of the total number of commuter vans operating as part of the same current, valid authorization rounded up to the next whole number, has failed to maintain the required liability insurance at least three times within a twelve month period;

(2) Where each commuter van comprising a number of commuter vans equaling at least thirty percent of the total number of commuter vans operating as part of the same current, valid authorization, rounded up to the next whole number, has operated without complying with any safety inspection requirements arising from any applicable law, rule or regulation at least three times within a twelve month period;

(3) Where a commuter van driver has had his or her license revoked pursuant to subdivision p of section 19-505 of this chapter while operating as part of such authorization and thereafter is found to be operating a commuter van as part of such authorization without a commuter van driver's license required pursuant to section 19-505 of this chapter three times within a six month period; or

(4) Where the number of violations of paragraph five of subdivision a of section 19-504.3 of this chapter occurring within a twelve month period is equal to the following: ninety percent of the number of commuter vans

authorized to operate as part of such authorization rounded up to the next whole number, or five, whichever is greater.

b. Any commuter van license shall be revoked after the holder of such license has had an opportunity for a hearing in accordance with procedures to be established by the commission and after which the holder of such license is found guilty of any of the following:

(1) Failure to maintain the required liability insurance three times within a period of one year; or

(2) Operating without complying with any safety inspection requirements arising from any applicable law, rule or regulation three times within a period of one year.

c. The commission may refuse to renew any authorization to operate a commuter van service or any commuter van license or commuter van driver's license required by this chapter and, after due notice and an opportunity to be heard, may suspend or revoke any such authorization or license upon the occurrence of any one or more of the following conditions:

(1) the holder of an authorization or a license or any of its officers, principals,, directors, employees,, or stockholders owning more than ten percent of the outstanding stock of the corporation has been found by the commission to have violated any of the provisions of this chapter or any rule promulgated thereunder governing the operation of commuter van services, commuter vans and commuter van drivers; or

(2) the holder of an authorization or a license or any of its officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation has made a material false statement or concealed a material fact in connection with the filing of any application or certification pursuant to this chapter or has engaged in any fraud or misrepresentation in connection with rendering transportation service; or

(3) the holder of an authorization or a license or any of its officers, principals, directors, or stockholders owning more than ten percent of the outstanding stock of the corporation has not paid any penalty duly imposed pursuant to the provisions of this chapter or any rule promulgated hereunder; or

(4) the holder of an authorization or a license or any of its officers, principals, directors, or stockholders owning more than ten percent of the outstanding stock of the corporation has been convicted of a crime which, in the judgment of the commission, has a direct relationship to such person's fitness or ability to perform any of the activities for which an authorization or a license is required under this chapter, or has been convicted of any other offense which under the provisions of article twenty-three-a of the correction law, would provide a basis for the commission to refuse to renew, or to suspend or revoke, such authorization or license; or

(5) the holder of an authorization or a license has failed to maintain the conditions of operation applicable to the particular authorization or license as provided in this chapter; or

(6) the holder of an authorization or a license or any of its officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation has been found to have violated any of the provisions of section 8-107 of the code concerning unlawful discriminatory practices in public accommodations in the operation of a commuter van service or a commuter van.

d. Notwithstanding the foregoing provisions, the chairperson of the commission may immediately suspend any authorization to operate a commuter van service or commuter van license or commuter van driver's license issued under this chapter without a prior hearing where the chairperson determines that the continued possession of such authorization or license poses a serious danger to the public health, safety or welfare, provided that after such suspension an opportunity for a hearing shall be provided on an expedited basis, within a period not to exceed fourteen days.

e. Where the commission suspends or revokes an authorization to operate a commuter van service pursuant to this section:

(1) any commuter van license which has been issued as part of such authorization shall be deemed suspended or revoked, as the case may be, where the suspension or revocation of the authorization to operate a commuter van service was based, in whole or in part, upon thhe operation of such commuter van; or

(2) any commuter van license which has been issued as part of such authorization shall continue to be valid in accordance with its terms where the suspension or revocation of the authorization to operate a commuter van service was not based, in whole or in part, upon the operation of such commuter van; provided, however, that such commuter van shall not be operated in the course of operations of such commuter van service unless and until such commuter van operates as part of a current, valid authorization to operate a commuter van service; provided, further that any such commuter van which operates without being part of a current, valid authorization to operate a commuter van service shall be deemed to be operating without a commuter van license and shall be subject to any and all of the penalties that may be imposed under this chapter for the unlicensed operation of commuter vans, including seizure and forfeiture as provided in sections 19-529.2 and 19-529.3 of this chapter.

f. Notwithstanding any other provision of law, any person who has had an authorization to operate a commuter van service revoked by the commission pursuant to this section shall not be permitted to apply for an authorization to operate a commuter van service under this chapter for a period of six months after the date of such revocation.

g. The commission shall notify the holder of an authorization to operate a commuter van sevice of all violations issued to any driver or vehicle operating pursuant to such authorization.

**HISTORICAL NOTE**

Section added L.L. 115/1993 § 9, eff. Sept. 26, 1994.



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***** Current through December 2009 ****

*NYC Administrative Code 19-505*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-505 General provisions for licensing of drivers.

a. No person shall drive any motor vehicle for hire which is regulated by the provisions of this chapter without first obtaining from the commission:

(i) a taxicab driver's license, if the vehicle driven is a taxicab; or

(ii) a coach driver's license, if the vehicle driven is a coach; or

(iii) a for-hire vehicle driver's license, if the vehicle driven is a for-hire vehicle; or

(iv) a wheelchair accessible van driver's license, if the vehicle driven is a wheelchair accessible van; or

(v) a commuter van driver's license, if the vehicle driven is a commuter van.

The issuance of a license to a person to drive any one of the aforementioned licensed vehicles shall not entitle such person to drive any other such licensed vehicle without first obtaining the additional appropriate driver's license.

b. Each applicant for a license, other than a commuter van driver's license must:

1. Hold a New York state chauffeur's license.

2. Be nineteen years of age or over.

3. Be of sound physical condition with good eyesight and no epilepsy, vertigo, heart trouble or any other infirmity of body or mind which might render him or her unfit for the safe operation of a licensed vehicle.

4. Be fingerprinted.

5. Be of good moral character.

6. Not be addicted to the use of drugs or intoxicating liquors.

c. Applications for driver's licenses must be filed as directed by the commission, and must be accompanied by the required license fee. Such application shall be on a form provided by the commission and contain such information as the commission deems reasonably necessary.

d. Each applicant for a driver's license under the provisions of this chapter, other than a commuter van driver's license, shall be examined as to his or her physical condition by a duly licensed physician designated by the commission; each such applicant shall also be examined by the commission as to his or her knowledge of the city, as well as city and state laws governing the idling of engines, and if the result of any of these examinations is unsatisfactory, he or she shall be refused a license.

e. Each applicant for a driver's license must file with his or her application two recent photos of such applicant of a size which may be easily attached to his or her license, one of which shall be attached to the license when issued and the other filed with the application in the office of the commission.

f. Upon satisfactory fulfillment of the applicable requirements, there shall be issued to the applicant a driver's license which shall be in such form as the commission may direct.

g. Original driver's licenses and renewals thereof shall be valid for a period of not less than one year nor more than three years.

h. The commission may renew a driver's license provided the driver shall have made application on the prescribed form during the period which the commission shall designate, and the commission may require the same standards and tests as are applicable for original applications.

i. The commission may revoke any driver's license for nonuse, in the event it shall determine that the driver has not worked at least twenty-five days as a licensed driver in the calendar year preceding the calendar year in which such determination is made, provided that such failure to work as a licensed driver shall not have been caused by strike, riot, war or other public catastrophe. However, in the event that it is shown to the commission by competent proof that a driver has been disabled through illness, his or her license shall not be revoked because of such nonuse as provided in this subdivision.

j. Fees shall be paid by each applicant for a driver's license, as determined by the commission, but not to exceed the following:

For each original one-year license $60.00

For renewal of a one year period $60.00

The fee for an original license or a renewal thereof shall be paid at the time of filing the applications and shall not be refunded in the event of disapproval of the application. An additional fee not exceeding twenty-five dollars shall be paid for each license issued to replace a lost or mutilated license. There shall be an additional fee of twenty-five dollars for late filing of a license renewal application where such late filing is permitted by the commission.

k. Every driver who has obtained a license pursuant to this section shall comply with the rules and regulations

promulgated by the commission for drivers of the type of vehicle for which the driver is licensed.

l. The commission may, after a hearing, suspend or revoke any driver's license for failure to comply with any provision of this chapter applicable to licensed drivers or for failure to comply with the commission's rules and regulations.

m. Notwithstanding any other provision of this section, the commission shall not issue a commuter van driver's license to an applicant unless the applicant: (1) has been fingerprinted for the purpose of securing criminal history records from the state division of criminal justice services for which the applicant shall pay any processing fee required by the state division of criminal justice services; (2) satisfies the commission that such applicant is fit and able to drive the commuter van for which the license is sought; (3) possesses a commercial driver's license which pursuant to the vehicle and traffic law is valid for the operation of such commuter van for the transportation of passengers for-hire; (4) has met the qualifications set forth in article nineteen-A of the vehicle and traffic law for the operation of a bus as defined in such article; and (5) has not engaged in any conduct that would be a basis for suspension or revocation of such license pursuant to rules promulgated by the commission.

n. The commission shall approve or disapprove an application for the issuance of a commuter van driver's license within one hundred eighty days after the completed application is filed. The failure to approve or disapprove such application within such time shall be deemed a disapproval of such application.

o. Every commuter van driver's license shall be issued on the condition that the applicant possesses a commercial driver's license and complies with article nineteen-A of the vehicle and traffic law as described in paragraphs three and four of subdivision m of this section during the time that such commuter van driver's license is in effect. Notwithstanding any other provision of law, suspension or revocation of such commercial driver's license pursuant to the vehicle and traffic law or noncompliance with article nineteen-A of the vehicle and traffic law shall render the commuter van driver's license suspended on and after the date of the suspension or revocation of such commercial driver's license or noncompliance with such article nineteen-A and during the period of such suspension revocation or noncompliance, and any person who drives a commuter van that is required to be licensed pursuant to section 19-504 of this chapter during the period of such suspension revocation or noncompliance shall be deemed to be driving a commuter van without a license required by this section.

p. Any commuter van driver's license issued pursuant to this section shall be revoked after the holder of such license has had an opportunity for a hearing in accordance with procedures to be established by the commission and such holder is found to have failed to comply with paragraph two of subdivision a of section 19-529.1 of this chapter three times within a period of six months.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended L.L. 115/1993 § 10, eff. Sept. 26, 1994.

Subd. a par (iii) amended L.L. 76/1986 § 5.

Subd. b open par amended L.L. 115/1993 § 11, eff. Sept. 26, 1994.

Subd. d amended L.L. 5/2009 § 3, eff. May 11, 2009.

Subds. d, f amended L.L. 115/1993 § 12, eff. Sept. 26, 1994.

Subd. j amended L.L. 57/1991 § 2, eff. July 17, 1991.

Subd. j amended L.L. 50/1989 § 3.

Subd. k amended L.L. 115/1993 § 12, eff. Sept. 26, 1994.

Subd. m added L.L. 115/1993 § 13, eff. Sept. 26, 1994

Subd. m repealed L.L. 48/1988 § 3, eff. 1/1/1989.

Subd. m amended L.L. 48/1988 § 2.

Subd. n added L.L. 115/1993 § 13, eff. Sept. 26, 1994

Subd. n repealed L.L. 48/1988 § 3, eff. 1/1/1989.

Subd. n amended L.L. 48/1988 § 2.

Subd. n amended L.L. 69/1987 § 1.

Subd. p added L.L. 115/1993 § 13, eff. Sept. 26, 1994.

**DERIVATION**

Formerly § 2305 added LL 12/1971 § 4

Sub j amended LL 20/1975 § 1

Sub j amended LL 64/1976 § 1

Subs m, n added LL 64/1976 § 2

Sub a amended LL 88/1977 § 3

Sub a repealed and added LL 19/1980 § 1

Sub j amended LL 31/1984 § 1

**CASE NOTES**

¶ 1. The TLC sought to use Section 19-505 as a basis for suspending the license of a driver who committed a first or second offense of refusal of service. In other words, the TLC contended that this section permitted suspension even though another section, 19-507, provided a specific fine for refusals of service. The court, however, held that the TLC was limited to the imposition of the statutory fines of § 19-507 and could not suspend a driver's license for a first or second offense of refusal of service. Lys v. New York City Taxi and Limousine Commission, N.Y.L.J., Jan. 31, 2002, page 21, col. 4, 2002 WL 338187 (Civ.Ct. New York Co.).

¶ 2. The Commission has brought revocation hearings on the ground that the driver no longer possesses the qualifications for license under this section. In particular, it has alleged the licensee does not possess good moral character, as required by subsection (b)(5) of this section. See annotations below.

¶ 3. Licensee's misdemeanor conviction for driving his personal car while intoxicated plus his evasiveness in testifying about the incident at a fitness hearing, supported a finding that the licensee lacked good moral character required to maintain license. Taxi & Limousine Comm'n v. Corrales, OATH Index No. 259/08 (Aug. 24, 2007).

¶ 4, Probationary licensee's conviction for driving his personal car while under the influence of alcohol (a traffic infraction) did not establish charge that he lacked moral character required for license, where driver candidly admitted his "big mistake" at the fitness hearing. Nevertheless, license revocation was recommended for violation of

Administrative Code section 19-512.1(a) on the ground that the driver posed a risk to public safety. Taxi & Limousine Comm'n v. Alexandridis, OATH Index No. 202/08 (Aug. 28, 2007).

¶ 5. ALJ found licensee's conviction for driving his personal car while ability impaired by alcohol (a traffic infraction) alone did not establish charge that he lacked moral character required for fitness to hold a license, where driver acknowledged his mistake, showed remorse for drinking and driving, and completed alcohol treatment program. Nevertheless, ALJ recommended license revocation for violation of Administrative Code section 19-512.1(a) on the ground that the driver posed a risk to public safety. TLC Commissioner/Chair affirmed revocation, but on the ground that conviction for violation alone established licensee lacked fitness. The Commissioner/Chair's decision did not address the question of whether the Commission established the driver lacked moral character. Taxi & Limousine Comm'n v. Pardo, Comm'r/Chair's Dec. (Nov. 19, 2007), adopting on other grounds, OATH Index No. 798/08 (Oct. 31, 2007).

¶ 6. Licensee's conviction for off-duty driving while ability impaired by alcohol (a traffic infraction), plus his evasive testimony at his fitness hearing, established charge that he lacked moral character required to maintain license. Taxi & Limousine Comm'n v. Chulsky, OATH Index No. 233/08 (Aug. 28, 2007).



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-506*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-506 [Regulations and enforcement.]

a. Regulations and Enforcement. Except as provided by section 19-512.1, the commission may impose reasonable fines and/or*9 suspend or revoke any license issued by the commission where the holder has failed to comply with or has willfully or knowingly violated any of the provisions of this chapter or a rule or regulation of the commission after adjudication of such violation by the administrative tribunal established by the commission in accordance with section 2303 of the New York city charter.

b. 1. Any person who shall permit another to operate or who shall knowingly operate or offer to operate for hire any vehicle as a taxicab, coach, wheelchair accessible van or for-hire vehicle in the city, without first having obtained an appropriate license therefor, shall be guilty of a violation hereof, and upon conviction in the criminal court shall be punished by a fine of not less than four hundred dollars or more than one thousand dollars or imprisonment for not more than sixty days, or both such fine and imprisonment.

2. Where a violation of this chapter or any rules promulgated thereunder is committed using a vehicle which is owned by a rental vehicle company and has been rented or leased by such rental vehicle company, it shall be an affirmative defense that the rental vehicle company did not know or have any reason to know that the person to whom it was rented or leased would operate or offer to operate for hire such vehicle as a taxicab, coach, wheelchair accessible van or for-hire vehicle in the city. For purposes of this subdivision, a "rental vehicle company" shall be defined as any person or organization or any subsidiary or affiliate, including a franchisee, in the business of providing rental vehicles to the public.

c. (1) No person shall operate or permit to be operated any vehicle bearing the words "hack," "taxi," "taxicab,"

"cab," "coach," "for hire vehicle," "livery," "limousine," "commuter van service," "van service," "commuter van," "van" or other designation of similar import unless the vehicle is licensed as a taxicab, coach, for-hire vehicle, or commuter van, as appropriate, and the driver has an appropriate driver's license under this chapter, and in the case of a commuter van service, such person has an authorization to operate a commuter van service nor shall any person advertise or hold himself or herself out as doing business as a taxi, taxicab, hack or coach service unless he or she holds a vehicle license and medallion for each vehicle used therefor, nor shall any person advertise or hold himself or herself out as doing business as a "limousine service," "livery service," a "for-hire vehicle service," or other similar designation unless a for-hire vehicle license is in effect for each vehicle used therefor, nor shall any person advertise or hold himself or herself out as doing business as a "commuter van service," "van service," "commuter van," "van" or other designation of similar import unless such person is authorized to operate a commuter van service and a commuter van license is in effect for each vehicle used therefor as required by this chapter, nor shall any person advertise or hold himself or herself out as doing business as a wheelchair accessible van service or other similar designation unless a wheelchair accessible van license is in effect for each vehicle used therefor.

(2) Any person required to obtain a license under this chapter shall conspicuously state in all print and broadcast advertising, with respect to such licensed activity, the vehicle license number and that the activity is licensed by the commission; provided, however, that as applied to the owner of a for-hire vehicle base station, or wheelchair accessible van base station, such license number shall be the number of the license issued to such base station; provided further, that the requirement of this subdivision respecting the display of vehicle license numbers in print and broadcast advertising shall not apply to any owner of five or more taxicabs. No person who is required to obtain authorization to operate a commuter van service under this chapter shall advertise in print or in a broadcast medium the activity for which authorization is required without conspicuously stating in such advertising the commuter van service authorization number and that the activity is licensed by the commission.

d. Any person, other than a person holding a driver's license issued pursuant to section 19-505 and a New York state class A, B, C or E license, neither of which is revoked or suspended, who drives or operates for hire a licensed vehicle in the city except a commuter van, shall be guilty of a violation hereof, and upon conviction in the criminal court, shall be punished by a fine of not less than one hundred or more than five hundred dollars or imprisonment for a term not exceeding thirty days, or both such fine and imprisonment.

e. As an alternative to the penalties provided for the violation of subdivisions b, c and d of this section, any person who shall violate any of the provisions of such subdivisions shall be liable for a civil penalty of not less than two hundred dollars nor more than one thousand five hundred dollars for each violation. A proceeding to impose such a civil penalty or a civil penalty prescribed in subdivision f of this section shall be commenced by the service of a notice of violation returnable before the commission or an administrative tribunal of the commission. The commission or such tribunal, after a hearing as provided by the rules of the commission, shall have the power to enforce its decisions and orders imposing such civil penalties as if they were money judgments pursuant to subdivision c of section two thousand three hundred three of the charter.

f. As an alternative to the penalties provided for the violation of subdivision c of this section, the commission, after notice and hearing, shall be authorized to impose the civil penalties provided in this subdivision upon any person found to have advertised in print or in a broadcast medium in violation of such subdivision, provided, however, that such civil penalties may be imposed only when such person was not licensed by the commission at the time of such violation. Such penalties shall be levied for each broadcast in violation of such subdivision and shall be not less than one hundred dollars nor more than five hundred fifty dollars for each such broadcast. Such penalties for printed advertisements shall be levied for each publication and shall be determined based on the period of time the publication in which the advertisement appears remains current. The current period shall be determined as that time when a publication is initially offered for sale or distribution until the period when the next dated publication is offered for sale or distribution. In no case shall this period be less than twenty-four hours. If the current period is:

daily, such penalty shall be not less than one hundred dollars nor more than five hundred dollars per day;

weekly, such penalty shall be not less than two hundred fifty dollars nor more than seven hundred fifty dollars;

greater than one week and not more than one month, such penalty shall be not less than seven hundred fifty dollars nor more than one thousand dollars; and

greater than one month, such penalty shall be not less than one thousand dollars nor more than two thousand dollars.

g. The commission shall undertake a public awareness campaign advising the public to patronize only licensed taxicabs and for-hire vehicles and, when selecting a taxicab or for-hire vehicle from an advertisement, to look for the commission license number in any such advertisement.

h. (1) Any officer or employee of the commission designated by the chairperson of the commission and any police officer may seize any vehicle which he or she has probable cause to believe is operated or offered to be operated without an appropriate vehicle license for such operation in violation of subdivision b or c of this section. Therefore, either the commission or an administrative tribunal of the commission at a proceeding commenced in accordance with subdivision e of this section, or the criminal court, as provided in this section, shall determine whether a vehicle seized pursuant to this subdivision was operated or offered to be operated in violation of either such subdivision. The commission shall have the power to promulgate regulations concerning the seizure and release of vehicles and may provide in such regulations for reasonable fees for the removal and storage of such vehicles. Unless the charge of violating subdivision b or c of this section is dismissed, no vehicle seized pursuant to this subdivision shall be released until all fees for removal and storage and the applicable fine or civil penalty have been paid or a bond has been posted in a form and amount satisfactory to the commission, except as is otherwise provided for vehicles subject to forfeiture pursuant to paragraph two of this subdivision.

(2) In addition to any other penalties provided in this section, if the owner is convicted in the criminal court of, or found liable in accordance with subdivision e of this section for, a violation of either subdivision b or c of this section three or more times, and all of such violations were committed on or after the effective date of this section and within a thirty-six month period, the interest of such owner in any vehicle used in the commission of any such third or subsequent violation shall be subject to forfeiture upon notice and judicial determination. Notice of the institution of the forfeiture proceeding shall be in accordance with the provisions of the civil practice law and rules.

(3) Except as hereinafter provided, the city agency having custody of a vehicle after judicial determination of forfeiture, shall, no sooner than thirty days after such determination and upon a notice of at least five days, sell such forfeited vehicle at public sale. Any person, other than an owner whose interest is forfeited pursuant to this section, who establishes a right of ownership in a vehicle, including a part ownership or security interest, shall be entitle*5 to delivery of the vehicle if such person;

(A) redeems the ownership interest which was subject to forfeiture by payment to the city of the value thereof;

(B) pays the reasonable expenses of the safekeeping of the vehicle between the time of seizure and such redemption; and

(C) either (i) asserts a claim in the forfeiture proceeding, or (ii) submits a claim in writing to the commission within thirty days after judicial determination of forfeiture.

(4) Notwithstanding the provisions of paragraph three of this subdivision, establishment of a right of ownership shall not entitle a person to delivery of a vehicle if the city establishes in the forfeiture proceeding or in a separate administrative adjudication of a claim asserted pursuant to subparagraph C of paragraph three of this subdivision that the violations of subdivision b or c of this section upon which the forfeiture is predicated were expressly or impliedly permitted by such person. The commission shall promulgate rules and regulations setting forth the procedure for such an administrative adjudication, which shall include provision for a hearing.

(5) For purposes of this subdivision, the term "owner" shall mean an owner as defined in section one hundred twenty-eight and in subdivision three of section three hundred eighty-eight of the vehicle and traffic law.

(6) The provisions of this subdivision shall not apply to the seizure and forfeiture of commuter vans which shall be governed by sections 19-529.2 and 19-529.3 of this chapter.

i. (1) Notwithstanding any inconsistent provision of this chapter, any person who violates any provision of this chapter or any rule promulgated hereunder applicable to commuter van services, commuter vans or drivers of commuter vans shall be subject to a civil penalty in an amount to be prescribed by the commission by rule for specific violations which amount shall not exceed one thousand dollars for a first violation and twenty-five hundred dollars for a second and subsequent violation committed within two years of a first violation. Where such violation involves the operation of a commuter van service without the authorization required by this chapter, the operation of a commuter van without the license required by this chapter or the operation of a commuter van that is not pursuant to a current, valid authorization to operate a commuter van service, such person shall be liable for a civil penalty of not less than five hundred dollars and not more than one thousand dollars, and for a subsequent violation committed within two years of the first violation, such person shall be liable for a civil penalty of not less than one thousand dollars and not more than ttwenty-five hundred dollars.

(2) A proceeding to impose such civil penalty shall be commenced by the service of a notice of violation returnable before the commission or an administrative tribunal of the commission. Such civil penalties shall be imposed after a hearing in accordance with the rules of the commission.

(3) Except as otherwise provided in paragraph four of this subdivision, civil penalties imposed by the commission or such tribunal may be recovered by the corporation counsel in a civil action in any court of competent jurisdiction.

(4) Decisions and orders of the commission or such tribunal imposing civil penalties for violations relating to, the operation of commuter van service without authorization and the operation of unlicensed commuter vans and unlicensed drivers of commuter vans may be entered and enforced as if they were money judgments of a court pursuant to subdivision c of section two thousand three hundred three of the charter.

(5) Notices of violation which are returnable to the commission or such tribunal may be served by any officers or employees designated by the commission, any police officer or any authorized officers or employees of the department of transportation or the New York city transit authority.

j. Where the commission or administrative tribunal thereof finds an owner liable for operating a vehicle as a commuter van without an authorization to operate a commuter van service or without a commuter van license, the commission shall notify the New York state commissioner of motor vehicles pursuant to subparagraph four of paragraph a of subdivision five of section eighty of the New York state transportation law of such finding. Upon such notification, the commissioner of motor vehicles, pursuant to such subparagraph four, shall thereupon suspend the registration of such vehicle and shall deny any application for the registration of such vehicle or any application for the renewal thereof pursuant to subdivision five-a of section four hundred one of the vehicle and traffic law until such time as the commission may give notice that the violation has been corrected to its satisfaction. Operation of any motor vehicle for which the registration has been suspended as herein provided shall constitute a class A misdemeanor. The commission shall also notify the department of finance where it finds an owner liable for operating a vehicle as a commuter van without an authorization to operate a commuter van service or without a commuter van license.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended L.L. 16/2008 § 3, eff. Sept. 3, 2008. Note: amendment

erroneously moved a. designation before the section heading.

Subd. b amended L.L. 87/1989 § 1

Subd. b amended L.L. 76/1986 § 6 [See Note after § 19-502]

Subd. b par 1 designated, par 2 added L.L. 35/1998 § 1, eff.

Aug. 4, 1998.

Subd. c amended L.L. 115/1993 § 14, eff. Sept. 26, 1994

Subd. c amended L.L. 13/1992 § 2, eff. Feb. 6, 1992

Subd. c amended L.L. 88/1989 § 1

Subd. c amended L.L. 76/1986 § 6

Subd. d amended L.L. 115/1993 § 14, eff. Sept. 26, 1994

Subd. d amended L.L. 88/1989 § 1

Subd. e amended L.L. 51/1996 § 3, eff. Sept. 18, 1996

Subd. e amended L.L. 13/1992 § 3, eff. Feb. 6, 1992

Subds. f, g added L.L. 13/1992 § 4, eff. Feb. 6, 1992

Subd. h relettered L.L. 13/1992 § 4, eff. Feb. 6, 1992. (formerly Subd.

f, added L.L. 90/1989 § 3 [See Note])

Subd. h par (6) added L.L. 115/1993 § 15, eff. Sept. 26, 1994

Subds. i, j added L.L. 115/1993 § 16, eff. Sept. 26, 1994

**DERIVATION**

Formerly § 2306 added LL 12/1971 § 4

Amended LL 88/1977 § 4

Sub d amended LL 59/1980 § 1

Sub e added chap 1021/1983 § 1

**NOTE**

Provisions of L.L. 90/1989 § 1.

Section 1. Declaration of legislative findings and intent. The council finds that vehicles operating as taxicabs, for-hire vehicles, coaches and wheelchair accessible vans without an appropriate license issued by the taxi and limousine commission are a threat to the health, safety and well-being of their passengers and the general public. Many of the vehicles operated in disregard of the commission's regulatory authority lack adequate insurance coverage, are mechanically unsafe and are not driven by responsible drivers. Most persons charged with operating a vehicle without

an appropriate license issued by the taxi and limousine commission simply ignore summonses they receive and continue to operate vehicles without the appropriate license having been duly issued. Thus, the overwhelming majority of summonses issued for operating without a license have resulted in unsatisfied default judgments.

Therefore, in order that the taxi and limousine commission may effectively enforce the vehicle licensing requirements of chapter five of title nineteen of the administrative code of the city of New York, the council hereby provides that the commission shall have the power to seize and subject to forfeiture vehicles operating as taxicabs, for-hire vehicles, coaches or wheelchair accessible vans without the appropriate license issued by the commission. These more stringent enforcement measures are clearly necessary to reduce the large number of illegally operating vehicles, compel compliance with the commission's licensing and other requirements, and to assure that the public is served by vehicles meeting the legal requirements for service, safety and insurance.

**CASE NOTES FROM FORMER SECTION**

¶ 1. Court would not enjoin city from issuing summonses to plaintiffs for violation of this section when it was not clear that plaintiffs' business of private car rental by prearrangement was not the business of "transportation of persons by licensed vehicles for hire".-Kelly's Rental v. City of N.Y., 48 A.D. 2d 662 [1975].

¶ 2. Plaintiff's business of private car rentals by prearrangement using ordinary four door sedans was subject to the jurisdiction of the City Taxi and Limousine Commission since vehicles operated by business were limousines.-Kelly's Rental, Inc. v. City of N.Y., 52 A.D. 2d 904 [1976], modified, 44 N.Y. 2d 700 [1978].

¶ 3. Defendant who operated a vehicle with "car service" signs on it violated subdivision c of this section.-People v. Estes-El, 101 Misc. 2d 689 [1979], aff'd, 49 N.Y. 2d [1980].

**CASE NOTES**

¶ 1. Taxicab owners, who leased their medallions to third parties who had illegally removed the vehicle identification numbers from the taxicabs and had reattached them to other vehicles, were strictly liable for the operating violations, even though the violations allegedly were committed without their knowledge. Boiadjian v. New York City Taxi and Limousine Commission, N.Y.L.J., Oct. 27, 1997, page 26, col. 1 (App.Div. 1st Dept.). See also Mystic Cab Corp. v. New York City Taxi & Limousine Commission, N.Y.L.J., Oct. 27, 1997, page 25, col. 6 (App.Div. 1st Dept.) (owners strictly liable where their agents had submited fraudulent workers' compensation certificates to the Commission.).

**FOOTNOTES**

9

[Footnote 9]: * So in original. (comma changed to "and/or" without brackets and italics).

5

[Footnote 5]: * So in original; should read "entitled."

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-506.1*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-506.1 Administrative Tribunal.

a. If the commission is unable to produce a complaining witness in person, where such witness' credibility is relevant to the charges made in the notice of violation, the commission shall make reasonable efforts to make such witness available during the hearing by videoconferencing or teleconferencing. If the complaining witness is not available during a hearing, the commission shall produce a statement outlining its efforts to produce such witness. An administrative law judge shall examine such statement and if he or she decides the commission's efforts to produce the complaining witness were inadequate, the administrative law judge shall dismiss the notice of violation.

b. Hearings where the commission seeks the revocation of a commission issued license for a rule violation that does not provide for the mandatory revocation of such license as a penalty shall be conducted before the office of administrative trials and hearings and shall be subject to the procedures of that tribunal. The commission may authorize other hearings to be conducted before the office of administrative trials and hearings.

c. If a respondent timely files to appeal a decision of the administrative tribunal, any fines imposed by the administrative tribunal shall be stayed until a decision is made in such appeal, provided that the commission shall not be required to refund any fines paid before respondent made his or her appeal unless such appeal is successful. The administrative tribunal shall expedite any appeal involving a suspension or revocation of a commission issued license.

d. If, for the purposes of appealing a decision, a respondent requests a copy of the hearing recording, such recording shall be produced to such respondent within thirty days after receipt of a written request from such respondent. If the commission cannot produce the recording within the thirty day period, the determination being appealed shall be dismissed without prejudice.

e. Notwithstanding any other laws, rules or regulations, where a respondent fails to appear at a scheduled hearing, such respondent shall have two years from the entry of any determination to move to vacate such determination and seek a new hearing. After mailing a notice of default to a respondent, the commission shall prepare a record containing the name of the person who mailed such notice, and the date, time and method used to mail such notice. The commission shall make such record available upon request to such respondent.

**HISTORICAL NOTE**

Section added L.L. 16/2008 § 4, eff. Sept. 3, 2008.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-507*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-507 Mandatory penalties.

a. The commission shall fine any driver, or suspend or revoke the driver's license of any driver, as provided in subdivision b of this section, who shall have been found in violation of any of the following:

1. No driver of a taxicab shall seek to ascertain, without justifiable grounds, the destination of a passenger before such passenger shall be seated in the vehicle.

2. No driver of a taxicab shall refuse, without justifiable grounds, to take any passenger or prospective passenger to any destination within the city.

3. No driver of a vehicle the fares of which are set by the commission shall charge or attempt to charge a fare above the fare set by the commission.

4. No driver of a for-hire vehicle shall accept passengers unless the passengers have engaged the use of the for-hire vehicle on the basis of telephone contract or prearrangement.

b. 1. Any driver who has been found to have violated a provision of paragraph one, two, three or four of subdivision a of this section, or any combination thereof, shall be fined not less than two hundred dollars nor more than three hundred fifty dollars for the first offense. Any driver who has been found in violation of any of the provisions of such paragraphs, or any combination thereof, for a second time within a twenty-four month period shall be fined not less than three hundred fifty dollars nor more than five hundred dollars, and the commission may suspend the driver's license of such driver for a period not to exceed thirty days. The commission shall revoke the driver's license of any

driver who has been found to have violated any of the provisions of paragraph one, two, three or four of such subdivision, or any combination thereof, three or more times within a thirty-six month period.

2. Notwithstanding the provisions of paragraph one of this subdivision, the commission shall revoke the driver's license of any person found to have violated paragraph three of subdivision a of this section by charging or attempting to charge a fare of ten dollars or more above the approved rate of fare for taxicabs.

c. The commission shall not issue any license under this chapter to any person who has had his or her driver's license revoked pursuant to subdivision b of this section prior to a period of one year from the date of such revocation.

d. 1. Each owner shall make a reasonable good faith effort, by a driver education program or other affirmative measures, to deter the commission of violations of paragraphs one, two and three of subdivision a of this section by drivers of taxicabs for which such owner holds a vehicle license. A finding that a driver has committed a violation of any such paragraph shall create a rebuttable presumption that the owner holding the vehicle license for the taxicab in which such violation was committed has failed to make a reasonable good faith effort to deter the commission of such violation. In any proceeding for a violation of this paragraph, it is an affirmative defense that the owner made a reasonable good faith effort, by a driver education program or other affirmative measures, to deter the commission of violations of paragraphs one, two and three of subdivision a of this section. The commission shall advise an owner in writing of his or her potential liability pursuant to this subdivision upon a finding that a violation of such paragraph was committed in a taxicab for which such owner holds a vehicle license.

2. If the owner holding a vehicle license for a taxicab or taxicabs in which a driver or drivers have been found to have committed violations of paragraphs one, two or three of subdivision a of this section, or any combination thereof, is found not to have made a reasonable good faith effort to deter such violation, the owner shall be liable for a violation of paragraph one of this subdivision as follows:

(i) for the second violation of paragraphs one, two or three of subdivision a of this section, or any combination thereof, committed in a taxicab or taxicabs for which the owner holds a vehicle license or licenses, the commission shall fine the owner two hundred dollars;

(ii) for the third violation of paragraphs one, two or three of subdivision a of this section, or any combination thereof, committed in a taxicab or taxicabs for which the owner holds a vehicle license or licenses, the commission shall fine the owner not less than two hundred dollars nor more than three hundred fifty dollars;

(iii) for the fourth and each subsequent violation of paragraphs one, two or three of subdivision a of this section, or any combination thereof, committed in a taxicab or taxicabs for which the owner holds a vehicle license or licenses, the commission shall fine the owner not less than three hundred fifty nor more than five hundred dollars;

(iv) for the fifth and each subsequent violation of paragraphs one, two or three of subdivision a of this section, or any combination thereof, committed in a taxicab or taxicabs for which the owner holds a vehicle license or licenses, the commission shall suspend the vehicle license of the taxicab used in the commission of the most recent violation for a period not to exceed sixty days.

For purposes of this paragraph, the obligation to have made a "reasonable good faith effort" shall be met if the owner, upon the hiring of each new driver and for all drivers, shall, at least once annually, distribute a copy of applicable commission rules to each driver and obtains a written receipt therefore. The commission shall supply owners with a copy of all such applicable rules. In addition, such rules shall be conspicuously posted by the owner at the owner's place of business so that they are readily visible to all drivers.

3. The commission shall promulgate rules and regulations setting forth the procedure for an administrative adjudication of violations of paragraph one of this subdivision, which shall include provision for notice and a hearing.

e. The term "without justifiable ground" used in paragraphs one and two of subdivision a of this section shall mean that standard of behavior which fails to conform to that of a reasonable and prudent person acting in compliance with any regulations promulgated by the commission.

f. The commission may suspend or revoke the license of any person whom it determines has obtained a license by fraud or false representation, or willful misstatement or omission of a material fact.

**HISTORICAL NOTE**

Section amended L.L. 88/1989 § 2

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 2307 added LL 12/1971 § 4

Sub a amended LL 72/1980 § 1

Sub b amended LL 72/1980 § 2

Sub c amended LL 72/1980 § 3

Sub e added LL 72/1980 § 4

**CASE NOTES**

¶ 1. Bungeroth v. New York City Taxi & Limousine Commission, 634 N.Y.S.2d 471 (App.Div. 1st Dept. 1995). Penalty of license revocation was mandatory under § 19-507(b)(1) where the petitioner had been found guilty of overcharging at least three times within a 36 month period.

¶ 2. A court held that the TLC's suspension of the driver's license by reason of a first offense of service refusal unlawfully deprived the driver of the property right which the license represented. The penalties imposed were in excess of those called for by Administrative Code § 19-507, which provided for a fine of between $250 and $350 for a first offense. Lys v. New York City Taxi and Limousine Commission, N.Y.L.J., Jan. 31, 2002, page 21, col. 4, 2002 WL 338187 (Civ.Ct. New York Co.).

¶ 3. In Padberg v. McGrath McKechnie, N.Y.L.J., May 2, 2001, page 31, col. 2, 2002 WL 826795 (U.S. Dist. Ct. E.D.N.Y.), the court declined to grant a preliminary injunction against the TLC's enforcement of a policy of suspending drivers' licenses for a first or second offense of service refusal. Apparently, the Padberg court, which did not discuss the Lys case, found that Sec. 19-507 did not preclude the TLC from imposing penalties greater than the fines set forth in the statute. The decision was affirmed by the Second Circuit Court of Appeals, 2003 WL 1191179, 60 Fed.Apdx. 861 (2d Cir.).

¶ 4. Penalty for first time service refusal under subsection (b)(1) of this section is limited to a fine between $200 and $350. Maximum fine of $350 for refusal was recommended where verbal abuse and refusal were found to be egregious. **Taxi & Limousine Comm'n v. Hussein**, OATH Index No. 572/08 (Jan. 14, 2008).



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-507.1*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-507.1 Persistent Violators of Rules Relating to Drivers of Taxicabs and For-Hire Vehicles.

a. (1) On or after September 1, 1999, any taxicab or for-hire vehicle driver may attend a remedial or refresher course approved by the commission. Upon satisfactory completion of a commission-approved course by such driver, two points shall be deducted from the number of points assessed under the persistent violators program against his or her taxicab or for-hire vehicle driver's license. A taxicab or for-hire vehicle driver shall be eligible for a point reduction pursuant to this subdivision only once within the five-year period commencing on or after September 1, 1999.

(2) Notwithstanding the provisions of paragraph one of this subdivision, any taxicab or for-hire vehicle driver may attend one remedial or refresher course approved by the commission between the effective date of this local law and August 31, 1999. Upon satisfactory completion of a commission-approved course by such driver two points shall be deducted from the number of points assessed under the persistent violators program against his or her taxicab or for-hire vehicle driver's license.

(3) Notwithstanding the provisions of paragraphs one or two of this subdivision, no point reduction shall affect any suspension or revocation action which may be taken by the commission pursuant to this program prior to the completion of the course and no taxicab or for-hire vehicle driver shall receive a point reduction unless attendance at the course is voluntary on the part of the driver. If the commission has no approved remedial or refresher course on the effective date of this subdivision, then a department of motor vehicles-approved course shall be deemed acceptable until such time as the commission approves a course.

b. Any taxicab or for-hire vehicle driver who has been found guilty of violations of the commission's rules such that six or more points have been assessed against his or her taxicab or for-hire vehicle driver's license within any

fifteen-month period and whose license has not been revoked shall have his or her taxicab or for-hire vehicle driver's license suspended for thirty days. The provisions of this subdivision shall apply only to violations issued on or after July 26, 1998.

c. Any taxicab or for-hire vehicle driver who has been found guilty of violations of the commission's rules such that ten or more points have been assessed against his or her taxicab or for-hire vehicle driver's license within any fifteen-month period shall have his or her taxicab or for-hire vehicle driver's license revoked. The provisions of this subdivision shall apply only to violations issued on or after July 26, 1998.

d. For the purposes of assessing points against the license of a taxicab or for-hire vehicle driver, where a taxicab or for-hire vehicle driver has been found guilty of multiple violations arising from a single enforcement action by an authorized enforcement agent, such driver shall be deemed guilty of the single violation having the highest point assessment.

e. A taxicab or for-hire vehicle driver shall not be subject to an assessment of points against his or her taxicab or for-hire vehicle driver's license or the imposition of duplicate penalties where the same act is a violation under provisions of law other than commission rules and where such violations duplicate each other or are substantively the same and any such driver may be issued only one summons or notice of violation for such violation. Points assessed by the department of motor vehicles by reason of violations under the vehicle and traffic law may not be added to points assessed by the commission under this section for violations of commission rules.

f. It shall be an affirmative defense that the act which formed the basis for the violation was beyond the control and influence of the taxicab or for-hire vehicle driver.

g. Any violation issued to a taxicab driver or owner for meter-tampering shall be served on the licensee by personal delivery or by certified and regular mail within five calendar days of its issuance. The licensee shall have an opportunity to request a hearing before the commission or other administrative tribunal of competent jurisdiction within ten calendar days after receipt of any such notification. Upon request such hearing shall be scheduled within ten calendar days. If the tenth day falls on a Saturday, Sunday or holiday, the hearing may be held on the next business day. A decision shall be made with respect to any such proceeding within sixty calendar days after the close of the hearing. In the event such decision is not made within that time period, the license or medallion which is the subject of the proceeding shall be returned by the commission to the licensee and deemed to be in full force and effect until such determination is made. It shall be an affirmative defense to any violation for meter-tampering issued to a taxicab driver or owner that such person (i) did not know of or participate in the alleged meter-tampering and (ii) exercised due diligence to ensure that meter-tampering does not occur.

h. For purposes of subdivision g of this section, examples of an owner's due diligence shall include, but are not limited to (1) giving to their drivers a clear warning that violations of the meter tampering rules will result in the immediate termination of any lease agreement, the reporting to the commission of driver tampering and the commission's probable revocation of the driver's taxicab driver's license, (2) including in any written lease agreement provisions containing the warnings against violation of meter tampering rules, (3) stamping warnings about the illegality of meter tampering on the trip cards issued to all drivers of an owner's taxicabs, (4) having management personnel or mechanics periodically check for proper odometer and meter mileage comparisons in order to determine if there are inappropriate disparities between the two sets of figures, (5) conducting periodic random inspections of the taxicab meter and its wiring for all of its taxicabs to detect any evidence of violation of the meter tampering rules and (6) having all of such owner's taxicabs inspected by a licensed meter shop once every commission inspection cycle.

**HISTORICAL NOTE**

Section added L.L. 20/1999 § 3, eff. May 26, 1999



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***** Current through December 2009 ****

*NYC Administrative Code 19-507.2*

Administrative Code of the City of New York

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§ 19-507.2 Critical driver program.

a. Any taxicab or for-hire vehicle driver who has been found guilty of violations such that six or more points have been assessed by the department of motor vehicles or an equivalent licensing agency of the driver's state of residence against the driver license issued to such taxicab or for-hire vehicle driver within any fifteen-month period and whose taxicab or for-hire vehicle driver's license has not been revoked shall have his or her taxicab or for-hire vehicle driver's license suspended for thirty days. The provisions of this subdivision shall apply only to violations issued on or after February 15, 1999.

b. Any taxicab or for-hire vehicle driver who has been found guilty of violations such that ten or more points have been assessed by the department of motor vehicles or an equivalent licensing agency of the driver's state of residence against the driver license issued to such taxicab or for-hire vehicle driver within any fifteen-month period shall have his or her taxicab or for-hire vehicle driver's license revoked. The provisions of this subdivision shall apply only to violations issued on or after February 15, 1999.

c. (1) On or after September 1, 1999, a taxicab or for-hire vehicle driver shall be eligible to receive a two point reduction in the number of points assessed pursuant to the critical driver program upon the submission to the commission of proof of the satisfactory completion of a motor vehicle accident prevention course approved by the department of motor vehicles. Such point reduction shall be considered in computing the total number of points accumulated by such driver as a result of violations which occurred within fifteen months prior to the date of the completion of the course.

(2) Notwithstanding the provisions of paragraph one of this subdivision no point reduction shall affect any

suspension or revocation action which may be taken by the commission pursuant to this program prior to the completion of the course. No person shall receive a point reduction more than once in any eighteen month period and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the driver.

(3) Notwithstanding the provisions of paragraphs one and two of this subdivision, any taxicab or for-hire vehicle driver who voluntarily attends and satisfactorily completes one motor vehicle accident prevention course approved by the department of motor vehicles between the effective date of this local law and August 31, 1999, shall have two points deducted from the total number of points assessed pursuant to the critical driver program against his or her taxicab or for-hire vehicle driver's license. No point reduction shall affect any suspension or revocation action which may be taken by the commission pursuant to this program prior to the completion of the course.

**HISTORICAL NOTE**

Section added L.L. 20/1999 § 3, eff. May 26, 1999.



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***** Current through December 2009 ****

*NYC Administrative Code 19-507.3*

Administrative Code of the City of New York

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§ 19-507.3 Reporting requirements.

a. An owner shall maintain on file with the commission a current telephone number serviced by an answering machine or recording device, a pager number, telephone answering service number or other information by which telephone contact with the owner or a designated representative may reasonably be expected to be made at all times. An owner or designated representative must respond to any telephone or pager contact from the commission within forty-eight hours.

**HISTORICAL NOTE**

Section added L.L. 20/1999 § 3, eff. May 26, 1999.

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*NYC Administrative Code 19-508*

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Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-508 Meters, radios and other equipment.

a. All taxicabs shall be equipped with meters, and the commission may permit or require other licensed vehicles to be equipped with the same or different types of meters.

b. The commission may permit or require the installation of radio or other equipment of specified types in licensed vehicles, except that the commission shall require that all wheelchair accessible vans contain two-way radios where the owner employs a dispatcher, a number of portable or fixed seat belts equal to the maximum capacity of the van, safety ties sufficient to secure any wheelchair or wheelchairs which the van may at any given time be transporting and such other special equipment as the commission shall determine is necessary to insure the safe transportation of physically handicapped persons. The commission shall require the use of a specified frequency for any radio used by licensed vehicles, said frequency to be assigned by the federal communications commission.

c. 1. For purposes of this section, the term "trouble light" shall mean a help or distress signaling light system consisting of two turn signal type "lollipop" lights.

2. Every for-hire vehicle or taxicab placed into operation shall carry a minimum of two spare turn signal type "lollipop" lights of a type approved by the commission. In the event that any authorized enforcement agent indicates to a for-hire vehicle or taxicab driver that the vehicle's trouble light is defective, such driver shall have the opportunity to return such defective trouble light to proper working order by replacing one or both bulbs, or by any other corrective action, in the presence of such enforcement agent. If the replacement of a bulb or bulbs, or any other corrective action, restores the trouble light to proper working order, no summons or notice of violation may be issued for operating a for-hire vehicle or taxicab with a defective trouble light. In the event that repair of the defective condition is not made in

the presence of such enforcement agent and a summons or notice of violation is issued for a defective for-hire vehicle or taxicab trouble light, such summons or notice of violation shall be dismissed by the adjudicatory body before which such summons or notice of violation is heard if: (a) proof that repair of such defect was made within twenty-four hours of the issuance of the summons or notice of violation is provided to the adjudicatory body and (b) the vehicle was not used for hire during the period of time from when the summons or notice of violation was issued to the time the repair was made.

3. Any person found to have violated the provisions of this subdivision shall be liable for a fine of one hundred seventy-five dollars for each such violation and in addition thereto the license for such vehicle shall be suspended until the defective condition is corrected.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended L.L. 86/1989 § 2.

Subd. c added L.L. 28/2003 § 1, eff. July 10, 2003.

**DERIVATION**

Formerly § 2308 added LL 12/1971 § 4

Amended LL 88/1977 § 5



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-509*

Administrative Code of the City of New York

Title 19 Transportation

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§ 19-509 Licensing of taximeter business.

a. It shall be unlawful for any person to engage in the business of manufacturing, selling, repairing and adjusting or calibrating taximeters or taximeter equipment for use upon any licensed vehicle in the city unless he or she shall secure a license therefor from the commission, and such person engaged in the business of installing, repairing, adjusting or calibrating taximeters shall only be licensed if he shall have a place of business within the city large enough simultaneously to accommodate at least three vehicles. Such licenses shall be issued for a period not exceeding one year and shall expire on the thirty-first day of March following the date of issue. The fee for the issuance of each such license shall be five hundred dollars per annum for each place of business licensed provided, however, that upon the issuance of a license for a period of six months or less, the fee shall be one-half the annual fee fixed by the com- mission.

b. It shall be unlawful for such person to sell or attach to a licensed vehicle for use within the city a taximeter which does not comply with the rules and regulations established by the commission, and the commission may establish such rules and regulations in respect to the taximeter business as may be reasonable to assure adequate protection of the public and enforcement of the provisions and purposes of this chapter and may require such reports and other information as it deems necessary or advisable. Any person who shall install, repair, adjust or calibrate any taximeter shall securely affix to the inside of the glass window thereon, so as to be clearly legible from the outside, a printed poster bearing his or her license number.

c. Fees to be charged by persons licensed pursuant to this section shall be subject to approval of the commission. In determining whether any proposed fee or fee schedules shall be approved, the commission shall take into consideration the nature of the service performed, the costs of the licensee, a reasonable profit to the licensee, fees for similar services charged in other communities, and the welfare of the taxicab and taximeter industries.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 2309 added LL 12/1971 § 4

Sub a amended LL 21/1975 § 1



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***** Current through December 2009 ****

*NYC Administrative Code 19-510*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-510 Licensing of official inspection stations. [Repealed]

**HISTORICAL NOTE**

Section repealed L.L. 48/1988 § 2, eff. 1/1/1989.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 2309-a added LL 49/1976 § 1

**NOTE**

Provisions of L.L. 48/1988.

§ 4. Notwithstanding the provisions of subdivisions d and e of section 19-510 of the administrative code of the city of New York, every application for an original or renewal license to operate an official inspection station on or after July first, nineteen hundred eighty-eight shall be accompanied by a fee of one hundred fifty dollars for each location to be licensed, which in no event shall be refunded, and each such license shall expire on December thirty-first, nineteen hundred eighty-eight.



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***** Current through December 2009 ****

*NYC Administrative Code 19-511*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-511 Licensing of communications systems and base stations.

a. The commission shall require licenses for the operation of two-way radio or other communications systems used for dispatching or conveying information to drivers of licensed vehicles, including for-hire vehicles or wheelchair accessible vans and shall require licenses for base stations, upon such terms as it deems advisable and upon payment of reasonable license fees of not more than five hundred dollars a year. There shall be an additional fee of twenty-five dollars for late filing of a license renewal application where such filing is permitted by the commission.

b. The operator of a base station shall provide and utilize lawful off-street facilities for the parking and storage of the licensed for-hire vehicles that are to be dispatched from that base station equal to not less than one parking space for every two such vehicles or fraction thereof. The commission shall establish by rule criteria for off-street parking which shall include, but not be limited to, the maximum permissible distance between the base station and such off-street parking facilities and the proximity of such off-street parking facilities and the proximity of such off-street parking facilities to residences and community facilities as defined in the zoning resolution of the city of New York. A license for a new base station shall only be granted where the applicant has demonstrated to the commission prior to the issuance of such license that off-street parking facilities sufficient to satisfy the requirements of this subdivision shall be provided.

c. Notwithstanding the provisions of subdivision b of this section, a license for a base station which was valid on the effective date of this section shall only be renewed upon the condition that within two years of such renewal the licensee shall provide off-street parking facilities as required by subdivision b of this section.

d. (1) No license for a new base station shall be issued unless the applicant demonstrates to the satisfaction of

the commission that the applicant will comply with the off-street parking requirements of subdivision b of this section and the commission finds that the operation of a base station by the applicant at the proposed location would meet such other criteria as may be established by the commission. Among the other factors which must be examined and considered by the commission in making a determination to issue a license are the adequacy of existing mass transit and mass transportation facilities to meet the transportation needs of the public any adverse impact that the proposed operation may have on those existing services and the fitness of the applicant. In determining the fitness of the applicant the commission shall consider, but is not limited to considering, such factors as the ability of the applicant to adequately manage the base station, the applicant's financial stability and whether the applicant operates or previously operated a licensed base station and the manner in which any such base station was operated. The commission shall also consider the extent and quality of service provided by existing lawfully operating for-hire vehicles and taxicabs.

(2) No license for a new base station shall be issued for a period of three years subsequent to a determination in a judicial or administrative proceeding that the applicant or any officer, shareholder, director or partner of the applicant operated a base station that had not been licensed by the commission.

(3) In its review of an application for a license to operate a new base station and in its review of an application to renew a base station license the commission shall also consider the possible adverse effect of such base station on the quality of life in the vicinity of the base station including, but not limited to, traffic congestion, sidewalk congestion and noise. In its review of an application to renew a base station license the commission shall also consider whether a determination has been made after an administrative proceeding that the operator has violated any applicable rule of the commission.

(4) No base station license shall be renewed where it has been determined after an administrative proceeding that the applicant has failed to comply with the off-street parking requirements set forth in subdivision b of this section or as they may have been modified pursuant to subdivision h of this section.

e. A licensed base station shall at all times have no fewer than ten affiliated vehicles, except that a base station for which a license was first issued prior to January 1, 1988 and which at that time had fewer than ten affiliated vehicles or a base station which has an affiliation with a wheelchair accessible vehicle may have as few as five affiliated vehicles, not including black cars and luxury lim- ousines.

f. Prior to the issuance of a license for a base station or the renewal of a valid base station license, the applicant shall provide to the commission a bond in the amount of five thousand dollars with one or more sureties to be approved by the commission. Such bond shall be for the benefit of the city and shall be conditioned upon the licensee complying with the requirement that the licensee dispatch only vehicles which are currently licensed by the commission and which have a current New York city commercial use motor vehicle tax stamp and upon the payment by the licensee of all civil penalties imposed pursuant to any provision of this chapter.

g. Upon receiving an application for the issuance of a license for a new base station or for the renewal of a license for a base station pursuant to this section, the commission shall, within five business days, submit a copy of such application to the council and to the district office of the council member and the community board for the area in which the base station is or would be located.

h. Notwithstanding the provisions of subdivisions b and c of this section, the commission may reduce the number of required off-street parking spaces or may waive such requirement in its entirety where the commission determines that sufficient lawful off-street parking facilities do not exist within the maximum permissible distance from the base station or an applicant demonstrates to the satisfaction of the commission that complying with the off-street parking requirements set forth in such subdivisions would impose an economic hardship upon the applicant; except that the commission shall not reduce or waive the off-street parking requirements where it has been determined in an administrative proceeding that the applicant, or a predecessor in interest, has violated any provision of section 6-03 of the rules of the commission or any successor thereto, as such may from time to time be amended. A determination to

waive or reduce the off-street parking requirements shall be made in writing, shall contain a detailed statement of the reasons why such determination was made and shall be made a part of the commission's determination to approve an application for a base station license.

i. The determination by the commission to approve an application for a license to operate a new base station or for the renewal of a license to operate a base station shall be made in writing and shall be accompanied by copies of the data, information and other materials relied upon by the commission in making that determination. Such determination shall be sent to the council and to the district office of the council member within whose district that base station is or would be located within five business days of such determination being made.

**HISTORICAL NOTE**

Section amended L.L. 51/1996 § 4, eff. Sept. 18, 1996

Section amended L.L. 57/1991 § 3, eff. July 17, 1991

Section amended L.L. 50/1989 § 4

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 2310 added LL 12/1971 § 4



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***** Current through December 2009 ****

*NYC Administrative Code 19-511.1*

Administrative Code of the City of New York

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CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-511.1 Council review.

Any determination by the commission to approve an application for a license to operate a new base station or to renew a license to operate a base station shall be subject to review by the council. Within ninety days of the first stated meeting following receipt of such determination and its accompanying materials, the council may approve or disapprove such determination by local law, after having adopted a resolution to review that determination. In the event that the council fails to act by local law within the ninety day period provided for in this section, the determination of the commission shall remain in effect. Where a base station license would otherwise expire while a determination by the commission to approve a renewal of such license is pending before the council, such license shall remain in full force and effect, unless suspended or revoked by the commission, until either the council has passed a local law to disapprove such determination or the period within which the council may act has elapsed.

**HISTORICAL NOTE**

Section added L.L. 51/1996 § 5, eff. Sept. 18, 1996



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***** Current through December 2009 ****

*NYC Administrative Code 19-512*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-512 Transferability of taxicab licenses issued prior to the effective date of this chapter.

a. Any taxicab license first issued prior to July sixteenth, nineteen hundred seventy-one, and in force on such date, and any renewals thereof, shall be transferable to a transferee who has demonstrated to the satisfaction of the commission that he is qualified to assume the duties and obligations of a taxicab owner, provided that either the applicant or his or her vendor or transferor shall have filed a bond to cover all the outstanding tort liabilities of the vendor or transferor in excess of the amount covered by a bond or insurance policy which is in effect pursuant to the vehicle and traffic law of the state of New York.

b. No voluntary sale or transfer of such taxicab license may be made if a judgment has been filed within the city against the holder of a license and remains unsatisfied and notice of said judgment has been filed with the commission, except that a transfer may be permitted if an appeal is pending from an unsatisfied judgment and a bond is filed in sufficient amount to satisfy the judgment. A transfer may also be permitted without filing a bond as set forth in this subdivision provided that all the judgment creditors of unsatisfied judgments file written permission for such a transfer with the commission or provided that the proceeds of sale are paid into court or held in escrow on terms and conditions approved by the commission which will have the effect of protecting the rights of all parties who may have an interest therein.

c. An owner's interest in such taxicab license may be transferred involuntarily and disposed of by public or private sale in the same manner as personal property provided, however, that upon such involuntary transfer the owner's license shall immediately be cancelled and a new license issued to the purchaser or his or her vendee, provided that such purchaser or vendee satisfied the requirements of subdivision (a) hereof, except that if the judgment against the involuntary transfer is by reason of a tort judgment against the involuntary transferor, no bond need be provided with

respect to the same judgment.

d. The commission may charge a fee of one hundred sixty dollars for its administrative expenses in connection with the transfer (i) of an owner's interest in a taxicab license transferable pursuant to the provisions of this section or (ii) of the stock in a corporation which is an owner of a taxicab license that is transferable pursuant to the provisions of this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. d amended L.L. 50/1989 § 5.

**DERIVATION**

Formerly § 2311 added LL 12/1971 § 4

Sub d added LL 71/1979 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. It is unrealistic to construe tort "liabilities" in subsection to require a bond to cover all tort liabilities including both absolute obligations and the face amount of any pending claims since the amount claimed as damages in negligence actions often exceeds the true value of the claim. Liabilities cover "absolute obligations plus those amounts a transferor may reasonably be expected to pay upon contingent obligations".-In the Matter of Cab Transportation Corp. v. N.Y. City Taxi and Limousine Comm., 58 A.D. 2d 604 [1979].



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***** Current through December 2009 ****

*NYC Administrative Code 19-512.1*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-512.1 Revocation of taxicab licenses.

a. The commission may, for good cause shown relating to a direct and substantial threat to the public health or safety and prior to giving notice and an opportunity for a hearing, suspend a taxicab or for-hire vehicle license issued pursuant to this chapter and, after notice and an opportunity for a hearing, suspend or revoke such license. The commission may also, without having suspended a taxicab or for-hire vehicle license, issue a determination to seek suspension or revocation of such license and after notice and an opportunity for a hearing, suspend or revoke such license. Notice of such suspension or of a determination by the commission to seek suspension or revocation of a taxicab or for-hire vehicle license shall be served on the licensee by personal delivery or by certified and regular mail within five calendar days of the pre-hearing suspension or of such determination. The licensee shall have an opportunity to request a hearing before an administrative tribunal of competent jurisdiction within ten calendar days after receipt of any such notification. Upon request such hearing shall be scheduled within ten calendar days, unless the commission or other administrative tribunal of competent jurisdiction determines that such hearing would be prejudicial to an ongoing criminal or civil investigation. If the tenth day falls on a Saturday, Sunday or holiday, the hearing may be held on the next business day. A decision shall be made with respect to any such proceeding within sixty calendar days after the close of the hearing. In the event such decision is not made within that time period, the license or medallion which is the subject of the proceeding shall be returned by the commission to the licensee and deemed to be in full force and effect until such determination is made, unless the commission or other administrative tribunal of competent jurisdiction determines that the issuance of such determination would be prejudicial to an ongoing criminal or civil investigation.

b. It shall be an affirmative defense that the holder of the taxicab or for-hire vehicle license or the owner of the taxicab or for-hire vehicle has (1) exercised due diligence in the inspection, management and/or operation of the taxicab

or for-hire vehicle and (2) did not know or have reason to know of the acts of any other person with respect to that taxicab or for-hire vehicle license or taxicab or for-hire vehicle upon which a suspension, proposed suspension or proposed revocation is based. With respect to any violation arising from taximeter tampering, an owner's due diligence shall include, but not be limited to, those actions set forth in subdivision h of section 19-507.1 of this chapter. Any pre-hearing suspension period shall be counted towards any suspension period made in any final determination.

**HISTORICAL NOTE**

Section added L.L. 20/1999 § 4, eff. May 26, 1999. [See Note]

Subd. a amended L.L. 16/2008 § 5, eff. Sept. 3, 2008.

**NOTE**

Provisions of L.L. 20/1999 § 1:

Section 1. Legislative Intent and Findings. The Council has, from the time it first established the Taxi and Limousine Commission, understood the strong need for aggressive regulation of the taxicab and for-hire vehicle industry and those directly responsible for the safety of the riding public. However, the Council finds that certain of the rules promulgated within the past several months by the New York City Taxi and Limousine Commission, such as those that modify the disciplinary measures that may be imposed against taxicab and for-hire vehicle drivers, taxicab and for-hire vehicle owners and taxicab medallion owners are onerous.

The Taxi and Limousine Commission was established in 1971 when the Council enacted Local Law 12 to add Chapter 65 to the New York City Charter and a companion Chapter 65 (now portions of Title 19) to the Administrative Code of the City of New York. Chapter 65 of the New York City Charter sets forth the jurisdiction, powers and duties of the Taxi and Limousine Commission. Therein, the Council conferred upon the Taxi and Limousine Commission authority with respect to ". . . the regulation and supervision of the business and industry of transportation of persons by licensed vehicles for hire in the city pursuant to the provisions of this chapter[.]". The Taxi and Limousine Commission's authority included, inter alia, the licensing of taxicab and for-hire vehicle drivers and owners and the setting of standards for their conduct. Former Chapter 65 of the Administrative Code established discrete policies with regard to the regulation of taxicabs and for-hire vehicles and set forth in considerable detail the manner in which the newly-created Commission was to implement its new powers. Local Law 12 of 1971 also amended the New York City Charter to divest the Police Commissioner of the long-held authority to oversee the licensing and regulation of taxicabs, for-hire vehicles and taxicab and for-hire vehicle drivers.

In the nearly thirty years since the Taxi and Limousine Commission was created, the Council has enacted local laws relating to many of those subject areas where authority to regulate was conferred upon the Taxi and Limousine Commission by Local Law 12. These include creating a licensing program for agents (Local Law 83 of 1995), restructuring the manner in which base stations and their affiliated vehicles operate (Local Law 51 of 1996) and modifying the liability of rental car companies for violations of Taxi and Limousine Commission rules by their customers (Local Law 35 of 1998).

It is the Council's view that Int. No. 472-C establishes a superior balancing of the concern for safe and high quality service with the need for fair treatment of an industry important to New York City. Accordingly, it is the Council's determination that any rules of the Taxi and Limousine Commission that are inconsistent with any provision of the New York City Charter and Administrative Code of the City of New York as enacted by the City Council are superseded and thereby void and of no legal force and effect.

**CASE NOTES**

¶ 1. Under subsection (a) of this section the Commission may revoke any license where the licensee constitutes "a

threat to the public health, or safety." License of probationary for-hire vehicle driver was revoked pursuant to this section based upon driver's recent conviction for driving while ability impaired by alcohol. ALJ found that permitting the licensee to maintain his license would pose a serious threat to public safety. Taxi & Limousine Comm'n v. Fuentes, OATH Index No. 201/08 (Aug. 28, 2007).

¶ 2. ALJ found licensee's recent conviction for driving his personal car while ability impaired by alcohol (a traffic infraction) established the driver posed a risk to public safety and recommended license revocation on that basis. TLC Commissioner/Chair affirmed revocation, but on the ground that conviction for violation alone established licensee was unfit. Taxi & Limousine Comm'n v. Pardo, Comm'r/Chair's Dec. (Nov. 19, 2007), adopting on other grounds, OATH Index No. 798/08 (Oct. 31, 2007).

¶ 3. Pursuant to subsection (a) of this section, the Commission may, for good cause shown relating to a threat to public health or safety and prior to giving notice and opportunity for a hearing, suspend a taxicab or for-hire vehicle license. A licensee may request a hearing within ten days after receipt of notification of the summary suspension. See annotations below.

¶ 4. At summary suspension hearing, ALJ found that the licensee posed a threat to the health or safety of the public based upon proof of his arrest for second degree assault and criminal possession of a weapon and she recommended continuation of summary suspension. Taxi & Limousine Comm'n v. Shahbaz, OATH Index No. 1014/08 (Nov. 30, 2007).

¶ 5. At summary suspension hearing, ALJ found that TLC licensee posed a threat to the health or safety of the public based upon proof of his arrest for second degree assault. ALJ recommended continuation of summary suspension. Taxi & Limousine Comm'n v. Chaudhry, OATH Index No. 1012/08 (Nov. 30, 2007).

¶ 6. In one case, a driver, whose license was revoked by reason of a positive drug test, challenged the determination made by an Administrative Law Judge, and contended that he was entitled to a hearing before the entire Taxi and Limousine Commission. The court, however, rejected his contention, stating that a plain reading and common sense interpretation (§ 19-512.1(a)) did not indicate that the full Commission had to be involved in every aspect statutory function simply because the word "Commission" was used. In re Wai Lun Fung v. Matthew Daus, NYC Taxi and Limousine Comm., 45 A.D.3d 392, 846 N.Y.S.2d 104 (1st Dept. 2008).

¶ 7. The Commission has broad authority under subsection (a) in its obligation to protect the public, including passengers, other drivers, and pedestrians. Revocation of a license because of a criminal conviction for an act that is directly related to driving advances the Commission's interest in protecting the public. Probationary licensee convicted of driving while intoxicated lacked fitness to maintain a for-hire driver's license and presented a risk to the public safety. **Taxi & Limousine Comm'n v. Liriano-Blanco**, OATH Index No. 1196/08 (Feb. 1, 2008).



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-513*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-513 Repossessions.

Any taxicab which is transferred involuntarily because of a default in the payment or installments due under the contract of sale, or any other contract or in any other manner whereby the license holder's interest in the license is not also transferred, and which is disposed according to law at public or private sale, may be operated by the purchaser thereof or his or her vendee, provided such purchaser or vendee is acceptable to the commission as a person suitable to receive a license. Upon such involuntary transfer, the license of said taxicab shall be cancelled immediately and a temporary, nontransferable, nonrenewable license issued to such purchaser or vendee for a period not exceeding one year upon the payment of a fee of not exceeding one hundred dollars therefor. At the end of such time, the original holder of the license, or his or her transferee if the license was first issued before the effective date of this chapter, shall be entitled to renewal of the license, provided that the provisions of subdivision (a) of section 19-512 of this chapter are complied with by such applicant, whether he or she is the original holder or a transferee.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 2312 added LL 12/1971 § 4



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-514*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-514 Color schemes and emblems.

a. The exterior of all taxicabs shall be painted yellow or any shade thereof.

b. The name of the corporate owner shall be printed on both rear doors or on both front doors of each taxicab in such a manner as shall be prescribed by the commission.

c. The commission may grant to any taxicab owner or association of taxicab owners, upon proper application therefor, the exclusive right to use one or more distinctive emblems or other identifying designs to be displayed on the vehicles of such applicant.

d. Such applications must include colored sketches of the proposed color schemes of the emblems or designs, together with such other and further information as the commission may require.

e. An owner shall not use an emblem granted to another owner or association, an emblem so similar as to lead to confusion in the mind of the public, or an emblem granted to any association unless he or she be a member of said association. The commission may suspend the license of any owner violating the provisions hereof.

f. Each taxicab license shall be represented by a metal medallion which shall bear the license number and be affixed to the outside of the licensed taxicab. The commission may require that a notice be posted at the main entrance of each garage housing taxicab vehicles reciting the number of such vehicles, their license numbers and such other information as the commission may designate.

g. Any vehicle for hire except those licensed under the provisions of this chapter shall not bear the colors yellow, orange, or gold, or, in combination of yellow-white, orange-white, gold-white, green-white, blue-white or any other combination of the above said colors or color scheme or striping in said colors.

h. Any accessible taxicab or for-hire vehicle licensed by the commission shall display the international wheelchair insignia or other insignia approved by the commission that identifies such vehicle as an accessible vehicle, in a minimum of two prominent locations on such vehicle's exterior. For purposes of this subdivision, "accessible vehicle" shall mean any vehicle approved for use by the commission as a taxicab or for-hire vehicle that meets the specifications and requirements for accessible vehicles pursuant to the americans with disabilities act of 1990, as amended, and rules promulgated by the commission.

i. Any clean air vehicle licensed by the commission shall display the words "CLEAN AIR VEHICLE" or such other term or symbol approved by the commission that identifies such vehicle as a clean air vehicle in a minimum of two prominent locations on such vehicle's exterior. For the purposes of this subdivision, "clean air vehicle" shall mean any taxicab or for-hire vehicle approved for use by the commission that receives an air pollution score of 9.0 or higher from the United States environmental protection agency or its successor agency and is estimated to emit 6.4 tons or less of equivalent carbon dioxide per year by the United States department of energy or its successor agency; provided that such vehicle is powered by the fuel for which such vehicle meets the above-specified standards. In the event the test method used by the United States environmental protection agency or its successor agency for determining fuel economy is adjusted in a way that impacts United States department of energy or its successor agency estimates of equivalent carbon dioxide emissions for motor vehicles, the commission shall, for vehicles that fall within the affected model years, modify by rule the equivalent carbon dioxide emissions estimate included herein so as to appropriately reflect such adjustment's impact consistent with the intent of this section.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. h added L.L. 55/2006 § 1, eff. June 16, 2007.

Subd. i added L.L. 54/2006 § 1, eff. June 16, 2007.

**DERIVATION**

Formerly § 2313 added LL 12/1971 § 4

**CASE NOTES FROM FORMER SECTION**

¶ 1. Rule requiring name and business address of vehicle owner of fleet owned vehicles to appear on rear door did not exceed the authority of the Commissioner under subdivision b of this section as the requirement that the name of the corporate owner be printed can reasonably be construed to require also a display of the owner's business address so as to enable persons to identify and locate the owner. Metropolitan Taxicab Board of Trade, Inc. v. Taxi and Limousine Commission, 170 (22) N.Y.L.J. (8-1-73) 2 Col. 3 M.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-515*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-515 Color schemes and emblems.

a. For-hire vehicles may be painted any color approved by the commission, other than the colors reserved for medallion taxis.

b. For-hire vehicles shall have the name of the owner or operator displayed on the outside or inside of the vehicle in such form as shall be prescribed by the commission, except that the commission may prescribe an exemption from this requirement for classes of for-hire vehicles for which such display would be inappropriate. All for-hire vehicles must at all times carry in the glove compartment and produce upon demand of any police, peace, law enforcement officer, inspector or officer of the commission:

1. The for-hire vehicle license.

2. The driver's for-hire vehicle-driver's license.

3. Evidence of current liability insurance or financial respon- sibility.

**HISTORICAL NOTE**

Section amended L.L. 76/1986 § 7. [See Note after § 19-502.]

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 2314 added LL 12/1971 § 4



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-516*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-516 Acceptance of passengers by for-hire vehicles and commuter vans.

a. For-hire vehicles may accept passengers only on the basis of telephone contract or rearrangement. The commission may establish such disciplinary actions as it deems appropriate for failure to abide by the provisions of this chapter.

b. No commuter van service and no person who owns, operates or drives a commuter van, shall provide, permit or authorize the provision of transportation service to a passenger unless such service to a passenger is on the basis of a telephone contract or other prearrangement and such prearrangement is evidenced by such records as are required by the commission to be maintained. Where a violation of this subdivision has been committed by a driver of a commuter van, the commuter van service and the owner of such vehicle shall also be liable for a violation of this subdivision.

**HISTORICAL NOTE**

Section amended L.L. 115/1993 § 17, eff. Sept. 26, 1994.

Section amended L.L. 88/1989 § 3.

Section amended L.L. 76/1986 § 8. [See Note after § 19-502.].

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 2315 added LL 12/1971 § 4



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-517*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-517 For-hire vehicle licenses.

The commission may require that a notice be posted at the main entrance of each garage housing for-hire vehicles reciting the number of such vehicles, their license numbers and such other information as the commission may designate.

**HISTORICAL NOTE**

Section amended L.L. 76/1986 § 9. [See Note after § 19-502.]

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 2316 added LL 12/1971 § 4



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-518*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-518 Transfer of licenses.

a. No for-hire vehicle license shall be transferred or assigned, nor shall such vehicle license be used in affiliation with any garage or business location other than the location stated in such license.

b. Any base station license or ownership interest in the licensee may be transferred to a proposed transferee who has demonstrated to the satisfaction of the commission the qualifications to assume the duties and obligations of a base station owner provided that either the transferor or transferee shall have filed a bond to cover all the outstanding tort liabilities of the transferor arising out of the operation of a base station and the for-hire vehicles owned by the transferor which is in excess of the amount covered by any bond or insurance policy in effect pursuant to the vehicle and traffic law, and all outstanding fines, penalties and other liabilities which the transferor owes to the commission shall have been satisfied. All such transfers and any changes in corporate offices or directors must be approved by the commission in order to be effective. The commission shall establish by rule the factors to be considered for approval of a proposed transferee, officer or director which shall include, but not be limited to, the criminal history of the proposed transferee and of the transferee's officers, shareholders, directors and partners, if any, or the proposed officers or directors, in a manner consistent with article twenty-three-A of the correction law, any relevant information maintained in the records of the department of more vehicles or the commission, and transferee's financial stability.

c. A transfer shall not be approved if in the past two years, the proposed transferee or any officer, shareholder, director or partner of the proposed transferee, where appropriate, has been found to have violated any law or rule involving:

(i) assaultive behavior toward a passenger, official or member of the public in connection with any matter

relating to a for-hire vehicle;

(ii) conviction for giving or offering an unlawful gratuity to a public servant, as defined in section 10.00 of the penal law.

(iii) providing the commission with false information; or

(iv) three unexplained failures to respond to an official communication of the commission or the department of investigation which was sent via certified mail, return receipt requested.

d. No voluntary transfer of a base station license may be made if a judgment in favor of the city of New York or any agency thereof or any state or federal agency has been docketed with the clerk of any county within the city of New York against the licensee and remains unsatisfied, except that a transfer may be permitted if an appeal is pending from an unsatisfied judgment and a bond is filed in an amount sufficient to satisfy the judgment. A transfer may also be permitted without filing a bond as set forth in this subdivision provided that all the judgment creditors of a licensee file written permission for such a transfer with the commission or that the proceeds from the transfer are paid into court or held in escrow on terms and conditions approved by the commission which will have the effect of protecting the rights of all parties who may have an interest therein.

e. The commission may by rule establish a fee in connection with an application to transfer a base station license or an ownership interest in a base station licensee.

f. The commission shall revoke any base station license for nonuse in the event it shall find after a public hearing that the base station has not been in operation for sixty consecutive days, provided that such failure to operate shall not have been caused by strike, riot, war, public catastrophe or other act beyond the control of the licensee. Where the commission finds that a particular base station cannot be operated due to an act beyond the control of the licensee, a replacement base station license shall be issued to the same licensee for an alternative location, provided that all other requirements for such license are met and provided further that the unexpired term of the original license is six months or more.

**HISTORICAL NOTE**

Section amended L.L. 51/1996 § 6, eff. Sept. 18, 1996

Section amended L.L. 76/1986 § 10. [See Note after § 19-502]

**DERIVATION**

Formerly § 2317 added LL 12/1971 § 4



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***** Current through December 2009 ****

*NYC Administrative Code 19-519*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-519 Anti-noise and air pollution provisions.

a. Definitions. The term "octane rating" shall mean research octane rating or number measured by the research method.

The term zero grams lead per gallon shall include gasoline containing up to 0.075 grams of lead per gallon.

b. Effective July first, nineteen hundred seventy-one, all motor vehicles licensed under the provisions of this chapter, which are manufactured in the model years nineteen hundred seventy-two or later, shall be equipped with an engine designed to operate on non-leaded gasoline. All motor vehicles manufactured prior to the nineteen hundred seventy-two model year which are licensed under the provisions of this chapter shall operate in the city on the effective dates set forth below only on gasoline which contains no more than the following amount of lead by weight for the respective octane ranges as follows:

**[See tabular material in printed version]**

c. Effective July first, nineteen hundred seventy-one, all motor vehicles manufactured in model years prior to nineteen hundred seventy, which are licensed under the provisions of this chapter shall be equipped with such emission control devices or otherwise comply with the standards governing levels of emissions for carbon monoxide, hydrocarbons and oxides of nitrogen applicable to light duty vehicles and engines manufactured in model year nineteen hundred seventy in accordance with Federal Public Law 91-604 cited as the "Clear Air Amendments of nineteen hundred seventy."

d. Effective July first, nineteen hundred seventy-one, all motor vehicles manufactured in model years nineteen hundred seventy-one and thereafter, which are licensed under the provisions of this chapter shall be equipped with such emission control devices or otherwise comply with the standards governing levels of emissions for particulates, carbon monoxide, hydrocarbons and oxides of nitrogen established by the commission, which in no event shall be less stringent than those promulgated by federal, state or local agencies, whichever is most stringent.

e. No driver shall operate or use a horn or similar signal device installed on a licensed vehicle except as a signal of imminent danger. The commission shall issue regulations and adopt programs facilitating the enforcement of subdivision a and paragraph one of subdivision b of section 10-107 of the code and shall be authorized to entertain complaints against drivers of licensed vehicles charged with a violation thereof.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 2318 added LL 12/1971 § 4

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*NYC Administrative Code 19-520*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-520 Advisory Boards.

a. Taxi and limousine commission advisory board. There shall be an advisory board whose members shall be appointed for two-year terms by the mayor to enable the commission to be kept aware of current views of all segments of the taxi industry and of the public and to be available to the commission to provide the expertise of its members for the better administration of the commission and service to the public.

b. The advisory board shall consist of fifteen members, one member each representing the taxi industry, labor, the commissioner of transportation, the commissioner of consumer affairs, the police commissioner, the director of the bureau of franchises, owner-drivers of taxis, the coach and limousine service industry, the private livery industry, the chairperson of the consumer affairs committee and the finance committee of the council and five members of the general public, one from each of the boroughs of the city.

c. Advisory board on transportation of the handicapped. There shall be an advisory board to advise the commission as to fees, safety regulations and any other matters concerning wheelchair accessible vans and handicapped transportation services.

d. This board shall consist of fifteen members to be appointed for two-year terms as follows: two, at least one of whom is handicapped, by the delegation of council members from each borough and five, at least three of whom are handicapped, by the mayor on recommendation of the director of the office for the handicapped. The members of this board shall serve without compensation except for reasonable expenses incurred in the transportation to and from meetings of said board.

e. Livery advisory board. There shall be a livery advisory board to consist of not more than twenty members to be appointed for two-year terms by the chairman to advise the commission concerning matters relating to the livery industry, including the preparation of rules and regulations for the class of for-hire vehicles commonly known as "liveries," for the owners and drivers thereof, and for livery vehicle base operators.

f. There shall be a drivers' advisory board to advise the commission on matters of safety, conditions of work and the fair enforcement of laws and rules governing drivers licensed by the commission and to examine complaints about these matters solely to facilitate the board's ability to advise the commission. This board shall consist of fourteen members each of whom shall, at the time of appointment and thereafter, possess, for at least one year, a valid driver's license in good standing issued by the commission. The board shall be comprised of two taxicab lease drivers and two independent taxicab owner-operators, two for-hire vehicle fleet drivers and two independent for-hire vehicle operators, two black car drivers, two commuter van drivers and two paratransit drivers. Half the members within each category shall be appointed by the speaker of the council and half shall be appointed by the mayor all for two-year terms, none of whom shall be an employee or staff member of the council or the commission. The board shall meet no less often than every three months, unless the board determines otherwise, but in no event shall the board meet less often than every six months.

**HISTORICAL NOTE**

Section added 907/1985 § 1

Subd. e added L.L. 79/1986 § 1.

Subd. f added L.L. 60/2003 § 1, eff. Jan. 18, 2004.

**DERIVATION**

Formerly § 2319 added LL 12/1971 § 4

Amended LL 88/1977 § 6



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-521*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-521 Central dispatcher services at all major transit terminals.

a. The commission shall institute a plan for the industry relating to the establishment of a central dispatch system operating at all air terminals within the city of New York. Such a program shall be instituted at all such air terminals to provide service to any and all points in the five boroughs, and in such other locations as from time to time the commission shall deem necessary.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 2320 added LL 12/1971 § 4



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-522*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-522 Group riding.

The commission shall institute a group riding plan for the taxi industry in the city of New York. Initially, this plan shall encompass, minimally, a pilot group riding program from John F. Kennedy international airport to any and all points in the five boroughs, providing dispatchers at the various airport terminals and a central dispatching system to expedite passenger conveyance. After sixty days from the start of such program at John F. Kennedy international airport, the commission shall seek to establish group riding programs at various points in the five boroughs, to be designated by the commission, with the view to increasing taxicab availability to and from the outlying sections of the city to meet the maximum demands for taxi service.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 2321 added LL 12/1971 § 4

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***** Current through December 2009 ****

*NYC Administrative Code 19-523*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-523 Service in areas outside the Manhattan central business district.

a. At the time of the submission of a final environmental impact statement to the council pursuant to section 19-504.1, the commission shall submit a written report to the council setting forth its plan for improving taxicab and for-hire vehicle service in the areas of the city lying outside of the central business district of the borough of Manhattan.

b. The commission shall develop such plan in consultation with community and business leaders, representatives of the taxicab and for-hire vehicle industries and members of the general public. The commission shall conduct at least one public hearing in each of the five boroughs concerning the development of such a plan.

c. The commission shall consider a broad range of service, pricing and regulatory options including, but not limited to, imposing additional requirements to ensure taxicab availability in areas of the city lying outside of the central business district of the borough of Manhattan, establishing group riding programs at various points in the five boroughs, instituting double shifting and shift time changes for taxicabs, altering the fare structure for taxicabs and improving compliance with the requirements of paragraphs one and two of subdivision a of section 19-507. The report to the council shall include a thorough assessment of each possible option for improving service, the commission's recommendations as to which options should be implemented and a timetable for implementing these options.

**HISTORICAL NOTE**

Section added L.L. 14/1987 § 2.

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***** Current through December 2009 ****

*NYC Administrative Code 19-525*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-525 Permits for exterior advertising.

a. No vehicle licensed pursuant to the provisions of this chapter shall carry any advertising on the exterior of such vehicle, including its roof and trunk, unless the owner thereof shall first have obtained from the commission a permit to carry such exterior advertising.

b. Such permits shall be issued as of September first, and shall expire on August thirty-first next succeeding unless sooner surrendered, suspended, revoked or terminated.

c. The fee for the issuance of such permit shall not exceed fifty dollars annually. If the permit so issued is surrendered to the commission by the permittee within six months of its date of issuance, one-half of the fee paid shall be refunded to the permittee.

d. Applications for such permits shall be filed with the commission upon forms which shall be provided by the commission.

e. The commission shall promulgate such rules and regulations as are necessary to carry out the provisions of this section, including but not limited to the type and size of any advertising matter.

f. Notwithstanding any other provision of law to the contrary, the commission may revoke any individual permit or the permits of any one medallion ownership corporation, issued pursuant to this section for exterior advertising, if advertising showed in the exterior display is offensive to public morals, and is not removed from public display within a period of fifteen days upon specific request for such action from the taxi and limousine commission.

g. No permit issued under this section shall be transferred or assigned.

**HISTORICAL NOTE**

Section added chap 907/1985

Subd. a amended L.L. 83/1992 § 5, eff. Apr. 25, 1993.

**DERIVATION**

Formerly § 2324 added LL 22/1975 § 1



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-527*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-527 Licensing of taxicab brokers.

a. For purposes of this section "taxicab broker" means a person, partnership or corporation who, for another and whether or not acting for a fee, commission or other valuable consideration, acts as an agent or intermediary in negotiating the purchase or sale of a taxicab or of stock of or in a corporation which is an owner as defined in subdivision i of section 19-501 of this chapter, or in negotiating a loan secured or to be secured by an encumbrance upon or transfer of a medallion, vehicle license or licensed vehicle. A purchase or sale under this subdivision shall include a purchase or sale of or under a reserve title contract, conditional sales agreement or vendor lien agreement.

b. On and after the first day of January nineteen hundred eighty-five, no person shall engage in the business or occupation of, or hold himself, herself or itself out or act temporarily or otherwise as a taxicab broker without first obtaining a license therefor from the commission. Such licenses shall be issued as of January first and shall expire on December thirty-first next succeeding, unless sooner suspended or revoked by the commission.

c. The license fee shall be five hundred dollars for a license and five hundred dollars for each subsequent renewal thereof. If a license is granted for a period of six months or less the fee shall be one-half of the annual fee.

d. Applications for taxicab broker licenses and for the renewal thereof shall be filed with the commission in such form and containing such detail as the commission shall prescribe. Each application shall be subscribed by the applicant; or if made by a partnership it shall be subscribed by a member thereof; or if made by a corporation it shall be subscribed by an officer thereof. Each application shall contain an affirmation by the person so subscribing that the statements therein are true under the penalties of perjury.

e. Before such license is issued, an applicant shall deposit with the commission, a bond in the penal sum of fifty thousand dollars containing one or more sureties to be approved by the commission. Such bond shall be payable to the city and shall be conditioned that the person applying for the license will comply with the provisions of this section and any rules or regulations of the commission; and shall pay all fines imposed by the commission pursuant to subdivision f hereof and all judgements awarding from damages occasioned to any person by reason of any misrepresentation, fraud or deceit, or any unlawful act or omission of such licensee, his or her agents or employees, while acting within the scope of their employment, made, committed or omitted in the business conducted under such license, or caused by any other violation of this section in carrying on the business for which such license is granted.

f. The commission may revoke or suspend a taxicab broker license; impose a fine not exceeding ten thousand dollars on a licensee; or deny an application for a taxicab broker license if after notice and hearing it finds that a licensee or applicant has:

(1) made a material misstatement or misrepresentation on an application for a taxicab broker license or the renewal thereof;

(2) made a material misrepresentation or committed a fraudulent, deceitful or unlawful act or omission while engaged in the business or occupation of or holding himself, herself or itself out or acting temporarily or otherwise as a taxicab broker;

(3) violated any provision of this section or any rule or regulation of the commission.

g. The commission shall establish the fee and/or commission rates to be charged by any taxicab broker.

h. Any person who violates the provisions of subdivision b of this section shall be guilty of a misdemeanor punishable by a fine of not less than one hundred dollars nor more than five hundred dollars and shall also be liable for a civil penalty of not less than one hundred dollars nor more than five hundred dollars.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 2325 added LL 18/1984 § 2

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*NYC Administrative Code 19-528*

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CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-528 Additional powers of the commission with respect to unlicensed activities.

a. It shall be unlawful for any person required to be licensed pursuant to the provisions of this chapter to engage in any trade, business or activity for which a license is required without such license.

b. In addition to the enforcement procedures set forth in section 19-506 of this chapter, the commission, after notice and a hearing, shall be authorized:

1. to impose fines upon any person in violation of subdivision a of this section of one hundred dollars per violation per day for each and every day during which such person violates such subdivision.

2. to order any person in violation of subdivision a of this section immediately to discontinue such activity at the premises from which such activity is occurring.

3. to order that such premises from which such activity is occurring be sealed, provided that such premises are primarily used for such activity.

c. Orders of the commission issued pursuant to this subdivision shall be posted at the premises from which unlicensed activity occurs in violation of this section.

d. Orders of the commission issued pursuant to paragraphs two or three of subdivision b of this section shall be stayed with respect to any person who, prior to service of the notice provided in subdivision b of this section, had submitted a full and complete application in proper form and accompanied by the requisite fee for a license or the

renewal of a license while such application is pending.

e. Ten days after the posting of an order issued pursuant to paragraphs two or three of subdivision b of this section and upon the written directive of the commission, officers and employees of the commission and officers of the New York city police department are authorized to act upon and enforce such orders.

f. The commission shall order that any premises which are sealed pursuant to this section shall be unsealed upon:

1. payment of all outstanding fines; and

2. presentation of proof that a license has been obtained for such activity or, if such person or premises are for any reason ineligible to obtain a license, proof satisfactory to the commission that such premises will not be used in violation of this section.

g. It shall be a misdemeanor for any person to remove the seal on any premises sealed in accordance with an order of the com- mission.

h. The owner or other person lawfully entitled to reclaim the contents of the premises sealed pursuant to this section shall reclaim such contents. If such owner or such other person does not reclaim such contents within ninety days of the premises having been sealed, such contents shall be subject to forfeiture upon notice and judicial determination in accordance with provisions of law. Upon forfeiture the commission shall, upon a public notice of at least five days, sell such forfeited contents at public sale. The net proceeds of such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the city.

**HISTORICAL NOTE**

Section added L.L. 87/1989 § 2.



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*NYC Administrative Code 19-529*

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Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-529 Seat and shoulder belts required.

a. Beginning with the 1991 model year, for each seating position, every taxicab and for-hire vehicle shall be equipped with seat belts and, for every outside passenger position, shall be equipped with shoulder belts.

b. All seat and shoulder belts required by this section or by any provision of state or federal law shall be clearly visible, accessible and shall be maintained in good working order.

No safety belt installed in a motor vehicle in accordance with the provisions of this section or in accordance with the provisions of state or federal law or the rules or regulations issued by the New York State Department of Transportation or the United States Department of Transportation, shall be removed from said motor vehicle.

c. The owner of any licensed vehicle found to be in violation of subdivision a or b hereof shall be fined not less than one hundred nor more than two hundred fifty dollars.

d. At each inspection of a licensed taxicab or for-hire vehicle made pursuant to subdivision f of section 19-504 of this chapter, failure to comply with subdivision a or b hereof shall be evidence that such vehicle fails to meet reasonable standards for safe operation and shall constitute cause for the suspension of said vehicle license by the commission.

**HISTORICAL NOTE**

Section amended and renumbered L.L. 10/1992 § 1, eff. Jan. 7, 1992.

Section  renumbered L.L. 13/1992 §  1, eff. Feb. 6, 1992. (formerly §  19-528)

Section added L.L. 6/1990 §  1 eff. April 5, 1990.

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*NYC Administrative Code 19-529.1*

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§ 19-529.1 Prohibited acts relating to commuter vans.

a. No commuter van service and no person who owns, operates or drives a commuter van shall solicit, pick up or discharge passengers, or permit or authorize the solicitation, pick up or discharge of passengers:

(1) outside of the geographical area set forth in the authorization to operate a commuter van service issued pursuant to section 19-504.2 of this chapter; or

(2) at stops of, or along a route which is traveled upon by a bus line which is operated by the New York city transit authority or the city or a private bus company which has been granted a franchise by the city. The prohibition contained in this paragraph shall not apply to the pick up or discharge of passengers in the borough of Manhattan south of Chambers Street by commuter van services who on July first, nineteen hundred ninety-two had authority from the state department of transportation to pick up or discharge passengers along bus routes in such area, provided that the scope of operations by such commuter van services along bus routes in such area shall not exceed the scope of such operations prior to July first, nineteen hundred ninety-two.

b. Where a violation of subdivision a of this section has been committed by a driver of a commuter van, the commuter van service and the owner of such vehicle shall also be liable for a violation of subdivision a of this section.

**HISTORICAL NOTE**

Section added L.L. 115/1993 § 18, eff. Sept. 26, 1994.

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*NYC Administrative Code 19-529.2*

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§ 19-529.2 Seizure of commuter vans.

a. A police officer or agent of the commission may, upon service of a notice of violation upon the owner or operator of a commuter van, seize a vehicle which such police officer or agent of the commission has reasonable cause to believe is being operated as a commuter van service by or on behalf of a person who is not operating pursuant to a current, valid authorization or operating as a commuter van without a commuter van license as required by this chapter. All passengers in any seized vehicle shall be left in or transported to a location which is readily accessible to other means of public transportation. Any vehicle seized pursuant to this section shall be delivered into the custody of the city.

b. Within one business day after the seizure of a vehicle pursuant to this section, notice of such seizure and a copy of the notice of violation shall be mailed to the owner of such vehicle at the address for such owner set forth in the records maintained by the New York state department of motor vehicles, or, for vehicles not registered in New York state, such equivalent record in such state of regis- tration.

c. A hearing to adjudicate the violation underlying the seizure shall be held before the commission or an administrative tribunal thereof within five business days after the date of the seizure. The commission or an administrative tribunal thereof shall, within one business day of the conclusion of the hearing, render a determination as to whether the vehicle has been operated by or on behalf of a person who is not the holder of a current, valid authorization or has been operated without a commuter van vehicle license required by this chapter.

d. An owner shall be eligible to obtain release of the vehicle prior to such hearing if such owner has not previously been found liable in an administrative or judicial proceeding for operating a vehicle as a commuter van

service without a current, valid authorization or operating a commuter van without a commuter van license as required by this chapter, which violation was committed within a five year period prior to the violation resulting in the seizure. The vehicle shall be released to an eligible owner upon the posting of a bond in a form satisfactory to the commission in an amount that shall not exceed the maximum civil penalties which may be imposed for the violation underlying the seizure and all reasonable costs for removal and storage of such vehicle.

e. Where the commission or an administrative tribunal thereof, after adjudication of the violation underlying the seizure, shall find that the vehicle has been operated as a commuter van by or on behalf of a person who is not the holder of a current, valid authorization or operated as a commuter van without a commuter van license:

(1) if the vehicle is not subject to forfeiture pursuant to section 19-529.3 of this chapter, the commission shall release such vehicle to an owner upon payment of the applicable civil penalties and all reasonable removal and storage costs; or

(2) if the vehicle is subject to forfeiture pursuant to section 19-529.3 of this chapter, the commission may release such vehicle to an owner upon payment of the applicable civil penalties and all reasonable removal and storage costs, or may commence a forfeiture action pursuant to section 19-529.3 of this chapter within ten days after the owner's written demand for such vehicle.

f. Where the commission or an administrative tribunal thereof, after adjudication of the violation underlying the seizure, finds that the charge of operating without an authorization or commuter van license has not been sustained, the vehicle shall be released to the owner.

If an owner or representative of such owner has not sought to reclaim a seized vehicle within thirty days after mailing of notice of such owner of the final adjudication by the commission or such administrative tribunal of the violation underlying the seizure, such vehicle shall be deemed by the commission to be abandoned. Such vehicle shall be disposed of by the city pursuant to section twelve hundred twenty-four of the vehicle and traffic law; provided, however, that notwithstanding any inconsistent provision of section twelve hundred twenty-four of such law, if an owner seeks to reclaim such vehicle pursuant to section twelve hundred twenty-four of such law, such owner shall be deemed to have made a written demand for such vehicle and the commission shall take such action as may be authorized by subdivision e or f of this section.

**HISTORICAL NOTE**

Section added L.L. 115/1993 § 19, eff. Sept. 26, 1994.

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*NYC Administrative Code 19-529.3*

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§ 19-529.3 Forfeiture of commuter vans.

a. In addition to the penalties, sanctions and remedies provided in this chapter or subdivisions six and seven of section one hundred forty-five of the transportation law, a vehicle seized pursuant to section 19-529.2 of this chapter, and all rights, title and interest therein, shall be subject to forfeiture to the city in accordance with the provisions of this section upon judicial determination thereof, if the owner of such vehicle has been found liable at least two times in an administrative or court proceeding for operating a commuter van or other such common carrier by or on behalf of a person who is not the holder of a current, valid authorization or operating a commuter van without a commuter van license as required by this chapter, both of which violations were committed within a five-year period.

b. A forfeiture action which is commenced pursuant to this section shall be commenced by filing of a summons with notice or a summons and complaint pursuant to the New York civil practice law and rules, and such summons with notice or summons and complaint shall be served pursuant to subdivision c of this section. A vehicle which is the subject of such an action shall remain in the custody of the city pending the final determination of the forfeiture action.

c. Service of a summons with notice or a summons and complaint shall be made:

(1) by personal service pursuant to the New York civil practice law and rules upon all owners of the vehicle listed in the records maintained by the New York state department of motor vehicles, or for vehicles not registered in New York state, in the records maintained by the state of registration;

(2) by first class mail upon all individuals who have notified the commission or an administrative tribunal thereof that they are an owneer of the vehicle; and

(3) by first class mail upon all persons holding a security interest in such vehicle which security interest has been filed with the New York state department of motor vehicles pursuant to the provisions of title ten of the New York state vehicle and traffic law, at the address set forth in the records of the New York state department of motor vehicles, or, for vehicles not registered in New York state, all persons holding a security interest in such vehicle which security interest has been filed with such state of registration at the address provided by such state of registration.

d. Any owner who receives notice of the institution of a forfeiture action who claims an interest in the vehicle subject to forfeiture shall assert a claim for the recovery of the vehicle or satisfaction of the owner's interest in such vehicle by intervening in the forfeiture action in accordance with the New York civil practice law and rules. Any person with a security interest in such vehicle who receives notice of the institution of the forfeiture action who claims an interest in such vehicle subject to forfeiture shall assert a claim for satisfaction of such person's security interest in such vehicle by intervening in the forfeiture action in accordance with the New York civil practice law and rules.

e. No vehicle shall be forfeited pursuant to this section, to the extent of the interest of a person who claims an interest in the vehicle, if such person shall plead and prove as an affirmative defense that:

(1) the use of the vehicle for the conduct that was the basis for the seizure occurred without the knowledge of such person, or, if such person had knowledge of such use, without the consent of such person, and that such person did not knowingly obtain such interest in the vehicle in order to avoid the forfeiture of such vehicle; or

(2) the conduct that was the basis for the seizure was committed by any person other than such person claiming an interest in the vehicle, while such vehicle was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state.

f. For purposes of subdivision e of this section, if such person claiming an interest in the vehicle had knowledge of the use of the vehicle for the conduct that was the basis for such seizure, such person shall be deemed to have consented to the unlawful conduct unless such person establishes that he or she did all that could reasonably have been done to prevent the use of the vehicle for such unlawful conduct.

g. The city, after judicial determination of forfeiture, shall, at its discretion, either:

(1) retain such vehicle for the official use of the city; or

(2) by public notice of at least twenty days, sell such forfeited vehicle at public sale. The net proceeds of any such sale shall be paid into the general fund of the city.

h. At any time within six months after the forfeiture, any person claiming an interest in a vehicle which has been forfeited pursuant to this section who was not sent notice of the commencement of the forfeiture action pursuant to subdivision b or c of this section or who did not otherwise receive actual notice of the forfeiture action may assert, in an action commenced before the justice of the supreme court before whom the forfeiture action was held, such claim as could have been asserted in such forfeiture action pursuant to this section. The court may grant the relief sought upon such terms and conditions as it deems reasonable and just if such person claiming an interest in the vehicle establishes that he or she was not sent notice of the commencement of the forfeiture action and was without actual knowledge of the forfeiture action and establishes either of the affirmative defenses set forth in subdivision e of this section.

i. In any action commenced pursuant to subdivision b or h of this section, where the court awards a sum of money to one or more persons in satisfaction of such person's or persons' interest or interests in the forfeited vehicle, the total amount awarded to satisfy such interest or interests shall not exceed the amount of the net proceeds of the sale of the forfeited vehicle, after deduction of the lawful expenses incurred by the city, including the reasonable costs of removal and storage of the vehicle between the time of seizure and the date of sale.

**HISTORICAL NOTE**

Section added L.L. 115/1993 § 20, eff. Sept. 26, 1994.

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*NYC Administrative Code 19-529.4*

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CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-529.4 Color schemes and emblems and additional requirements for commuter vans.

a. Commuter vans shall have the name of the vehicle owner, the name of the person holding the authorization pursuant to which such vehicle is operating and evidence of such authorization displayed on the outside and inside of the vehicle in such form as shall be prescribed by the commission.

b. Commuter vans shall display a sticker on at least the front, back and sides of such vehicles containing a unique emblem in such form as shall be prescribed by the commission. The commission shall issue such stickers to the commuter van owner upon the issuance of a commuter van license and such sticker shall:

(1) be large enough to be easily seen by law enforcement officers and members of the public;

(2) include information uniquely identifying the van, which may include make and model, color(s) of such van, license plate number or information about the commuter van license and the term of such license;

(3) be hard to replicate, with security features such as holograms or other security features as prescribed by the commission; and

(4) include any other information or features as prescribed by the commission.

c. Commuter vans may be painted any color approved by the commission, other than the colors reserved for medallion taxis.

d. All commuter vans shall at all times carry inside the vehicle and the operator shall produce upon demand of

any officer or employee designated by the commission, any police officer or any authorized officers or employees of the department of transportation or the New York city transit authority:

1. the commuter van license;

2. the driver's commuter van driver's license;

3. the authorization to operate a commuter van service, or copy thereof reproduced in accordance with the specifications set forth in rules of the commission;

4. the vehicle registration and evidence of current liability insurance; and

5. a passenger manifest, and such records evidencing prearrangement as are prescribed by rule of the commission.

**HISTORICAL NOTE**

Section added L.L. 115/1993 § 21, eff. Sept. 26, 1994.

Subd. b added L.L. 48/2007 § 1, eff. Feb. 6, 2008.

Subd. c relettered (former Subd. b) L.L. 48/2007 § 1, eff. Feb. 6, 2008.

Subd. d relettered (former Subd. c) L.L. 48/2007 § 1, eff. Feb. 6, 2008.



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*NYC Administrative Code 19-529.5*

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Title 19 Transportation

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§ 19-529.5 Construction.

The provisions of this chapter authorizing penalties, sanctions and remedies shall not be construed to supersede the provisions of subdivisions six and seven of section one hundred forty-five of the transportation law but shall be construed to provide penalties, sanctions and remedies in addition to those provided in such subdivisions.

**HISTORICAL NOTE**

Section added L.L. 115/1993 § 22, eff. Sept. 26, 1994.

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*NYC Administrative Code 19-529.6*

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§ 19-529.6 Applicability.

The provisions of this chapter shall not apply to the operations by a commuter van service of commuter vans to or from an airport in the city when such commuter van service or commuter vans have been issued a permit by the port authority of New York and New Jersey to operate at an airport in the city or apply for such permit and within a reasonable period of time are issued such permit by such authority.

**HISTORICAL NOTE**

Section added L.L. 115/1993 § 22, eff. Sept. 26, 1994.

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*NYC Administrative Code 19-530*

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Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-530 Licensing of agents.

a. It shall be unlawful to act as an agent without first obtaining a license therefor from the commission. Such licenses shall be issued for a period not to exceed one year and shall expire on December thirty-first of the year in which it was issued, unless sooner suspended or revoked by the commission.

b. The fee for such a license or a renewal of such a license shall be five hundred dollars. However, if a license is granted for a period of six months or less, the fee shall be two hundred fifty dollars.

c. Any person who violates the provisions of subdivision a of this section shall be guilty of a misdemeanor punishable by a fine of not less than five hundred dollars nor more than one thousand dollars and shall also be liable for a civil penalty of not less than five hundred dollars nor more than one thousand dollars. Such person shall also be subject to the provisions of subdivision f of this section.

d. An application for a license required by subdivision a of this section and for the renewal thereof shall be filed with the commission and shall be in such form as the commission shall prescribe. An application for such license shall be submitted on behalf of a sole proprietorship by the proprietor; on behalf of a partnership by a general partner thereof; on behalf of a corporation by an officer or director thereof; or by any other type of business entity by the chief executive officer thereof, irrespective of organizational title. The application shall contain a sworn and notarized statement by such individual that the statements therein are true under the penalties of perjury.

e. Before such license is issued, an applicant shall deposit with the commission a bond, the amount of which shall be determined by rule of the commission, containing one or more sureties to be approved by the commission. Such

bond shall be payable to the city and shall be conditioned on the licensee complying with the provisions of this section and any applicable rules of the commission; payment of all civil penalties imposed pursuant to subdivision f of this section; and payment of all judgments or settlements arising from damages occasioned to any person by reason of any misrepresentation, fraud or deceit, or any unlawful act or omission of such licensee or an employee, officer, director, partner, owner of more than ten percent of the outstanding stock of the licensee or the chief executive officer of such licensee while such individual is acting on behalf of such licensee, or any other violation of this section.

f. The commission may deny an application for a license or renewal of a license or, after notice and hearing, revoke or suspend any license issued pursuant to this section, and/or impose a civil penalty not exceeding ten thousand dollars on a licensee, if it finds that an applicant, a licensee, any officer, director, partner, or owner of more than ten percent of the outstanding stock of an applicant or licensee, or the chief executive officer of an applicant or licensee has:

(1) made a material misstatement or misrepresentation on an application for such a license or the renewal thereof; or

(2) made a material misrepresentation or omission or committed a fraudulent or unlawful act while engaged in the business or occupation of, or holding himself, herself or itself out as an agent. Such acts shall include but not be limited to:

(i) presentation of a vehicle for inspection by the commission with a vehicle identification number other than the one under which such vehicle is licensed by the commission;

(ii) operation of a vehicle with a vehicle identification number which has been removed and reattached, or which is other than the one under which such vehicle is licensed by the commission;

(iii) presentation of a document to the commission which falsely states that insurance requirements with respect to a licensed vehicle have been met; and

(iv) conviction of bribing or attempting to bribe any officer or employee of the commission; or

(3) violated any provision of this section or any applicable rule of the commission.

g. Prior to the issuance of any license pursuant to this section, the applicant shall be fingerprinted by a person designated for such purpose by the chairperson and pay a fee to be submitted by the chairperson to the state division of criminal justice services for the purposes of obtaining criminal history records. For purposes of securing a license pursuant to this section, fingerprints shall be taken of the proprietor if the applicant is a sole proprietorship; all the general partners if the applicant is a partnership; all the officers, directors, and owners of more than ten percent of the outstanding stock of the corporation if the applicant is a corporation; and if the applicant is another type of business entity, the chief executive officer, irrespective of organizational title.

h. An application for a license required by this section or the renewal thereof may be denied where the proprietor, any general partner, officer, director or any owner of ten percent or more of the outstanding stock of the applicant or the chief executive of the applicant as is appropriate, has been convicted of a crime which under article twenty-three-A of the correction law would provide a basis for the denial of such license or renewal.

i. An agent licensed pursuant to this section shall be subject to all applicable rules of the commission.

j. Agents licensed pursuant to this section shall promptly respond to and comply with all inquiries, directives, summonses and other communications from the commission or from the New York city department of investigation, and shall make their business premises and books and records available upon request for inspection by employees or designees of the commission.

k. Any agent acting on behalf of an owner who leases or otherwise dispatches one or more taxicabs for return at the end of a shift shall maintain business premises in a location zoned for the operation of such business with:

(i) sufficient off-street space at or near its business premises to store the lesser of 25 vehicles or the following: fifty percent of the taxicabs leased on a daily or shift basis, plus five percent of the taxicabs leased for longer than one day;

(ii) sufficient office space to conduct business, where all records required by the commission, including trip sheets and driver records are kept;

(iii) regular business hours, including the hours of 9:00 a.m. through 5:00 p.m. on every weekday other than legal holidays; and

(iv) a business address and telephone number on file with the commission.

l. Nothing herein shall relieve the owner of a taxicab medallion of responsibility for compliance with any applicable provision of law or rule. Such owner shall be fully responsible for the operation of a vehicle bearing such medallion, including compliance with all regulatory requirements applicable to such vehicle, regardless of the appointment by such owner of an agent licensed pursuant to this section.

**HISTORICAL NOTE**

Section added L.L. 83/1995 § 2, eff. Mar. 3, 1996.

**CASE NOTES**

¶ 1. The statute provides that the owner of a medallion remains responsible for the operation of a taxicab bearing its medallion. According to a federal court, the statute does not clearly indicate whether the statute extends vicarious liability to medallion owners for the negligent acts of taxicab drivers that cause injury to passengers, and if so, whether it does so even where the medallion owner does not own the taxicab involved in the accident. Here, the medallion owner had permitted a temporary transfer of the medallion to a vehicle owner by another. The Second Circuit certified this question to the New York Court of Appeals, Golden v. Winjohn Taxi Corp., 311 F.3d 513 (2d Cir. 2002). The Court of Appeals accepted the certified question, 99 N.Y.2d 567, 755 NY2d 702 (2003). After the parties settled, the certified question was withdrawn, 99 NY2d 567, 760 NYS2d 89 (2003). Thus, there still is no definite answer to the question.



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*NYC Administrative Code 19-531*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-531 Public sale of taxicab licenses.

Notwithstanding any other provision of this chapter to the contrary, the commission is hereby authorized to issue additional taxicab licenses, provided, however, that the number of such additional licenses issued shall not exceed four hundred. Such additional licenses shall be issued by public sale and shall be fully transferable, and shall be subject to the provisions of this chapter and of chapter sixty-five of the New York city charter, except that they shall not be subject to the provisions of section 19-504.1 of this code. The commission shall prescribe by regulation the procedures for the issuance and public sale of such additional licenses, by public auction, sealed bids or other competitive process.

**HISTORICAL NOTE**

Section added L.L. 15/1996 § 1, eff. Feb. 20, 1996.



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***** Current through December 2009 ****

*NYC Administrative Code 19-532*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-532 Public sale of additional taxicab licenses.

a. Notwithstanding any other provision of law to the contrary, the commission is hereby authorized to issue additional taxicab licenses, provided, however, that such additional licenses shall be issued only after completion by the commission of such review as may be required by article eight of the New York state environmental conservation law. Such additional licenses shall be issued in a number not to exceed the number of taxicab licenses whose public sale was authorized by chapter sixty-three of the laws of two thousand three, and shall be fully transferable and subject to the provisions of this chapter and of chapter sixty-five of the New York city charter. The commission shall prescribe by rule the procedures for the issuance and public sale of such additional licenses, by public auction, sealed bids or other competitive process.

b. Of the total number of taxicab licenses issued by the commission pursuant to subdivision a of this section, at least nine percent shall be issued subject to the requirement that the vehicles operated by or under agreement with the owners of such licenses either be powered by compressed natural gas or be a hybrid electric vehicle, and at least nine percent shall be issued subject to the requirement that the vehicles operated by or under agreement with the owners of such licenses be fully accessible to persons with disabilities in accordance with standards established by the commission; provided however, of the licenses authorized to be sold pursuant to subdivision a of this section that are issued after June 1, 2006, two hundred fifty-four shall be issued subject to the requirement that the vehicles operated by or under agreement with the owners of such licenses either be powered by compressed natural gas or be a hybrid electric vehicle, and fifty-four shall be issued subject to the requirement that the vehicles operated by or under agreement with the owners of such licenses be fully accessible to persons with disabilities in accordance with standards established by the commission; and provided further that if the prices which the commission is able to obtain for the

issuance of licenses subject to either of the foregoing requirements does not exceed ninety percent of the average price otherwise obtained by the commission for the issuance of licenses pursuant to this section, the commission is authorized to issue such licenses without such requirement.

c. In the event that the city of New York is authorized to issue taxicab licenses in addition to those authorized by chapter sixty-three of the laws of two thousand three, such additional licenses shall be issued by the commission only after completion by the commission of such review as may be required by article eight of the New York state environmental conservation law. Such additional licenses shall be issued in a number not to exceed the number of taxicab licenses whose public sale is authorized by law and in accordance with the procedures and conditions set forth in subdivision a of this section, except that the first one hundred fifty such licenses issued shall be subject to the requirement that the vehicles operated by or under agreement with the owners of such licenses be fully accessible to persons with disabilities in accordance with standards established by the commission, regardless of the prices which the commission is able to obtain for the issuance of such licenses.

d. The terms and conditions for the public sale of licenses pursuant to this section shall explicitly provide that vehicles operated by or under agreement with the owners of such licenses shall be entitled to accept hails from passengers in the street in accordance with paragraph one of subdivision a of section 19-504 of this code.

**HISTORICAL NOTE**

Section amended (without laying out section heading) L.L. 18/2006 § 1,

eff. June 13, 2006.

Section added L.L. 51/2003 § 1, eff. July 16, 2003.



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***** Current through December 2009 ****

*NYC Administrative Code 19-533*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-533 Clean air taxis.

The commission shall approve one or more hybrid electric vehicle models for use as a taxicab within ninety days after the enactment of this law. The approved vehicle model or models shall be eligible for immediate use by all current and future medallion owners. For the purposes of this chapter, a hybrid electric vehicle shall be defined as a commercially available mass production vehicle originally equipped by the manufacturer with a combustion engine system together with an electric propulsion system that operates in an integrated manner.

**HISTORICAL NOTE**

Section amended L.L. 53/2006 § 1, eff. Dec. 18, 2006.

Section added L.L. 72/2005 § 2, eff. July 20, 2005. [See Note 1]

**NOTE**

1. Provisions of L.L. L.L. 72/2005:

Section 1. Declaration of legislative findings and intent. The Council of the City of New York hereby finds that use of alternative fuel vehicles is important to the City's goal of improving air quality and conserving fuel. The use of alternative fuel vehicles is especially appropriate with taxicabs, many of which operate 24 hours per day, spewing an enormous amount of emissions into the air.

The burning of fossil fuels is a major source of greenhouse gases that contribute to the growing problem of

global warming. Furthermore, fuel prices continue to escalate while our reliance on fossil fuels has also increased our dependence on foreign sources of oil. Therefore, it is important to encourage the use and development of alternative fuel vehicles, including hybrid electric vehicles, to increase fuel efficiency, reduce air pollution and lower our dependence on foreign oil.

The New York City Taxi and Limousine Commission has promulgated rules mandating specifications for taxicabs. These specifications, while important to passenger comfort, have prevented many promising alternative fuel vehicles, which do not meet specifications by minimal amounts, from being used as taxicabs. To further the City's policy of improving air quality and conserving fuel, this Council is enacting this law to designate certain alternative fuel vehicles to be used as taxicabs.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-534*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-534 Clean air and accessible taxicab and for-hire vehicle plan.

a. Definitions. For the purposes of this section only, the following terms shall have the following meanings:

(1) "Accessible vehicle" shall mean any taxicab or for-hire vehicle approved for use by the commission as a taxicab or for-hire vehicle that meets the specifications and requirements for accessible vehicles pursuant to the americans with disabilities act of 1990, as amended, and rules promulgated by the commission.

(2) "Clean air vehicle" shall mean any taxicab or for-hire vehicle approved for use by the commission that receives an air pollution score of 9.5 or higher from the United States environmental protection agency or its successor agency and is estimated to emit 5.0 tons or less of equivalent carbon dioxide per year by the United States department of energy or its successor agency; provided that such vehicle is powered by the fuel for which such vehicle meets the above-specified standards. In the event the test method used by the United States environmental protection agency or its successor agency for determining fuel economy is adjusted in a way that impacts United States department of energy or its successor agency estimates of equivalent carbon dioxide emissions for motor vehicles, the commission shall, for vehicles that fall within the affected model years, modify by rule the equivalent carbon dioxide emissions estimate included herein so as to appropriately reflect such adjustment's impact consistent with the intent of this section.

b. No later than one hundred eighty days after the effective date of this section, the commission shall develop and approve a plan to significantly increase the number of clean air and accessible vehicles in New York city. Such plan shall include, but not be limited to:

(1) a description of specific measures the commission will implement, or recommend to the mayor and the

council for implementation through local law, to increase the number of clean air and accessible vehicles and periodic goals for achieving such increases;

(2) a schedule, including interim and final milestones, for implementing such measures; and

(3) an education campaign regarding clean air and accessible vehicles that provides taxicab and for-hire vehicle owners and prospective owners with information regarding the availability, costs and savings, and benefits of such vehicles for such owners. Such information may include, but is not limited to: (i) for available clean air vehicle models: the fuel economy of such vehicles, as compared with other models typically used as taxicabs and for-hire vehicles in New York city; costs and savings associated with the purchase and use of such vehicles; the estimated air quality benefits associated with the use of such vehicles; and any available governmental and manufacturer incentives for the purchase of such vehicles; and (ii) for available accessible vehicle models: the fact that such vehicles can be used to serve specific clients that non-accessible vehicles cannot serve; costs and savings associated with the purchase of such vehicles; and any available governmental and manufacturer incentives for the purchase of such vehicles. Such information shall be posted on the commission's website and shall be provided to owners of taxicabs and for-hire vehicles upon issuance or renewal of a license in accordance with section 19-504 of this chapter; by sending such information directly to such owners with other commission documents and notices; during informational workshops open to all commission licensees; or in any other manner deemed appropriate by the commission.

c. The commission shall implement the plan developed and approved pursuant to subdivision b of this section.

d. The commission shall conduct or participate in at least one informational workshop regarding clean air and accessible vehicles in each of the two calendar years following the development and approval of the plan pursuant to subdivision b of this section.

e. The commission shall in every annual report submitted to the city council pursuant to section twenty three hundred two of the New York city charter, include the following information: (i) the implementation status of the measures included in the plan developed and approved pursuant to this section; (ii) the numbers of clean air and accessible vehicles in New York city, disaggregated by vehicle model, and how such numbers compare to those of the previous year and with the goals set forth in such plan; and (iii) to the extent practicable, the estimated air quality benefits and fuel savings associated with the use of each clean air vehicle model in operation as a taxicab or for-hire vehicle in New York city and the aggregate air quality benefits and fuel savings associated with the use of all such vehicles.

f. The commission shall establish a web page or pages or modify its existing website to make available information regarding clean air and accessible vehicles, which shall include, but not be limited to, the information provided pursuant to paragraph three of subdivision b of this section and the numbers of clean air and accessible vehicles in New York city, disaggregated by vehicle model, which shall be updated, at a minimum, every four months.

g. The commission shall annually review the plan required to be implemented pursuant to subdivision c of this section to determine, among other things, whether such plan has helped to increase the number of clean air and accessible vehicles and whether scheduled milestones and goals included in such plan have been met. The commission shall revise such plan as necessary to accomplish such goals.

**HISTORICAL NOTE**

Section added L.L. 53/2006 § 2, eff. Dec. 18, 2006.



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***** Current through December 2009 ****

*NYC Administrative Code 19-535*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-535 Extension of retirement periods for taxicabs.

a. Definitions. For the purposes of this section only, the following terms shall have the following meanings:

1. "Accessible taxicab" shall mean any vehicle approved for use by the commission as a taxicab that meets the specifications and requirements for accessible vehicles pursuant to the americans with disabilities act of 1990, as amended, and rules promulgated by the commission.

2. "Level one clean air taxicab" shall mean any vehicle approved for use by the commission as a taxicab that receives an air pollution score of 9.5 or higher from the United States environmental protection agency or its successor agency and is estimated to emit 5.0 tons or less of equivalent carbon dioxide per year by the United States department of energy or its successor agency; provided that such vehicle is powered by the fuel for which such vehicle meets the above-specified standards. In the event the test method used by the United States environmental protection agency or its successor agency for determining fuel economy is adjusted in a way that impacts United States department of energy or its successor agency estimates of equivalent carbon dioxide emissions for motor vehicles, the commission shall, for vehicles that fall within the affected model years, modify by rule the equivalent carbon dioxide emissions estimate included herein so as to appropriately reflect such adjustment's impact consistent with the intent of this section.

3. "Level two clean air taxicab" shall mean any vehicle approved by the commission for use as a taxicab that receives an air pollution score of 9.0 or higher from the United States environmental protection agency or its successor agency and is estimated to emit 6.4 tons or less of equivalent carbon dioxide per year by the United States department of energy or its successor agency and that does not meet the definition of a level one clean air taxicab pursuant to paragraph 2 of this subdivision; provided that such vehicle is powered by the fuel for which such vehicle meets the

above-specified standards. In the event the test method used by the United States environmental protection agency or its successor agency for determining fuel economy is adjusted in a way that impacts United States department of energy or its successor agency estimates of equivalent carbon dioxide emissions for motor vehicles, the commission shall, for vehicles that fall within the affected model years, modify by rule the equivalent carbon dioxide emissions estimate included herein so as to appropriately reflect such adjustment's impact consistent with the intent of this section.

b. Extension of retirement period. 1. The retirement period for any accessible taxicab or level one clean air taxicab shall be extended by two years beyond the applicable standard retirement period for taxicabs established pursuant to rule of the commission; provided that the retirement period for any such taxicab that must be retired and replaced pursuant to rules of the commission no later than thirty-six months after the vehicle is hacked up, shall be extended by one year beyond the applicable standard retirement period for taxicabs established pursuant to rule of the commission. The two-year extension period established pursuant to this paragraph shall also apply to any vehicle, as specified by rule of the commission, which is not a level one clean air taxicab as defined in this section, but which meets or exceeds the standards established pursuant to paragraph 2 of subdivision a of this section.

2. The retirement period for any level two clean air taxicab shall be extended by one year beyond the applicable standard retirement period for taxicabs established pursuant to rule of the commission.

3. The commission may modify the extended retirement period established pursuant to this subdivision for any taxicab where such vehicle does not pass two of the inspections, not including reinspections, conducted at the commission's inspection facility pursuant to section 19-504 of this chapter in the twelve-month period immediately preceding the time at which such vehicle would otherwise be required to be retired pursuant to rule of the commission, or where such vehicle does not pass an inspection conducted at the commission's inspection facility pursuant to section 19-504 of this chapter after the time at which such vehicle would otherwise be required to be retired pursuant to rule of the commission.

c. Nothing contained herein shall affect the authority of the commission pursuant to subdivision f of section 19-504 of this chapter to order an owner to repair or replace a licensed vehicle where it appears that such vehicle no longer meets the reasonable standards for safe operation prescribed by the commission.

**HISTORICAL NOTE**

Section added L.L. 52/2006 § 1, eff. Apr. 17, 2007. [See Note 1]

**NOTE**

1. Provisions of L.L. L.L. 52/2006:

§ 2. This local law shall take effect one hundred twenty days after its enactment into law, provided that the commission may promulgate any rules and take any other actions as shall be necessary for the timely implementation of this local law prior to such effective date; provided further that this local law shall be deemed repealed for any new vehicle placed into service seven years after such law's effective date.



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***** Current through December 2009 ****

*NYC Administrative Code 19-536*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-536 Clean air vehicle labeling and information.

a. For the purposes of this section, the term "clean air vehicle" shall mean any taxicab approved for use by the commission that receives an air pollution score of 9.0 or higher from the United States environmental protection agency or its successor agency and is estimated to emit 6.4 tons or less of equivalent carbon dioxide per year by the United States department of energy or its successor agency; provided that such vehicle is powered by the fuel for which such vehicle meets the above-specified standards. In the event the test method used by the United States environmental protection agency or its successor agency for determining fuel economy is adjusted in a way that impacts United States department of energy or its successor agency estimates of equivalent carbon dioxide emissions for motor vehicles, the commission shall, for vehicles that fall within the affected model years, modify by rule the equivalent carbon dioxide emissions estimate included herein so as to appropriately reflect such adjustment's impact consistent with the intent of this section.

b. The commission shall develop and provide information to each owner of a clean air vehicle, which shall be made available for viewing in each such vehicle in a manner that is clearly apparent to a passenger located in the back seat of such vehicle, and which (i) identifies such vehicle as a clean air vehicle; (ii) includes the address of the commission web page(s) required to be established pursuant to section 19-534 of this chapter; and (iii) includes, to the extent practicable, the estimated air quality benefits associated with the use of such vehicle and the type of fuel used to power such vehicle.

**HISTORICAL NOTE**

Section added L.L. 54/2006 § 2, eff. June 16, 2007.

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***** Current through December 2009 ****

*NYC Administrative Code 19-537*

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Title 19 Transportation

CHAPTER 5 TRANSPORTATION OF PASSENGERS FOR HIRE BY MOTOR VEHICLES

§ 19-537 Passengers' bills of rights.

a. For the purposes of this section, the term "livery" shall have the same meaning as defined under Title 35, § 6-01 of the rules of the city of New York.

b. Every owner of a taxicab or livery shall post passengers' bill of rights in at least one conspicuous location in the rear passenger compartment of such taxicab or livery in a form and location to be prescribed by commission rule.

c. The taxicab passengers' bill of rights shall state passengers' rights to:

(1) pay for a ride with credit/debit card subject to taxi and limousine commission rules;

(2) go to any destination in New York city, Westchester county, Nassau county or Newark airport;

(3) a car that is in good condition and has passed all required inspections;

(4) a properly licensed driver in good standing, with the commission-issued driver's license information on display;

(5) direct the route taken;

(6) a safe and courteous driver who obeys all traffic laws;

(7) a knowledgeable driver who speaks english and is familiar with city geography;

(8) air conditioning or heat on request;

(9) a quiet trip free of horn honking or radio or other music playing;

(10) clean air, which is smoke and scent free;

(11) working seatbelts;

(12) a clean vehicle, both inside and outside;

(13) be accompanied by a service animal;

(14) a driver who does not use a cell phone (hand-held or hands free) while driving; and

(15) decline to tip for poor service.

d. The livery passengers' bill of rights shall state passengers' rights to: (1) a car that is in good condition and has passed all required inspections; (2) a properly licensed driver in good standing, with the commission-issued driver's license information on display;

(3) a safe and courteous driver who obeys all traffic laws;

(4) a quiet trip free of horn honking or radio or other music playing;

(5) clean air that is smoke and scent free;

(6) working seatbelts;

(7) air conditioning or heat on request;

(8) be accompanied by a service animal;

(9) pay a pre-approved fare quoted by the dispatcher;

(10) a driver who does not use a cell phone (hand-held or hands free) while driving; and

(11) decline to tip for poor service.

e. In addition to the rights specified in subdivisions c and d of this section, each passengers' bill of rights shall include a statement of passengers' rights regarding fares and payment and regarding the lodging of passenger complaints and compliments. The content of such statement shall be prescribed by commission rule.

f. The commission may by rule provide for additional rights to be stated in any passengers' bill of rights.

**HISTORICAL NOTE**

Section added L.L. 12/2009 § 1, eff. June 26, 2009.



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***** Current through December 2009 ****

*NYC Administrative Code 19-601*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 6 SCHOOL BUSES

§ 19-601 Safety measures on school buses; declaration and findings.

The council hereby finds that a serious emergency exists as to the safety of handicapped children transported to and from schools in school buses and other vehicles. Handicapped school children have been grievously injured, maimed and killed due to lack of seat belts and guards or escorts on school buses. The council finds that in order to prevent further tragedies to our handicapped school children the provisions of this section are declared necessary and are designed to protect, the safety, health and general welfare of our school children.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § Z51-2.0 added LL 13/1971 § 1



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-602*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 6 SCHOOL BUSES

§ 19-602 Seat belts.

All buses or other motor vehicles engaged in the business of transporting handicapped children to and from schools in the city shall be equipped with seat belts for each seat on such a bus, or other safety appliances prescribed by the national bureau of standards or other authorized governmental agencies promulgating rules relating to auto safety.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § Z51-2.1 added LL 13/1971 § 1



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-603*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 6 SCHOOL BUSES

§ 19-603 Escorts.

a. All buses and other motor vehicles transporting handicapped children to and from school in the city shall be staffed, in addition to the driver thereof, with an escort. It shall be the duty and responsibility of such escort to generally supervise and aid the handicapped children riding such bus; to require each child to utilize a seat belt or other safety device and to escort the children on and off each bus to an area of safety.

b. The driver of a bus transporting children to and from school in the city shall not proceed after having halted such bus to take on or discharge a passenger until he or she has received assurance from the escort that the children are seated, have fastened the safety belt on the seat and that it is otherwise safe to proceed.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § Z51-2.2 added LL 13/1971 § 1



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-604*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 6 SCHOOL BUSES

§ 19-604 Dual opening doors.

All buses transporting handicapped children in the city, after September first, nineteen hundred seventy-five, shall be equipped with dual opening doors so that said doors shall open from no less than two sides of the motor vehicle.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § Z51-2.3 added LL 13/1971 § 1

Amended LL 49/1974 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Board of Education was not required to include in its bid specification for new contracts a requirement that all buses transporting handicapped children to school be equipped with dual door openings where contract required that all vehicles used in transportation operations comply with all federal, state and city laws applicable to the contract.-Varsity Transit, Inc. v. Saporita, 98 Misc. 2d 255 [1979].

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***** Current through December 2009 ****

*NYC Administrative Code 19-605*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 6 SCHOOL BUSES

§ 19-605 Air-conditioning.

a. Any bus or other motor vehicle transporting a child with a disability to and from a school in the city pursuant to any agreement or contract shall be air-conditioned when the ambient outside temperature exceeds seventy degrees Fahrenheit. Drivers of all such vehicles shall utilize such air conditioning systems in order to make the internal climate of such vehicles comfortable to passengers in order to protect or enhance the health of children with disabilities. Any failure, mechanical or otherwise, of an air-conditioning system required by this section shall be repaired and restored to operable condition as soon as is practicable, but in no event more than three business days subsequent to the failure. For purposes of this section, "child with a disability" shall mean a child with a disability as defined in section 4401(1) of the education law who requires an air-conditioned environment for health reasons.

b. The penalty provisions set forth in section 19-607 of this chapter shall not apply to any violation of the provisions of this section. Any owner, operator or contractor responsible for transporting a child with a disability to and from a school in the city pursuant to any agreement or contract shall be liable for a civil penalty of four hundred dollars for each violation of this section.

**HISTORICAL NOTE**

Section added L.L. 63/2003 § 2, eff. Apr. 26, 2004.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-606*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 6 SCHOOL BUSES

§ 19-606 School bus service.

a. Except as provided in subdivisions d, e and f of this section, no student shall be allowed to board a school bus operated by or pursuant to a contract with the board of education unless a seat is available for the student.

b. The board of education shall prepare and, when necessary, revise two school bus service plans annually to ensure that all students eligible to receive school bus service to and from the schools they legally attend shall be provided with a seat on a school bus. One plan shall relate to school bus service to be provided during the session of the school year beginning in September and ending in June and one plan shall relate to school bus service to be provided during a summer school session. Each plan shall be prepared prior to the first day of the session of the school year to which it relates and shall include the following information: (i) the criteria used by the board of education to determine whether a student is eligible to receive school bus service; (ii) for each school, a summary description of the school bus routes servicing the school; (iii) for each school bus route, the number of students eligible to ride on the school bus operating on the route and the maximum seating capacity of such school bus; and (iv) any other information the board of education deems relevant. Upon completion of the plans, they shall be submitted to the mayor and the speaker of the city council.

c. If at any time during any session of a school year the number of students eligible to ride on a school bus operating on a particular school bus route exceeds the maximum seating capacity of the school bus operating on such route, the board of education shall revise the affected school bus service plan, and take all steps necessary to ensure that all students eligible to receive school bus service are provided with a seat on a school bus. A revised plan shall identify any changes to the information provided pursuant to paragraphs (i), (ii), (iii) and (iv) of subdivision b of this section and, in addition, shall describe, for each school bus route affected by the revision, the steps taken to ensure that the

number of students eligible to ride on a school bus operating on a particular school bus route does not exceed the maximum seating capacity of the school bus operating on such route. Upon completion of a revised plan, it shall be submitted to the mayor and the speaker of the city council.

d. Not later than ten days prior to the first day of the session of the school year beginning in September, and not later than ten days prior to the first day of a summer school session, the board of education shall prepare, and provide to each bus company that will be transporting students to or from school, lists of students eligible to ride on the school buses operating on the school bus routes serviced by such bus company. A separate list shall be compiled for each school bus route. Each list shall identify each eligible student by name, school bus stop and school, but shall not contain any other information relating to such student. The board of education shall require that bus companies provide to bus drivers the list appropriate for each school bus route. The board of education shall prepare, and promptly provide to each bus company, revised and updated lists that reflect any changes necessary to comply with the requirements of this section. All students listed as eligible to receive school bus service on a particular school bus route shall be entitled to board the school bus operating on such route. During transport to school at the beginning of the regular school day, students not listed as eligible to receive school bus service on a particular school bus route shall not be allowed to board the school bus operating on such route, provided, however, that where such students waiting to board such school bus are not accompanied by an adult, the bus driver shall allow such students to board such school bus. During transport from school at the close of the regular school day, students not listed as eligible to receive school bus service on a particular school bus route shall not be allowed to board the school bus operating on such route unless authorized to do so by personnel assigned by the principal pursuant to subdivision e of this section.

e. The principal of each school to or from which students are transported by school bus shall assign personnel to monitor students exiting school buses at the beginning of the regular school day and boarding school buses at the close of the regular school day. Such personnel shall be provided with the same lists provided to bus drivers pursuant to subdivision d of this section. Such personnel shall: (i) at the close of the regular school day, determine whether to allow a student not listed as eligible to receive school bus service on a particular school bus route to board the school bus operating on such route; (ii) notify the parent or legal guardian of such student that he or she has been or may be prohibited from boarding a school bus; (iii) provide the parent or legal guardian with the name, address and telephone number of the office responsible for determining whether a student is eligible to receive school bus service; (iv) for each school bus, maintain a record of students not listed as eligible who exit or board the bus; and (v) determine whether information regarding such students should be referred to the office responsible for determining whether a student is eligible to receive school bus service and, where appropriate, report such information to such office. The information reported to such office, together with such other relevant information available to the board of education, shall be considered in determining whether and how to revise the affected school bus service plan and revise and update the lists of eligible students in accordance with subdivisions c and d of this section.

f. Notwithstanding any other provision of this section to the contrary, during the first ten days of the session of the school year beginning in September and during the first ten days of a summer school session, a student waiting at a school bus stop to board a school bus transporting students to the school attended by the student may be allowed to board the school bus, whether or not such student is listed as eligible to receive school bus service on that school bus route and, at the close of the regular school day, may be allowed to board the school bus stopping at such school bus stop.

g. The provisions of this section shall apply only to those school buses operated by or pursuant to a contract with the board of education.

**HISTORICAL NOTE**

Section added L.L. 48/2000 § 1, eff. Aug. 9, 2000.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-607*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 6 SCHOOL BUSES

§ 19-607 Penalty.

Any person, firm or corporation who shall violate the provisions of this chapter shall be punished by a fine of five hundred dollars, or by imprisonment not to exceed three months or by both such fine and imprisonment.

**HISTORICAL NOTE**

Section renumbered (former § 19-605) and amended L.L. 63/2003 § 1,

eff. Apr. 26, 2004.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § Z51-2.4 added LL 13/1971 § 1



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-701*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 7 ACCESSIBLE WATER BORNE COMMUTER SERVICES FACILITIES TRANSPORTATION ACT*8

§ 19-701 Short title.

This chapter shall be known and may be cited as the "Accessible Water Borne Commuter Services Facilities Transportation Act".

**HISTORICAL NOTE**

Section added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however,

that all water borne commuter services facilities shall satisfy all

provisions of the local law that added this chapter no later than

December 31, 2008.

**FOOTNOTES**

8

[Footnote 8]: * Chapter 7 added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however, that all water borne commuter services facilities shall satisfy all provisions of the local law that added this chapter no later than December 31, 2008.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 19-702*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 7 ACCESSIBLE WATER BORNE COMMUTER SERVICES FACILITIES TRANSPORTATION ACT*8

§ 19-702 Legislative findings and intent.

The Council hereby finds that the city of New York's water borne commuter services facilities are not uniformly accessible to disabled persons. This is a matter of serious concern affecting the public safety and welfare. The Council believes that there is an immediate need for regulation of water borne commuter services in order to enable disabled members of the public to have access to such services on an equal basis with non-disabled persons. The Council believes that under the Americans with Disabilities Act (ADA), disabled persons have the right to access commuter transportation services on an equal and non-discriminatory basis. However, the Council finds that no federal or state laws, rules or regulations are in effect that establish specific standards regarding access by disabled persons to water borne commuter services facilities in the city or the safety of such persons when utilizing such facilities. As a result, disabled persons in the city of New York are not assured that they can safely and consistently access water borne commuter services facilities. This legislation sets specific standards in relation to mandating accessible water borne commuter services facilities for disabled persons, thereby minimizing the tremendous and unfair burden placed on disabled persons who rely on these services.

The Council further finds that the city's transportation needs and system are unique in that, unlike many other cities, major waterways are interspersed throughout the greater New York city area, resulting in residential concentrations that are in many instances separated by water from major centers of employment. Consequently, the city historically has had an extensive passenger ferry system. Furthermore, because of increasing levels of traffic congestion and air pollution, and concerns regarding the threat of terrorism to other modes of transportation, the city is rapidly developing an increasingly expansive system of passenger ferry transportation. The Council finds that it is imperative that such development results in water borne commuter services facilities that are accessible to all persons.

**HISTORICAL NOTE**

Section added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however,

that all water borne commuter services facilities shall satisfy all

provisions of the local law that added this chapter no later than

December 31, 2008.

**FOOTNOTES**

8

[Footnote 8]: * Chapter 7 added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however, that all water borne commuter services facilities shall satisfy all provisions of the local law that added this chapter no later than December 31, 2008.

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*NYC Administrative Code 19-703*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 7 ACCESSIBLE WATER BORNE COMMUTER SERVICES FACILITIES TRANSPORTATION ACT*8

§ 19-703 Definitions.

For purposes of this chapter, the following terms shall be defined as follows:

a. "Accessible route" has the meaning set forth in section 19-705.

b. "ADA" means the Americans with Disabilities Act, title 42 of the United States code annotated section 12101 et seq.

c. "Coaming" means the vertical plating bounding a hatch or located at the base of a door for the purpose of stiffening the edges of the opening and resisting entry of water.

d. "Disabled persons" means persons with physical disabilities, including but not limited to mobility impairments, sight impairments, hearing impairments and speech impairments, and further includes persons utilizing a service animal or wheelchair or other physical mobility aid.

e. "Gangway" means a pedestrian walkway that changes slope to accommodate changes in water level, linking a fixed structure or land with a barge, float, dock or other floating structure except a water borne commuter vessel.

f. "Operator" means any person or private or governmental entity that owns or operates a water borne commuter services facility.

g. "Passenger" means every person other than the captain and crew on board a water borne commuter vessel.

h. "Point of embarkation or disembarkation" means any portal point of entry or exit onto or off of a water borne commuter vessel, or into or out of the main cabin area of such water borne commuter vessel.

i. "Transition plate" means any sloping pedestrian walking surface located at the end of a gangway, vessel loading equipment, point of embarkation or disembarkation or coaming.

j. "Vessel loading equipment" means any piece of equipment or assembly of equipment, whether or not such equipment requires operation by water borne commuter services facility personnel, that may be located on a water borne commuter vessel or located on a landing, that bridges from a water borne commuter vessel to a barge, float, dock or other floating structure or landing, the purpose of which is to accommodate the differences in elevation between such water borne commuter vessel and such barge, float, dock or other floating structure or landing.

k. "Water borne commuter services facility" means any dock, pier, slip or terminal located within the city of New York or its territorial waters and utilized by a water borne commuter vessel, as well as water borne commuter vessels and any concession, ticket purchasing or other facility or amenity available at or on such dock, pier, slip, terminal or water borne commuter vessel.

l. "Water borne commuter vessel" means every description of water craft operating within the city of New York or its territorial waters, including commuter ferries but excluding seaplanes, that is used as a means of commuter passenger mass transportation by water.

**HISTORICAL NOTE**

Section added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however,

that all water borne commuter services facilities shall satisfy all

provisions of the local law that added this chapter no later than

December 31, 2008.

**FOOTNOTES**

8

[Footnote 8]: * Chapter 7 added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however, that all water borne commuter services facilities shall satisfy all provisions of the local law that added this chapter no later than December 31, 2008.



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***** Current through December 2009 ****

*NYC Administrative Code 19-704*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 7 ACCESSIBLE WATER BORNE COMMUTER SERVICES FACILITIES TRANSPORTATION ACT*8

§ 19-704 Scope.

All water borne commuter services facilities located or operating within the city of New York or its territorial waters shall be accessible to disabled persons as provided in this chapter.

**HISTORICAL NOTE**

Section added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however,

that all water borne commuter services facilities shall satisfy all

provisions of the local law that added this chapter no later than

December 31, 2008.

**FOOTNOTES**

8

[Footnote 8]: * Chapter 7 added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however, that all water borne commuter services facilities shall satisfy all provisions of the local law that added this chapter no later than December 31, 2008.



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***** Current through December 2009 ****

*NYC Administrative Code 19-705*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 7 ACCESSIBLE WATER BORNE COMMUTER SERVICES FACILITIES TRANSPORTATION ACT*8

§ 19-705 Accessible route.

Except as may otherwise be set forth herein, there shall be at least one accessible route (i) to, (ii) into, (iii) onto and (iv) throughout any water borne commuter services facility consisting of a continuous, firm, stable and slip-resistant path that is maintained free of ice and snow; provided, however, that except as may be required pursuant to federal or state law, rule or regulation, no water borne commuter services facility shall be required to modify or install an elevator in order to satisfy the requirements of this chapter. No accessible route may have any vertical steps or rises greater than 1/2 inch unless made accessible by ramps, gangways or transition plates complying with this section. No accessible route may require that use thereof or accessibility thereto be conditioned upon prearrangement except to the extent a ticket must be purchased or fare must be paid. An accessible route shall provide or satisfy the following additional criteria, as applicable:

a. Points of embarkation and disembarkation. Each point of embarkation and disembarkation shall provide or satisfy each of the following criteria:

1. A minimum clear width of 36 inches, exclusive of any bulwarks, lifelines, deck rails and toe rails; provided, however, that where the main deck area of a water borne commuter vessel is less than 3,000 square feet, such clear width shall be at least 32 inches, exclusive of any bulwarks, lifelines, deck rails and toe rails.

2. Doors and doorways with a minimum width of 32 inches; provided, however, that any projections into such clear opening shall be mounted at least 34 inches above the finished deck surface; and provided, further, that any projections situated 34 inches or higher than the finished deck surface and 80 inches or lower from the finished deck surface shall not exceed 4 inches.

3. Transition plates or ramps with a maximum slope of 1:12, or as close thereto as is feasible for access to water borne commuter vessels and the inner cabins of such vessels that have steps or coamings leading into such cabins; provided, however, that such transition plates and ramps may be removable. With respect to water borne commuter vessels designed or constructed after the date of enactment of the local law that added this chapter, removable coamings shall be utilized where feasible and permitted by the United States Coast Guard, pursuant to title 14 of the United States code or any rules or regulations promulgated pursuant thereto.

4. Notwithstanding anything to the contrary contained herein, wherever there are multiple points of embarkation or disembarkation, and two or more such points are simultaneously utilized at any given docking, only one such point need comply with the provisions of this section.

b. Gangways. Gangways shall provide or satisfy each of the following criteria:

1. Handrails on each side.

2. A minimum clear width of 36 inches, which width shall be measured between the inside edges of handrails.

3. A maximum running slope of 1:12 and a maximum cross slope of 1:48, subject to reasonable and minor variations under extreme and unusual tidal conditions.

4. Edge protection on each side.

5. A design that ensures that no water will accumulate on walking surfaces.

6. A rise which may exceed 30 inches.

7. A length which may exceed 30 feet between level landings; provided, however, that such slope may not exceed 1:12 subject to reasonable and minor variations under extreme and unusual tidal conditions.

c. Transition plates. Transition plates shall provide or satisfy each of the following criteria:

1. A maximum slope of 1:12.

2. A minimum clear width of 36 inches.

3. Handrails on each side, where the length of a transition plate exceeds 24 inches.

4. The transition from the deck to the transition plate may be vertical without edge treatment up to $^1/_4$ inch. Changes in level between $^1/_4$ inch and $^1/_2$ inch shall be beveled with a slope no greater than 1:2.

5. Transition plates that are 36 inches or less in length shall support a minimum load of 300 lbs. Transition plates that are greater than 36 inches in length shall support a minimum load of 100 lbs. per square foot.

d. On board maneuvering space and clear paths. On board maneuvering space and clear paths shall provide or satisfy each of the following criteria: 1. An on board maneuvering space shall be provided adjacent to the accessible opening in the bulwarks, lifelines, deck rails or toe rails which is either (i) 60 inches minimum by 60 inches minimum or (ii) 42 inches minimum in depth and starting at one side of the opening and extending 80 inches minimum in width across the opening (see figure 1, L-Shaped Space, as set forth in this subdivision).

2. At least one clear path of at least 32 inches in width shall run from each point of embarkation and disembarkation to all facilities available to the general public on the level of such water borne commuter services vessel where such point of embarkation or disembarkation is located.

FIGURE 1

e. Clear deck spaces. Clear deck spaces shall provide or satisfy each of the following criteria:

1. Measure at least 30 inches by at least 48 inches for placement of wheelchairs, exclusive of legroom for other passengers. Such clear spaces may also be provided in the form of readily folding or removable seats.

2. A tie down system that complies with subdivision (f) of this section.

3. The number of clear deck spaces shall be provided in accordance with Table 1 of this subdivision and shall be dispersed throughout the water borne commuter vessel's passenger areas; provided, however, that at least one such space shall be provided on any outdoor passenger area on water borne commuter vessels with a passenger capacity of 101 or more.

Table 1. Clear Deck Spaces

| Passenger capacity of water borne commuter vessel | Minimum Number |
|---|---|
| 0 to 100 | 2 |
| 101 to 149 | 4 |
| 150 and above | 6 |

4. This subdivision does not apply to spaces reachable only by vertical or inclined ladder.

f. Tie-down systems. Tie-down systems for securing wheelchairs within water borne commuter vessels shall provide or satisfy each of the following criteria:

1. Each tie-down system shall consist of any tie-down system acceptable for taxi, van or bus transportation as provided under the United States department of transportation regulations or four d-rings securely fastened to the deck.

2. Where d-rings are used, lashings, also known as marine-strength quality rope, shall be provided to secure a wheelchair to the d-rings.

3. Security belts for securing disabled persons in their wheelchairs for use by disabled persons at their discretion.

g. Toilet rooms. Where one or more toilet rooms are provided on a water borne commuter vessel at least one such toilet room shall provide or satisfy each of the following criteria:

1. An entry door with a clear width of at least 32 inches that is capable of being opened and closed by the occupant.

2. A maneuvering space of at least 48 inches in depth and at least 80 inches in width outside the entry door (see figure 1, subdivision (d)); provided, however, that where the entry door has a clear width of at least 42 inches, the maneuvering space at the door shall be at least 32 inches by 48 inches.

3. A horizontal grab bar at least 24 inches in length and located 33 inches to 36 inches above the finished deck surface and adjacent to the toilet; provided, however, that this requirement shall not apply to those water borne commuter vessels the deck length of which is 48 feet or less.

4. A toilet positioned 17 inches to 19 inches above the finished deck surface, measured to the top of the toilet seat.

5. Clear deck space of at least 30 inches by at least 48 inches adjacent to the toilet.

6. Notwithstanding anything to the contrary contained herein, any water borne commuter vessel with a passenger capacity of 1000 or more persons currently scheduled to be decommissioned before November 1, 2005 shall be exempt from the requirements of this subdivision.

h. Vessel loading equipment. Vessel loading equipment shall provide or satisfy each of the following criteria:

1. A maximum slope of 1:12 where feasible; provided, however, that where achieving such a maximum slope is not feasible, any vessel loading equipment exceeding such slope shall comply with the following additional criteria:

(i) A slope no greater than 1:10.

(ii) Must be designed and operated such that disabled persons are able to embark onto and disembark from a water borne commuter vessel without water borne commuter services facilities personnel pushing, carrying, pulling, lifting or otherwise physically handling disabled persons.

2. Deck surfaces that do not have protrusions from the surface greater than $^1/_4$ inch.

3. No opening along the bottom surface shall permit passage of a $^1/_2$ inch diameter sphere. Elongated openings shall be placed so that the long dimension is perpendicular to the predominant direction of travel.

4. Handrails on each side.

5. A minimum clear width of 36 inches, which width shall be measured between the inside edges of handrails; provided, however, that where vessel loading equipment leads directly to a point of embarkation or disembarkation that is permitted to be 32 inches in width under the terms of this chapter, such vessel loading equipment may narrow to a width of 32 inches at that end that abuts such 32 inch point of embarkation or dis- embarkation.

6. Edge protection on each side.

7. Any vessel loading equipment that is 30 inches or longer in length shall support a minimum load of 600 lbs. placed at the center of such vessel loading equipment and distributed over an area of 26 inches by 26 inches, with a safety factor of at least 3 based on the ultimate strength of the material. Vessel loading equipment shorter than 30 inches shall support a minimum load of 300 lbs.

**HISTORICAL NOTE**

Section added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however,

that all water borne commuter services facilities shall satisfy all

provisions of the local law that added this chapter no later than

December 31, 2008.

**FOOTNOTES**

8

[Footnote 8]: * Chapter 7 added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however, that all water borne commuter services facilities shall satisfy all provisions of the local law that added this chapter no later

than December 31, 2008.



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***** Current through December 2009 ****

*NYC Administrative Code 19-706*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 7 ACCESSIBLE WATER BORNE COMMUTER SERVICES FACILITIES TRANSPORTATION ACT*8

§ 19-706 Posting of schedules, rates, departure and arrival information and complaint number.

a. All schedules, rates, departure and arrival information shall be posted in accordance with the ADA.

b. Wherever there may be multiple points of embarkation onto a water borne commuter vessel, operators of water borne commuter services facilities shall prominently post signage and make regular announcements notifying passengers of which point of embarkation is part of an accessible route for each boarding.

c. Operators of water borne commuter services facilities shall post a sign to be prominently displayed at the ticket counter as well as inside each water borne commuter vessel in accordance with the ADA and stating the following:

"ANY COMPLAINTS REGARDING THE ACCESSIBILITY OF THIS FACILITY TO DISABLED PERSONS MAY BE REPORTED TO THE CITY OF NEW YORK BY DIALING 311."

**HISTORICAL NOTE**

Section added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however,

that all water borne commuter services facilities shall satisfy all

provisions of the local law that added this chapter no later than

December 31, 2008.

**FOOTNOTES**

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[Footnote 8]: * Chapter 7 added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however, that all water borne commuter services facilities shall satisfy all provisions of the local law that added this chapter no later than December 31, 2008.



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***** Current through December 2009 ****

*NYC Administrative Code 19-707*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 7 ACCESSIBLE WATER BORNE COMMUTER SERVICES FACILITIES TRANSPORTATION ACT*8

§ 19-707 Transportation to and from water borne commuter services facilities.

a. Seventy-five percent of all buses and vans operated, sponsored, chartered, leased or otherwise placed into operation within the city of New York by water borne commuter services facilities operators or their affiliates as of the date of enactment of the local law that added this chapter shall meet the standards for accessibility for new vehicles as set forth in department of transportation regulations at title 49 of the code of federal regulations, part 38, subpart B by March 1, 2007.

b. One hundred percent of all buses and vans operated, sponsored, chartered, leased or otherwise placed into operation within the city of New York by water borne commuter services facilities operators or their affiliates as of the date of enactment of the local law that added this chapter shall meet the standards for accessibility for new vehicles as set forth in department of transportation regulations at title 49 of the code of federal regulations, part 38, subpart B by December 31, 2008.

c. Buses and vans purchased or newly chartered or leased by water borne commuter services facilities operators or their affiliates after the date of enactment of the local law that added this chapter shall meet the standards for accessibility for new vehicles, as set forth in department of transportation regulations at title 49 of the code of federal regulations, part 38, subpart B.

**HISTORICAL NOTE**

Section added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however,

that all water borne commuter services facilities shall satisfy all

provisions of the local law that added this chapter no later than

December 31, 2008.

**FOOTNOTES**

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[Footnote 8]: * Chapter 7 added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however, that all water borne commuter services facilities shall satisfy all provisions of the local law that added this chapter no later than December 31, 2008.



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***** Current through December 2009 ****

*NYC Administrative Code 19-708*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 7 ACCESSIBLE WATER BORNE COMMUTER SERVICES FACILITIES TRANSPORTATION ACT*8

§ 19-708 Safety and training.

Operators shall ensure that an appropriate number of water borne commuter services facility personnel, and in no event less than one such person, be aboard each water borne commuter vessel during all crossings who are trained in appropriate safety and evacuation procedures for disabled persons.

**HISTORICAL NOTE**

Section added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however,

that all water borne commuter services facilities shall satisfy all

provisions of the local law that added this chapter no later than

December 31, 2008.

**FOOTNOTES**

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[Footnote 8]: * Chapter 7 added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however, that all water borne commuter services facilities shall satisfy all provisions of the local law that added this chapter no later

than December 31, 2008.



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***** Current through December 2009 ****

*NYC Administrative Code 19-709*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 7 ACCESSIBLE WATER BORNE COMMUTER SERVICES FACILITIES TRANSPORTATION ACT*8

§ 19-709 Enforcement.

The commission on human rights shall enforce the provisions of this chapter pursuant to the adjudication and mediation provisions as set forth in chapter 1 of title 8 of the administrative code of the city of New York.

**HISTORICAL NOTE**

Section added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however,

that all water borne commuter services facilities shall satisfy all

provisions of the local law that added this chapter no later than

December 31, 2008.

**FOOTNOTES**

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[Footnote 8]: * Chapter 7 added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however, that all water borne commuter services facilities shall satisfy all provisions of the local law that added this chapter no later than December 31, 2008.



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***** Current through December 2009 ****

*NYC Administrative Code 19-710*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 7 ACCESSIBLE WATER BORNE COMMUTER SERVICES FACILITIES TRANSPORTATION ACT*8

§ 19-710 Violations.

a. Any violation of any provision of this chapter or any rules promulgated hereto shall be liable for a civil penalty of not less than two hundred and fifty dollars per violation per day for every day that such violation occurs until such violation is remedied or removed.

b. Penalties imposed pursuant to this section shall not affect any right or remedy available or civil or criminal penalty applicable under law to any individual or entity, or in any way diminish or reduce the remedy or damages recoverable in any action in equity or law before a court of law with competent jurisdiction.

**HISTORICAL NOTE**

Section added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however,

that all water borne commuter services facilities shall satisfy all

provisions of the local law that added this chapter no later than

December 31, 2008.

**FOOTNOTES**

8

[Footnote 8]: * Chapter 7 added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however, that all water borne commuter services facilities shall satisfy all provisions of the local law that added this chapter no later than December 31, 2008.

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*NYC Administrative Code 19-711*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 7 ACCESSIBLE WATER BORNE COMMUTER SERVICES FACILITIES TRANSPORTATION ACT*8

§ 19-711 Reporting requirements.

The department, the commission on human rights and operators of any water borne commuter services facility each shall provide the mayor and the city council with a semiannual report by January thirty-first and July first of each year setting forth information regarding compliance and non-compliance with this chapter at each water borne commuter services facility, as applicable, regulated pursuant to this chapter. Such information shall include, but not be limited to, any violations, fines, complaints reported to the city of New York 311 Citizen Service Center or otherwise reported to the department, the commission on human rights or operators of any water borne commuter services facility, litigation instituted as a result of the provisions of this chapter and a detailed description of safety and training procedures implemented pursuant to section 19-708 of this chapter.

**HISTORICAL NOTE**

Section added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however,

that all water borne commuter services facilities shall satisfy all

provisions of the local law that added this chapter no later than

December 31, 2008.

**FOOTNOTES**

8

[Footnote 8]: * Chapter 7 added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however, that all water borne commuter services facilities shall satisfy all provisions of the local law that added this chapter no later than December 31, 2008.

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***** Current through December 2009 ****

*NYC Administrative Code 19-712*

Administrative Code of the City of New York

Title 19 Transportation

CHAPTER 7 ACCESSIBLE WATER BORNE COMMUTER SERVICES FACILITIES TRANSPORTATION ACT*8

§ 19-712 Severability.

If any section, subdivision, sentence, clause, phrase or other portion of the local law that added this chapter is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that added this chapter, which remaining portions shall continue in full force and effect.

**HISTORICAL NOTE**

Section added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however,

that all water borne commuter services facilities shall satisfy all

provisions of the local law that added this chapter no later than

December 31, 2008.

**FOOTNOTES**

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[Footnote 8]: * Chapter 7 added L.L. 68/2005 § 1, eff. July 20, 2005; provided, however, that all water

borne commuter services facilities shall satisfy all provisions of the local law that added this chapter no later than December 31, 2008.

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***** Current through December 2009 ****

*NYC Administrative Code 20-101*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-101 Legislative intent.

The council finds that for the protection and relief of the public from deceptive, unfair and unconscionable practices, for the maintenance of standards of integrity, honesty and fair dealing among persons and organizations engaging in licensed activities, for the protection of the health and safety of the people of New York city and for other purposes requisite to promoting the general welfare, licensing by the department of consumer affairs is a necessary and proper mode of regulation with respect to certain trades, businesses and industries. The council finds further that, in order to secure the above-mentioned purposes, and generally to carry out responsibilities for supervising and regulating licensed activities, trades, businesses and industries, the commissioner of consumer affairs requires powers, remedies and sanctions which are equitable, flexible and efficient. Finally, the council finds that sanctions and penalties applied by the commissioner and by the courts for the violation of laws and regulations by individuals and organizations engaging in various licensed activities, trades, businesses and industries, must be sufficient to achieve these above-mentioned purposes of licensing.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 773-1.0 added LL 20/1973 § 1

**CASE NOTES**

¶ 1. The New York City Dept. of Consumer Affairs (DCA) is charged with the maintenance of standards of honesty, integrity and fair dealing among persons engaging in licensed activities. Under § 20-104, DCA is authorized to impose penalties for violation of any provision of law the enforcement of which is within the jurisdiction of DCA. The filing of a false affidavit of service in any location is relevant to a licensee's fitness to serve process in the City of New York. Thus, the DCA has jurisdiction to bring proceedings to impose penalties against a process server who allegedly signed a false affidavit of service regarding service in Connecticut in connection with a Westchester County (New York) matrimonial action. Laureiro v. New York City Dept. of Consumer Affairs, 41 A.D.3d 717, 837 N.Y.S.2d 746 (2d Dept. 2007).

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***** Current through December 2009 ****

*NYC Administrative Code 20-102*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-102 Definitions.

Wherever used in this title:

a. "Commissioner" shall mean the commissioner of consumer affairs.

b. "Department" shall mean the department of consumer affairs.

c. "License" shall mean an authorization by the department of consumer affairs to carry on various activities within its jurisdiction, which may take the form of a license, permit, registration, certification or such other form as is designated under law, regulation or rule.

d. "Organization" shall mean a business entity, including but not limited to a corporation, trust, estate, partnership, cooperative, association, firm, club or society.

e. "Person" shall mean a natural person or an organization.

f. "Trade name" shall mean that name under which an organization or person solicits, engages in, conducts or transacts a business or activity.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 773-2.0 added LL 20/1973 § 1

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-103*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-103 Construction of this chapter and chapter two of this title.

The provisions of this chapter and chapter two of this title shall be liberally construed in accordance with the legislative declaration of the city council set forth in section 20-101.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 773-3.0 added LL 20/1973 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-104*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-104 Powers of the commissioner with respect to licensing.

a. The commissioner shall have cognizance and control of the granting, issuance, transferring, renewal, denial, revocation, suspension and cancellation of all licenses issued under chapter two and under all other laws conferring such powers upon him or her. The commissioner or the commissioner's designee shall collect all fees for all such licenses and permits and shall otherwise enforce the provisions of chapter two.

b. The commissioner shall, as he or she determines necessary and appropriate, promulgate, amend and rescind regulations and rules:

1. to carry out the powers and duties of the department;

2. to prevent and remedy fraud, misrepresentation, deceit and unconscionable dealing, and to promote fair trade practices by those engaging in licensed activities;

3. to require adequate disclosure by those engaging in licensed activities of both the terms and conditions under which they perform licensed activities, adequate disclosure of the true names or true corporate names of licensees, and adequate disclosure of applicable local, state and federal law pertinent to consumers' interests regarding the conduct of activities licensed under chapter two; 4. to require that licensees keep such records as he or she may determine are necessary or useful for carrying out the purposes of chapter two and, except as specifically set forth in chapter two, retain them for three years;

5. to ensure that all persons and organizations licensed under this title have made appropriate financial

disclosure, and that the premises complies with all legal requirements necessary to engage in the licensed activity;

6. with respect to licensed activities, to protect the health, safety, convenience and welfare of the general public; and

7. to ensure that those engaging in licensed activities do not discriminate against any person on the basis of age, sex, race, color, national origin, creed or religion in violation of city, state or federal laws.

c. The commissioner shall compile all regulations and rules promulgated by the department and maintain a copy thereof, available for public inspection at his or her principal office at such times as that office shall be open for business. A record of each license issued indicating its kind and class, the license number, the fee received therefor and such other records as the commissioner may require shall be kept by the department.

d. The commissioner or the commissioner's designee shall be authorized to conduct investigations, to issue subpoenas, to receive evidence, to hear complaints regarding activities for which a license is or may be required, to take depositions on due notice, to serve interrogatories, to hold public and private hearings upon due notice, to take testimony and to promulgate, amend and modify procedures and practices governing such proceedings.

e. (1) The commissioner shall be authorized, upon due notice and hearing, to suspend, revoke or cancel any license issued by him or her in accordance with the provisions of chapter two and to impose or institute fines or civil penalties for the violation of (i) any of the provisions of chapter two of this title and regulations and rules promulgated under chapter two of this title and (ii) any of the provisions of any other law, rule or regulation, the enforcement of which is within the jurisdiction of the department including but not limited to subchapter one of chapter five of this title (the consumer protection law) subchapter two of chapter five (the truth in-pricing-law); provided that such violation is committed in the course of and is related to the conduct of the business, trade or occupation which is required to be licensed pursuant to chapter two of this title. Except to the extent that dollar limits are otherwise specifically provided such fines or civil penalties shall not exceed five hundred dollars for each violation.

(2) The commissioner may arrange for the redress of injuries caused by such violations, and may otherwise provide for compliance with the provisions and purposes of chapter two of this title.

(3) The commissioner or the commissioner's designee shall be authorized to suspend the license of any person pending payment of such fine or civil penalty or pending compliance with any other lawful order of the department.

(4) The commissioner shall be authorized to impose a fine or civil penalty or to suspend a license or both for a failure to appear at a hearing at the department after due notice of such hearing. If a license has been suspended, it shall be returned to the department forthwith upon receipt of the order of suspension. Failure to surrender the license shall be grounds for a fine or civil penalty or revocation of the license.

(5) Any of the remedies provided for in this section shall be in addition to any other remedies provided under any other provision of law.

f. The commissioner, upon due notice and hearing, may require that persons licensed under chapter two of this title who have committed repeated, multiple or persistent violations of chapter two or any other law, rule or regulation the enforcement of which is within the jurisdiction of the department, conspicuously display at their place of business and in advertisements a notice (of a form, content and size to be specified by the commissioner), which shall describe the person's record of such violations; provided that, for each time such display is required, the commissioner may require that such notice be displayed for not less than ten nor more than one hundred days.

g. The commissioner may refuse to issue or renew any license issued in accordance with the provisions of chapter two of this title and may suspend or revoke any such license, after due notice and opportunity to be heard, upon the occurrence of any one or more of the following conditions:

1. Two or more judgments within a two-year period against the applicant or licensee for theft of identity as defined in section three hundred eighty-s of the general business law; or

2. One criminal conviction against the applicant or licensee for acts of identity theft or unlawful possession of personal identification information as defined in article one hundred ninety of the penal law; or

3. Two or more criminal convictions within a two-year period of any employees or associates of the applicant or licensee for acts of identity theft or unlawful possession of personal identification information as defined in article one hundred ninety of the penal law that are committed with the use of the applicant's or licensee's equipment, data, technology, or other similar resource. It shall be an affirmative defense that a applicant or licensee did not have reasonable grounds to believe the proscribed acts were taking place with the use of the licensee's equipment, data, technology, or other similar resource or that the proscribed acts were not taking place with the use of the applicant's or licensee's equipment, data, technology, or other similar resource.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. g added L.L. 44/2005 § 2, eff. Sept. 16, 2005. [See Note 1]

**DERIVATION**

Formerly § 773-4.0 added LL 20/1973 § 1

Subs e, f amended LL 74/1982 § 2

**NOTE**

1. Provisions of L.L. 44/2005:

Section 1. Legislative declaration. The Council finds that acts of identity theft are plaguing New Yorkers. Federal Trade Commission statistics for 2002 and 2003 indicate that identity theft is the single most common consumer fraud complaint in the nation. New York City residents are as likely to be victimized by identity theft as the citizens of many cities within the United States.

The Council further finds that identity thieves are constantly developing new ways to harm consumers. Some hack into computer systems storing sensitive information and misuse the contents to defraud innocent victims. Others obtain personal information by stealing paper records or manipulating consumers to unknowingly surrender such data. Most recently, the practice of "skimming," or swiping an Automated Teller Machine card or credit card in a device programmed to steal the personal identification encoded in the card, has facilitated identity theft in small businesses throughout the City. Skimming can be done with a hand-held device or through an instrument installed in a seemingly innocuous Automated Teller Machine.

The Council finds that such acts harm individual consumers and tarnish the good name of hard-working, upstanding New York City business people. Those few bad actors who use their professional resources to engage in identity theft should not be permitted to profit from City residents or act as authorized licensees of the City. The Council thus finds it necessary and appropriate to prevent chronic identity thieves from receiving or maintaining licenses from the Department of Consumer Affairs.

. . . . . .

§ 4. This local law shall take effect 120 days after it shall have been enacted into law; provided that the commissioner may take any actions necessary prior to such effective date for the implementation of this local law

including, but not limited to, establishing guidelines and promulgating rules.

**CASE NOTES FROM FORMER SECTION**

¶ 1. Petitioner could not complain that the refusal of the Commissioner of Licenses to renew its burlesque house license had been hasty and taken on short notice, where petitioner had made application for renewal only six days before expiration of its license then in force, notice of hearing had been given two days later and a hearing was held two days thereafter and the denial was announced on the day of expiration. The predicament of shortness was therefore the fault of petitioner, and moreover the holding of any hearing whatever was favor and not right (Admin. Code § 773a-7.0).-In re Bonserk Theatre Corp. (Moss), 34 N.Y.S. 2d 541 [1942].

¶ 2. Where petitioner's rubbish collector's license was revoked, the hearing granted by the Commissioner of Licenses was discretionary rather than statutory. Therefore his determination was not subject to review under Art. 78 of the C.P.A.-In re Times Square Ash Removal Co., 136 (102) N.Y.L.J. (11-28-56) 8, Col. 5 F.

¶ 3. Under Administrative Code § 773(a)-7.0, Commissioner of Licenses **held** empowered to hear and determine and to suspend a license only after a hearing and determination, and he might not summarily suspend petitioner's amusement license pending a hearing of charges to be held at a later date.-In re Bob's Amus. Co. (O'Neill), 128 (29) N.Y.L.J. (8-11-52) 227, Col. 3 F.

¶ 4. A second-hand automobile dealer was entitled to a hearing prior to revocation of his license even though the statutes do not so provide. In the instant case, the exercise of the statutory power adversely affected the property rights of petitioner.-In re Brody's Auto Wrecking Inc., 31 Misc. 2d 466, 220 N.Y.S. 2d 936 [1961].

¶ 5. Where, even though Commissioner of Public Markets was not obligated by law to conduct a hearing where charges are made against a licensee, general policy of department was nevertheless to conduct hearings, petitioner who had been directed to appear before department on charge that he peddled near a public park should have been granted the adjournment requested by his attorney when he was unable to appear on return day because of illness, especially since petitioner denied the charges and no complaint had ever theretofore been made against him during his 24 years of peddling. In any event, such facts were sufficient to permit Court to review the proceedings, and in view of doubt raised as to identity of petitioner as a violator, and his prior record of good behavior, Commissioner was directed to reissue his license.-Matter of Asrelan (Morgan), 100 (43) N.Y.L.J. (8-20-38) 439, Col. 2 M.

¶ 6. Petitioner's license could be legally revoked without a hearing at which charges made against petitioner were established by formal testimony and the right of cross-examination given.-In re Asrelan (Morgan), 102 (125) N.Y.L.J. (11-30-39) 1880, Col. 6 F.

¶ 7. Where the Commissioner of Licenses, on instigation of the Commissioner of Housing and Buildings, was contemplating the cancellation, without a hearing, of petitioner's license to operate a sideshow at Coney Island because certain advertising signs erected on petitioner's building were not in conformity with the Administrative Code and the City Zoning Laws with respect to size, area, composition and location, petitioner was granted a temporary injunction restraining such revocation in view of considerations that such cancellation would terminate petitioner's business operations without a hearing, that the conditions of the signs did not present any immediate danger to pedestrians nor constitute a public nuisance, that petitioner claimed that the condition prevailed prior to 1940 and therefore she had a lawful right to display the signs, and that petitioner's business season had only a few weeks to run.-Duval v. Gillroy, 82 N.Y.S. 2d 790 [1948].

¶ 8. There is no requirement that the Commissioner grant a hearing in a proceeding to revoke a license, and accordingly the licensee's complaint that the notice of the actual hearing was inadequate, was without merit. However, it might have been better practice for the Commissioner to have indicated specifically the regulations alleged to have been violated and that revocation of petitioner's license was to be considered.-In re Schachne (McCaffrey), 1 Misc. 2d 748, 104 N.Y.S. 2d 107 [1951].

¶ 9. A corporation, a licensed automobile dealer, was granted a hearing on charges that checks in the amount of $80,000 had been returned to the bank, and that its principal officer had a long criminal record. The corporation, instead of proceeding with a hearing, asked for an adjournment. The Commissioner suspended the corporation's license forthwith but stated that it could make an application for reconsideration as soon as convenient. The corporation filed an application in court for an order granting a hearing on the charges made against it. **Held:** The record showed that a hearing was granted to the petitioner and that it failed to proceed therewith. Under these facts, the petitioner was not entitled to an order granting a hearing.-Matter of Elmhurst Motor Sales, Inc. v. O'Connell, 24 Misc. 2d 991, 196 N.Y.S. 2d 15 [1959].

¶ 10. The hearing before the deputy commissioner in a proceeding to revoke the petitioner's parking lot license, at which hearing counsel for petitioner was given a chance to cross-examine the witnesses, was deemed fair in every respect. Furthermore, Administrative Code § 773a-7.0 permits the Commissioner to delegate to the deputy commissioners the power and duty of taking testimony.-Id.

¶ 11. A license to operate a laundromat granted to the petitioner corporation could be revoked without a hearing where the secretary of the corporation had been five times convicted of bookmaking and in the application it was stated that none of the officers had ever been arrested or summoned to court. Inasmuch as a license could have been denied if the true facts had been revealed in the application, it could be thereafter revoked without a hearing.-Clamae v. O'Connell, 135 (24) N.Y.L.J. (2-3-56) 13, Col. 7 M.

¶ 12. Revocation of petitioner's license **held** not to have been arbitrary in view of the evidence that the business did not belong to the licensee, who purported to be the owner thereof, but rather to her father.-In re Weingrad (Moss), 102 (125) N.Y.L.J. (11-30-39) 1880, Col. 6 F.

¶ 13. Petitioners were informed by Department of Licenses that the establishments with which they were connected were conducting fraudulent auctions and were directed to cease operating or continuing their connections with such establishments, under penalty of forfeiting their license. They refused. The Commissioner's action in revoking their auctioneer licenses, under the circumstances, was neither arbitrary, capricious, nor contrary to law.-Matter of Friedman, 18 Misc. 2d 975, 190 N.Y.S. 2d 439 [1959].

¶ 14. Commissioner **held** to have been warranted in revoking petitioner's license where he had violated terms of his license by selling products other than those authorized in his license.-In re Asrelan (Morgan), 102 (125) N.Y.L.J. (11-30-39) 1880, Col. 6 F.

¶ 15. That Commissioner may have based his action in revoking the license on grounds untenable and other than those upon which he presently sustained it, was immaterial, since the Commissioner might justify his action upon any grounds known to him at time of filing of his return, including grounds predicated upon acts occurring subsequent to the action sought to be reviewed.-In re Weingrad (Moss), 102 (125) N.Y.L.J. (11-30-39) 1880, Col. 6 F.

¶ 16. Refusal to renew plaintiff's license was deemed arbitrary, where the papers presented no reasonable basis for the refusal. That petitioner admittedly chose to avail himself of his constitutional privilege against self-incrimination was not sufficient to warrant the refusal.-In re O'Rourke (Murphy), 110 (89) N.Y.L.J. (10-15-43) 942, Col. 5 F.

¶ 17. Application for license was properly denied where the applicant did not intend to carry on the business in accordance with the law and would have continued her association with persons in the conduct of the business who were not entitled to do business either directly or indirectly, it being her plan to have those persons who could not obtain a license conduct the business for her.-Cohen v. Moss, 110 (89) N.Y.L.J. (10-15-43) 943, Col. 1 M.

¶ 18. Conduct of New York City Commissioner of Licenses in revoking petitioner's theatre ticket broker's license, **held** to have been arbitrary and unwarranted, where it appeared that petitioner had built up a substantial business over a period of 36 years, that until 1943 he was not shown ever to have violated any rules but in 1943 the League of New York Theatres, Inc., suspended his operational license for two weeks because of minor alleged violations, that

petitioner's license had been granted for 1944 after a hearing before the Commissioner and a full inquiry into his business activities, and that the Commissioner's conduct in revoking the license in a so-called rehearing held 10 days later was without basis.-Supreme Ticket Office v. Moss, 111 (23) N.Y.L.J. (2-3-44) 46, Col. 4 T.

¶ 19. Commissioner of Licenses **held** not to have abused his discretion in refusing to renew petitioner's ticket broker's license where, after considerable investigation and several hearings, the Commissioner had imposed the condition upon the grant of the license for 1943 that one C, a suspended operator and husband of one of the petitioners, whose police record consisted of 18 arrests for violation of ordinances with respect to the ticket brokerage business, should not be permitted to frequent the place of business, and such condition had been breached.-Circle Theatre Ticket Service Co. v. Moss, 111 (28) N.Y.L.J. (2-3-44) 456, Col. 3 M.

¶ 20. Commissioner's denial of license to petitioner, who had been addicted to gambling and had on numerous occasions been arrested by the police as a participant in crap games, **held** not unreasonable.-In re Goodman (Moss), 112 (64) N.Y.L.J. (9-15-44) 507, Col. 5 F.

¶ 21. This section expressly permits the Commissioner of Licenses to delegate to his Deputy Commissioners the power and duty of taking testimony.-Matter of Schachne, 1 Misc. 2d 748, 104 N.Y.S. 2d 1017 [1951].

¶ 22. The provision of this section requiring the Deputy Commissioner to reduce the record to writing does not require a verbatim transcription of the stenographic minutes; a stenographic summary of the evidence is sufficient. The suspension of petitioner by the Deputy Commissioner was not illegal where there was no evidence that the Commissioner was not ill or absent from the city.-Rose v. O'Connell, 142 (63) N.Y.L.J. (9-28-59) 12, Col. 6 M.

¶ 23. Petitioner failed to have an order issued in an Article 78 proceeding to annul a determination of the Commissioner of Licenses of the City of New York which suspended petitioner's license for failure to disclose complete and accurate information in his application. The Court in applying § 733-7.0 of the Administrative Code said, "the Commissioner is empowered to hear and determine complaints against licenses."-Arroyo v. Moss, 295 N.Y. 755, 66 N.E. 2d 124 [1946].

¶ 24. Even though the Commissioner is empowered to revoke licenses upon conviction of a felony or misdemeanor, the law does not provide that for a policy conviction a man should be deprived of earning a livelihood at his trade. In considering petitioner's time at his trade and the harsh consequences, an order to reinstate the license was granted.-Corro v. Moss, 184 Misc. 1050, 56 N.Y.S. 2d 652 [1945].

¶ 25. Although a license, once it has been granted, may not be revoked except upon conviction for violation of pertinent statutes, the application for a license imports a compact that no such violation will ensue, and if the Commissioner of Licenses believes reasonably and in good faith that he cannot conscientiously accept the promise he may refuse to license.-In re Bonserk Theatre Corp. (Moss), 34 N.Y.S. 2d 541 [1942].

¶ 26. Commissioner of Licenses has no power to declare a legislative policy or to create standards with respect to the granting or exercising of a license, but his duty is merely to apply the declared policy and the rules and standards laid down in statute and ordinance.-Executive Service Corp. v. Moss, 256 App. Div. 345, 10 N.Y.S. 2d 103 [1939].

¶ 27. Commissioner of Licenses of New York City has discretion to deny a license or a renewal thereof to a theatre, although he has not the power to revoke a license for the same reason as might cause him to refuse to renew a license. However, he may not act in an arbitrary manner in passing on applications for licenses.-Matter of Edjomac Amusement Corp., (Moss, Comm'r &c.) 97 (107) N.Y.L.J. (5-8-37) 2318, Col. 5 M.

¶ 28. The Commissioner of Licenses has no power to declare any legislative policy or to create standards governing grant of a license but may only apply the policy declared in the rules laid down in statute and ordinance. However, the rules or standards need not be set forth in the statute in express terms, but it is sufficient that they are clearly implied when the statute is read in the light of its history and purpose.-In re Dorf (Fielding), 120 (7) N.Y.L.J.

(7-12-48) 59, Col. 2 M.

¶ 29. The Commissioner did not abuse his discretion where he rejected the application of petitioner for a license as a second-hand dealer because of three convictions under different names for maintaining a house of prostitution. Good character is a requirement for an applicant for a license, by necessary implication, if not by the express terms of the statute.-Dorf v. Fielding, 20 Misc. 2d 18, 197 N.Y.S. 2d 280 [1948].

¶ 30. The determination of the Commissioner of Licenses which denied a parking lot license for premises owned by a corporation whose sole stockholders were husband and wife was not arbitrary and capricious where the denial was based on the character of the husband and was supported by the record.-Benson Parking Corp., v. O'Connell, 31 Misc. 2d 1037, 220 N.Y.S. 2d 1010 [1961].

¶ 31. Contractor who failed to provide a written contract for home improvements as required by regulations of the Department of Consumer Affairs adopted pursuant to this section was not precluded from seeking to recover on contract or from asserting other rights to recover since the regulations pertains only to proceedings before the Department of Consumer Affairs and the sanctions and disciplines which the commissioner may apply to persons subject to the licensing requirements of this chapter.-Gargano v. Smith, 97 Misc. 2d 535 [1978].

¶ 32. This section authorizes a fine for every car parked over capacity and does not limit the fine to $350 as a single offense regardless of the number of cars overparked.-Meyers Bros. Parking Systems v. Sherman, 87 App. Div. 2d 562 [1982], affirmed, 57 N.Y. 2d 653 [1982].

**CASE NOTES**

¶ 1. A regulation authorizing the Department of Consumer Affairs to conduct physical inspections of parking lots and garages subject to the agency's licensing jurisdiction, was held to be constitutional. The court rejected petitioners' claim that the regulation allowed unconstitutional warrantless searches. Amsterdam Garage v. Department of Consumer Affairs of the City of New York, 139 Misc.2d. 799, 529 N.Y.S.2d 243 (Sup.Ct. New York Co. 1988).

¶ 2. See Laureiro v. New York City Dept. of Consumer Affairs, 41 A.D.3d 717, 837 N.Y.S.2d 746 (2d Dept. 2007), discussed in note to Adm. Code § 20-101.

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-105*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-105 Additional powers of the commissioner with respect to unlicensed activities.

a. It shall be unlawful for any person required to be licensed pursuant to the provisions of chapter two or pursuant to provisions of state law enforced by the department to engage in any trade, business or activity for which a license is required without such license.

b. In addition to the enforcement procedures set forth in section 20-106 of this chapter, the commissioner after notice and a hearing shall be authorized:

1. to impose fines upon any person in violation of subdivision a of this section of one hundred dollars per violation per day for each and every day during which such person violates such subdivision.

2. to order any person in violation of subdivision a of this section immediately to discontinue such activity at the premises on which such activity is occurring.

3. to order that such premises on which such activity is occurring be sealed, provided that such premises are primarily used for such activity.

4. to order that any devices, items or goods sold, offered for sale available for public use or utilized in the operation of a business and relating to such activity for which a license is required but has not been obtained pursuant to the provisions of chapter two shall be removed, sealed or otherwise made inoperable.

c. Orders of the commissioner issued pursuant to this subdivision shall be posted at the premises on which

unlicensed activity occurs in violation of this section.

d. Orders of the commissioner issued pursuant to paragraph two, three or four of subdivision b of this section shall be stayed with respect to any person who, prior to service of the notice provided in subdivision b of this section, had submitted a full and complete application in proper form and accompanied by the requisite fee for a license or the renewal of a license while such application is pending.

e. Ten days after the posting of an order issued pursuant to paragraph two, three or four of subdivision b of this section and upon the written directive of the commissioner, officers and employees of the department and officers of the New York city police department are authorized to act upon and enforce such orders.

f. Any devices, items or goods removed pursuant to the provisions of subdivision b of this section shall be stored in a garage, pound or other place of safety and the owner or other person lawfully entitled to the possession of such devices, items, or goods may be charged with reasonable costs for removal and storage payable prior to the release of such devices, items or goods to such owner or such other person.

g. The commissioner shall order that any premises which are sealed pursuant to this section shall be unsealed and that any devices, items or goods removed, sealed or otherwise made inoperable pursuant to this section shall be released, unsealed or made operable upon:

1. payment of all outstanding fines and all reasonable costs for removal and storage, and

2. presentation of proof that a license has been obtained for such activity or, if such person or premises are for any reason ineligible to obtain a license, proof satisfactory to the commissioner that such premises, devices, items or goods will not be used in violation of this section.

h. It shall be a misdemeanor for any person to remove the seal on any premises or remove the seal or make operable any devices, items or goods sealed or otherwise made inoperable in accordance with an order of the commissioner.

i. The owner or other person lawfully entitled to reclaim the devices, items or goods removed pursuant to this section shall reclaim such devices, items or goods. If such owner or such other person does not reclaim such devices, items or goods within ninety days of their removal, such devices, items or goods shall be subject to forfeiture upon notice and judicial determination in accordance with provisions of law. Upon forfeiture the department shall, upon a public notice of at least five days, sell such forfeited devices, items or goods at public sale. The net proceeds of such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the city.

j. In the event that any removal made pursuant to this section shall include any perishable items, goods or food products which cannot be retained in custody without such items, goods or food products becoming unwholesome, putrid, decomposed or unfit in any way, they may be delivered to the commissioner of health for disposition pursuant to the provisions of section 17-323 of this code.

k. The provisions of this section shall not be construed to apply to general vendors required to be licensed pursuant to subchapter twenty-seven of chapter two of this title.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 773-4.1 added LL 5/1982 § 2

(legislative findings, licence sanctions, LL 5/1982 § 1)

Sub a amended LL 7/1984 § 1

Sub b par 4 amended LL 7/1984 § 2

**CASE NOTES**

¶ 1. The Department of Consumer Affairs of the City of New York is not precluded from pursuing administrative remedies by having already commenced actions in Supreme Court. The administrative remedies of this section did not exist at the time the Supreme Court actions were commenced. Therefore no election of remedies could have been made.-Matter of Gameways v. Dept. of Consumer Affairs of the City of N.Y., 101 A.D. 2d 888 [1984].

¶ 2. Even though only part of the premises are used for dancing, the premises can be deemed an unlicensed caberet for purposes of the padlock law. Thus, the Department of Consumer Affairs properly issued an order stating that the premises would be closed unless the licensed activities were discontinued within ten days. Cafe Iguana Corp. v. City of New York, 181 A.D.2d 586, 581 N.Y.S.2d 770 (1st Dept. 1992).

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-106*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-106 Judicial enforcement.

a. Except as otherwise specifically provided in chapter two of this title, or in subdivision b of this section, any person, whether or not he or she holds a license issued under chapter two, who violates any provision of chapter two or any regulation or rule promulgated under it shall, upon conviction thereof, be punished for each violation by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment not exceeding fifteen days, or both; and any such person shall be subject also to a civil penalty in the sum of one hundred dollars for each violation, to be recovered in a civil action.

b. Any person who engages without a license therefor in an activity for which a license is required by any provision of chapter two, shall, upon conviction thereof, be subject to the following sanctions:

1. If he or she has never held a license for such activity, he or she shall be subject to a fine of not less than twenty-five dollars, nor more than five hundred dollars, or by imprisonment not exceeding fifteen days, or both; and any such person shall be subject also to the payment of a civil penalty in the sum of the greater of twice the applicable license fee or one hundred dollars, to be recovered in a civil action.

2. If he or she has never held a license for such activity, and has been convicted once previously for engaging in such activity without a license, or if he or she has held such license and his or her license has lapsed prior to such person's perfecting an application for a renewal, he or she shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment not exceeding thirty days, or both; and he or she shall be subject also to civil penalty in the sum of one thousand dollars, to be recovered in a civil action.

3. If such person has held such a license, but his or her license has been suspended or revoked, or he or she has twice previously been convicted of engaging in such activity without a license, he or she shall be subject to a fine of not less than two hundred dollars nor more than two thousand dollars, or by imprisonment not exceeding sixty days, or both; and he or she shall be subject also to a civil penalty in the sum of two thousand dollars, to be recovered in a civil action.

c. Every manager or proprietor of a business required to be licensed under chapter two who consents to, causes or allows that business to operate without a license and every person aiding such unlicensed business and every owner or lessee of any building, part of building, grounds, room or place, who leases or lets the premises for the operation of any unlicensed business or assents that the premises be used for any such purpose, is in violation of this title and shall be subject to a penalty of one hundred dollars per day for every day during which the unlicensed business operates. This penalty shall be prosecuted, sued for and recovered in the name of the city.

d. The corporation counsel is authorized to bring an injunction proceeding to restrain or enjoin any violation of this title.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 773-5.0 added LL 20/1973 § 1

**CASE NOTES**

¶ 1. Plaintiff who was operating an enclosed sidewalk cafe without a license or franchise was not subject to both the franchise and license fees payable as if it had been legally operating an enclosed sidewalk cafe and in addition the penalty for operating it illegally and where the Department of Licenses had provisionally accepted and retained franchise and license fees for period of Jan. 1, 1977 to Feb. 28, 1978 at higher rates applicable to enclosed sidewalk cafe and no penalty would be due for that period.-Friar Tuck Inn v. Dept. of Transportation, 74 A.D. 2d 530 [1980].

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-107*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-107 Application; filing fee; license fee.

All applications for licenses shall be made to the commissioner or the commissioner's designee in such form and detail as shall be prescribed. Except as specifically provided in chapter two, every application shall include the license fee for the full license term. If the license is not issued, the lesser of fifty dollars or one-half of the amount of the annual license fee shall be retained by the department as a non-returnable filing fee. In the event a license is issued for less than the full license term, the applicable fee shall be decreased proportionately to the nearest half year, except that in no case shall the fee be less than the fee for one-half year. Where a two year license is surrendered for a reason other than suspension or revocation and less than one year of the license term has expired, the licensee may apply for a refund of an amount equal to one year's license fee. Except as otherwise specifically provided for in chapter two, reference to fees, license fees or any other word of similar import shall be deemed to be the license fee for one year. Notwithstanding any inconsistent provision of this section, whenever the commissioner increases or decreases the term of a type of license pursuant to section 20-108 of this chapter, the fee for such license shall be increased or decreased proportionately and the amount of refund due upon surrender of such license before the expiration of the term for a reason other than suspension or revocation shall be prorated to the unexpired term.

**HISTORICAL NOTE**

Section amended L.L. 84/1989 § 1. [See note.]

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 773-6.0 added LL 20/1973 § 1

Amended LL 74/1977 § 1

**NOTE**

Provision of L.L. 84/1989 § 3.

§ 3. Notwithstanding any other provision of law, any license issued by the commissioner of consumer affairs on November 30, 1989 pursuant to section 20-387 of the administrative code of the city of New York shall expire on December 31, 1992, unless sooner suspended or revoked. The fee for any such license shall be increased proportionately and the amount of refund due upon surrender of such license before the expiration of the term for a reason other than suspension or revocation shall be prorated to the unexpired term.

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-108*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-108 License terms.

a. The commissioner shall establish by regulation the expiration date of licenses issued pursuant to chapter two.

b. Licenses issued pursuant to chapter two shall be for a two-year term unless otherwise specifically provided for in chapter two; provided, however, that whenever the commissioner changes the expiration date of a type of license pursuant to subdivision a of this section, he or she may also increase or decrease the term of such type of license by rule to the extent necessary to effectuate the change.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended L.L. 84/1989 § 2.

**DERIVATION**

Formerly § 773-7.0 added LL 20/1973 § 1

Repealed and added LL 74/1977 § 2

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***** Current through December 2009 ****

*NYC Administrative Code 20-109*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-109 Transferability.

No license issued under chapter two shall be assignable or transferable unless otherwise specifically provided by law or regulation or rule issued by the commissioner.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 773-8.0 added LL 20/1973 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-110*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-110 Change of corporate ownership.

Where any person or organization becomes the beneficial owner of ten percent or more of the stock of an organization to which a license has been granted pursuant to chapter two, if such person or organization previously did not hold at least a ten percent interest, such license shall immediately become void unless prior written approval of the commissioner or the commissioner's designee is obtained.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 773-9.0 added LL 20/1973 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-111*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-111 Change in a partnership.

Any license issued under chapter two shall immediately become void upon the addition or termination of any general partner or upon the dissolution of a partnership unless prior written approval of the commissioner or the commissioner's designee is obtained.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 773-10.0 added LL 20/1973 § 1



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***** Current through December 2009 ****

*NYC Administrative Code 20-112*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-112 Address of licensed activity.

Except as specifically provided in chapter two, a license shall be valid only for the location designated upon the application therefor, except in the case of licenses issued for activities which in their nature are carried out at large and not at a fixed place of business. No license shall be issued for more than one location. Licensees shall, at least ten days prior thereto, notify the commissioner or the commissioner's designee by registered or certified mail, or personal service, of any change of address of the licensed premises or of the residence of the licensee.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 773-11.0 added LL 20/1973 § 1

**CASE NOTES**

¶ 1. Plaintiff's claim for balance of agreed upon cost of roof repairs is barred. Although job was satisfactorily completed, plaintiff's address on contract is different than that which appeared on his home improvement and repair business license. Section provides that license is only good for location designated upon application and that licensee shall notify of any change of address.-Estates Roofing Co., Inc. v. Homeowner, 121 Misc. 2d 279 [1983].

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***** Current through December 2009 ****

*NYC Administrative Code 20-113*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-113 Trade name.

A license issued under chapter two shall be valid only for activities conducted under the name of the person or organization to whom such license was issued or under the trade name stated in the application therefor; if a licensed activity is to be conducted under a trade name, the application must state that trade name. No license shall be issued for more than one trade name, and no licensed activity may be carried out under more than one such name; provided, however, that if a person or organization was engaged in bona fide licensed activities under more than one such trade name or was issued a license to conduct licensed activities under more than one trade name prior to June fifth, nineteen hundred seventy-three, a single license shall be issued for such trade names. Licensees shall notify the commissioner or the commissioner's designee of any change of trade name at least ten days before such change becomes effective, and no such change may take place without the prior written approval of the commissioner or the commissioner's designee.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 773-12.0 added LL 20/1973 § 1



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***** Current through December 2009 ****

*NYC Administrative Code 20-114*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-114 Inspection; display of license.

a. All licensed vehicles or places of business shall be regularly inspected, and reports thereof shall be made to the commissioner.

b. All licensees shall conspicuously post on their premises, licenses issued under chapter two and said licenses shall be accessible at all times for inspection by any interested person. Licensees having no fixed place of business shall exhibit their licenses upon the request of any interested person.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 773-13.0 added LL 20/1973 § 1

**CASE NOTES**

¶ 1. NYC Dep't of Consumer Affairs regulations authorizing warrantless inspection of parking garages is constitutional. The scope of investigation is to inspect records or documents and determine compliance with city codes. There is a long history of city's regulation of the parking garage industry. Amsterdam Garage v. Consumer Affairs, 139 Misc. 2d 799 [1988].

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***** Current through December 2009 ****

*NYC Administrative Code 20-115*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-115 Bonds.

Except as specifically provided in chapter two, a bond may be required for any licensed activity in a form and amount approved by the commissioner for the due observance of the provisions of chapter two and the laws, regulations and rules governing the conduct of licensed activities. The amount of the bond shall be established by the commissioner after a public hearing, five-day notice of which shall be published in the City Record.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 773-14.0 added LL 20/1973 § 1

**CASE NOTES**

¶ 1. The establishment of the Home Improvement Business Trust Fund by the New York City Department of Consumer Affairs as an alternative for home improvement contractors traditional bond, Rules of the City of New York 6 RCNY 2-225 is reasonably within the authority delegated to commissioner to require home improvement licensees to furnish a bond "in a form and amount" approved by the commissioner, § 20-115. This statute does not define the type and form of the bond. The "form and amount" of the bond is left to the commissioner's discretion. Brooklyn Gen. Contr. v. Green, 156 Misc. 2d 661 [1993].

¶ 2. This section permits the City to require bonds from licensed home improvement contractors but does not preclude the City from using other methods to protect potential victims of unfair contractor practices. Thus, the court upheld the creation of a New York City Department of Consumer Affairs Home Improvement Business Trust Fund, to which contractors were required to contribute. Brooklyn General Contracting Co. v. Green, 205 A.D.2d 314, 613 N.Y.S.2d 15 (1st Dept. 1994).

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***** Current through December 2009 ****

*NYC Administrative Code 20-116*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-116 Advertising.

a. Any person required to be licensed under chapter two or pursuant to provisions of state law enforced by the department to carry on a trade, occupation or business activity, who is not so licensed may not advertise the availability of goods and services related to the carrying on of such trade, occupation or business activity in any print publication or broadcast media having a circulation or audience within the city.

b. The commissioner after notice and hearing shall be authorized to impose civil penalties upon any person found to have violated subdivision a of this section. Such penalties shall be levied for each broadcast of such advertisement and shall be not less than fifty dollars nor more than two hundred fifty dollars for each violation. Such penalties for printed advertisements shall be determined based on the period of time the publication in which the advertisement appears remains current. The current period shall be determined as that time when a publication is initially offered for sale until the period when the next dated publication is offered for sale. In no case shall this period be less than twenty-four hours. If the current period is:

daily, such penalty shall be not less than fifty dollars nor more than one hundred dollars per day;

weekly, such penalty shall be not less than two hundred fifty dollars nor more than three hundred fifty dollars per week;

greater than one week and not more than one month, such penalty shall be not less than three hundred fifty dollars nor more than five hundred dollars;

greater than one month, such penalty shall be not less than five hundred dollars nor more than one thousand dollars.

Such civil penalties may be recovered in a civil action before any court having jurisdiction of such actions.

c. The commissioner shall promulgate regulations requiring that any person required to be licensed under this title or pursuant to provisions of state law enforced by the department shall state in all print advertising with respect to such licensed activity the license number, and that the activity is licensed by the department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § 773-15.0 added LL 51/1982 § 2

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***** Current through December 2009 ****

*NYC Administrative Code 20-117*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§ 20-117 Licensee disclosure of security breach; notification requirements.

a. Definitions. For the purposes of this section,

1. The term "personal identifying information" shall mean any person's date of birth, social security number, driver's license number, non-driver photo identification card number, financial services account number or code, savings account number or code, checking account number or code, brokerage account number or code, credit card account number or code, debit card number or code, automated teller machine number or code, personal identification number, mother's maiden name, computer system password, electronic signature or unique biometric data that is a fingerprint, voice print, retinal image or iris image of another person. This term shall apply to all such data, notwithstanding the method by which such information is maintained.

2. The term "breach of security' shall mean unauthorized possession of personal identifying information that compromises the security, confidentiality or integrity of such information. Good faith or inadvertent possession of any personal identifying information by an employee or agent of the licensee for the legitimate purposes of the business of the licensee shall not constitute a breach of security.

b. Any person required to be licensed pursuant to chapter two of this title, or pursuant to provisions of state law enforced by the department, that owns or leases data that includes personal identifying information and any person required to be licensed pursuant to chapter two of this title, or pursuant to provisions of state law enforced by the department, that maintains but does not own data that includes personal identifying information shall immediately disclose to the department and to the police department any breach of security following discovery by a supervisor or manager, or following notification to a supervisor or manager, of such breach if such personal identifying information is

reasonably believed to have been acquired by an unauthorized person.

c. Subsequent to compliance with the provisions set forth in subdivision b of this section, any person required to be licensed pursuant to chapter two of this title, or pursuant to provisions of state law enforced by the department, that owns or leases data that includes personal identifying information shall disclose, in accordance with the procedures set forth in subdivision e of this section, any breach of security following discovery by a supervisor or manager, or following notification to a supervisor or manager, of such breach to any person whose personal identifying information was, or is reasonably believed to have been, acquired by an unauthorized person.

d. Subsequent to compliance with the provisions set forth in subdivision b of this section, any person required to be licensed pursuant to chapter two of this title, or pursuant to provisions of state law enforced by the department, that maintains but does not own data that includes personal identifying information shall disclose, in accordance with the procedures set forth in subdivision e of this section, any breach of security following discovery by a supervisor or manager, or following notification to a supervisor or manager, of such breach to the owner, lessor or licensor of the data if the personal identifying information was, or is reasonably believed to have been, acquired by an unauthorized person.

e. The disclosures required by subdivisions c and d of this section shall be made as soon as practicable by a method reasonable under the circumstances. Provided said method is not inconsistent with the legitimate needs of law enforcement or any other investigative or protective measures necessary to restore the reasonable integrity of the data system, disclosure shall be made by at least one of the following means:

1. Written notice to the individual at his or her last known address; or

2. Verbal notification to the individual by telephonic communication; or

3. Electronic notification to the individual at his or her last known e-mail address.

f. Should disclosure pursuant to paragraphs one, two or three of subdivision e be impracticable or inappropriate given the circumstances of the breach and the identity of the victim, such disclosure shall be made by a mechanism of the licensee's choosing, provided such mechanism is reasonably targeted to the individual in a manner that does not further compromise the integrity of the personal information disclosed and has been approved, or is in compliance with rules promulgated, by the Commissioner.

g. Any person required to be licensed pursuant to chapter two of this title, or pursuant to provisions of state law enforced by the department, that discards any records of an individual's personal identifying information shall do so in a manner intended to prevent retrieval of the information contained therein or thereon.

h. Any person required to be licensed pursuant to chapter two of this title, or pursuant to provisions of state law enforced by the department, who shall violate any of the provisions of this section, upon conviction thereof, shall be punishable by a fine of not more than five hundred dollars ($500) and shall be liable for a civil penalty of one hundred dollars ($100) for each violation.

**HISTORICAL NOTE**

Section added L.L. 46/2005 § 2, eff. Sept. 16, 2005. [See Note 1]

**NOTE**

1. Provisions of L.L. 46/2005:

Section 1. Legislative declaration. The Council finds that acts of identity theft are plaguing New Yorkers. Federal Trade Commission statistics for 2002 and 2003 indicate that identity theft is the single most common consumer fraud complaint in the nation. New York City residents are as likely to be victimized by identity theft as the citizens of

many cities within the United States.

The Council finds that identity thieves often gain control of victims' sensitive personal information by hacking into computers or otherwise violating the security of data systems. When such unauthorized persons acquire individuals' personal information, they are able to access bank accounts, take control of credit cards, and defraud unsuspecting victims. The Council thus finds that one of the most effective ways to curtail identity thieves is to inform would-be victims that the security of their sensitive personal information has been violated; individuals can then take the steps necessary to regain control of their privacy and finances.

Accordingly, the Council finds it necessary to require businesses required to be licensed by the Department of Consumer Affairs, or pursuant to provisions of state law enforced by the department, to inform individuals whenever there has been a breach of security with respect to sensitive personal information. Business people can best serve their fellow New Yorkers by making such disclosures expeditiously, while acting in accordance with the procedures of the New York City Police Department and other legitimate law enforcement agents.

. . . . . .

§ 3. If any section, subdivision, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect 120 days after it shall have been enacted into law; provided that the Commissioner may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, establishing guidelines and promulgating rules.

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***** Current through December 2009 ****

*NYC Administrative Code 20-118*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 1 LICENSE ENFORCEMENT

§20-118 Notifications regarding identity theft.

Any person, firm, partnership, corporation or association required to be licensed under chapter two, or pursuant to provisions of state law enforced by the department, shall immediately notify the department upon the occurrence of a judgment against such person, firm, partnership, corporation or association for theft of identity; a conviction of such person, firm, partnership, corporation or association of an offense specified in subdivision g of section 20-104 of this chapter; or a conviction of the person's, firm's, partnership's, corporation's or association's employees or associates for acts of identity theft or unlawful possession of personal identification information as defined in article one hundred ninety of the penal law that are committed with the use of the person's, firm's, partnership's, corporation's or association's equipment, data, technology, or other similar resource.

**HISTORICAL NOTE**

Section added L.L. 44/2005 § 3, eff. Sept. 16, 2005. [See § 20-104 Note 1]

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***** Current through December 2009 ****

*NYC Administrative Code 20-330*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 17 GARAGES AND PARKING LOTS

§ 20-330 Regulations.

The commissioner may promulgate such rules and regulations as may be necessary to carry out the provisions of this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-259.0 added LL 61/1947 § 1

**CASE NOTES**

¶ 1. The City regulation governing the obligations of parking garages to pay customers for damage to their property is constitutional and does not impair the obligation of contracts because the garages' insurers would refuse to reimburse them for the losses.-Metropolitan Garage Owners' Association v. Rosenthal, 192 (50) N.Y.L.J. (9-11-84) 7, Col. 1B.

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***** Current through December 2009 ****

*NYC Administrative Code 20-331*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 17 GARAGES AND PARKING LOTS

§ 20-331 Revocation, suspension or renewal of license.

Any license may be suspended or revoked by the commissioner, and any application for a renewal thereof denied, for the failure of the licensee to comply with any applicable provision of law or any rule or regulation duly promulgated by the commissioner.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-260.0 added LL 61/1947 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. A parking lot license was properly revoked by the Commissioner of Licenses where the licensee, in violation of a regulation which provided that the lot must be adequately attended at all times, visited the lot only two or three times a day. As a result of the inadequate attendance of the licensee bookmaking activities were permitted to take place in a shack located on the parking lot.-Matter of Schachne, 1 Misc. 2d 748, 104 N.Y.S. 2d 544 [1951].



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***** Current through December 2009 ****

*NYC Administrative Code 20-338*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-338 Short title.

This subchapter shall be known and may be cited as the New York city bingo licensing law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-274.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1



*NYC Administrative Code 20-339*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-339 Definitions.

As used in this subchapter, the following terms shall have the following meanings:

a. "Control commission" or "commission" or "board" shall mean the state racing and wagering board.

b. "Bingo" or "game" shall mean and include a specific game of chance, commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random.

c. "Authorized organization" shall mean and include a charitable or educational non-profit organization or a non-profit organization of veterans or any bona fide religious or charitable organization or bona fide educational, fraternal, civil or service organization or bona fide organization of veterans or volunteer firefighters, which by its charter, certificate of incorporation, constitution, or act of the legislature, shall have among its dominant purposes one or more of the lawful purposes as defined in article fourteen-H of the general municipal law, provided that each shall operate without profit to its members, and provided that each such organization has engaged in serving one or more of the lawful purposes as defined in article fourteen-H of the general municipal law for a period of one year immediately prior to applying for a license under this subchapter, and provided, such organization, if unincorporated, has a membership of not less than twenty-five persons.

d. "License" shall mean a license issued pursuant to the provisions of this subchapter and article fourteen-H of the general municipal law.

e. "Regular bingo game" shall mean a game that is played on a card or cards issued to a player upon payment of the admission fee provided in this subchapter.

f. "Special bingo game" shall mean any game which is not a "regular bingo game."

g. "Opportunity" shall mean a one-faced chance to participate in a game or games of bingo.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-275.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

Sub a amended LL 29/1980 § 1

Subs e, f, g added LL 29/1980 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-340*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-340 Authority of commissioner.

The administrative powers granted to the governing body of the city under the provisions of article fourteen-H of the general municipal law, in relation to the issuance, amendment and cancellation of licenses, the conduct of investigations and hearings, the supervision of the operation of the games and the collection and transmission of fees, are hereby conferred upon the commissioner pursuant to the provisions of section four hundred ninety-eight of the general municipal law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-276.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-341*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-341 Conduct of game of bingo by authorized organizations.

It shall be lawful for any authorized organization, upon obtaining a license therefor as hereinafter provided, to conduct the game of bingo within the territorial limits of the city, subject to the provisions of this subchapter, the provisions of article fourteen-H of the general municipal law and the provisions of the bingo licensing law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-277.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-342*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-342 Restrictions upon conduct of bingo games.

The conduct of bingo games authorized by this subchapter shall be subject to the following restrictions:

a. No person, firm, association, corporation or organization other than a licensee under the provisions of this subchapter, shall conduct such game or shall lease or otherwise make available for conducting bingo a hall or other premises for any consideration whatsoever, direct or indirect.

b. No bingo games shall be held, operated or conducted on or within any leased premises if rental under such lease is to be paid, wholly or partly, on the basis of a percentage of the receipts or net profits derived from the operation of such game.

c. No authorized organization licensed under the provisions of this subchapter shall purchase or receive any supplies or equipment specifically designed or adapted for use in the conduct of bingo games from other than a supplier licensed under the bingo licensing law or from another authorized organization.

d. The entire net proceeds of any game of bingo and of any rental shall be exclusively devoted to the lawful purposes of the organization permitted to conduct the same.

e. No prize shall exceed the sum or value of two hundred fifty dollars in any single game of bingo.

f. No series of prizes on any one bingo occasion shall aggregate more than one thousand dollars.

g. No person except a bona fide member of any such organization shall participate in the management or operation of such game.

h. No person shall receive any remuneration for participating in the management or operation of any game of bingo.

i. The unauthorized conduct of a bingo game and any wilful violation of any provision of this subchapter shall constitute and be punishable as a misdemeanor.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-278.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-343*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-343 Application for license.

1. To conduct bingo. a. Each applicant for a license shall file with the commissioner a written application therefor in the form prescribed in the rules and regulations of the control commission, duly executed and verified, in which shall be stated the name and address of the applicant together with sufficient facts relating to its incorporation and organization to enable the commissioner to determine whether or not it is a bona fide authorized organization; the names and addresses of its officers; the place or places where, the date or dates and the time or times when the applicant intends to conduct bingo under the license applied for; in case the applicant intends to lease premises for this purpose from other than an authorized organization, the name and address of the licensed commercial lessor of such premises, and the capacity or potential capacity for public assembly purposes of space in any premises presently owned or occupied by the applicant; the amount of rent to be paid or other consideration to be given directly or indirectly for each occasion for use of the premises of another authorized organization licensed under this subchapter to conduct bingo or for use of the premises of a licensed commercial lessor; all other items of expense intended to be incurred or paid in connection with the holding, operating and conducting of such games of bingo and the names and addresses of the persons to whom, and the purposes for which, they are to be paid; the specific purposes to which the entire net proceeds of such games are to be devoted and in what manner; that no commission, salary, compensation, reward or recompense will be paid to any person for conducting such bingo game or games or for assisting therein except as in this subchapter or article fourteen-H of the general municipal law otherwise provided; and such other information as shall be prescribed by such rules and regulations.

b. In each application there shall be designated an active member or members of the applicant organization under whom the game or games of bingo will be conducted and to the application shall be appended a statement executed by the member or members so designated, that he or she or they will be responsible for the conduct of such bingo games in accordance with the terms of the license and the rules and regulations of the commission and of this subchapter and article fourteen-H of the general municipal law.

c. In each application there shall be designated one special bingo game, to be played on each occasion under such license, which shall be known as the "jackpot game."

2. Commercial lessor. a. Each applicant for a license to lease premises to a licensed organization for the purposes of conducting bingo therein shall file with the commissioner a written application therefor in a form prescribed in the rules and regulations of the control commission duly executed and verified, which shall set forth the name and address of the applicant; designation and address of the premises intended to be covered by the license sought; lawful capacity for public assembly purposes; cost of premises and assessed valuation for real estate tax purposes, or annual net leased rent, whichever is applicable; gross rentals received and itemized expenses for the immediately preceding calendar or fiscal year, if any; gross rentals, if any, derived from bingo during the last preceding calendar or fiscal year; computation by which proposed rental schedule was determined; number of occasions on which applicant anticipates receiving rent for bingo during the ensuing year or shorter period if applicable; proposed rent for each such occasion; estimated gross rental income from all other sources during the ensuing year; estimated expenses itemized for the ensuing year and amount of each item allocated to bingo rentals; a statement that the applicant in all respects conforms with the specifications contained in the definition of "authorized commercial lessor" as set forth in article fourteen-H of the general municipal law, and such other information as shall be prescribed by such rules and regulations.

b. In the event an applicant shall apply for a license for a subsequent year, a recapitulation, in a manner prescribed in the rules and regulations of the commission, shall be made as between said applicant and the commissioner in respect of the gross rental actually received during the preceding license period and the fee paid therefor, and any deficiency of fee thereby shown to be due shall be paid by the applicant and any excess of fee thereby shown to have been paid shall be credited to said applicant, in such manner as the commission by rules and regulations shall prescribe.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-279.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

Sub 1 par c added LL 29/1980 § 2

**CASE NOTES**

¶ 1. Order of N.Y.S. Racing and Wagering Board confirming a determination of the N.Y.C. Department of Consumer Affairs which issued a license as a commercial lessor to X to conduct bingo games reversed where Board made no findings of fact and conclusions of law and there was no explicit statement of the underlying facts supporting the findings.-B'Nai Jacob Religious School v. N.Y.S. Racing and Wagering Board, 72 A.D. 2d 760 [1979].

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*NYC Administrative Code 20-344*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-344 Investigation; matters to be determined; issuance of license; fees; duration of license.

a. The commissioner shall make an investigation of the qualifications of each applicant and the merits of each application, with due expedition after the filing of the application, and if he or she shall determine that the applicant is duly qualified to be licensed to conduct bingo under this subchapter and article fourteen-H of the general municipal law; that the member or members of the applicant designated in the application to conduct bingo are bona fide active members of the applicant and are persons of good moral character and have never been convicted of a crime; that such game is to be conducted in accordance with the provisions of this subchapter, article fourteen-H of the general municipal law and in accordance with the rules and regulations of the commission, and that the proceeds thereof are to be disposed of as provided by this subchapter and article fourteen-H of the general municipal law, and if the commissioner is satisfied that no commission, salary, compensation, reward or recompense whatever will be paid or given to any person holding, operating or conducting or assisting in the holding, operation and conduct of any such games except as in this subchapter or article fourteen-H of the general municipal law otherwise provided; and that no prize will be offered and given in excess of the sum or value of two hundred fifty dollars in any single game and that the aggregate of all prizes offered and given in all of such games conducted on a single occasion, under said license shall not exceed the sum or value of one thousand dollars, he or she shall issue a license to the applicant for the conduct of bingo upon payment of a license fee of ten dollars for each bingo occasion; provided, however, that he or she shall refuse to issue a license to an applicant seeking to conduct bingo in premises of a licensed commercial lessor where he or she determines that the premises presently owned or occupied by said applicant are in every respect adequate and

suitable for conducting bingo games.

b. Issuance of licenses to commercial lessors. If the commissioner shall determine that the applicant seeking to lease a hall or premises for the conduct of bingo to an authorized organization is duly qualified to be licensed under this subchapter and article fourteen-H of the general municipal law; that the applicant satisfies the requirements for an authorized commercial lessor as defined in article fourteen-H of the general municipal law; that the schedule of proposed rentals provides a fair and reasonable return on the applicant's investment; that the applicant has filed a schedule of proposed rentals in accordance with the rules and regulations of the commission and that the commission has approved such schedule as fair and reasonable and as the maximum rentals the applicant may charge to any authorized organization; that there is no diversion of the funds of the proposed lessee from the lawful purposes as defined in article fourteen-H of the general municipal law; and that such leasing of a hall or premises for the conduct of bingo is to be in accordance with the provisions of this subchapter, article fourteen-H of the general municipal law and in accordance with the rules and regulations of the commission, he or she shall issue a license permitting the applicant to lease said premises for the conduct of bingo to the authorized organization or organizations specified in the application during the period therein specified or such shorter period as he or she shall determine, but not to exceed one year, upon payment of a license fee of ten dollars plus an amount based upon the aggregate rent specified in the license and determined in accordance with the schedule set forth therefor in article fourteen-H of the general municipal law.

c. On or before the thirtieth day of each month, the commissioner of finance shall transmit to the state comptroller a sum equal to fifty percent of all license fees collected by the city pursuant to this section during the preceding calendar month.

d. No license shall be issued under this subchapter and article fourteen-H of the general municipal law which shall be effective for a period of more than one year.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-280.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

Sub c amended chap 100/1963 § 583

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***** Current through December 2009 ****

*NYC Administrative Code 20-345*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-345 Hearing; amendment of license.

a. No application for the issuance of a license shall be denied by the commissioner until after a hearing, held on due notice to the applicant, at which the applicant shall be entitled to be heard upon the qualifications of the applicant and the merits of the application.

b. Any license issued under this subchapter and article fourteen-H of the general municipal law may be amended, upon application made to the commissioner who issued it, if the subject matter of the proposed amendment could lawfully and properly have been included in the original license and upon payment of such additional license fee, if any, as would have been payable if it had been so included.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-281.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-346*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-346 Form and contents of license; display of license.

a. Each license to conduct bingo shall be in such form as shall be prescribed in the rules and regulations promulgated by the control commission, and shall contain a statement of the name and address of the licensee, of the names and addresses of the member or members of the licensee under whom the games will be conducted, of the place or places where and the date or dates and time or times when such games are to be conducted and of the specific purposes to which the entire net proceeds of such games are to be devoted; if any prize or prizes are to be offered and given in cash, a statement of the amounts of the prizes authorized so to be offered and given; and any other information which may be required by said rules and regulations to be contained therein, and each license issued for the conduct of any game shall be conspicuously displayed at the place where same is to be conducted at all times during the conduct thereof.

b. Each license to lease premises for conducting bingo shall be in such form as shall be prescribed in the rules and regulations of the control commission and shall contain a statement of the name and address of the licensee and the address of the leased premises, the amount of permissible rent and any other information which may be required by said rules and regulations to be contained therein, and each such license shall be conspicuously displayed upon such premises at all times during the conduct of bingo.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-282.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-347*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-347 Control and supervision; suspension of licenses; inspection of premises.

The commissioner shall have and exercise rigid control and close supervision over all games of bingo conducted under any license issued under this subchapter and article fourteen-H of the general municipal law, to the end that the same are fairly conducted in accordance with the provisions of such license, the rules and regulations promulgated by the control commission and the provisions of this subchapter and article fourteen-H of the general municipal law and such commissioner and the control commission shall have the power and the authority to suspend any license issued by such commissioner and to revoke the same, after notice and hearing, for violation of any such provision, and shall have the right of entry, by their respective officers and agents, at all times into any premises where any game of bingo is being conducted or where it is intended that any such game shall be conducted, or where any equipment being used or intended to be used in the conduct thereof is found, for the purpose of inspecting the same.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-283.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-348*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-348 Sunday; conduct of games on.

Games of bingo may be conducted after 6 p.m. on the first day of the week, commonly known and designated as Sunday under any license under this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-284.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-349*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-349 Participation by persons under eighteen.

No person under the age of eighteen years shall be admitted to any game or games of bingo conducted pursuant to any license issued under this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-285.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-350*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-350 Frequency of games; sale of alcoholic beverages.

No game or games of bingo shall be conducted under any license issued under this subchapter and article fourteen-H of the general municipal law more often than on eighteen days in any three successive calendar months; or in any room or outdoor area where alcoholic beverages are sold or served during the progress of the game or games.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-286.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-351*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-351 Persons operating and conducting games; equipment; expenses; compensation.

No person shall hold, operate or conduct any game of bingo under any license issued under this subchapter and article fourteen-H of the general municipal law except an active member of the authorized organization to which the license is issued, and no person shall assist in the holding, operating or conducting of any game of bingo under such license except such an active member or a member of an organization or association which is an auxiliary to the licensee or a member of an organization or association of which such licensee is an auxiliary or a member of an organization or association which is affiliated with the licensee by being, with it, auxiliary to another organization or association and except bookkeepers or accountants as hereinafter provided. No game of bingo shall be conducted with any equipment except such as shall be owned absolutely by the authorized organization so licensed or used without payment of any compensation therefor by the licensee. No item of expense shall be incurred or paid in connection with the conducting of any game of bingo pursuant to any license issued under this subchapter and article fourteen-H of the general municipal law, except those that are reasonable and are necessarily expended for bingo supplies and equipment, prizes, stated rental if any, bookkeeping or accounting service according to a schedule of compensation prescribed by the commission, janitorial services and utility supplies if any, and license fees, and the cost of bus transportation, if authorized by the control commission.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-287.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-352*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-352 Charge for admission and participation; charge for other opportunities; amount of prizes, award of prizes.

a. No amount other than one dollar, or such minimum fee as may be fixed by the board shall be charged by any licensee for admission to any room or place in which any game or games of bingo are to be conducted under any license issued under this subchapter and article fourteen-H of the general municipal law, which admission fee, upon payment thereof, shall entitle the person paying the same to only two opportunities to participate without additional charge in all regular games of bingo to be played under such license on such occasion, and no charge in excess of one dollar, or such minimum fee as may be fixed by the board, shall be made for a single opportunity to participate in all special games to be played under such license on such occasion.

b. Extra regular bingo cards. No less than twenty-five cents shall be charged by any licensee for two opportunities to participate in regular games of bingo to be played under such license on such occasion. If the licensee during any occasion conducts less than three special bingo games, no less than twenty-five cents shall be charged for each opportunity to participate in regular games of bingo to be played under such license on such occasion. All such charges for extra regular bingo cards shall be in addition to the two opportunities purchased as part of the admission provided in subdivision a of this section.

c. Special game cards. No less than twenty-five cents shall be charged by any licensee for a single opportunity to participate in each of more than one special bingo game other than the jackpot game and no less than ten cents shall be charged for a single opportunity to participate in any one specified special bingo game, to be played under such license

on such occasion.

d. Jackpot cards. No less than fifty cents shall be charged by any licensee for three opportunities to participate in the jackpot game, and no less than twenty-five cents shall be charged for a single opportunity to participate in the jackpot game to be played under such license on such occasion. A card or cards permitting the player to participate in the jackpot game shall not be used to participate in any other game of bingo to be played under such license on such occasion.

e. Every winner shall be determined and every prize shall be awarded and delivered within the same calendar day as that upon which the game was played. No alcoholic beverage shall be offered or given as a prize in any such game.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-288.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

Amended LL 29/1980 § 3

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*NYC Administrative Code 20-353*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-353 Advertising games.

No game of bingo to be conducted under any license issued under this subchapter and article fourteen-H of the general municipal law shall be advertised as to its location, the time when it is to be or has been played, or the prizes awarded, or to be awarded, by means of newspapers, radios, television or sound trucks or by means of billboards, posters or handbills or any other means addressed to the general public, except that one sign not exceeding sixty square feet in area may be displayed on or adjacent to the premises owned or occupied by a licensed authorized organization, and when an organization is licensed to conduct bingo on premises of another licensed authorized organization or of a licensed commercial lessor, one additional such sign may be displayed on or adjacent to the premises in which the games are to be conducted. Additional signs may be displayed upon any fire fighting equipment belonging to any licensee, which is a volunteer fire company, or upon any first-aid or rescue squad equipment belonging to any licensee, which is a first-aid or rescue squad, in and throughout the community or communities served by such volunteer fire company or such first-aid or rescue squad as the case may be.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-289.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1



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***** Current through December 2009 ****

*NYC Administrative Code 20-354*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-354 Statement of receipts, expenses; additional license fees.

a. Within fifteen days after the conclusion of the conducting of any game of bingo, the authorized organization which conducted the same, and its members who were in charge thereof, and when applicable the authorized organization which rented its premises therefor, shall each furnish to the commissioner a duly verified statement showing the amount of the gross receipts derived therefrom and each item of expense incurred, or paid, and each item of expenditure made or to be made, the name and address of each person to whom each such item has been paid, or is to be paid, with a detailed description of the merchandise purchased or the services rendered therefor, the net proceeds derived from such game or rental, as the case may be, and the use to which such proceeds have been or are to be applied and a list of prizes offered and given, with the respective values thereof, and it shall be the duty of each licensee to maintain and keep such books and records as may be necessary to substantiate the particulars of each such statement.

b. Upon the filing of such statement of receipts, the authorized organization furnishing the same shall pay to the commissioner as and for an additional license fee a sum based upon the reported net proceeds, if any, for the occasion covered by such statement and determined in accordance with such schedule as shall be established from time to time by the department to defray the cost of administering the provisions of this subchapter, article fourteen-H of the general municipal law and article nineteen-B of the executive law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-290.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

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*NYC Administrative Code 20-355*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-355 Examination of books and records; examination of managers, etc.; disclosure of information.

a. The commissioner and the control commission shall have power to examine or cause to be examined the books and records of:

1. Any licensed authorized organization so far as they may relate to bingo including the maintenance, control and disposition of net proceeds derived from bingo or from the use of its premises for bingo, and to examine any manager, officer, director, agent, member or employee thereof under oath in relation to the conduct of any such game under any such license or the use of its premises for bingo, as the case may be;

2. Any licensed authorized commercial lessor so far as they may relate to leasing premises for bingo and to examine said lessor or any manager, officer, director, agent or employee thereof under oath in relation to such leasing.

b. Any information received pursuant to subdivision a shall not be disclosed except so far as may be necessary for the purpose of carrying out the provisions of this subchapter, article fourteen-H of the general municipal law and article nineteen-B of the executive law.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-291.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1



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***** Current through December 2009 ****

*NYC Administrative Code 20-356*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-356 Appeals from commissioner to control commission.

Any applicant for, or holder of, any license issued or to be issued under this subchapter aggrieved by any action of the commissioner to whom such application has been made or by whom such license has been issued, may appeal to the control commission from the determination of such commissioner by filing with the commissioner a written notice of appeal within thirty days after the determination or action appealed from, and upon the hearing of such appeal, the evidence, if any, taken before the commissioner and any additional evidence may be produced and shall be considered in arriving at a determination of the matters in issue, and the action of the control commission upon said appeal shall be binding upon the commissioner and all parties to such appeal.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-292.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Petitioner who, after a hearing, had been denied a license under the Bingo Licensing Law, was required to exhaust its administrative remedies by appeal pursuant to this section and might not proceed pursuant to C.P.A. Article 78.-Embassy Operating Corp. v. O'Connell, 150 (77) N.Y.L.J. (10-17-63) 11, Col. 4 T.

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***** Current through December 2009 ****

*NYC Administrative Code 20-357*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-357 Exemption from prosecution.

No person or corporation: (a) Lawfully conducting, or participating in the conduct of bingo, or

(b) Permitting the conduct upon any premises owned or leased by him, her or it under any license lawfully issued pursuant to this subchapter and article fourteen-H of the general municipal law, shall be liable to prosecution or conviction for violation of any provision of article one hundred thirty of the penal law or any other law or ordinance to the extent that such conduct is specifically authorized by this subchapter or article fourteen-H of the general municipal law, but this immunity shall not extend to any person or corporation knowingly conducting or participating in the conduct of any game of bingo under any license obtained by any false pretense or by any false statement made in any application for license or otherwise, or permitting the conduct upon any premises owned or leased by him, her or it of any game of bingo conducted under any license known to him, her or it to have been obtained by any such false pretense or statement.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-293.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-358*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 19 BINGO LICENSING LAW

§ 20-358 Offenses, forfeitures of license; ineligibility to apply for license.

Any person, association or corporation who or which shall:

(a) make any false statement in any application for any license authorized to be issued under this subchapter or article fourteen-H of the general municipal law;

(b) pay or receive, for the use of any premises for conducting bingo, a rental in excess of the amount specified as the permissible rent in the license provided for in this subchapter or article fourteen-H of the general municipal law;

(c) fail to keep such books and records as shall fully and truly record all transactions connected with the conducting of bingo or the leasing of premises to be used for the conduct of bingo;

(d) falsify or make any false entry in any books or records so far as they relate in any manner to the conduct of bingo, to the disposition of the proceeds thereof and to the application of the rents received by any authorized organization;

(e) divert or pay any portion of the net proceeds of any game of bingo to any person, association or corporation, except in furtherance of one or more of the lawful purposes defined in article fourteen-H of the general municipal law; or

(f) violate any of the provisions of this subchapter or article fourteen-H of the general municipal law or of any term of any license issued under this subchapter; shall be guilty of a misdemeanor and shall forfeit any license issued under this subchapter or article fourteen-H of the general municipal law and be ineligible to apply for a license under this subchapter or article fourteen-H of the general municipal law for one year thereafter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-294.0 added LL 46/1958 § 1

Amended LL 46/1962 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-359*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-359 Definitions.

Whenever used in this subchapter the following terms shall mean:

1. "Public dance hall." Any room, place or space in the city in which dancing is carried on and to which the public may gain admission, either with or without the payment of a fee.

2. "Public dance or ball." Any dance or ball of any nature or description to which the public may gain admission.

3. "Cabaret." Any room, place or space in the city in which any musical entertainment, singing, dancing or other form of amusement is permitted in connection with the restaurant business or the business of directly or indirectly selling to the public food or drink, except eating or drinking places, which provide incidental musical entertainment, without dancing, either by mechanical devices, or by not more than three persons.

4. "Catering establishment." Any room, place or space in the city, which is used, leased or hired out in the business of serving food or beverages for a particular function, occasion or event, to which the public is not invited or admitted and wherein music or entertainment is permitted.

5. "Person." An individual, corporation, club, partnership, association, society or any other organized group of persons, and shall include officers, directors and trustees of a corporation, club, association or society.

6. "Employee." A person employed in any capacity or title in connection with a cabaret or public dance hall, including the licensee and any and all persons responsible for the control or management thereof. It shall also include a concessionaire and each person employed by such concessionaire.

7. "Security guard." A person as defined by subdivision six of section eighty nine-f of the general business law. There shall be a rebuttable presumption that a person employed or whose services are retained at a public dance hall or cabaret whose job functions include (1) the monitoring or guarding of the entrance or exit of such public dance hall or cabaret to manage ingress and egress to such public dance hall or cabaret for security purposes during the hours of operation of such establishment and/or (2) protection of such public dance hall or cabaret from disorderly or other unlawful conduct by such patrons is a security guard, provided, however, that such rebuttable presumption shall not apply to the owner of the public dance hall or cabaret.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1.

Subd. 3 amended L.L. 34/1986 § 1.

Subd. 7 added L.L. 35/2006 § 4, eff. Nov. 21, 2006. [See § 20-360.1

Note 1]

**DERIVATION**

Formerly § B32-296.0 added LL 92/1961 § 3

Sub 3 amended LL 95/1961 § 2

Sub 7 repealed LL 62/1967 § 1

Sub 3 repealed and added LL 15/1971 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Denial of a cabaret license to Playboy Club on ground the granting of a license would not be in the public interest, was arbitrary. The Commissioner could not impose his own personal moral standards upon license applicants. That the so-called sophisticated cartoons displayed in petitioner's premises might be personally offensive to the Commissioner, or that he might equate the "bunnies" work clothes with semi-nudity, formed no basis for denial of the permit.-Playboy Club of New York, Inc. v. O'Connell, 149 (12) N.Y.L.J. (1-17-63) 14, Col. 6 T.

¶ 2. In proceeding by City of N.Y. and Department of Consumer Affairs to restrain defendant from operating a cabaret without a license defendants could not raise the defense of laches for failure of a municipality or governmental agency to enforce illegal activity at a given time does not constitute waiver of the right to do so at a different time.-City of N.Y. v. Reno Sweeney Rest, Inc., 180 (119) N.Y.L.J. (12-22-78) 11, Col. 4T.

¶ 3. Premises in which petitioner operated a restaurant and bar business and had a certificate of occupancy to permit playing of piano and two stringed instruments where dancing was permitted required a cabaret license.-Matter of Moon Luck Corp. v. Guggenheimer, 65 A.D. 2d 745 [1978].

¶ 4. Statute was not unconstitutional as applied to an establishment where patrons danced on premises where drinks were sold although its constitutionality might be questionable when applied to a five-piece band.-People v. Walter, 106 Misc. 2d 359, 431 N.Y.S. 2d 776.

**CASE NOTES**

¶ 1. Cabarets, dance halls and eating establishments must be licensed. There is an exception termed the "incidental music exception" where music may be played without dancing "by not more than three persons", § 20-359(3). City claims the numerical limitation alleviates traffic and congestion but is not a "content" based restriction. Failing to provide studies or other evidence the city has failed to show need for this regulation. The three musician limitation is unconstitutional and abridges the First Amendment rights of composers and performers. Chiasson v. Consumer Affairs, 138 Misc. 2d 394 [1988].

¶ 2. Comedy club may be deemed a cabaret for the purpose of complying with fire regulations. People v. Caroline's Comedy, 141 Misc. 2d 1061 [1988].

¶ 3. In an eviction proceeding evidence was offered that witness observed that liquor and musical instruments were on the premises. There was no evidence of an actual entertainment or amusement or that food or drink was directly or indirectly sold. This does not meet criteria to prove a cabaret license was required. Valentine Assocs. v. Plummer, 148 Misc. 2d 811 [1991].



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***** Current through December 2009 ****

*NYC Administrative Code 20-360*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-360 Licenses and fingerprinting.

a. It shall be unlawful for any person to conduct, maintain or operate, or engage in the business of conducting, maintaining or operating, a public dance hall, cabaret or catering establishment unless the premises wherein the same is conducted, maintained or operated are licensed in the manner prescribed herein.

b. A membership corporation, club, association or society which permits musical entertainment, singing, dancing or other form of amusement in premises wherein food or drink is directly or indirectly sold to its members, or their guests, or to the public, shall be deemed to be conducting a cabaret hereunder.

c. A steamship or boat moored or tied to a dock, pier or shore, and which contains a dance hall or cabaret in use while so moored or tied, shall be required to obtain such license.

d. All applicants for licenses required by the provisions of this subchapter and holders of concessions on premises requiring such license shall be fingerprinted. If the applicant is a partnership, all members of the partnership shall be fingerprinted. Except in the discretion of the commissioner, if the applicant is a corporation, club, association, society or other organized groups of persons, all officers, directors, stockholders and other persons entitled to a share of the income or profits shall be fingerprinted. If the applicant for a cabaret license is the proprietor of a hotel containing more than two hundred rooms, only an officer or manager of the hotel filing the application shall be fingerprinted.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-297.0 added LL 92/1961 § 3

Sub d repealed LL 91/1977 § 1

Sub d relettered LL 91/1977 § 2

(formerly sub e)

**CASE NOTES FROM FORMER SECTION**

¶ 1. Determination of Commissioner of Licenses denying cabaret license to Playboy Club was sustained. There was reasonable ground to be apprehensive that waitresses would mingle with patrons in violation of rule adopted by Commissioner under § B32-305.0.-Matter of the Playboy Club of New York, Inc., 14 N.Y. 2d 503, 248 N.Y.S. 2d 226 [1964], aff'g, 18 App. Div. 2d 339, 239 N.Y.S. 2d 262 [1963].

¶ 2. Defendant did not violate this section by allegedly operating an unlicensed cabaret where one of a performing group of three instrumentalists occasionally put down her instrument and sang solo accompanied by the patrons since her basic employment as an instrumentalist was not thereby compromised.-People v. Byrne, 84 Misc. 2d 211, 375 N.Y.S. 2d 792 [1975].

¶ 3. Defendants who were present before court facing prosecution for operation of an unlicensed cabaret in violation of this section were directly affected by enforcement of the statute and thus had standing to challenge its constitutionality; it is irrelevant that defendant never applied for a license or could have obtained a license.-People v. Walter, 106 Misc. 2d 359, 431 N.Y.S. 2d 776 [1980].

**CASE NOTES**

¶ 1. Section 20-360(b) was not unconstitutional as applied to a nominally non-commercial membership organization which in fact is a commercial enterprise selling food and beverages for profit. Thus, the court upheld an administrative finding that petitioner was guilty of operating an unlicensed caberet. Interliners Lounge Social Club, Ltd. v. Department of Consumer Affairs, 176 A.D.2d 169, 574 N.Y.S.2d 190 (1st Dept. 1991).

¶ 2. The statutory requirement that caterers be licensed is one of general applicability. Hence, the law is not pre-empted by the state Alcholic Beverages Control Act. Cowgirl, Inc. v. Department of Consumer Affairs of the City of New York, 234 A.D.2d 42, 650 N.Y.S.2d 678 (App.Div. 1st Dept. 1996).

¶ 3. A landlord sought to evict a tenant who allegedly operated an unlicensed social club. The court held that even though the landlord's witness testified that he observed bottles of liquor, this did not constitute proof that the tenant sold or possessed liquor to sell for a consideration. Thus, since the landlord failed to show that a liquor license was needed, the eviction petition was dismissed. Valentine Associates v. Plummer, 148 Misc.2d 811, 562 N.Y.S.2d 351 (Civ.Ct. Bronx Co. 1990).



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-360.1*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-360.1 Security guards in public dance halls or cabarets.

a. It shall be a violation of this subchapter for any person to conduct, maintain or operate a public dance hall or cabaret that employs or retains the services of one or more security guards without complying with the provisions of article 7-A of the general business law.

b. A public dance hall or cabaret that employs or retains the services of one or more security guards shall maintain and make available during all hours of operation, in accordance with rules promulgated by the department, proof that each such security guard is validly registered pursuant to article 7-A of the general business law.

c. A public dance hall or cabaret shall maintain a roster of all security guards working at any given time when such public dance hall or cabaret is open to the public, and shall require each security guard to maintain on his or her person proof of registration at all times when on the premises.

d. The enforcement agency shall report any violation of the provisions of this section to the state liquor authority if the licensee holds a license pursuant to the alcoholic beverage control law.

**HISTORICAL NOTE**

Section added L.L. 35/2006 § 5, eff. Nov. 21, 2006. [See Note 1]

**NOTE**

1. Provisions of L.L. 35/2006:

§ 8. Severability. If any subdivision, sentence, clause, phrase or other portion of the local law that added this chapter is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that added this chapter, which remaining portions shall remain in full force and effect.

§ 9. This local law shall take effect ninety days after its enactment [Nov. 21, 2006]; provided that the relevant city agencies shall take all necessary steps, including but not limited to the promulgation of rules, to ensure the prompt implementation of this local law upon its effective date.

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***** Current through December 2009 ****

*NYC Administrative Code 20-360.2*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-360.2 Additional security measures for cabarets and public dance halls.

a. No one shall operate a cabaret or public dance hall unless all entrances and exits used by patrons are equipped with digital video surveillance cameras, provided, however, that this section shall not apply to an establishment that operates primarily as a restaurant, as defined by section three of the alcoholic beverage control law, during all hours of operation.

b. Digital video surveillance systems shall comply with the following provisions and with the rules of the commissioner:

1. The video surveillance cameras shall be digital in nature and shall be of sufficient number, type, placement and location to view and record all activity in front of and within 15 feet of either side of each entrance or exit;

2. The video surveillance cameras shall be sufficiently light sensitive and provide sufficient image resolution (supported by additional lighting if necessary) to produce easily discernible images recorded at all times;

3. The video surveillance cameras shall record at a minimum speed of fifteen frames per second;

4. The video surveillance camera images shall be capable of being viewed through use of appropriate technology, including but not limited to a computer screen or closed circuit television monitor;

5. The video surveillance camera system shall be capable of transferring the recorded images to a portable form of media, including but not limited to compact disc or digital video disc;

6. The video surveillance cameras shall not have an audio capability;

7. The video surveillance cameras shall be maintained in good working condition;

8. Except as otherwise provided by rule, the video surveillance cameras shall be in operation and recording continuously during all hours of operation of the cabaret or public dance hall and for two hours after the cabaret or public dance hall closes;

9. The recordings made by video surveillance cameras installed and maintained pursuant to this section shall be indexed by dates and times and preserved for a minimum of thirty days so that they may be made available to the department, the police department and other government agencies acting in furtherance of a criminal investigation or a civil or administrative law enforcement purpose;

10. All recordings made by video surveillance cameras installed and maintained pursuant to this section while in the possession of the cabaret or public dance hall shall be stored in a locked receptacle located in a controlled access area, to which only authorized personnel have access, or shall otherwise be secured so that only authorized personnel may access such video recordings. All personnel authorized to access such video recordings must certify in writing that they have been informed on the appropriate use and retention of recordings as set forth in this section, and on the legal issues associated with video surveillance and the use and retention of recordings. The cabaret or public dance hall shall keep a log of all instances of requests for, access to, dissemination and use of, recorded materials made by video surveillance cameras installed and maintained pursuant to this section. Copies of the certifications by authorized employees and of the access log shall be provided to the department in accordance with its rules;

11. The use or dissemination of recordings made by video surveillance cameras installed and maintained pursuant to this section in violation of the penal law or section 50 of the civil rights law shall result in suspension or revocation of a license and a fine of not less than $5,000 nor more than $50,000; and

12. The cabaret or public dance hall shall post signage at appropriate locations, as determined by rule of the commissioner, to notify the public of its use of video surveillance equipment and the locations of video surveillance equipment so that the public has sufficient warning that surveillance is in operation.

c. Each person subject to the provisions of this section shall submit, or ensure the submission of, a report to the department within thirty days after the effective date of this section, or, in the case of a new cabaret or public dance hall, within thirty days after the establishment of such cabaret or public dance hall. Such report shall certify that the cabaret or public dance hall is in compliance with this section. Reports filed pursuant to this subdivision shall be submitted in such form and manner and containing such information as shall be provided by rule of the commissioner.

d. The department shall conduct periodic inspections of licensees to ensure compliance with the use and retention policies set forth in this section.

e. The commissioner may suspend or revoke a cabaret or public dance hall license if the licensee violates the requirements of this section and, in addition, shall impose a fine of $1,000 for each violation of paragraphs nine, ten or twelve of subdivision (b) of this section, and any additional penalties and fines as required by paragraph eleven of subdivision (b) of this section.

**HISTORICAL NOTE**

Section added L.L. 7/2007 § 1, eff. Sept. 10, 2007.

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***** Current through December 2009 ****

*NYC Administrative Code 20-361*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-361 Issuance and renewal of license.

a. The commissioner may refuse to issue or renew a license to an applicant only upon the occurrence of any one or more of the following conditions:

1. the applicant, licensee, its officers, principals, directors and stockholders owning more than ten percent of the outstanding stock of the corporation have not submitted complete and accurate information required by the department in connection with:

(a) an application for a license or renewal thereof;

(b) an application for the approval of a change of ownership;

(c) the furnishing of a record of convictions for offenses as provided in paragraph five of this subdivision;

(d) the furnishing of financial information and records by the applicant, licensee, its officers, principals, directors and stockholders owning more than ten percent of the outstanding stock of the corporation concerning the source of funds used or intended to be used in the operation of the licensed business and the amount of total funds each such individual has invested in the business;

2. the premises on or in which the licensed business is to be conducted have not been certified as in compliance

with the health, fire, buildings, zoning and water, gas and electricity safety requirements and standards established by the laws of the city and state of New York or any other governmental authority having jurisdiction thereof;

3. with respect to a new license application for the premises on or in which the licensed business is to be conducted, there is no current certificate of occupancy to operate a public dance hall, cabaret or catering establishment;

4. the applicant, licensee, its officers, principals, directors and stockholders have not complied with the regulations of the department applicable thereto;

5. the applicant, licensee, its officers, principals, directors and stockholders owning more than ten percent of the outstanding stock of the corporation have been convicted of:

(a) any of the following offenses and there is a relationship between the offense and the conduct of a public dance hall, cabaret or catering establishment:

(i) an offense within article two hundred of the penal law relating to bribery involving public servants;

(ii) a felony within article two hundred ten of the penal law relating to perjury;

(iii) an offense within article two hundred thirty of the penal law relating to prostitution offenses;

(iv) an offense within article two hundred forty-five of the penal law relating to offenses against public sensibilities;

(v) an offense within section 260.20 of the penal law relating to unlawfully dealing with a child;

(b) any other offense which is a felony under the laws of this state or a crime committed in violation of the laws of any other jurisdiction which if committed in this state would be a felony;

(c) any offense which is a misdemeanor involving the premises on or in which the licensed business is to be conducted.

6. the applicant, licensee, its officers, principals, directors and stockholders owning more than ten percent of the outstanding stock of the corporation have suffered or permitted the premises on or in which the licensed business is to be conducted, through improper or inadequate maintenance and supervision, to be used for the commission of any of the offenses set forth in paragraph five of this subdivision;

7. the applicant, its officers, principals, directors, stockholders owning more than ten percent of the outstanding stock of the corporation and employees thereof at the premises on which the licensed business is to be conducted have at least three times been proven to be in violation of the provisions of subchapter one of chapter five of this title of this code or of any regulations promulgated thereunder.

b. The commissioner shall not issue or renew a license if the applicant, licensee, its officers, principals, directors and stockholders owning more than ten percent of the outstanding stock of the corporation have not paid, within the time permitted by law, any fine, penalty or judgment duly imposed in connection with or arising from the use, occupation or operation of the premises on which the licensed business is to be conducted.

e. Each applicant and licensee shall notify the department in writing by registered mail, return receipt requested, within three business days of receipt of notice of service of a summons for a violation relating to the operation of the business licensed or to be licensed or to the premises on or in which the business licensed or to be licensed is to be conducted and of a conviction for any offense set forth in paragraph five of subdivision a of this section occurring after the filing date of the application for a license or a renewal thereof or occurring during the term of the license.

f. In the manner prescribed in rule three hundred eighteen of the civil practice law and rules, each applicant or licensee shall designate an agent, a substitute agent and a successor agent for receiving service of process and communications from this de- partment located within the city of New York. Proof of such designation shall be filed with the license application at the department.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a par 7 renumbered L.L. 34/1986 § 2.

Subd a (former par 8)

Subd. a par 7 repealed L.L. 34/1986 § 2.

Subd. b added L.L. 34/1986 § 3.

Subd. e relettered L.L. 34/1986 § 2.

Subd e (former subd b)

Subd. f relettered L.L. 34/1986 § 2.

Subd. f (former subd c)

**DERIVATION**

Formerly § B32-297.1 added LL 91/1977 § 3

**CASE NOTES**

¶ 1. Plaintiffs, who were served with summonses from the Department of Consumer Affairs, for operating unlicensed cabarets in violation of this section, had standing on a motion for a preliminary injunction enjoining defendant from enforcing the ordinance to challenge the constitutionality of the section even though they had not applied for a cabaret license.-Club Winks v. City of N.Y., 99 Misc. 2d 787 [1979].

¶ 2. This section which authorizes Commissioner of Consumer Affairs to refuse to renew a cabaret license upon the basis of various types of criminal convictions, many unrelated to the use of the premises or qualifications for operating them, is unconstitutional since it vests overly broad discretion in an administrator.-Id.

¶ 3. Provision in statute requiring disclosure of all stockholders holding a minimum of a 10 percent stock interest in corporation and source of their money is unconstitutional, no compelling necessity to procure this information being showed and to do so would violate right to freedom of association and anonymity.-Id.

¶ 4. Where illegal drugs are being sold on respondent's cabaret premises, the City can use such acts as a basis for denying renewal of the cabaret license, and at the same time pursue an action for nuisance abatement. Cromwell v. Hoffman, 724 N.Y.S.2d 420 (App.Div. 1st Dept. 2001).

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***** Current through December 2009 ****

*NYC Administrative Code 20-362*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-362 Exemptions.

This subchapter shall not apply to:

a. Premises owned, occupied and used exclusively by a membership corporation, club, society or association, provided such membership corporation, club, society or association was in actual existence prior to January first, nineteen hundred twenty-six.

b. Premises owned, occupied and used exclusively by a religious, charitable, eleemosynary or educational corporation or institution.

c. Premises licensed pursuant to subchapters one and three of this chapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-298.0 added LL 92/1961 § 3

Sub c amended LL 95/1961 § 3

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***** Current through December 2009 ****

*NYC Administrative Code 20-363*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-363 Fees.

a. The license herein prescribed shall be issued by the commissioner. Application for such license shall be made on a form containing such information as may be determined by the commissioner, and shall be certified to by the applicant. The fee for each cabaret or public dance hall license shall be as follows:

**[See tabular material in printed version]**

b. If additional rooms are to be used independently by the same applicant in the same premises as a public dance hall, cabaret or catering establishment, the applicant shall indicate on the application the location of each and every room or space which is to be used for such purpose. In such cases a separate license shall be required for each such additional independent room or space, and the fee for each such independent additional room or space shall be sixty dollars.

c. A partial fee in an amount equal to one-third of the applicable license fee shall be paid upon filing of an application for a license herein prescribed, in order to defray the cost of processing the application and shall not be refundable. The processing fee shall be applied against the fee to be paid for the issuance of such license as provided herein.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-299.0 added LL 92/1961 § 3

Subs a, b, c amended LL 44/1970 § 12

Sub d repealed LL 74/1977 § 3

Subs a, b amended LL 30/1983 § 10



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-364*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-364 Posting of license.

Each license issued hereunder shall be kept posted at the main entrance of every place licensed hereunder.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-300.0 added LL 92/1961 § 3



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-365*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-365 License not transferable.

No license issued under the provisions of this subchapter shall be transferred or assigned to any person, or used by any person other than the licensee to whom it was issued, nor shall such license be used on any location other than the location stated in such license.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-301.0 added LL 92/1961 § 3

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*NYC Administrative Code 20-366*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-366 Changes in corporate licenses.

If, during the term of the licensing period, one or more directors, stockholders or officers of a corporate license, is substituted or added, such substituted or added directors, stockholders or officers shall, within five days of such substitution or addition, file with the commissioner an application for an approval of the change of directors, stockholders or officers on such forms as are prescribed by the commissioner. A waiver of this provision may be granted in the discretion of the commissioner to any corporation with regard to stockholders holding less than ten percent of the issued stock.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-302.0 added LL 92/1961 § 3



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***** Current through December 2009 ****

*NYC Administrative Code 20-367*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-367 Places closed to public within certain hours.

Premises licensed hereunder shall not be kept open for business, nor shall the public be permitted to enter or to remain therein, between four ante meridian and eight ante meridian; and if the occupant is a membership corporation, club, association, or society, its members or their guests shall not be permitted to enter or to remain therein between such hours. The commissioner, in his or her discretion, may permit any premises licensed hereunder to be open to the public between such hours on special occasions. If it appears to the commissioner that the place for which a license is sought will be frequented by minors, or if there is in the opinion of the commissioner any other good and sufficient reason therefor, he or she may grant a license upon the condition that the licensed premises shall not be open for business between one ante meridian and eight ante meridian.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-303.0 added LL 92/1961 § 3

**CASE NOTES**

¶ 1. Discotheque "The Limelight" is licensed as a "cabaret" and also licensed to sell liquor for consumption on premises pursuant to ABCL. Petitioner is charged with violating § 20-367 requiring closing between the hours of 4:00 A.M. and 8:00 A.M. However, State liquor laws only prohibit licensed establishments from selling alcoholic beverages on premises during those hours, patrons may remain on premises and are given $^1/_2$ hour to finish drinking. State law preempts local law in this case. Limelight v. NYC Dep't of Consumer Affairs, 141 AD2d 468 [1988] affirmed 74 NY2d 761 [1989].

¶ 2. This section is pre-empted by the state Alcholic Beverages Control Law (ABC law) but only with respect to estabishments which are also licensed under the ABC law. Thus, the City could not require an ABC licensed discotheque to close at times when customers were otherwise permitted by state law to remain on the premises. Landsdown Entertainment Corp. v. New York City Dept. of Consumer Affairs, 141 AD2d 468, 530 N.Y.S.2d 574 (1st Dept. 1988).

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***** Current through December 2009 ****

*NYC Administrative Code 20-368*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-368 Rules and regulations.

a. The commissioner is authorized to adopt such reasonable rules and regulations as he or she may deem necessary for the proper control, operation, and supervision of public dance halls, cabarets and catering establishments.

b. Upon request of a patron or guest of a public dance hall or cabaret, such patron or guest shall be furnished with a clearly printed menu or other written list that itemizes the prices charged for food and drink sold before he or she is served, or, in the alternative, one or more signs reciting such itemized prices may be placed in conspicuous locations within the premises so as to be readily observable to all patrons and guests.

**HISTORICAL NOTE**

Section amended L.L. 39/2006 § 11, eff. Dec. 16, 2006. [See § 17-315

Note 1]

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-305.0 added LL 92/1961 § 3

**CASE NOTES FROM FORMER SECTION**

¶ 1. Determination of Commissioner of Licenses denying cabaret license to Playboy Club was sustained. There was reasonable ground to be apprehensive that waitresses would mingle with patrons in violation of rule adopted by Commissioner under § B32-305.0.-Matter of the Playboy Club of New York, Inc., 14 N.Y. 2d 503, 248 N.Y.S. 2d 226 [1964], aff'g, 18 App. Div. 2d 339, 239 N.Y.S. 2d 262 [1963].



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-369*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-369 Suspension and revocation of license.

a. The commissioner may suspend or revoke a license for conduct of the licensee, its officers, principals, directors, agents or employees or in a closely held corporation, stockholders, that would constitute grounds for denying the issuance of renewal of a license pursuant to section 20-361 of this code.

b. The commissioner may suspend or revoke a cabaret or public dance hall license if the licensee violates the requirements of section 20-360.1 of this subchapter, provided, however, that the commissioner shall suspend or revoke a cabaret or public dance hall license upon the third violation by the licensee within two years of the first violation.

c. Upon application to the commissioner and prior to the reinstatement or reissuance of a suspended or revoked license, the licensee, with the commissioner's approval, shall, upon payment of the fee as specified in section 20-362 of this code, be permitted to operate for six months on a probationary license. At the end of such six month period, the license shall be reinstated or reissued unless the commissioner finds that the licensee, its officers, principals, directors, agents or employees or, in a closely held corporation, stockholders, have engaged in conduct that would constitute grounds for denying the issuance or renewal of a license pursuant to section 20-361 of this code. Upon a finding of such conduct the probationary license shall be revoked and shall not be reissued for a period of one year.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Section heading amended L.L. 34/1986 § 4.

Subd. a amended L.L. 34/1986 § 4.

Subd. b added L.L. 35/2006 § 6, eff. Nov. 21, 2006. [See § 20-360.1 Note 1]

Subd. b added L.L. 34/1986 § 4.

Subd. c relettered (former subd. b) L.L. 35/2006 § 6, eff. Nov. 21, 2006. [See § 20-360.1 Note 1]

**DERIVATION**

Formerly § B32-306.0 added LL 92/1961 § 3

Repealed and added LL 91/1977 §§1, 3

**CASE NOTES FROM FORMER SECTION**

¶ 1. City was entitled to temporary injunction against operation of a public dance hall by defendant without a license which had been suspended until a sprinkler system was installed even though defendant had filed a petition for arrangement under the United States Bankruptcy Act in the federal court, and the usual court order had issued restraining the commencement of a lawsuit against the debtor or in any way interfering with his property since the motion before the court involved the public interest and was not to be treated as creditors' lawsuits which are within the contemplation of the federal order.-City of N.Y. v. Electric Circus Co., 165 (15) N.Y.L.J. (1-22-71) 18 Col. 1 M.

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*NYC Administrative Code 20-370*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-370 Independent monitoring required.

The commissioner may, with the consent of the licensee, require in lieu of suspension or revocation of a license pursuant to section 20-369 of this code upon the grounds delineated in sections 20-361, 20-360.1 or 20-360.2 of this code, or as a condition of license renewal upon the occurrence of one or more of the conditions provided in section 20-361 of this code, that the licensee enter into a contract with an independent monitor approved or selected by the police commissioner. Such contract, the cost of which shall be paid by the licensee, shall provide that the monitor review the activities of the licensee with respect to the licensee's compliance with the provisions of this subchapter, other applicable federal, state and local laws and such other matters as the department shall determine by rule, and shall recommend to the licensee steps it can take and practices it can implement to ensure compliance with such provisions, rules and laws, which may include, but need not be limited to, the use of identification scanners at all entrances and additional training for employees concerning safety issues, conflict management and/or laws and liabilities associated with the illegal service of alcoholic beverages. The contract shall provide further that the monitor report the findings of such monitoring, including the extent to which the cabaret or public dance hall has complied with the monitor's recommendations, to the department and to the police commissioner on a regular basis, as determined by rule of the commissioner.

**HISTORICAL NOTE**

Section added L.L. 6/2007 § 1, eff. June 12, 2007.

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*NYC Administrative Code 20-370.1*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-370.1 Reporting by the department regarding monitoring contracts.

The department shall submit to the city council on an annual basis a report listing all monitoring contracts entered into pursuant to section 20-370 of the administrative code of the city of New York, which report shall include: (1) the reason for each monitoring agreement; (2) the length of the initial monitoring period in each monitoring agreement; and (3) the length of any extension of a monitoring agreement and the reasons for such extension.

**HISTORICAL NOTE**

Section added L.L. 6/2007 § 1, eff. June 12, 2007.

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*NYC Administrative Code 20-370.2*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-370.2 Reporting by licensees of substantiated violations against cabarets and public dance halls.

Licensees who are convicted or otherwise found liable for violation of any of the provisions of sections 20-361, 20-360.1 or 20-360.2 that would constitute grounds for denying the issuance or renewal of a license shall within ten days of such conviction or finding report such conviction or finding to the department in a form and manner and containing such information as shall be provided by rule of the commissioner.

**HISTORICAL NOTE**

Section added L.L. 6/2007 § 1, eff. June 12, 2007.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-370*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 20 PUBLIC DANCE HALLS, CABARETS AND CATERING ESTABLISHMENTS

§ 20-370 Permit for a public, masquerade or fancy dress dance or ball; fee. [Repealed]

**HISTORICAL NOTE**

Section repealed L.L. 12/1995 § 1, eff. Jan. 19, 1995.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-307.0 added LL 92/1961 § 3

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***** Current through December 2009 ****

*NYC Administrative Code 20-201*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 1*5 RETAIL CIGARETTE DEALERS

§ 20-201 Definitions.

Whenever used in this subchapter:

a. "Agent" means any person authorized to purchase and affix adhesive or meter stamps under chapter thirteen of title eleven of this code who is designated as an agent by the commissioner of finance.

b. "Cigarette" shall mean (1) any roll for smoking made wholly or in part of tobacco or any other substance wrapped in paper or in any other substance not containing tobacco, and (2) any roll for smoking made wholly or in part of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph one of this subdivision. However, a roll will not be considered to be a cigarette for purposes of paragraph two of this subdivision if it is not treated as a cigarette for federal excise tax purposes under the applicable federal statute in effect on April first, two thousand eight.

c. "Commissioner of finance" means the commissioner of finance of the City of New York.

d. "Dealer" shall mean any wholesale dealer or retail dealer as hereinafter defined.

e. "Person" shall mean any individual, partnership, society, association, joint-stock company, corporation,

limited liability company, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

f. "Retail dealer" shall mean any person other than a wholesale dealer engaged in selling cigarettes. For the purposes of this chapter, the possession or transportation at any one time of five thousand or more cigarettes by any person other than a manufacturer, an agent, a licensed wholesale dealer or a person delivering cigarettes in the regular course of business for a manufacturer, an agent or a licensed wholesale or retail dealer, shall be presumptive evidence that such person is a retail dealer.

g. "Sale or purchase" shall mean any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever or any agreement therefor.

h. "Wholesale dealer" shall mean any person who sells cigarettes to retail dealers or other persons for purposes of resale only, and any person who owns, operates or maintains one or more cigarette vending machines in, at or upon premises owned or occupied by any other person.

**HISTORICAL NOTE**

Section added L.L. 2/2000 § 9, eff. Aug. 2, 2000.

Subd. b amended chap 57/2008 Part MM-1 § 4, eff. July 1, 2008. [See

§ 11-1301 Note 1]

**CASE NOTES**

¶ 1. The court sustained a Department of Consumer Affairs order revoking petitioner's home improvement license, directing petitioner to make restitution in the amount of $34,777.39, and imposing fines of $400. The order was imposed after petitioner failed to comply with a settlement agreement, and the court found that the penalties imposed were not so disproportionate to the offense as to shock the court's sense of fairness. Marin Contracting Corp. v. Scatliffe, 272 A.D.2d 206, 706 N.Y.S.2d 96 (App.Div. 1st Dept. 2000).

**FOOTNOTES**

5

[Footnote 5]: * Subchapter added L.L. 2/2000 § 9, eff. Aug. 2, 2000.

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***** Current through December 2009 ****

*NYC Administrative Code 20-202*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 1*5 RETAIL CIGARETTE DEALERS

§ 20-202 License.

a. License required of retail dealers.

1. It shall be unlawful for any person to engage in business as a retail dealer without first having obtained a license as hereinafter prescribed for each place of business wherein such person sells cigarettes in the city.

2. It shall be unlawful for a person to permit any premises under such person's control to be used by any other person in violation of paragraph one of subdivision a of this section.

b. License application. In order to obtain a license to engage in business as a retail dealer, a person shall file an application with the commissioner for a license for each place of business that he or she desires to have for the retail sale of cigarettes in the city. The application for each license or renewal thereof shall be made upon such form as prescribed by the commissioner and shall contain such information as the commissioner shall require.

c. Fee and license term. 1. There shall be a biennial fee of one hundred ten dollars for a license to engage in the business of a retail dealer at each place of business where cigarettes are sold in the city.

2. All even-numbered licenses shall expire on December 31 of the even-numbered year, and all odd-numbered licenses shall expire on December 31 of the odd-numbered year, next succeeding the year in which the license is issued.

d. Issuance of license. 1. A license shall be issued to a person to conduct the business of a retail dealer for each place of business where such person engages in selling cigarettes in the city only where:

(A) an applicant for a license or renewal thereof meets all the requirements prescribed herein and any criteria in addition thereto established by the commissioner by rule as he or she deems necessary to effectuate the purposes of this subchapter;

(B) an applicant satisfies the commissioner that such person is fit and able to conduct the business of a retail dealer; and

(C) the commissioner has not received notification from the commissioner of finance or the commissioner of the department of health and mental hygiene that such applicant is not in full compliance with any provision of chapter thirteen of title eleven of this code, or chapter forty of title eleven of this code relating to the sale of cigarettes, or chapter seven of title seventeen of this code, or chapter eight of title seventeen of this code, or any rules promulgated by the commissioner of finance or the commissioner of the department of health and mental hygiene to effectuate the purposes of such chapters.

2. A retail dealer license shall not be assignable and shall be valid only for the persons in whose names it is issued and for the transaction of business in the place designated therein and shall at all times be conspicuously displayed at the place for which it is issued.

3. Where a license for any place of business licensed pursuant to this subchapter has been revoked, the commissioner in his or her discretion may refuse to issue a license required under this subchapter, for a period of two years after such revocation, for such place of business or for any part of the building that had contained such place of business and was connected therewith, unless the applicant for such license demonstrates with documentary proof, to the satisfaction of the commissioner, that the applicant acquired the premises or business through an arm's length transaction.

4. For purposes of revocation of retail dealer licenses pursuant to section 17-624 of the code, any violation of section 17-618, 17-619 or 17-620 by any license holder at a place of business shall be included in determining the number of violations by any subsequent license holder at the same place of business unless the subsequent license holder provides the commissioner with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of violations on the premises.

5. For purposes of paragraphs 3 and 4 of section 20-202, "arm's length transaction" means a sale of a fee or all undivided interests in real property, or lease of any part thereof, or a sale of a business, in good faith and for valuable consideration, that reflects the fair market value of such real property or lease, or business, in the open market, between two informed and willing parties, where neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the sale or lease was made for the purpose of permitting the original licensee to avoid the effect of violations on the premises. The following sales or leases shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of violations on the premises:

(1) a sale between relatives; or

(2) a sale between related companies or partners in a business; or

(3) a sale or lease affected by other facts or circumstances that would indicate that the sale or lease is entered into for the primary purpose of permitting the original licensee to avoid the effect of violations on the premises, or revocation of a license.

**HISTORICAL NOTE**

Section added L.L. 2/2000 § 9, eff. Aug. 2, 2000.

Subd. d par 1 subpar (C) amended L.L. 22/2002 § 40, eff. July 29, 2002

and deemed in effect as of July 1, 2002.

Subd. d par 1 subpar (C) amended L.L. 30/2000 § 2, eff. Aug. 2, 2000.

**FOOTNOTES**

5

[Footnote 5]: * Subchapter added L.L. 2/2000 § 9, eff. Aug. 2, 2000.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-203*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 1*5 RETAIL CIGARETTE DEALERS

§ 20-203 Recordkeeping and examination.

a. A retail dealer shall make and maintain such records of cigarette sales and purchases as are prescribed by the commissioner of finance pursuant to chapter thirteen of title eleven of this code.

b. Such records as are required to be kept shall be available for inspection at the place of business for which a retail dealer license is issued and such records shall be available for inspection by the commissioner of finance or such commissioner's duly authorized representatives as to the extent necessary to ascertain whether such retail dealer is in compliance with the purposes and requirements of chapter thirteen of title eleven of this code.

**HISTORICAL NOTE**

Section added L.L. 2/2000 § 9, eff. Aug. 2, 2000.

**FOOTNOTES**

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[Footnote 5]: * Subchapter added L.L. 2/2000 § 9, eff. Aug. 2, 2000.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-204*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 1*5 RETAIL CIGARETTE DEALERS

§ 20-204 Duplicate licenses.

Whenever any license issued under the provisions of this subchapter is defaced, destroyed or lost, the commissioner shall issue a duplicate license to the holder of the defaced, destroyed or lost license upon the payment of a fee of fifteen dollars.

**HISTORICAL NOTE**

Section added L.L. 2/2000 § 9, eff. Aug. 2, 2000.

**FOOTNOTES**

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[Footnote 5]: * Subchapter added L.L. 2/2000 § 9, eff. Aug. 2, 2000.

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***** Current through December 2009 ****

*NYC Administrative Code 20-205*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 1*5 RETAIL CIGARETTE DEALERS

§ 20-205 Prohibited sales and purchases.

No agent or dealer shall sell cigarettes to an unlicensed dealer, or to a dealer whose license has been suspended or revoked. No dealer shall purchase cigarettes from any person other than a manufacturer or a licensed wholesale dealer.

**HISTORICAL NOTE**

Section added L.L. 2/2000 § 9, eff. Aug. 2, 2000.

**FOOTNOTES**

5

[Footnote 5]: * Subchapter added L.L. 2/2000 § 9, eff. Aug. 2, 2000.

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***** Current through December 2009 ****

*NYC Administrative Code 20-206*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 1*5 RETAIL CIGARETTE DEALERS

§ 20-206 Renewal, suspension and revocation of licenses.

a. In addition to any other powers of the commissioner, and not in limitation thereof, the commissioner may, after due notice and opportunity to be heard, refuse to renew any license required under this subchapter and may suspend or revoke such license if the person holding such license, or, where applicable, any of its officers, principals, directors, members, managers, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation, has been found to have:

1. made a material false statement or concealed a material fact in connection with the filing of any application pursuant to this subchapter; or

2. not paid, within the time permitted by law, any civil penalty or judgment duly imposed pursuant to the provisions of this subchapter or any rules promulgated thereunder or pursuant to chapter thirteen of title eleven of this code, or chapter forty of title eleven of this code relating to cigarette sales.

3. violated the provisions of section 17-702 of this code or any rules promulgated thereunder.

b. In addition to the commissioner's power to refuse to renew, suspend or revoke a license as provided in subdivision a of this section, the commissioner shall be authorized to refuse to renew any license required under this subchapter and may suspend or revoke such license upon the notification by the commissioner of finance that the person

holding such license, or, where applicable, any of its officers, principals, directors, employees, members, managers, or stockholders owning more than ten percent of the outstanding stock of the corporation, has been found to have violated any provision of chapter thirteen of title eleven of this code, or of chapter forty of title eleven of this code relating to cigarette sales.

c. Upon suspending or revoking any retail cigarette license, the commissioner shall direct the holder thereof to surrender to the commissioner immediately any cigarette retail license or duplicates thereof issued to such holder for such place of business and the holder shall surrender promptly all such licenses to the commissioner as directed.

**HISTORICAL NOTE**

Section added L.L. 2/2000 § 9, eff. Aug. 2, 2000.

Subd. a par 3 added L.L. 30/2000 § 3, eff. Aug. 2, 2000.

**FOOTNOTES**

5

[Footnote 5]: * Subchapter added L.L. 2/2000 § 9, eff. Aug. 2, 2000.

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***** Current through December 2009 ****

*NYC Administrative Code 20-207*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 1*5 RETAIL CIGARETTE DEALERS

§ 20-207 Violations.

a. The civil penalties imposed pursuant to this section shall be in addition to any other sanctions and orders which may be imposed by the commissioner pursuant to this title including, but not limited to, such sanctions and orders which may be imposed pursuant to section 20-105 or to title 11 or title 17 of this code or pursuant to such other law the commissioner is authorized to enforce under this code.

b. Notwithstanding the provisions of subdivision a and b of section 20-106 of this code, any person who violates any provision of this subchapter or any rules promulgated thereunder shall be subject to a civil penalty of not less than two hundred and fifty dollars but not more than two thousand dollars for each violation, to be recovered in a civil action or in an administrative tribunal with jur- isdiction.

**HISTORICAL NOTE**

Section added L.L. 2/2000 § 9, eff. Aug. 2, 2000.

**FOOTNOTES**

5

[Footnote 5]: * Subchapter added L.L. 2/2000 § 9, eff. Aug. 2, 2000.

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***** Current through December 2009 ****

*NYC Administrative Code 20-211*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 3 AMUSEMENT DEVICES, ARCADES AND OPERATORS

§ 20-211 Definitions.

Whenever used in this subchapter, the following terms shall mean:

a. "Amusement device" means any contrivance, open to the public, that carries and conveys passengers along, around or over a fixed or restricted course or within a defined area for the purpose of amusing or entertaining its passengers, other than coin-operated amusement devices as defined in subdivision b of this section.

b. "Player-operated amusement device" means any machine, contrivance, apparatus, booth or other device intended as a game that one or more persons are permitted to play by controlling the mechanical, electrical or electronic components that are needed to operate or manipulate the game in exchange for the payment of a fee, charge or thing of value, and that provides amusement, diversion or entertainment. This shall include, but not be limited to, fixed stand coin-operated rides as defined in subdivision j of section 19-136 of this code.

c. "Amusement arcade" means any premises wherein there are operated, in any combination, five or more of the amusement devices and/or player-operated amusement devices defined in subdivisions a and b of this section.

d. "Amusement operator" means any person who maintains or operates any amusement device, gaming cafe or amusement arcade as defined in subdivisions a, c and i of this section.

e. "Amusement arcade or gaming cafe owner" means any person who owns or otherwise has legal possession or title to an amusement arcade as defined in subdivision c or a gaming cafe as defined in subdivision i of this section.

f. "Amusement device owner" means any person who owns or otherwise has legal possession or title to an amusement device as defined in subdivision a of this section.

g. "Portable amusement device" means an amusement device designed to be operated on the vehicle which is used to transport such device.

h. "Affected community board" means the community board in which an amusement device or amusement arcade would be located if a license were to be granted pursuant to this subchapter.

i. "Gaming cafe" is a place where, for a fee charged directly or indirectly, persons are provided access to three or more computers or electronic devices in which game software has been installed by or for the owner or operator for the purpose of playing a game on the premises.

**HISTORICAL NOTE**

Section added L.L. 72/1995 § 3, eff. Jan. 16, 1996.

Subd. b amended L.L. 58/2005 § 1, eff. Oct. 4, 2005.

Subd. c amended L.L. 58/2005 § 1, eff. Oct. 4, 2005.

Subd. d amended L.L. 58/2005 § 1, eff. Oct. 4, 2005.

Subd. e amended L.L. 58/2005 § 1, eff. Oct. 4, 2005.

Subd. i added L.L. 58/2005 § 2, eff. Oct. 4, 2005.



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***** Current through December 2009 ****

*NYC Administrative Code 20-212*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 3 AMUSEMENT DEVICES, ARCADES AND OPERATORS

§ 20-212 Licenses required.

a. It shall be unlawful for any person to act as an amusement operator without first having obtained a license therefor.

b. It shall be unlawful for any person to operate or for the owner to permit the operation of an amusement device unless such owner has first obtained a license for such amusement device.

c. It shall be unlawful for any person to operate, or for the owner to permit the operation of, an amusement arcade or gaming cafe unless such owner has first obtained a license for such amusement arcade or gaming cafe.

**HISTORICAL NOTE**

Section added L.L. 72/1995 § 3, eff. Jan. 16, 1996.

Subd. c amended L.L. 58/2005 § 3, eff. Oct. 4, 2005.

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***** Current through December 2009 ****

*NYC Administrative Code 20-213*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 3 AMUSEMENT DEVICES, ARCADES AND OPERATORS

§ 20-213 Fees.

a. The biennial license fee for an amusement operator's license shall be one hundred dollars.

b. The biennial license fee for each amusement device shall be one hundred dollars, except that where the amusement device is being operated for less than thirty consecutive days, the license fee shall be fifty dollars.

c. The biennial license fee for an amusement arcade or gaming cafe shall be three hundred forty dollars.

**HISTORICAL NOTE**

Section added L.L. 72/1995 § 3, eff. Jan. 16, 1996.

Subd. c amended L.L. 58/2005 § 4, eff. Oct. 4, 2005.



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***** Current through December 2009 ****

*NYC Administrative Code 20-214*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 3 AMUSEMENT DEVICES, ARCADES AND OPERATORS

§ 20-214 License requirements.

a. Generally.

(1) The application shall be made on a form to be provided by the commissioner and shall include such information as the commissioner shall deem pertinent.

(2) Every amusement device owner, gaming cafe owner or amusement arcade owner must submit to the department either a valid certificate of occupancy or an equivalent document duly issued by the department of buildings stating that the premises in which such amusement device, gaming cafe or amusement arcade is to be located is situated in an area which is zoned to permit such use or a valid, current permit or special permit has been granted by the appropriate city agency permitting such use at the given location. If such permit or special permit shall expire or be terminated for any reason during the pendency of any license, the licensee shall present to the department a new permit or special permit authorizing such continued use of the premises for an amusement device, gaming cafe or amusement arcade. If such new permit or special permit is not presented within ten days of the expiration of the prior permit or special permit, such amusement device license, gaming cafe or amusement arcade license shall be terminated automatically and without any requirement of notice or hearing by the department.

(3) Within fifteen days of receipt of a new application for a license to operate an amusement device, gaming cafe or an amusement arcade, the commissioner shall give notice of such new application to the affected community

board and the council member for that district. The affected community board shall have fifteen days from receipt of the notification to comment on such application to the department.

(4) The commissioner shall promptly notify the affected community board and the council member for that district of the final disposition of any license application that was subject to comment by the community board under paragraph three of this subdivision.

b. Amusement Devices.

(1) In order to apply for an amusement device license, the amusement device owner must present to the department a completed application at least thirty days before the amusement device is to be operated.

(2) Every amusement device owner must submit with his or her license application for an amusement device proof that he or she has purchased insurance or posted cash or other security in an amount not less one million dollars ($1,000,000) per occurrence or a bond in an amount not less than two million five hundred thousand dollars ($2,500,000) in the aggregate against liability for injury to persons arising out of the use of the amusement device. In addition, the application must be accompanied by the certificates of insurance for workers' compensation and disability coverage.

(3) Every amusement device owner must submit proof that an inspection of the amusement device was made by the department of buildings, and that such amusement device passed an elevator and/or electrical control inspection prior to the issuance or renewal of a license.

(4) Every portable amusement device shall be equipped with a stairway on either or both sides thereof so that the stairway in use at any time for access to or egress from such portable amusement device shall at all times be within a reasonable distance from the sidewalk, such distance to be determined at the discretion of the commissioner. The operator of such portable amusement device shall not at any time permit any person to be admitted to the portable amusement device or to depart therefrom except by the stairway.

c. Amusement Arcades and Gaming Cafes.

(1) The commissioner, at the time an amusement arcade or gaming cafe license application is made, may prescribe conditions for the operation of such amusement arcade or gaming cafe in order to minimize adverse effects on the surrounding area, including, but not limited to, prescribing hours of operation and requirements for security and supervision. After a license is granted, the commissioner may prescribe such conditions from time to time upon notice and opportunity to be heard.

(2) Each player-operated amusement device located within an amusement arcade or gaming cafe shall display a sign or signs, located and designed so as to be discernible by all players and prospective players, setting forth the rules of play, including the price of each game.

(3) Where the amusement arcade or gaming cafe owner or the amusement operator in the amusement arcade or gaming cafe offers free games or prizes, signs shall be required to set out with clarity the number of wins or the score required to obtain a free game or prize; provided, however, that no amusement arcade or gaming cafe owner or amusement operator in the amusement arcade or gaming cafe shall offer money prizes or awards or such other prizes or awards which are redeemable or may be redeemed in money at the amusement arcade or gaming cafe or any other establishment, or which may be used as a credit or allowance or which may be exchanged for any money, credit or allowance.

(4) No amusement arcade or gaming cafe owner or operator shall permit persons under the age of eighteen, unless such persons are otherwise exempt under New York State Education Law, to enter or remain in an amusement arcade or gaming cafe between the hours of nine a.m. through three p.m. on weekdays during the regularly scheduled

school year for public schools. Such owners shall prominently display a sign stating that, unless exempt by New York State Education Law, persons under eighteen years of age are not to enter or remain on the premises at such times and that the truancy laws of the state of New York will be enforced.

d. Placement and Operation. No amusement device or player-operated amusement device or group of amusement devices and/or player-operated amusement devices shall be placed or operated in such a manner as to obstruct, or cause by the congregating of persons, an obstruction to, or interfere with, any public corridor or passageway, or to obstruct the entrance or exit to any premises. No amusement device or player-operated amusement device or group of amusement devices and/or player-operated amusement devices shall be placed on a public sidewalk in front of or adjacent to an amusement arcade or gaming cafe.

**HISTORICAL NOTE**

Section added L.L. 72/1995 § 3, eff. Jan. 16, 1996.

Subd. a pars (2), (3) amended L.L. 58/2005 § 5, eff. Oct. 4, 2005.

Subd. c amended L.L. 58/2005 § 6, eff. Oct. 4, 2005.

Subd. c par (4) added L.L. 59/2005 § 1, eff. Oct. 4, 2005.

Subd. d amended L.L. 58/2005 § 6, eff. Oct. 4, 2005.

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*NYC Administrative Code 20-215*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 3 AMUSEMENT DEVICES, ARCADES AND OPERATORS

§ 20-215 [Gambling, gambling devices not authorized]*

Nothing2 in this subchapter shall be construed to authorize gambling or the use of gambling devices.

**HISTORICAL NOTE**

Section added L.L. 72/1995 § 3, eff. Jan. 16, 1996.

**FOOTNOTES**

2

[Footnote 2]: * Supplied by editor.

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***** Current through December 2009 ****

*NYC Administrative Code 20-216*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 3 AMUSEMENT DEVICES, ARCADES AND OPERATORS

§ 20-216 Location of Player-Operated Amusement Devices.

a. No person shall operate a player-operated amusement device or a gaming cafe within two hundred feet of a public or a private elementary or secondary school.

b. The provisions contained in subdivision a of this section shall not apply to fixed stand coin operated rides as defined in subdivision j of section 19-136 of this code.

c. Any person who violates the provisions of this section or any rules promulgated hereunder shall be guilty of a class B misdemeanor. In addition, the commissioner may, upon due notice, hold hearings to determine whether violations of the provisions of this section have occurred. Such notice shall contain a concise statement of the facts constituting the alleged violation and shall set forth the date, time and place of the hearing. Upon a finding of a violation of the provisions of this section, the commissioner shall be authorized to impose a civil penalty of not more than five hundred dollars.

**HISTORICAL NOTE**

Section added L.L. 72/1995 § 3, eff. Jan. 16, 1996.

Section heading amended L.L. 58/2005 § 7, eff. Oct. 4, 2005.

Subd. a amended L.L. 58/2005 § 7, eff. Oct. 4, 2005.



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***** Current through December 2009 ****

*NYC Administrative Code 20-215*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 4 BILLIARD AND POCKET BILLIARD TABLES AND BILLIARD AND POCKET BILLIARD ROOMS*4

§ 20-215 License; general provisions.

a. It shall be unlawful for any person to maintain, operate, conduct or engage in the business of conducting and maintaining a billiard or pocket billiard room or place unless the premises are licensed by the commissioner in the manner prescribed herein.

b. A membership corporation, club, association or society in whose premises billiards or pocket billiards are played or in whose premises billiard or pocket billiard tables are maintained which are available or held out as being available to persons for the playing of billiards or pocket billiards, shall be deemed to be conducting a billiard or pocket billiard room.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Section heading amended L.L. 10/1995 § 1, eff. Aug. 1, 1995.

Subd. b amended L.L. 10/1995 § 2, eff. Aug. 1, 1995.

Subds. c, d repealed L.L. 10/1995 § 3, eff. Aug. 1, 1995.

**DERIVATION**

Formerly § B32-45.0 added chap 929/1937 § 1

Sub d added LL 172/1939 § 12

Sub b amended LL 9/1943 § 1

(Special provision LL 9/1943 § 3)

Sub b amended LL 25/1947 § 1

Amended LL 48/1965 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Not only the applicant's character, but the character of the premises where a poolroom is to be operated, is an important factor in determining whether a license is to be granted or rejected.-Weinberg v. Moss, 112 (129) N.Y.L.J. (12-5-44) 1563, Col. 7 M.

¶ 2. Where petitioner's poolroom was near a school and convent, two churches and a rectory and he failed to disclose an arrest and conviction for vagrancy in 1935 and jostling in 1941, the denial of a poolroom license was not arbitrary.-Hill v. O'Connell, 145 (44) N.Y.L.J. (3-2-61) 14, Col. 2 M.

¶ 3. Petitioner **held** entitled to restoration of his poolroom license, which the Commissioner of Licenses had revoked or threatened to revoke, where it appeared that petitioner had held his license under annual renewals since 1930, that his establishment constituted a substantial investment in a busy part of the City, and that the record merely showed the arrest of an employee on a misdemeanor charge for allegedly allowing a fifteen-year-old boy to take part in a game of pool but the employee had been discharged on his own recognizance, that two summonses were issued for failure to display a sign showing the number allowed to congregate on the premises and failure of an employee to have an attendant's license, but the complaints were dismissed, and that in addition there had been over a fourteen-year period since 1930 fifteen additional "arrests" and one "summons", all of which resulted in dismissals insofar as petitioner was involved and also insofar as others were involved except that on one occasion in 1930 and one in 1933 patrons were convicted of disorderly conduct and received suspended sentences.-In re Katz (Moss), 184 Misc. 133, 55 N.Y.S. 2d 131, 50 N.Y.S. 2d 428 [1944], aff'd, 269 App. Div. 854, 56 N.Y.S. 2d 539 [1945].

¶ 4. In determining propriety of granting a license to operate a bowling alley, the Commissioner of Licenses was entitled to consider the location and suitability of the premises, and the character of the applicant.-In re Rosenberg (Moss), 106 (38) N.Y.L.J. (8-14-41) 343, Col. 7 M, aff'd without opinion, 266 App. Div. 845, 43 N.Y.S. 2d 852 [1944], aff'd, 296 N.Y. 595, 68 N.E. 2d 880 [1946].

¶ 5. Revocation of billiard and pool license merely because two persons convicted of attempted burglary told the authorities that they had planned the crime in petitioner's poolroom, where they spent most of their leisure time, **held** unreasonable, and reinstatement of the license would be directed, where neither petitioner nor her husband had ever been convicted of a crime and had never heard of the convicted men, there had been no complaints against petitioner and her associates for the five years they had had their license, and the husband, who managed the poolroom, had been doing such work for 40 years and had never had a complaint made against him.-In re Kats (Moss), 111 (41) N.Y.L.J. (2-19-44) 674, Col. 4 M.

¶ 6. Action of Commissioner of Licenses in revoking petitioner's poolroom license was arbitrary where there was no evidence to indicate that petitioner knew or might have known that his poolroom was frequented by any known criminal or used by any person planning a crime.-In re Marconi (Moss), 111 (82) N.Y.L.J. (4-20-44) 1537, Col. 7 F.

¶ 7. Refusal of Commissioner of Licenses to grant petitioner a license for operation of a pool and billiard academy at a certain address on ground the police captain of the precinct recommended denial of the license because an unwholesome reputation had been acquired by the premises, **held** not illegal on theory the Commissioner had made the approval of the Police Department a condition precedent to issuance of a license, since actually the Commissioner had merely referred the application to the Police Department for its advisory comment and had not surrendered any prerogative of his office.-In re Rosen (Moss), 101 (112) N.Y.L.J. (5-15-39) 2238, Col. 7 M.

¶ 8. The Commissioner of Licenses reasonably refused petitioner a pool hall license where the premises in question had a bad history, including arrests of patrons and proceedings against the former licensee, deceased.-In re Holloman (O'Connell), 140 (68) N.Y.L.J. (10-6-58) 12, Col. 7 F.

¶ 9. The denial of an application to operate a billiard parlor was not arbitrary where the area where the parlor would be located was predominantly residential, was within 350 feet of a public library and the application was opposed by 89 residents and business people in the area.-Brooks v. O'Connell, 148 (98) N.Y.L.J. (10-21-62) 14, Col. 5 M.

¶ 10. Commissioner's revocation of petitioner's bowling alley license because of a single instance in which an inspector had discovered a boy under the age of 16 engaged in setting up pins in the establishment, **held** to have been arbitrary, where petitioner had operated a bowling alley for 30 years and had invested a substantial sum of money therein, petitioner had not been represented by counsel at the hearing, and petitioner stoutly contended that he had not hired the boy but that a group of players had asked the boy to set up the pins for them for a final game.-In re New Orpheum Bowling Academy, Inc. (Moss), 113 (1) N.Y.L.J. (1-2-45) 13, Col. 5 F.

¶ 11. Revocation of petitioner's bowling alley license because of employment after midnight of a pin setter who was only 16 years of age, **held** to constitute an abuse of discretion where the pin setter was a runaway boy who had stated to petitioner that he was 20 years of age and a veteran of the present war, and had produced a baptismal certificate indicating that he was of the age claimed, and explained his lack of social security and selective service cards by fact that a pick-pocket had relieved him of them.-In re Lindauer (Moss), 52 N.Y.S. 2d 860 [1945].

¶ 12. Revocation of petitioner's license to conduct a bowling alley because petitioner employed a boy $17\frac{1}{2}$ years of age, who was setting up pins at 1:30 in the morning, was deemed unreasonable and arbitrary, inasmuch as there is no positive law against a boy of such age working at such occupation after midnight, and the boy was five feet 10 inches tall and weighed 175 pounds, and testified that the work did not interfere with his progress in high school and that he desired to continue the work until he was graduated or was ready to join the armed forces.-Gardners Bowling Centre, Inc. v. Moss, 269 App. Div. 709, 54 N.Y.S. 2d 196 [1945], aff'd, 294 N.Y. 960, 63 N.E. 2d 186 [1945].

¶ 13. Administrative Code § B32-46.0 provides an absolute prohibition against the use of a public bowling alley by a person under 16 years of age. There is no conflict between this provision and P.L. § 48 (1, 2), insofar as the latter relates to the same subject. Opinion of Attorney General dated Nov. 27, 1944.

¶ 14. A violation of the provisions of Administrative Code § B32-46.0, subd. c, providing that every keeper of a public bowling alley shall maintain good order and allow no person under 16 years of age to bowl therein, is **malum prohibitum,** not **malum in se,** and while the law does not require proof of intent in the application of a **malum prohibitum** statute, it does require that such a statute be strictly construed.-People v. Erwich, 118 N.Y.S. 2d 98 [1952].

¶ 15. Refusal of License Commissioner to issue to petitioners a license to run a billiard parlor on ground petitioners were intimately connected with an organization which, under guise of a political and social club, was a gambling resort, and that many arrests had been made in such place and petitioners had been among those arrested, **held** not to have been arbitrary so as to warrant a mandamus to compel issuance of license.-Matter of Peris (Moss), 98 (104) N.Y.L.J. (11-3-37) 1469, Col. 2 M.

¶ 16. Refusal of Commissioner of Licenses to issue to petitioner a license for operation of a pool and billiard academy on certain premises, **held** not to have been arbitrary or illegal, notwithstanding the good reputation of the

petitioner, where during the preceding eight years 179 persons had been arrested upon the premises for gambling, policy playing, bookmaking and disorderly conduct, and the police captain in the precinct had recommended a denial of the application.-In re Rosen (Moss), 101 (112) N.Y.L.J. (5-15-39) 2238, Col. 7 M.

¶ 17. Commissioner's refusal to renew petitioner's license to operate a billiard room at certain premises, **held** not to have been arbitrary where there had been a long record of arrests on the premises for card gambling and bookmaking, and the place had become a habitat of gamblers, particularly boys and young men.-In re Bobroff (Moss), 183 Misc. 851, 51 N.Y.S. 2d 950 [1944].

¶ 18. Action of Commissioner of Licenses in refusing to renew petitioner's licenses to run a pool room and bowling alley, **held** not to have been arbitrary, where petitioner was twice arrested three years prior thereto for bookmaking and pleaded guilty on both occasions, and on four separate occasions in connection with applications for license renewal he had admittedly made false statements by concealing such convictions.-Matter of Schwab (Moss), 112 (73) N.Y.L.J. (9-26-44) 645, Col. 3 T.

¶ 19. Commissioner's refusal to issue to petitioner a billiard parlor license, **held** not arbitrary where license of petitioner's father, who had been the original licensee, was revoked following his indictment for bribery, and keeping and maintaining a betting establishment, and petitioner had acquired the billiard parlor through a sale, purportedly made prior to the father's indictment and arrest, whereby petitioner was to pay $300 down and $20 per week for two years, for a total of $3200. It appeared that the arrangement would continue the operation of the billiard parlor under the father's control, and the father could take over at any time upon petitioner's failure to make the weekly payments.-In re Blum (Moss), 114 (129) N.Y.L.J. (12-5-45) 1587, Col. 2 F.

¶ 20. Refusal of Commissioner of Licenses to renew petitioner's pool and billiard academy license, **held** to have been arbitrary, and an order would issue directing the Commissioner to renew the license.-In re Blumenthal (McCaffrey), 124 (72) N.Y.L.J. (10-13-50) 797, Col. 5 F; Katz v. McCaffrey, 124 (72) N.Y.L.J. (10-13-50) 797, Col. 6 T.

¶ 21. Act of Commissioner of Licenses in denying a renewal of petitioner's license to operate a pool room because during a five-year period there were four complaints of illegal gambling, three arrests on the premises and two surveys by the Police Department which recommended continued police attention against the premises, **held** to have been arbitrary, where there had been complete exoneration of the licensee and the licensed premises after investigations by the Police Department of the complaints of illegal gambling and the acquittal and dismissal of the three criminal charges, the license had been renewed each year after the Commissioner was cognizant of the complaints and arrests and alleged character of the neighborhood, and after the arrest of petitioner's brother the license was at first suspended and then reinstated, petitioner, relying on such reinstatement, had committed himself to a five-year lease, and since such reinstatement no complaint or arrest had been made.-Feder v. McCaffrey, 110 N.Y.S. 2d 488 [1952].

¶ 22. Determination of Commissioner of Licenses denying petitioner's application for a license to operate a pool and billiard parlor at certain premises on ground the premises had become a habitat for a gambling syndicate, was sustained, as on the facts the decision could not be said to be capricious or unreasonable.-Bloom v. McCaffrey, 126 (85) N.Y.L.J. (10-31-51) 1074, Col. 5 F.

¶ 23. Denial by Commissioner of Licenses of a license to petitioner to operate a pool and billiard parlor at certain premises which had been purchased by petitioner in August, 1951, in which premises petitioner had operated under a license expiring in August 1, 1952, **held** to have been arbitrary, where the denial was based on 16 complaints received by the Police Department since 1936 concerning alleged gambling activities conducted in the premises and alleged numerous arrests made therein for violations of law. However, it was not claimed that any of the arrests resulted in a conviction, petitioners were persons of unblemished record, the 16 complaints were all based on hearsay, and although some basis for complaint arose years ago nevertheless annual licenses had been issued.-In re Bensom Recreation Center, Inc. (McCaffrey), 128 (12) N.Y.L.J. (7-17-52) 102, Col. 1 F.

¶ 24. Commissioner's denial of license to petitioner for operation of pool room at certain premises because of considerations that a number of arrests had been made for illegal gambling at the premises during a period of operation of the premises by petitioner's cousin, that petitioner had refused to testify before a deputy commissioner as to circumstances pertaining to transfer of the pool room to him by his cousin, that testimony at hearings before deputy police commissioner indicated use of the premises for bookmaking, and that the pool room had become known as headquarters for the conduct of illegal gambling, **held** not to have been arbitrary, as in his discretion the Commissioner may determine that the public interest would best be served by not allowing a license for a pool room which had been used for illegal purposes.-Feder v. McCaffrey, 110 N.Y.S. 2d 488 [1952].

¶ 25. Since petitioner was not entitled to a hearing on his application for a license as a matter of right, the Commissioner in reaching his determination had a right to consider any information concerning the matter that had come to his knowledge, even if it were hearsay and was secured in the absence of confrontation by petitioner. That the violations of law occurred prior to petitioner's acquisition of the premises did not preclude consideration thereof.-Id.

¶ 26. Refusal of Commissioner of Licenses to renew petitioner's pool room and billiard parlor license because of alleged laxity in supervision which had resulted in the death of a female employee who had been discovered in a bleeding condition in the female employee's dressing room and had died shortly thereafter, **held** not to have been arbitrary, as negligence on part of the management was clearly established whatever version of the details be credited.-Strand Billiard Academy, Inc. v. Moss, 269 App. Div. 733, 54 N.Y.S. 2d 226 [1945], reversing, 51 N.Y.S. 2d 494 [1944], aff'd without opinion, 294 N.Y. 865, 62 N.E. 2d 490 [1945].

¶ 27. Refusal of Commissioner of Licenses to issue a poolroom license to petitioner, **held** not to have been arbitrary where the premises were located within 500 feet of the church, there was another established poolroom in the neighborhood, and objections to the license were voiced by the pastor of the church, the police of the precinct and others in the neighborhood.-Serra v. McCaffrey, 128 (45) N.Y.L.J. (9-3-52) 363, Col. 7 M.

¶ 28. Denial of license to conduct a billard parlor was not arbitrary, where there were in the immediate vicinity several religious institutions, a public library and a public school, and several residents objected to the application.-In re A. & P. Billiards, Inc. (O'Connell), 150 (47) N.Y.L.J. (9-5-63) 14, Col. 2 M.

¶ 29. Denial of application for a billiard parlor license, was not arbitrary, in view of proximity of proposed premises to a public high school, and objections from a neighborhood parish priest, the local PTA, a community leader, a local civic association and many neighborhood residents.-In re Barovick (O'Connell), 149 (76) N.Y.L.J. (4-19-63) 16, Col. 4 M.

¶ 30. Refusal of Commissioner of Licenses to issue a bowling alley license to petitioner, **held** not to have been arbitrary or capricious, inasmuch as the Commissioner might reasonably have based his decision on considerations that while the alley was to be located in a business zone district it would be in a newly developed residential suburban section where it might be disquieting to the neighborhood, attract undesirables and create traffic problems, and that upon the hearing a great number of property owners and occupants, civic organizations and governmental agencies had protested against the proposed licensing.-In re Rosenberg (Moss), 106 (38) N.Y.L.J. (8-14-44) 343, Col. 7 M, aff'd without opinion, 266 App. Div. 845, 43 N.Y.S. 2d 852 [1944], aff'd, 296 N.Y. 595, 68 N.E. 2d 880 [1946].

¶ 31. Refusal of Commissioner of Licenses to issue a bowling alley license to petitioner for a bowling alley to be situated in basement of a one-story taxpayer building which was about completed in a business district of Jackson Heights, **held** not to have been an abuse of discretion, where, after the receipt in April, 1941, of a letter from a resident of the neighborhood expressing opposition to the bowling alley the Commissioner had made an investigation with a view to having an application for a license made as soon as possible, the builder and petitioner were notified thereof and knew of the protest, the Commissioner had ordered a discretionary hearing when application was finally made by petitioner, and objections to the application had been filed by 35 persons living in the vicinity, most of whom were tenant owners of co-operative apartments, and by a Parent-Teachers Association of a public school located diagonally

opposite the site.-In re Jackson Heights Recreations, Inc. (Moss), 106 (70) N.Y.L.J. (9-22-41) 708, Col. 2 M.

¶ 32. Refusal of Commissioner of Licenses to issue license permitting petitioner to operate a bowling alley at premises adjoining a commercial high school for girls, with a student body of 1,600, on ground the alley would tend to encourage delinquency, would not be disturbed, particularly in view of objections voiced by the school authorities and parents who feared that the bowling alley would attract a loitering element which would constitute a moral danger to the girls.-Erwich Bowling Center, Inc. v. Canella, 82 N.Y.S. 2d 192 [1948].

¶ 33. Where petitioner had been granted a license to operate a pool room and had immediately thereafter obtained a lease upon the premises, purchased equipment, contracted for alterations, made expenditures of over $2,000 and incurred obligations for several thousand dollars more, subsequent revocation of the license at a rehearing was set aside as being without factual evidence, where petitioner's character had not been attacked by any witness, within the radius of a few blocks of petitioner's premises three other pool rooms were operating, and a police officer assigned to the area testified that there were no bad boys in the neighborhood. To hold that a public pool room is in and of itself dangerous to the public welfare is a matter for a legislative body and not for an administrative officer.-In re Greenspan, 102 (83) N.Y.L.J. (10-7-39) 1027, Col. 6 F.

¶ 34. Unless the Commissioner of Licenses was arbitrary or capricious in refusing a grant a license to petitioner to operate a bowling alley, the courts were bound to respect his judgment and might not substitute their discretion for his.-In re Rosenberg (Moss), 106 (38) N.Y.L.J. (8-14-44) 343, Col. 7 M, aff'd without opinion, 266 App. Div. 845, 43 N.Y.S. 2d 852 [1944], aff'd, 296 N.Y. 595, 68 N.E. 2d 880 [1946].

¶ 35. A prosecution under Administrative Code § B32-46.0, subds. c and d, must be leveled at the "keeper" of the public bowling alley. The word "keeper" is broad enough to include the owner and also employees, agents and representatives of the owner, lessees and generally any person who owns, manages, operates or conducts the alley, and is also sufficiently broad to include a corporate or partnership as well as an individual owner.-People v. Erwich, 118 N.Y.S. 2d 98 [1952].

¶ 36. Complaint against defendant for alleged violation of Administrative Code § B32-46.0, subd. c, for permitting four people under the age of 16 years to bowl at bowling alley, was dismissed for failure to make prima facie case, where defendant was not the owner of the bowling alley and was not present at time of the alleged violation. That he was the president or the owner was not sufficient in and of itself to qualify him as the keeper under the facts of the case.-Id.

¶ 37. That the premises were located in a business district and operation of a bowling alley therein was not prohibited by the zoning ordinance, did not ipso facto give rise to a legal right to a license for operation of a bowling alley.-In re Jackson Heights Recreations, Inc. (Moss), 106 (70) N.Y.L.J. (9-22-41) 708, Col. 2 M.

¶ 38. Commissioner of Licenses, having been directed by court order to issue a temporary license to petitioner to operate a billiard parlor, might not issue a license limiting operation to 1 A.M. where formerly the license permitted operation until 5 A.M., other billiard parlors in the vicinity were allowed to operate later than 1 A.M., and the incidents relied upon by the Commissioner as justifying the restriction in operation had all been presented to the justice who had granted the order directing issuance of the license.-In re Strand Billiard Academy, Inc. (Moss), 112 (144) N.Y.L.J. (12-22-44) 1799, Col. 2 T.

¶ 39. Petitioner purchased a bowling alley in September of 1960 and was allowed to continue operations under predecessor's license pending disposition of his own application. In November of 1960 the Department of Licenses issued a summons to the predecessor for a departmental hearing for an incident which occurred in May of 1960. Following failure to appear the license was suspended in December of 1960. Petitioner continued to operate thereafter, and his application for a license was denied because of such continued operation. **Held,** such denial was not arbitrary, but such permanent disqualification appears unduly harsh and the matter is remitted for further consideration.-Janiace

Lanes Inc. v. O'Connell, 145 (56) N.Y.L.J. (3-23-61) 13, Col. 1 M.

¶ 40. The Court would not direct the Commissioner of Licenses to issue a pool and billiard parlor license where the Borough Superintendent had denied the use of the property for such purposes because of a zoning ordinance.-Valelortlino v. O'Connell, 147 (59) N.Y.L.J. (3-27-62) 14, Col. 3 T.

**FOOTNOTES**

4

[Footnote 4]: * Chapter heading amended L.L. 48/1965 § 1.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-216*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 4 BILLIARD AND POCKET BILLIARD TABLES AND BILLIARD AND POCKET BILLIARD ROOMS*4

§ 20-216 Definitions.

Whenever used in this subchapter, the following terms shall mean:

1. "Billiard and pocket billiard room". Any room or place in the city in which billiards or pocket billiards are played, and which includes three or more billiard or pocket billiard tables, which are available or held out to persons as being available, for the purpose of playing billiards or pocket billiards.

2. "Person". An individual, corporation, club, partnership, association, society or any other organized group of persons and shall include officers, directors and trustees of a corporation club association or society.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. 1 amended L.L. 32/2007 § 1, eff. Oct. 31, 2007. [See Note 1]

Subds. 3, 4 repealed L.L. 10/1995 § 4, eff. Aug. 1, 1995.

**DERIVATION**

Formerly § B32-45.1 added LL 48/1965 § 1

**NOTE**

1. Provisions of L.L. 32/2007:

§ 3. This local law shall take effect one hundred twenty days after it shall have been enacted into law; provided that the commissioner may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, establishing guidelines and promulgating rules.

**FOOTNOTES**

4

[Footnote 4]: * Chapter heading amended L.L. 48/1965 § 1.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-217*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 4 BILLIARD AND POCKET BILLIARD TABLES AND BILLIARD AND POCKET BILLIARD ROOMS*4

§ 20-217 Prohibitions.

It shall be unlawful for a person, firm, corporation, association, society or any other organized group of persons holding such license to:

1. Suffer or permit any game of chance to be played or gambling in any manner on the licensed premises.

2. Suffer or permit the licensed premises to become disorderly.

3. Sell, barter, furnish or possess in such billiard room or place any habit forming drugs or any appliances for administering same.

4. Suffer or permit any minor under the age of sixteen years to enter or remain in such billiard or pocket billiard room or place unless accompanied by his or her parent or guardian, or by an adult person authorized by his or her parent or guardian.

**HISTORICAL NOTE**

Section amended L.L. 92/1989 § 1.

Section added chap 907/1985 § 1.

**DERIVATION**

Formerly § B32-45.2 added LL 48/1965 § 1

**FOOTNOTES**

4

[Footnote 4]: * Chapter heading amended L.L. 48/1965 § 1.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-218*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 4 BILLIARD AND POCKET BILLIARD TABLES AND BILLIARD AND POCKET BILLIARD ROOMS*4

§ 20-218 Fees; term.

The biennial license fee for a billiard or pocket billiard room or rooms shall be three hundred forty dollars for the first billiard or pocket billiard table and forty dollars for each additional billiard or pocket billiard table in the same room or place.

**HISTORICAL NOTE**

Section amended L.L. 10/1995 § 5, eff. Aug. 1, 1995.

Section added chap 907/1985 § 1

Subds. a, b amended L.L. 51/1991 § 1, eff. July 17, 1991.

**DERIVATION**

Formerly § B32-45.3 added LL 48/1965 § 1

Sub b, c repealed LL 74/1977 § 3

Sub a amended LL 30/1983 § 2

**FOOTNOTES**

4

[Footnote 4]: * Chapter heading amended L.L. 48/1965 § 1.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-219*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 4 BILLIARD AND POCKET BILLIARD TABLES AND BILLIARD AND POCKET BILLIARD ROOMS*4

§ 20-219 Exemptions.

This subchapter shall not apply to:

1. Premises owned, occupied and used exclusively by a membership corporation, club, society or association where the billiard or pocket billiard facilities for the playing of billiards or pocket billiards are incidental to the other facilities or activities of the organization and are not the dominant facility or activity of the organization.

2. Premises owned, occupied and used exclusively by a religious, charitable, eleemosynary or educational corporation or institution.

3. Premises owned, occupied and used exclusively as a private residence.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-45.4 added LL 48/1965 § 1

**FOOTNOTES**

4

[Footnote 4]: * Chapter heading amended L.L. 48/1965 § 1.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-220*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 4 BILLIARD AND POCKET BILLIARD TABLES AND BILLIARD AND POCKET BILLIARD ROOMS*4

§ 20-220 Regulations.

The commissioner may make and promulgate such rules and regulations and prescribe such forms as are necessary to carry out any provision of this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-45.5 added LL 48/1965 § 1

Sub b repealed LL 20/1973 § 2

**FOOTNOTES**

4

[Footnote 4]: * Chapter heading amended L.L. 48/1965 § 1.

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*NYC Administrative Code 20-221*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 4 BILLIARD AND POCKET BILLIARD TABLES AND BILLIARD AND POCKET BILLIARD ROOMS*4

§ 20-221 Application of subchapter. [Repealed]

**HISTORICAL NOTE**

Section repealed L.L. 32/2007 § 2, eff. Oct. 31, 2007. [See § 20-216 Note 1]

**DERIVATION**

Formerly § B32-45.6 added LL 48/1965 § 1

**FOOTNOTES**

4

[Footnote 4]: * Chapter heading amended L.L. 48/1965 § 1.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-223*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 6 SIDEWALK CAFES

§ 20-223 Definitions.

Whenever used in this subchapter:

a. "Sidewalk cafe" shall mean a portion of a restaurant operated under permit from the department of health and mental hygiene, located on a public sidewalk, that is either an enclosed or unenclosed sidewalk cafe.

b. "Enclosed sidewalk cafe" shall mean a sidewalk cafe which is constructed predominantly of light materials such as glass, slow-burning plastic or lightweight metal.

c. "Unenclosed sidewalk cafe" shall mean a space on the sidewalk which contains readily removable tables and chairs.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended L.L. 8/2003 § 1, eff. Mar. 27, 2003 or a later date as

per L.L. 8/2003 § 20. [See Note 1]

Subd. a amended LL 84/1985 § 1

**DERIVATION**

Formerly § B32-53.0 added chap 929/1937 § 1

Repealed and added LL 50/1982 § 2

NOTE 1. Provisions of L.L. 8/2003: §13. Any agency or officer to which are assigned by or pursuant to this local law any functions, powers and duties shall exercise such functions, powers and duties in continuation of their exercise by the agency or officer by which the same were heretofore exercised and shall have power to continue any business, proceeding or other matter commenced by the agency or officer by which such functions, powers and duties were heretofore exercised. Any provision in any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers or duties, and applicable to the agency or officer formerly exercising the same shall, so far as not inconsistent with the provisions of this local law, apply to the agency or officer to which such functions, powers and duties are assigned by or pursuant to this local law. §14. Any rule or regulation in force on the effective date of this local law, and promulgated by an agency or officer whose power to promulgate such type of rule or regulation is assigned by or pursuant to this local law to some other agency or officer, shall continue in force as the rule or regulation of the agency or officer to whom such power is assigned, except as such other agency or officer may hereafter duly amend, supersede or repeal such rule or regulation. §15. No existing right or remedy of any character accruing to the city shall be lost or impaired or affected by reason of the adoption of this local law. §16. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by or pursuant to this local law be assigned or transferred to another agency or officer, but in that event the same may be prosecuted or defended by the head of the agency or the officer to which such functions, powers and duties have been assigned or transferred by or pursuant to this local law. §17. Any license, permit or other authorization in force on the effective date of this local law, and issued by an agency, where the power of such agency to issue such license, permit or authorization is assigned by or pursuant to this local law to another agency or officer, shall continue in force as the license, permit or authorization of such other agency, or officer, except as such license, permit or authorization may expire or be altered, suspended or revoked by the appropriate agency or office pursuant to law. Such license, permit or authorization shall be renewable in accordance with the applicable law by the agency or officer with such power pursuant to law, including this local law. §18. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance shall be held invalid, the remainder of this local law and the application thereof shall not be affected thereby. §19. This local law shall apply to all licenses, permits or other authorizations in force as of its effective date. §20. This local law shall take effect on the later of the date 45 days after its enactment into law or the date upon which amendments to Chapter 4 of Article I of the Zoning Resolution, relating to sidewalk cafe regulations, are adopted, whichever date is later, provided that the City agencies affected, including, but not limited to, the department of consumer affairs and the department of transportation, may take any actions necessary to effectuate the provisions of this local law prior to its effective date, including promulgation of rules prior to such effective date.

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***** Current through December 2009 ****

*NYC Administrative Code 20-224*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 6 SIDEWALK CAFES

§ 20-224 License required.

a. Any person owning, leasing, managing or operating a restaurant under permit from the department of health and mental hygiene upon property which abuts upon any street within the city may maintain or operate upon the sidewalk of such street in an area immediately adjacent to its premises, a sidewalk cafe, provided that such sidewalk cafe shall be granted a license and a revocable consent by the commissioner.

b. The commissioner, consistent with the provisions of this subchapter and the applicable provisions of the zoning resolution, shall establish such rules, regulations, terms and conditions as the commissioner deems proper in respect to the granting and issuance of such licenses and revocable consents, priorities or rights between applicants for a license covering the same space, and operation (including hours of operation) and maintenance of any sidewalk cafe, to ensure good order and to prevent undue obstruction of the sidewalk, which shall have the force and effect of law. A license to operate a sidewalk cafe shall be issued after the review and approval of a petition for a revocable consent to construct and operate such sidewalk cafe pursuant to the provisions of section 20-225, 20-226 or 20-227 of this subchapter. The operator of a sidewalk cafe under license from the commissioner shall cause the boundary of the area licensed as a sidewalk cafe to be marked in a manner prescribed under rules promulgated by the commissioner.

c. No license shall be granted for an enclosed sidewalk cafe until an alteration permit or any other required permit is issued by the department of buildings. No license shall be granted for a sidewalk cafe located in a historic district, on a landmark site or attached or adjacent to a landmark or an improvement containing an interior landmark

without the required approval of the landmarks preservation commission. No license shall be granted for an unenclosed cafe which obstructs the means of egress from any portion of a building nor for any unenclosed cafe with an awning unless a permit therefor is issued by the department of buildings.

d. The fee for such license shall be at the rate of five hundred and ten dollars for a two-year license. Such license fee shall be in addition to any fee imposed, pursuant to rules of the commissioner, upon approval of a petition for a revocable consent, or a renewal of such revocable consent, to construct and operate a sidewalk cafe or any other applicable fee.

e. A licensee must provide waiter or waitress service to patrons in the sidewalk cafe if alcohol is served. If no alcohol is served at the restaurant, a licensee must provide adequate service to maintain tables in the sidewalk cafe and the adjacent sidewalk in a manner that ensures good order and cleanliness.

f. The license shall be personal to the applicant and may not be sold, leased or transferred and shall be deemed revoked by the sale or transfer of the lease or of title to the building or structure to which the sidewalk cafe is related.

**HISTORICAL NOTE**

Section amended L.L. 70/1990 § 1, eff. Nov. 27, 1990.

Section added chap 907/1985 § 1

Subd. a amended L.L. 8/2003 § 2, eff. Mar. 27, 2003 or a later date as

per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. b amended L.L. 8/2003 § 2, eff. Mar. 27, 2003 or a later date as

per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. d amended L.L. 8/2003 § 3, eff. Mar. 27, 2003 or a later date as

per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. e amended L.L. 8/2003 § 4, eff. Mar. 27, 2003 or a later date as

per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. e added LL 84/1985 § 2

**DERIVATION**

Formerly § B32-54.0 added chap 929/1937 § 1

Sub b amended chap 100/1963 § 573

Sub b amended LL 23/1963 § 1

Sub b amended LL 50/1982 § 3

Subs c, d added LL 50/1982 § 4

Sub d amended LL 30/1983 § 3

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***** Current through December 2009 ****

*NYC Administrative Code 20-225*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 6 SIDEWALK CAFES

§ 20-225 Review and approval of petitions for revocable consents to construct and operate enclosed sidewalk cafes which do not require special permits.

A petition for a revocable consent to construct and operate an enclosed sidewalk cafe which does not require a special permit modification pursuant to the zoning resolution shall be reviewed and approved in the following manner:

a. The petition shall be in such form as prescribed by the department. The petition shall be filed with the department which, within five days of the filing of such petition, shall forward copies thereof to the department of city planning, the department of environmental protection and the landmarks preservation commission for review pursuant to subdivision b of this section. The department shall forward copies of the petition, within five days of the filing of such petition, to the speaker of the council and to the council member in whose district the cafe is proposed to be located, for informational purposes.

b. The agencies to which the petition has been forwarded shall review the petition and shall indicate any objections to such petition, including any determination by the landmarks preservation commission that the petition requires a certificate of appropriateness, by filing written comments with the department of city planning within twenty-one days of the receipt thereof. The failure of an agency to indicate its objections within the prescribed time to the department of city planning shall be construed to mean that such agency has no objections.

c. If no objections to such petition are filed within the twenty-one day period prescribed in subdivision b of this

section, the department of city planning shall forward the petition within five days after the close of such period to the community board for the community district in which the cafe is proposed to be located, and such board shall review such petition pursuant to subdivision e of this section.

d. If any objections exist, including any objections by the department of city planning, the department of city planning shall inform the petitioner of the objections and that review of the petition has been stayed until the objections indicated are resolved. If the objections are not resolved within six months from the date the petitioner is informed that review of the petition has been stayed, such petition shall be deemed to have been withdrawn. If the objections are resolved within the prescribed time, the department of city planning shall forward the petition within five days of such resolution to the council member in whose district the cafe is proposed to be located and to the community board for the community district in which the cafe is proposed to be located, and such board shall review the petition pursuant to subdivision e of this section.

e. The community board shall, not later than forty-five days after receipt of such petition, either (i) notify the public of the petition in a manner specified by the city planning commission, conduct a public hearing thereon and submit a written recommendation to the department and to the council or (ii) waive by a written statement its public hearing and recommendation on such petition, and submit such statement to the department and to the council.

f. Within thirty days after the expiration of the forty-five day period allowed for the filing of a recommendation or waiver by the community board, the department shall (i) hold a public hearing on the petition, (ii) approve the petition, disapprove it or approve it with modifications, and (iii) file with the council any such decision to approve or approve with modifications, together with the petition. If within the time period provided, the department fails to take the actions on a petition provided for in the preceding sentence, the petition shall be deemed to have been denied. For a period of not less than fifteen calendar days prior to the date of such public hearing, the petitioner shall post notice of the public hearing in a place conspicuous to public view at the location of the proposed sidewalk cafe. At least fifteen days prior to the date of such hearing, the department shall give notice to the community board for the district in which the cafe is proposed to be located, to the president of the borough in which the cafe is proposed to be located and to the council member in whose district the cafe is proposed to be located. Not less than five calendar days prior to the date of any such hearing, notice of the hearing shall be published in the City Record and in one newspaper of local circulation in the community where the cafe is proposed to be located. No other notice requirements shall apply to hearings for revocable consents for sidewalk cafes.

g. Within twenty days of the date the petition is received by the council pursuant to subdivision f of this section, the council may resolve by the majority vote of all council members to review the petition. If the council does not so resolve, the approval of the petition by the department shall be forwarded to the mayor for approval pursuant to subdivision i of this section.

h. If the council resolves to review a petition pursuant to subdivision g of this section, the council shall hold a public hearing, after giving public notice not less than five days in advance of such hearing. The council shall take final action on the petition and shall file with the mayor its resolution, if any, with respect to the petition within fifty days of the filing of the petition with the council pursuant to subdivision f of this section. The affirmative vote of a majority of all the council members shall be required to approve, approve with modifications or disapprove the petition. Any modification by the council shall not affect the terms of any proposed revocable consent agreement which relate to term, compensation, revocability, exclusivity, security, insurance, indemnification, erection, maintenance or removal of any structure, right of access by the city and rights of abutting property owners. If within the time period provided for in this subdivision, the council fails to act or fails to act by the required vote on a petition, the council shall be deemed to have approved the petition.

i. The consent shall be for such term and upon such conditions as may be provided in the approval of the petition by the department, as such approval may be modified by action of the council pursuant to subdivision h of this section, but shall be revocable at any time by the department. The separate and additional approval of the mayor shall be

necessary to its validity.

j. Consents for sidewalk cafes shall provide for fees to be paid annually to the city during the continuance of the consent. Such fees shall be calculated pursuant to a formula established by rule or by local law, which shall apply uniformly to all consents for enclosed sidewalk cafes. The department shall file with the council a written recommendation for a formula to be used to calculate such fees.

**HISTORICAL NOTE**

Section amended L.L. 70/1990 § 1, eff. Nov. 27, 1990.

Section added chap 907/1985 § 1

Subd. a amended L.L. 8/2003 § 5, eff. Mar. 27, 2003 or a later date as

per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. e amended L.L. 8/2003 § 6, eff. Mar. 27, 2003 or a later date as

per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. f amended L.L. 8/2003 § 6, eff. Mar. 27, 2003 or a later date as

per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. g amended L.L. 8/2003 § 6, eff. Mar. 27, 2003 or a later date as

per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. i amended L.L. 8/2003 § 7, eff. Mar. 27, 2003 or a later date as

per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. j amended L.L. 8/2003 § 7, eff. Mar. 27, 2003 or a later date as

per L.L. 8/2003 § 20. [See § 20-223 Note 1]

**DERIVATION**

Formerly § B32-55.0 added LL 50/1982 § 5

**CASE NOTES FROM FORMER SECTION B32-55.0 repealed by L.L. 50/1982**

¶ 1. Complaint alleging that defendant was landlord of certain premises in the City of New York of which plaintiff was in possession of a portion thereof as lessee for operation of a restaurant and bar, that a substantial part of plaintiff's restaurant business was the operation of a sidewalk cafe, that plaintiff each year was required to submit an application to the City Commissioner of Licenses for operation of the cafe and along with such application a written consent from defendant was required, and that defendant refused to grant its consent this year although it had granted such consent in other years, **held** insufficient to state a cause of action for a judgment directing defendant to execute such consent and "specifically to perform the lease", as the lease nowhere bound defendant to give such consent, and the giving of its consent in the past was merely a voluntary act.-Brody v. W. & L. Enterprises, Inc., 117 N.Y.S. 2d 719 [1952], aff'd, 120 N.Y.S. 2d 239 [1953].

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***** Current through December 2009 ****

*NYC Administrative Code 20-226*

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Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 6 SIDEWALK CAFES

§ 20-226 Review and approval of petitions for revocable consents to operate unenclosed sidewalk cafes which do not require special permits.

A petition for a revocable consent to operate an unenclosed sidewalk cafe which does not require a special permit modification shall be reviewed and approved in the following manner:

a. The petition shall be in such form as prescribed by the department. The department shall forward copies of the petition, within five days of the filing of such petition, to the speaker of council and the council member in whose district the cafe is proposed to be located, for information purposes, and to the community board for the community district in which the cafe is proposed to be located, for review pursuant to subdivision b of this section.

b. The community board shall, not later than forty-five days after receipt of such petition, either (i) notify the public of the petition, conduct a public hearing thereon and submit a written recommendation to the department and to the council or (ii) waive by a written statement its public hearing and recommendation on such petition and submit such statement to the department and to the council. The petitioner shall amend the petition if both the community board and the petitioner agree to modifications in writing. Such modifications shall be reflected in the written recommendations of the community board to the department and the council.

c. The department shall hold a public hearing pursuant to subdivision d of this section and approve the petition, disapprove it or approve it with modifications within thirty days of the expiration of the forty-five-day period allowed

for the filing of a recommendation by the community board. If within the time period provided, the department fails to take the actions on a petition provided for in the preceding sentence, the petition shall be deemed to have been denied. Within the thirty-day time period provided for in this subdivision, the department shall file with the council any such decision to approve or approve with modifications, together with the petition.

d. The department shall hold a public hearing on each petition prior to approving, approving with modifications or disapproving the petition. For a period of not less than fifteen calendar days prior to the date of such public hearing, the petitioner shall post notice of the public hearing in a place conspicuous to public view at the location of the proposed sidewalk cafe. At least fifteen days prior to the date of the hearing, the department will give notice to the community board for the district in which the cafe is proposed to be located, to the president of the borough in which the cafe is proposed to be located and to the council member in whose district the cafe is proposed to be located. Not less than five-calendar days prior to the date of any such hearing, notice of the hearing shall be published in the City Record and in one newspaper of local circulation in the community where the cafe is proposed to be located. No other notice requirements shall apply to hearings for revocable consents for sidewalk cafes.

e. Within twenty days of the date the petition is received by the council pursuant to subdivision c of this section, the council may resolve by majority vote of all the council members to review the petition. If the council does not so resolve, the approval of the petition by the department shall be forwarded to the mayor for approval pursuant to subdivision g of this section.

f. If the council resolves to review a petition pursuant to subdivision e of this section, the council shall hold a public hearing, after giving public notice not less than five days in advance of such hearing. The council shall take final action on the petition and shall file with the mayor its resolution, if any, with respect to the petition within fifty days of the filing of the petition with the council pursuant to subdivision c of this section. The affirmative vote of a majority of all the council members shall be required to approve, approve with modifications or disapprove the petition. Any modification by the council shall not affect the terms of any proposed revocable consent agreement which relate to term, compensation, revocability, exclusivity, security, insurance, indemnification, erection, maintenance or removal of any structure, right of access by the city and rights of abutting property owners. If within the time period provided for in this subdivision, the council fails to act or fails to act by the required vote on a petition, the council shall be deemed to have approved the petition. If within the time period provided for in this subdivision, the council approves the petition with modifications, the petitioner shall accept such modifications within fifteen days of such approval, or the council shall be deemed to have denied the petition.

g. The consent shall be for such term and upon such conditions as may be provided in the approval of the petition by the department, as such approval may be modified by action of the council pursuant to subdivision f of this section, but shall be revocable at any time by the department. The separate and additional approval of the mayor shall be necessary to its validity.

h. Consents for sidewalk cafes shall provide for fees to be paid annually to the city during the continuance of the consent. Such fees shall be calculated pursuant to a formula established by rule or by local law, which shall apply uniformly to all consents for unenclosed sidewalk cafes. The department shall file with the council a written recommendation for a formula to be used to calculate such fees.

i. An unenclosed sidewalk cafe may not be opened or operated prior to the approval of the consent therefor by the department pursuant to this section.

**HISTORICAL NOTE**

Section amended L.L. 70/1990 § 1, eff. Nov. 27, 1990.

Section amended L.L. 5/1988 § 1.

Section added chap 907/1985 § 1.

Subd. a amended L.L. 8/2003 § 8, eff. Mar. 27, 2003 or a later date as per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. b amended L.L. 8/2003 § 8, eff. Mar. 27, 2003 or a later date as per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. c relettered and amended (former subd. e) L.L. 8/2003 § 10, eff. Mar. 27, 2003 or a later date as per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. c repealed L.L. 8/2003 § 9, eff. Mar. 27, 2003 or a later date as per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. d relettered and amended (former subd. f) L.L. 8/2003 § 10, eff. Mar. 27, 2003 or a later date as per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. d repealed L.L. 8/2003 § 9, eff. Mar. 27, 2003 or a later date as per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. e relettered and amended (former subd. g) L.L. 8/2003 § 10, eff. Mar. 27, 2003 or a later date as per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. f relettered and amended (former subd. h) L.L. 8/2003 § 10, eff. Mar. 27, 2003 or a later date as per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. g relettered and amended (former subd. i) L.L. 8/2003 § 10, eff. Mar. 27, 2003 or a later date as per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. h relettered and amended (former subd. j) L.L. 8/2003 § 10, eff. Mar. 27, 2003 or a later date as per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. i relettered and amended (former subd. k) L.L. 8/2003 § 10, eff.

Mar. 27, 2003 or a later date as per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Subd. k amended L.L. 10/1991 § 1, eff. Jan. 24, 1991.

Subd. k amended L.L. 12/1988 § 1. (amended as Subd. i)

Subd. l repealed L.L. 8/2003 § 9, eff. Mar. 27, 2003 or a later date as per L.L. 8/2003 § 20. [See § 20-223 Note 1]

**DERIVATION**

Formerly § B32-56.0 added LL 50/1982 § 5

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*NYC Administrative Code 20-227*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 6 SIDEWALK CAFES

§ 20-227 Review and approval of petitions for revocable consents to construct and operate sidewalk cafes which require special permits.

Notwithstanding the provisions of any other section of the charter or code, a petition for a revocable consent to construct and operate a sidewalk cafe which requires a special permit modification pursuant to the zoning resolution shall be reviewed and approved in accordance with the provisions of sections one hundred ninety-seven-c and one hundred ninety-seven-d of the charter and shall require the approval of the department. The consent shall be for such term and upon such conditions as may be provided in the approval of the department but shall be revocable at any time by the department. The separate and additional approval of the mayor shall be necessary to its validity. The consent shall provide for fees to be paid annually to the city during the continuance of the consent. Such fees shall be calculated pursuant to a formula established by rule or by local law pursuant to section 20-225(j) or section 20-226(h).

**HISTORICAL NOTE**

Section amended L.L. 8/2003 § 11, eff. Mar. 27, 2003 or a later date as

per L.L. 8/2003 § 20. [See § 20-223 Note 1]

Section amended L.L. 10/1991 § 2, eff. Jan. 24, 1991.

Section amended L.L. 70/1990 § 1, eff. Nov. 27, 1990.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-57.0 added LL 50/1982 § 5

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***** Current through December 2009 ****

*NYC Administrative Code 20-227.1*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 6 SIDEWALK CAFES

§ 20-227.1 [Violations; penalties.]

a. Any person found to be operating an unlicensed sidewalk cafe shall be liable for a civil penalty of at least two hundred and not more than one thousand dollars for the first violation, at least two hundred and not more than one thousand dollars for each additional violation occurring on the same day; and at least five hundred and not more than two thousand dollars for the second violation and each subsequent violation at the same place of business within a two-year period. For purposes of this section, any violation for operating an unlicensed sidewalk cafe shall be included in determining the number of violations by any subsequent license holder at the same place of business unless the subsequent license holder provides the department with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision f of this section and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original license holder to avoid the effect of violations on the premises.

b. Any holder of a license found to be operating a sidewalk cafe in violation of this subchapter, the terms and conditions of such license and/or a revocable consent or rules promulgated by the commissioner pursuant to this subchapter, shall be liable for a civil penalty of at least two hundred and not more than one thousand dollars for the first violation, at least two hundred and not more than one thousand dollars for each additional violation occurring on the same day; and at least five hundred and not more than two thousand dollars for the second violation, and at least one thousand and not more than four thousand dollars for each subsequent violation at the same place of business within a two-year period. In addition, for a third violation occurring on a different day and all subsequent violations occurring on

different days at the same place of business within a two-year period, any person licensed to operate a sidewalk cafe at such place of business shall be subject to suspension or revocation of his or her sidewalk cafe license for such place of business. For purposes of this section, any such violation by any license holder at a place of business shall be included in determining the number of violations by any subsequent license holder at the same place of business unless the subsequent license holder provides the department with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision f of this section and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original license holder to avoid the effect of violations on the premises. A sidewalk cafe license shall be suspended or revoked at the same hearing at which a person is found liable for a third violation or subsequent violations at the same place of business within a two-year period.

c. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivisions a or b of this section shall be commenced by service of a notice of violation which shall be returnable to the adjudication division of the department. Such notice shall contain a statement that any hearing for a third violation or subsequent violations of this subchapter, the terms and conditions of a license and/or a revocable consent or rules promulgated by the commissioner under this subchapter at the same place of business within a two-year period shall also constitute a hearing for the suspension or revocation of a license.

d. The penalties provided by subdivisions a and b of this section shall be in addition to any other penalty imposed by any other provision of law or rule promulgated thereunder.

e. In addition to any other enforcement procedures authorized by this subchapter or any other provision of law or rule, the commissioner after notice and a hearing shall be authorized to order that any sidewalk cafe and the restaurant of which it is a portion be sealed for a period not to exceed thirty consecutive days. Such notice may be included with notice of any hearing for a second violation for operating an unlicensed sidewalk cafe as provided in subdivision a of this section, or a third violation of this subchapter, the terms and conditions of a license and/or a revocable consent or rules promulgated by the commissioner, as provided in subdivision b of this section. For purposes of this subdivision, any such violations at a place of business shall be included in determining the number of violations by any subsequent license holder at the same place of business unless the subsequent license holder provides the department with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision f of this section and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original license holder to avoid the effect of violations on the premises. The procedures provided for in subdivisions c and e through j of section 20-105 of this title shall apply to an order by the commissioner for sealing of a sidewalk cafe and the restaurant of which it is a portion.

f. For purposes of this section, "arm's length transaction" means a sale of a fee or all undivided interests in real property, or lease of any part thereof, or a sale of a business, in good faith and for valuable consideration, that reflects the fair market value of such real property or lease, or business, in the open market, between two informed and willing parties, where neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the sale or lease was made for the purpose of permitting the original licensee to avoid the effect of violations on the premises. The following sales or leases shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of violations on the premises:

(1) a sale between relatives;

(2) a sale between related companies or partners in a business; or

(3) a sale or lease affected by other facts or circumstances that would indicate that the sale or lease is entered into for the primary purpose of permitting the original licensee to avoid the effect of violations on the premises,

g. Notwithstanding the provisions of subdivisions a or b of this section, the suspension or revocation of a license for a subsequent offense shall be waived if, upon the submission of satisfactory proof, the commissioner determines that the person or persons who committed the violations which are the basis for the suspension or revocation acted against the licensee's will in committing such violations.

**HISTORICAL NOTE**

Section added L.L. 8/2003 § 12, eff. Mar. 27, 2003 or a later date as per

L.L. 8/2003 § 20. [See § 20-223 Note 1]



*NYC Administrative Code 20-228*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 7 SIDEWALK STANDS

§ 20-228 Definitions.

Whenever used in this subchapter, the following shall mean:

a. Newsstand. A not readily removable stand or booth operated primarily for the sale of newspapers and periodicals.

b. Area occupied. The sidewalk space occupied when a newsstand is in operation including any space occupied by the stand itself, including racks, tables, doors or anything which prevents ordinary use of the sidewalks.

c. Franchise. A franchise granted pursuant to chapter fourteen of the city charter to construct, install and maintain newsstands in the city of New York. For purposes of this subchapter, the date upon which a franchise is granted shall be the date on which such franchise is registered in accordance with chapter fourteen of the city charter.

d. Franchisee. A person granted a franchise.

e. Replacement newsstand. Either (i) a newsstand that replaces a newsstand at the same location, provided that the license pursuant to section 20-229 of this code for the newsstand that is being replaced is in full force and effect on the date such franchise is granted, or (ii) a newsstand constructed and installed at any location approved by the department of transportation to replace a newsstand that the city requires, for any reason, to be permanently removed

from the location for which it is licensed, provided such license is in full force and effect at the time removal is required.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. c added L.L. 64/2003 § 2, eff. Oct. 29, 2003. [See § 20-241.1 Note 1]

Subd. c repealed L.L. 41/1998 § 1, eff. Sept. 28, 1998, which repealed L.L. 29/1997.

Subd. c added L.L. 29/1997 § 2, eff. May 16, 1997.

Subd. d added L.L. 64/2003 § 2, eff. Oct. 29, 2003. [See § 20-241.1 Note 1]

Subd. d repealed L.L. 41/1998 § 1, eff. Sept. 28, 1998, which repealed L.L. 29/1997.

Subd. d added L.L. 29/1997 § 2, eff. May 16, 1997.

Subd. e added L.L. 64/2003 § 2, eff. Oct. 29, 2003. [See § 20-241.1 Note 1]

Subd. e repealed L.L. 41/1998 § 1, eff. Sept. 28, 1998, which repealed L.L. 29/1997.

Subd. e added L.L. 29/1997 § 2, eff. May 16, 1997.

Subd. f repealed L.L. 41/1998 § 1, eff. Sept. 28, 1998, which repealed L.L. 29/1997.

Subd. f added L.L. 29/1997 § 2, eff. May 16, 1997.

**DERIVATION**

Formerly § B32-58.0 added LL 73/1979 § 2

Sub a amended LL 33/1982 § 6



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***** Current through December 2009 ****

*NYC Administrative Code 20-229*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 7 SIDEWALK STANDS

§ 20-229 License required.

No person shall maintain or operate a newsstand unless licensed pursuant to this subchapter, and unless the operation of the newsstand is his or her principal employment. No license shall be issued to an individual for the operation of a newsstand that is not a replacement newsstand and that has been constructed and installed by a franchisee pursuant to a franchise unless such operator has reimbursed such franchisee for the costs of construction and installation of such newsstand as determined by the department in accordance with paragraph two of subdivision c of section 20-241.1 of the code.

**HISTORICAL NOTE**

Section amended L.L. 64/2003 § 3, eff. Oct. 29, 2003. [See § 20-241.1 Note 1]

Section amended L.L. 41/1998 § 1, eff. Sept. 28, 1998, which repealed L.L. 29/1997.

Section amended L.L. 29/1997 § 3, eff. May 16, 1997.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-59.0 added LL 73/1979 § 2



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***** Current through December 2009 ****

*NYC Administrative Code 20-230*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 7 SIDEWALK STANDS

§ 20-230 Preferences; employment; fee.

a. When there are competing applications for a certain location, a preference in granting a license shall be shown as follows:

1. Disabled veterans;
2. Handicapped persons as defined by the department;
3. Veterans who are not disabled;
4. Persons over the age of sixty-two.

b. The biennial fee for a license to operate a newsstand shall be one thousand seventy-six dollars.

**HISTORICAL NOTE**

Section amended LL 91/1985 § 1.

Section added chap 907/1985 § 1

Subd. a par 2 amended L.L. 41/1998 § 1, eff. Sept. 28, 1998, which

repealed L.L. 29/1997.

Subd. a par 2 amended L.L. 29/1997 § 4, eff. May 16, 1997

Subd. b amended L.L. 51/1991 § 2, eff. July 17, 1991

**DERIVATION**

Formerly § B32-60.0 added LL 73/1979 § 2

**CASE NOTES FROM FORMER SECTION B32-59.0**

¶ 1. Determination of Commissioner of Licenses denying petitioner a license for operation of newsstand which had been operated by his father up to time of his death, **held** not to have been arbitrary, where petitioner was 26 years of age and had been gainfully employed from 1946 to shortly before time of his application for the license, and his wife was presently employed.-In re Schneider (McCaffrey), 127 (83) N.Y.L.J. (4-29-52) 1702, Col. 5 F.

¶ 2. The legislative scheme is that licenses are not to pass unto the descendant of a former licensee as a matter of right, but such descendants qualify only in case of dependency. Grant of petitioner's first application for a license as a descendant of a deceased licensee did not afford petitioner any greater rights to future licenses, which were required to be awarded in the order of statutory preference.-Stern v. McCaffrey, 304 N.Y. 828, 109 N.E. 611 [1952], aff'd, 279 App. Div. 461, 110 N.Y.S. 2d 705 [1952].

¶ 3. Where in 1926 a license had been issued for the stand to petitioner's father, who was blind, upon the father's death in 1942 the license was issued to petitioner's mother and upon her death in 1945 petitioner was granted a renewal of the license although at that time he was 40 years of age, apparently in good health and gainfully employed and for practically all of the period since had been employed on a part-time basis delivering publications by automobile, which job paid him in 1950 $67.50 a week plus $25.00 allowance for his automobile, the determination of the Commissioner that he was not a needy dependent or legally entitled to a renewal of the license in 1951, would not be disturbed.-Id.

¶ 4. That the Commissioner offered to issue the license to petitioner if he would give up other employment, was immaterial.-Id.

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Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 7 SIDEWALK STANDS

§ 20-231 Restrictions; size.

a. No newsstand shall be within three feet of private property without the consent of the owner of that property.

b. Items other than newspapers, magazines, periodicals, and prepaid telecommunication or transit cards may be offered for sale from a newsstand if they are sold for less than five dollars exclusive of taxes; provided, however, that apparel, jewelry, hair ornaments, handbags and video cassettes shall not be offered for sale from a newsstand and that if food items are offered for sale, they must be prepackaged.

c. No new license shall be issued under section 20-229 unless aproval for the location has been obtained from the department of transportation.

d. 1. No license issued under section 20-229 shall be renewed if the department of transportation determines that the newsstand so licensed poses an obstruction to the free use of sidewalks by pedestrians at the time of review.

2. On and after the effective date of the local law that adds this paragraph two to this subdivision d of this section, a newsstand shall not be eligible for a renewal if the area of the sidewalk occupied by it exceeds seventy-two square feet or such newsstand exceeds nine feet in height.

(a) On and after such date, such newsstand that was first licensed on or after the first day of August, nineteen

hundred ninety-one shall not pose an obstruction to the free use of the sidewalks by pedestrians if the location of such newsstand does not

(i) reduce the area maintained on the sidewalk for pedestrian movement below a width of nine and one-half feet.

(ii) place the proposed newsstand within five feet of a fire hydrant.

(iii) create a level of service at the proposed location for the peak fifteen minutes of the peak hour of a pedestrian flow rate equal to or greater than eleven people per minute per linear foot of clear path, as determined by the department of transportation.

(iv) place the proposed newsstand within fifteen feet of an entrance to or exit from a subway.

(v) extend into the area encompassed by the extension of the property lines from the buildings to the curb at the intersection of two streets and the area ten feet on either side of such lines.

(vi) extend into a bus stop.

(vii) otherwise create a hazardous condition. For purposes of this subparagraph, a hazardous condition shall include, but not be limited to, the location of a newsstand less than one foot, six inches from the curb, under a fire escape, within ten feet of a driveway or parking lot or within two feet from underground access points, such as utility access openings, ventilation grills, or cellar doors.

(b) On and after such date, a newsstand that was first licensed prior to the first day of August, nineteen hundred ninety-one shall not pose an obstruction to the free use of the sidewalks by pedestrians if the location of such newsstand does not

(i) reduce the area maintained on the sidewalk for pedestrian movement below a width of nine and one-half feet.

(ii) place the proposed newsstand within five feet of a fire hydrant.

(iii) create a level of service at the proposed location for the peak fifteen minutes of the peak hour of a pedestrian flow rate equal to or greater than eleven people per minute per linear foot of clear path, as determined by the department of transportation.

(iv) violate the restrictions on the location of newsstands in subdivision f of this section, if such newsstand is located at the rear or side of a subway entrance or exit kiosk.

(v) extend into the area encompassed by the extension of the property lines from the buildings to the curb at the intersection of two streets.

(vi) otherwise create a hazardous condition. For purposes of this subparagraph, a hazardous condition shall include, but not be limited to, the location of a newsstand less than one foot, six inches from the curb, under a fire escape, within ten feet of a driveway or parking lot or within two feet from underground access points, such as utility access openings, ventilation grills, or cellar doors.

e. No newsstand shall occupy an area of more than seventy-two square feet or have a height of over nine feet. However, any newsstand that occupied an area of more than seventy-two square feet on the first day of August, nineteen hundred seventy-nine may continue to operate within that area until the thirty-first day of July, nineteen hundred eighty. In no event shall there be less than a width of nine and one-half feet maintained on the sidewalk for pedestrian movement. The provision of this section requiring that no less than nine and one-half feet be maintained on the sidewalk for pedestrian movement shall not apply to any newsstand which was first licensed by the department prior to the first day of August, nineteen hundred seventy-nine where the person who held the license for such newsstand on the first day

of August, nineteen hundred ninety-one continues to be the licensee for such newsstand; provided, however, that where a newsstand which was first licensed prior to the first day of August, nineteen hundred seventy-nine is reconstructed in its entirety or in substantial part, which reconstruction was commenced on or after the first day of August, nineteen hundred ninety-one, such newsstand shall be subject to such requirement that no less than nine and one-half feet be maintained on the sidewalk for pedestrian movement.

f. Stands at subway entrance or exit kiosks shall be maintained at the rear or side of such kiosks. Where such stand is located at the rear of such entrance or exit it shall not be located within fifteen feet of the front of any other entrance or exit and shall not be longer than the width of the kiosk nor occupy an area of more than fifty square feet.

g. It shall be unlawful to erect a stand or booth under the stairs of an elevated railway station, or a projection therefrom, which is wider than the width of the stairs or which extends along the sidewalk a greater distance than to a point where the undersurface is not over seven feet from the level of the sidewalk.

h. 1. After November first, nineteen hundred seventy-nine, no newsstand may be operated unless its design has been approved by the art commission. The art commission shall evaluate newsstand designs in conformity with guidelines to be established by the department of consumer affairs. Approval or disapproval of a design submission shall be issued within thirty days of filing an application with the commission.

2. The department of transportation shall develop criteria for the design of the interior of newsstands constructed and installed by a franchisee pursuant to a franchise in consultation with available representatives of newsstand licensees and available representatives of publishers.

i. No advertising shall be placed on any newsstand other than exterior advertising placed by a franchisee. Nothing herein shall be construed to prohibit or limit the ability of the newsstand licensee to display legal merchandise pursuant to rules promulgated by the department.

j. The licensee shall make reasonable efforts to maintain the cleanliness of his or her newsstand. Such requirement shall not include an obligation to maintain the exterior of a structure installed pursuant to a franchise. The licensee shall make no alteration in the design or dimensions of a newsstand constructed or installed by a franchisee.

k. 1. On and after the grant of a franchise, no new license shall be granted except for operation of a newsstand installed and maintained pursuant to such franchise, and approval of the location of a new newsstand shall be made by the department of transportation in accordance with rules of the department.

2. Notwithstanding any other provision of this section or the second undesignated paragraph of section 15-205 of the code, a newsstand, the location or dimensions of which were not in violation of the provisions of this section or any rule promulgated pursuant thereto at the date of the grant of a franchise and which complies with all of the terms and conditions of such franchise, may be reconstructed at such location by such franchisee if such reconstruction does not change the location of such newsstand or expand the area occupied by such newsstand for any reason, including compliance with the requirements of any provision of law in effect at the time of such reconstruction, such as the requirements of the Americans with Disabilities Act. If such reconstruction results in a change in location or an expansion of the area occupied by such newsstand, such newsstand may be reconstructed at such changed or expanded location if that location complies with the siting criteria applicable to the renewal of the license of such newsstand in subparagraph (a) or (b) of paragraph two of subdivision d of this section. If such reconstruction at such location would not comply with such criteria, such newsstand may be relocated in accordance with the process defined in paragraph five of this subdivision to a location that meets the criteria in subparagraph (a) of such paragraph two.

3. On or after the grant of such franchise, any newsstand applying for renewal of a license issued pursuant to section 20-229 of this subchapter may remain at its then current location if it meets the siting criteria applicable to the renewal of the license of such newsstand in subparagraph (a) or (b) of paragraph two of subdivision d of this section, or, if such location does not meet such criteria, such newsstand may be relocated in accordance with the process defined in

paragraph five of this subdivision to a location that meets the criteria in subparagraph (a) of such paragraph two.

4. On or after the grant of such franchise, the department of transportation shall not exercise its authority, by granting revocable consents or other approvals, to authorize the installation of a structure at a location that would render the location of a licensed newsstand in violation of the siting criteria applicable to the renewal of licenses in subparagraph (a) or (b), as applicable to the renewal of the license of such newsstand, of paragraph two of subdivision d of this section unless the commissioner of such department finds that such installation is for the benefit of public health, safety, welfare or convenience. In the event the installation of a structure not prohibited by this paragraph four causes the location of a newsstand to be in violation of such criteria, such newsstand may be relocated pursuant to the process defined in paragraph five of this subdivision to a location that meets the criteria in subparagraph (a) of such paragraph two.

5. (a) On or after the grant of such a franchise, a newsstand, the location of which fails to meet the siting criteria applicable to the renewal of the license of such newsstand in subparagraph (a) or (b) of paragraph two of subdivision d of this section shall cease operation and shall be removed from such location. A newsstand required by the provisions of this paragraph to be relocated at any time shall be eligible to be relocated to a site within a radius of five hundred feet from such licensed location, referred to in this section as the "catchment area", provided such site is identified by the licensee and meets the siting criteria applicable to the renewal of licenses in subparagraph (a) of paragraph two of subdivision d of this section. Notwithstanding the preceding provisions of this subparagraph (a) of this paragraph five, a newsstand, the license for which is in full force and effect, shall not be required to be replaced before September thirtieth, two thousand six, if the replacement of such newsstand is required to occupy an expanded area solely because of the provisions of the Americans with Disabilities Act, and the installation of such newsstand at such expanded location would not meet the siting criteria applicable to the renewal of the license of such newsstand in subparagraph (a) or (b) of such paragraph two.

(b) If the department of transportation determines that there is no site within such catchment area to which a newsstand may be relocated in accordance with subparagraph (a) of this paragraph five, the licensee of such newsstand may apply for a license for a new newsstand in accordance with the applicable provisions of this subchapter.

6. The department of transportation shall conduct an inspection at the time of the reconstruction and installation of a newsstand by a franchisee in accordance with paragraph two of this subdivision. In addition, such department shall conduct inspections of all newsstands in the year two thousand eight and every six years thereafter to determine whether the location for which each newsstand is licensed violates any laws, rules or regulations applicable to the review by such department of applications for the renewal of licenses, notwithstanding that the term of such licenses is two years, and, except for determinations made pursuant to inspections made in accordance with such paragraph two of this subdivision at the time of the reconstruction and installation of a newsstand by a franchisee, the determination by such department that there is no such violation shall not be revised, except for a mistake of fact, by such department until such six year period has elapsed.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended L.L. 2/2002 § 1, eff. Apr. 2, 2002.

Subd. b amended L.L. 41/1998 § 1, eff. Sept. 28, 1998, which repealed

L.L. 29/1997

Subd. b amended L.L. 29/1997 § 5, eff. May 16, 1997

Subd. c amended L.L. 64/2003 § 4, eff. Oct. 29, 2003. [See § 20-241.1

Note 1]

Subd. d repealed and added L.L. 64/2003 § 5, eff. Oct. 29, 2003. [See § 20-241.1 Note 1]

Subd. e amended L.L. 66/1991 § 1, eff. July 18, 1991

Subd. h repealed and added L.L. 64/2003 § 6, eff. Oct. 29, 2003. [See § 20-241.1 Note 1]

Subd. h amended L.L. 41/1998 § 1, eff. Sept. 28, 1998, which repealed L.L. 29/1997.

Subd. h open par repealed L.L. 29/1997 § 5, eff. May 16, 1997

Subd. i amended L.L. 64/2003 § 7, eff. Oct. 29, 2003. [See § 20-241.1 Note 1]

Subd. i amended L.L. 41/1998 § 1, eff. Sept. 28, 1998, which repealed L.L. 29/1997

Subd. i amended L.L. 29/1997 § 5, eff. May 16, 1997

Subd. j amended L.L. 64/2003 § 8, eff. Oct. 29, 2003. [See § 20-241.1 Note 1]

Subd. k added L.L. 64/2003 § 9, eff. Oct. 29, 2003. [See § 20-241.1 Note 1]

**DERIVATION**

Formerly § B32-61.0 added LL 73/1979 § 2

**CASE NOTES FROM FORMER SECTION B32-58.0**

¶ 1. Plaintiff was not entitled to a temporary injunction where, pursuant to the recommendations of the Commissioner of Licenses, a newsstand owner moved his stand to a position in a subway entrance which blocked plaintiff's window and impeded ingress at plaintiff's store. Plaintiff could seek relief in a speedy trial.-Goldstein v. O'Connell, 146 (60) N.Y.L.J. (9-26-61) 14, Col. 6 T.

**CASE NOTES FROM FORMER SECTION B32-64.0**

¶ 1. Store owner who was engaged in the business of selling newspapers, magazines, and similar items, and who maintained and operated his own newsstand abutting his store, was not required to be licensed under Administrative Code § B32-64.0, in view of the exception contained therein with respect to the owner of a store engaged in the business of selling newspapers.-People v. Levitt, 178 Misc. 320, 34 N.Y.S. 2d 258 [1942].

¶ 2. Administrative Code § B32-64.0 did not work any such material change in § 230, subd. 3, of the Code of

Ordinances, as to require application of rule that the exception was written in by inadvertent error and should be excluded.-Id.

¶ 3. Application to restrain Commissioner of Licenses from removing or attempting to remove certain publications issued by plaintiffs from licensed newsstands, the Commissioner claiming that plaintiff's publications were "tipster sheets", was granted to a limited extent, with a trial of the issues to be had at an early date, in view of the conflicting affidavits and evidence as to whether the publications indicated that plaintiffs were a part of "the criminal gambling element".-Triangle Publications, Inc. v. Moss, 181 Misc. 966, 43 N.Y.S. 2d 171 [1943].

¶ 4. New York City Commissioner of Licenses **held** to have been well within his powers in forbidding the sale of "tipster sheets", in connection with horse racing, by licensees of public newsstands.-Armstrong Racing Publications v. Moss, 181 Misc. 966, 43 N.Y.S. 2d 171 [1943].

¶ 5. However, publications known as "Armstrong, Joe & Asbestos Sports Weekly, The Morning Telegraph, Daily Racing Form, and Daily Racing Guide or Daily Racing Tab," **held** not to be "tipster sheets", but to be merely sheets containing "racing selections", and hence the regulations prohibiting sale of "tipster sheets" by licensees of public newsstands might not properly be extended to them. That such publications were in many instances found in pool rooms and in possession of bookmakers, with the racing page well thumbed, was immaterial.-Id.

¶ 6. Motion for preliminary injunction to restrain Commissioner of Licenses from preventing the sale from licensed newsstands of the publication "Irwin Kaye, Daily Ratings Digest", was denied, on ground it was not clear whether the publication was devoted to "racing tips", as distinguished from "racing selections", inasmuch as the publication, although it contained "racing selections", in addition contained certain "preferred" entries and one "standout spot play", and certain subscribers were entitled to a "super-telephone special".-Kaye v. Moss, 112 (16) N.Y.L.J. (7-20-44) 125, Col. 1 M.

¶ 7. Action of Commissioner of Licenses in sending a notice to newsdealers licensed by his department cautioning them to discontinue the sale and to remove from display certain named magazines containing photographs of nudes, and warning them that in the event that they displayed or offered for sale such publications after a certain date steps would be taken for suspension or revocation of their licenses, **held** not to be an unconstitutional prior restraint upon publication, as the notice was not directed against the sale of nudist magazines or literature as such, but only against those which contained pictures of nudes. The public is not helpless to prevent, by anticipatory action, the recurrence of the open and continuous sale in a community of obscene periodicals.-Sunshine Book Co. v. McCaffrey, 112 N.Y.S. 2d 476 [1952].

¶ 8. The action of the Commissioner of Licenses in sending a letter to newsstands to the effect that they might lose their licenses if they continue to sell certain nudist magazines constituted a prior restraint upon publication and amounted to censorship.-Sunshine Book Co. v. McCaffrey, 4 A.D. 2d 643, 168 N.Y.S. 2d 268 [1957].

¶ 9. Refusal of Commissioner of Licenses to renew petitioner's newsstand license was not arbitrary, in view of evidence supporting his findings that petitioner violated rules of the Department of Licenses in the operation of his newsstand.-In re Liebowitz (McCaffrey), 124 (113) N.Y.L.J. (12-13-50) 1567, Col. 7 T.

¶ 10. Powers of Commissioner of Licenses would appear to include the adoption of rules to prevent newsdealers who are licensed by his department from using those licenses to engage in activities in open and notorious violation of the Penal Laws.-Sunshine Book Co. v. McCaffrey, 112 N.Y.S. 2d 476 [1952].

¶ 11. Plaintiff, operating a curb bench newsstand continually since 1913 applied for and received, because of his ill health, permission to erect an enclosed booth and he expended about $1,200 for this purpose. On complaint that he was obstructing pedestrian traffic the Commissioner of Licenses directed him to remove the stand. The evidence showed that only one complaint had been made by a merchant located in the building opposite plaintiff's stand, that the distance between the building line and the stand was 8 feet 5 inches, one foot less than before, that there were four other

news booths in the same vicinity exposed to about the same pedestrian traffic. **Held,** that although plaintiff did not obtain a vested right to continue the booth by reason of the permission and expenditure of money, he did have the right to expect that permission would continue in the absence of a material change in conditions. **Held,** plaintiff entitled to a permanent injunction restraining the cancellation of his license.-Fordham v. O'Connell, 144 (66) N.Y.L.J. (10-4-60), 14, Col. 7 F (Temporary stay granted in same case), 144 (4) N.Y.L.J. (7-7-60) 5, Col. 8 M.

**CASE NOTES**

¶ 1. Guidelines Booklet for Newsstands states that the desired clear path for newsstands on sidewalks wider than 19 feet is 13 feet, 6 inches. DOT would not grant approval for a clear path less than 13 feet, 6 inches so Consumer Affairs Department could not issue a lincese pursuant to Ad Cd §20-231(c). Hajovsky v. City of New York, 171 Ad 2d 507 [1991].

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*NYC Administrative Code 20-232*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

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§ 20-232 Revocation.

In addition to any other basis for revoking, a newsstand license may be revoked upon a finding by the commissioner that the location listed in the license was not utilized for a period of two consecutive months or more or that the licensee is not using the stand primarily for the sale of newspapers and periodicals.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-62.0 added LL 73/1979 § 2



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*NYC Administrative Code 20-233*

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Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 7 SIDEWALK STANDS

§ 20-233 Stoopline stands; license required; permitted use.

a. It shall be unlawful to maintain a stand or booth within stooplines without a license therefor.

b. Such stands or booths shall be used for the sale or display of fruits, vegetables, soft drinks, cigars, cigarettes, tobacco, confectionary, ice cream, flowers or any of the foregoing.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. b amended L.L. 65/1992 § 1, eff. July 23, 1992.

**DERIVATION**

Formerly § B32-63.0 added chap 929/1937 § 1

Sub a amended LL 3/1945 § 1

Amended LL 118/1954 § 1

(Sub b omitted)

Sub b amended LL 23/1979 § 1

Renumbered LL 73/1979 § 5

(formerly § B32-66.0)

**CASE NOTES FROM FORMER SECTION B32-66.0**

¶ 1. Appeal by the People from judgment of City Magistrate sustaining a demurrer on constitutional grounds, to a complaint charging a violation

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of Admin. Code § B32-66.0, subd. a, as amended in 1945, prohibiting obstruction of sidewalks in the County of Queens by stoop stands or booths, was dismissed, on ground the People had no right of appeal from the judgment.-People (Kitching) v. Goldstein, 192 Misc. 337, 78 N.Y.S. 2d 256 [1948]. ¶ 2. Denial of petitioner's application for a license for a stoop line stand overruled where the denial was based on a 1912 resolution of the Board of Estimate which, even if still in effect did not apply to the particular facts in the case.-Chiapperini v. McCaffrey, 143 N.Y.S. 2d 735 [1955]. ¶ 3. Where defendant was charged with violation of § B32-66.0 of the Administrative Code and a demurrer to the complaint was sustained, the People have no statutory authority to appeal from such court.-People v. Goldstein, 192 Misc. 337, 78 N.Y.S. 2d 256 [1948]. ¶ 4. Revocation of petitioner's stoop line stand license on ground of personal unfitness in that license had allegedly been obtained from seller by fraud, trick and device and buyer had failed to disclose to Commissioner of Licenses the "equitable interest" of the seller was unwarranted as these facts related solely to a private contract dispute between the seller and buyer as to the agreed price and the Commissioner of Licenses may not use his licensing power to determine such disputes.-In re Saranita, 155 (25) N.Y.L.J. (2-4-66) 17, Col. 3 F.



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***** Current through December 2009 ****

*NYC Administrative Code 20-234*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 7 SIDEWALK STANDS

§ 20-234 Stoop line stands on market streets.

All such licenses shall be issued by the commissioner, in his or her discretion, with the consent of the owner of the abutting premises, provided however, that where any such stand is to be located in front of any premises facing on a market street, the license shall be issued by the commissioner of small business services, in his or her discretion.

**HISTORICAL NOTE**

Section amended L.L. 34/2002 § 12, eff. Nov. 7, 2002.

Section amended L.L. 65/1992 § 2, eff. July 23, 1992.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-64.0 added chap 929/1937 § 1

Amended chap 100/1963 § 577

Renumbered LL 73/1979 § 5

(formerly § B32-67.0)

**CASE NOTES FROM FORMER SECTION B32-67.0**

¶ 1. Under Administrative Code § B32-67.0, issuance of stoop line stand licenses is not confined to market areas or market streets, and hence refusal of Commissioner of Licenses to issue a stoop line stand license to petitioner for a fruit and vegetable stand in front of premises on Rivington Street on ground a resolution of the Board of Estimate had discontinued Rivington Street as a market area, was arbitrary.-In re Markowitz (Moss), 29 N.Y.S. 2d 709 [1941].

¶ 2. Determination of Commissioner of Licenses suspending petitioner's license to operate a fruit and vegetable stand upon a public sidewalk, would not be disturbed where the records showed that petitioner over a protracted period used a substantial portion of the sidewalk other than that legally permitted for the storage of garbage, that often garbage was allowed to remain upon the greater part of the sidewalk which was also illegally used for the storage of boxes and other packages and bags, that there was a constant shouting of the help to attract customers or to extol the cheapness or quality of the products sold, that 112 residents and citizens had petitioned to have the stand removed, and that petitioner had been summoned to court and fined five times within the past 18 months for the unlawful manner in which he conducted his stand.-In re Kaplan (Moss), 108 (128) N.Y.L.J. (12-3-42) 1729, Col. 5 F.

¶ 3. Where petitioner had record of two violations for operating an unlicensed stand, denial of his application for a fruit and vegetable stand in front of his store was held not arbitrary.-Matter of Haber (O'Connell), 144 (69) N.Y.L.J. (10-7-60) 13, Col. 6 M.

¶ 4. Commissioner's suspension of petitioner's license to maintain a stoop stand for sale of fruits and vegetables, on ground petitioner had persistently violated provisions of her license in regard to size of the stand, and after repeated warnings had continued to maintain stand to annoyance of neighboring residents by obstructing the sidewalk, using glaring lights and by failing to observe cleanliness, **held** not to have been arbitrary.-Greenberg v. Moss, 102 (113) N.Y.L.J. (11-15-39) 1636, Col. 6 F.

¶ 5. Motion to compel issuance of display stand permits to petitioners was denied on basis of affidavit of general inspector of Department of Markets stating that plaintiffs' stands, though designated as display stands, had in fact been used for purpose of making sales in violation of rules of Commissioner of Markets.-Handelman v. Morgan, 104 (148) N.Y.L.J. (12-27-40) 2212, Col. 4 M.

¶ 6. Provision of newly promulgated rules governing the so-called Fulton Fish Market which restricted the issuance of permits to sell fish from stands in the roadway of the street constituting such market to owners or tenants of street level stores, **held** unconstitutional as arbitrarily discriminating against tenants of upper floors and depriving them of property rights incident to such tenancy, and thus denying to them the equal protection of the laws and depriving them of their property without due process of law.-Russo v. Morgan, 103 (125) N.Y.L.J. (5-28-40) 2428, Col. 5 F.

¶ 7. If object of the rules was to give an economic advantage to those maintaining street level stores and the tenants of the city-owned market across the street, this would not tend to establish that the classification was reasonable instead of arbitrary.-Id.

¶ 8. Even if it were established that owners and tenants of street level stores used their street stands merely as an adjunct to their stores and that tenants renting space on upper floors transacted no business therein and used the stands in the street as the sole place of doing business, such differences would not justify the classification.-Id.

¶ 9. Plaintiffs failed to establish a clear right to injunctive relief against the Commissioner of Public Markets in connection with the permits to maintain display stands, where plaintiffs had actually sold merchandise from their stands in violation of rule prohibiting sales from display stands, and were also guilty of other violations of department regulations.-Cinquegrana v. Morgan, 104 (130) N.Y.L.J. (12-5-40) 1880, Col. 3 T.

¶ 10. Even though owner of the abutting premises acted arbitrarily in rescinding her consent given to the Commissioner of Licenses to maintenance of a stoop-line stand, court could not compel her to reinstate the rescinded consent nor direct the Commissioner of Licenses to reinstate the license previously given to plaintiff. Neither plaintiff nor the owner possessed any property right to maintain a stoop-line stand on the land which was the property of the City. Furthermore, a stoop-stand license is a privilege and not a property right; the rent regulations made no provisions for controlling a "license" on City property, and there was no landlord-tenant relationship between the property owner and the licensee.-Mazzanobile v. McCaffrey, 108 N.Y.S. 2d 649 [1951]. See ¶ 11.

¶ 11. In view of considerations that the stand had been at the particular location for 50 years, the plaintiff had had continuous use of it for 18 years, including use of part of the basement of the building for storage purposes, that pipes extended from the building and furnished heat and water, that the abutting owner had been collecting rent from plaintiff as a tenant on a month to month basis and that the tenant offered to pay the September rent although the abutting owner refused to accept it, the Appellate Division granted plaintiff's application for a temporary injunction so that plaintiff might continue operation of the stand pending determination of the owner's right to revoke her consent to the operation of the stand.-Mazzanobile v. McCaffrey, 279 App. Div. 861, 110 N.Y.S. 2d 378.

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*NYC Administrative Code 20-235*

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Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 7 SIDEWALK STANDS

§ 20-235 Stoop line stands; requirements.

No such stand at a location not licensed on the twenty-fourth day of July, nineteen hundred thirty-five, shall be licensed if the proposed location of the stand is within two hundred feet of any store in which any of such articles are sold, or any of such services are rendered, except that the occupant of a store may be licensed to maintain a stand in front of such store for the sale of such articles or services as are provided within the store.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-65.0 added chap 929/1937 § 1

Renumbered LL 73/1979 § 5

(formerly § B32-68.0)



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-236*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 7 SIDEWALK STANDS

§ 20-236 Stoop line stands; fees.

The fee for such license shall be based on the article or articles permitted to be sold or displayed as follows:

**[See tabular material in printed version]**

5. For any combination of the foregoing the fee shall be the total of the prescribed fees, except that such fee shall not exceed one hundred dollars.

**HISTORICAL NOTE**

Section amended L.L. 65/1992 § 3, eff. July 23, 1992.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-66.0 added chap 929/1937 § 1

Renumbered LL 73/1979 § 5

(formerly § B32-69.0)

Repealed and added LL 30//1983 § 4

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*NYC Administrative Code 20-237*

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Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 7 SIDEWALK STANDS

§ 20-237 Stoop line stands; restrictions.

a. Displays shall not extend farther than three feet from the front of any premises and in no case shall such stand or display exceed seven feet in height. Every licensed stand shall be maintained wholly within the stoop line and shall not obstruct the free use of the sidewalk by pedestrians. It shall not exceed ten feet in length nor four feet in width, provided, however that where the sidewalk in front of the premises is at least sixteen feet wide, such stand shall not exceed ten feet in length nor five feet in width as long as a straight, unobstructed pathway of at least nine and one-half feet is maintained at all times on the sidewalk in front of the entire length of the premises where such stand or stands are located.

b. Any stand licensed for the sale of any combination of the articles enumerated in subdivision b of section 20-233 of this subchapter, shall not exceed ten by four feet, provided, however that where the sidewalk in front of the premises is at least sixteen feet wide, such stand shall not exceed ten feet in length nor five feet in width as long as a straight, unobstructed pathway of at least nine and one-half feet is maintained at all times on the sidewalk in front of the entire length of the premises where such stand or stands are located.

c. It shall be unlawful for any person to lease or permit any other person to use any space on the sidewalk located adjacent to such store for the purpose of selling or displaying any merchandise. Violations of this section shall be punishable by a fine of one hundred dollars per day for each day said space is leased.

d. The commissioner shall promulgate any rules and regulations necessary for the proper implementation of this section.

**HISTORICAL NOTE**

Section amended L.L. 65/1992 § 4, eff. July 23, 1992.

Section added chap 907/1985 § 1

Subds. a, b amended L.L. 46/1993 §§ 1, 2, eff. June 1, 1993.

**DERIVATION**

Formerly § B32-67.0 added chap 929/1937 § 1

Renumbered LL 73/1979 § 4

(formerly § B32-70.0)

Sub b amended LL 73/1979 § 4

Subs c, d added LL 13/1984 § 1

**CASE NOTES FROM FORMER SECTION B32-70.0**

¶ 1. For a period of years the Commissioner of Licenses issued more than one license for stoop line stands at a given location, provided no stand exceeded 10 feet in length. In the midst of a license year, he arrived at a new interpretation of the statute and thereafter would issue only one new license at a given location, with a result that holders of existing licenses might continue to operate several stands for the balance of the term. Since all licenses expired uniformly on March 31, his action was arbitrary and capricious in the middle of a license year.-Matter of Guarino v. O'Connell, 8 Misc. 2d 454, 168 N.Y.S. 2d 132 [1957].

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***** Current through December 2009 ****

*NYC Administrative Code 20-238*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 7 SIDEWALK STANDS

§ 20-238 Stoop line stands; revocation of consent.

The commissioner who granted the license for any such stand or display shall revoke or suspend it if the abutting owner files a written revocation of the consent previously granted therefor in the office of such commissioner.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-68.0 added chap 929/1937 § 1

Renumbered LL 73/1979 § 5

(formerly § B32-71.0)

**CASE NOTES FROM FORMER SECTION B32-71.0**

¶ 1. The revocation of petitioner's license for operation of a stoop-line stand due to the withdrawal of consent by the owner of the abutting premises, which consent was required, was not arbitrary; nor was there any need for a

hearing.-Matter of Paulson (O'Connell), 142 (96) N.Y.L.J. (11-17-59) 13, Col. 3  M.

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-239*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 7 SIDEWALK STANDS

§ 20-239 Approval.

Any stand required to be licensed under section 20-233 shall not be licensed unless the location thereof has been approved by the department of transportation. No license issued under section 20-233 shall be renewed if the department of transportation determines that the stoop line stand so licensed poses an obstruction to the free use of sidewalks by pedestrians. Notwithstanding anything in this subchapter to the contrary, if the department of transportation determines that a stoop line stand which is permitted to be five feet in width pursuant to section 20-237 poses an obstruction to the free use of sidewalks by pedestrians solely because the width of such stand is five feet rather than four feet, the department of transportation shall approve the renewal of such license at a width of four feet.

**HISTORICAL NOTE**

Section amended L.L. 46/1993 § 3, eff. June 1, 1993.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-69.0 added chap 929/1937 § 1

Amended chap 100/1963 § 578

Renumbered and amended LL 73/1979 § 3

(formerly § B32-72.0)

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***** Current through December 2009 ****

*NYC Administrative Code 20-240*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 7 SIDEWALK STANDS

§ 20-240 Sleeping in stands prohibited.

It shall be unlawful for any person to sleep in any portion of any stand licensed under this subchapter.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-70.0 added chap 929/1937 § 1

Renumbered LL 73/1979 § 5

(formerly § B32-73.0)



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-240.1*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 7 SIDEWALK STANDS

§ 20-240.1 Enforcement.

a. Where exigent circumstances exist and a police officer or other authorized officer or employee of any city agency gives notice to the owner or operator of a stand licensed pursuant to section 20-233 of this subchapter to temporarily remove or otherwise disassemble such stand, such owner or operator shall comply with such notice and shall not continue to sell or display from such stand. For the purposes of this subdivision, exigent circumstances shall include, but not be limited to, unusually heavy pedestrian or vehicular traffic, the existence of obstructions in the public space, and accident, fire or other emergency situation, a parade, demonstration or other such event at or near the location of such stand.

b. If an owner or operator of a stand licensed pursuant to section 20-233 does not remove or otherwise disassemble such stand when directed to do so by a police officer or other authorized officer or employee of the city in accordance with the provisions of subdivision a of this section, such officer or employee is authorized to provide for the removal of such owner's or operator's goods and stand to any garage, automobile pound or other place of safety, and the owner or other person lawfully entitled to the possession of such goods and such stand may be charged with reasonable costs for removal and storage payable prior to the release of such goods and such stand.

c. In the event that any seizure made pursuant to this section shall include any perishable items or food products which cannot be retained in custody without such items or food products becoming unwholesome, putrid, decomposed or unfit in any way, they may be delivered to the commissioner of health for disposition pursuant to the provisions of

section 17-323 of this code.

d. Any person who violates the provisions of this section or section 20-237 shall be considered to be an unlicensed general vendor or an unlicensed food vendor and shall be subject to the penalty and enforcement provisions of either subchapter twenty-five of chapter two of this title or subchapter two of chapter three of title seventeen of the code, whichever is applicable.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-71.0 added LL 15/1984 § 5

(legislative findings, sidewalk obstructions unhealthy, LL 15/1984 § 1)

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***** Current through December 2009 ****

*NYC Administrative Code 20-241*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 7 SIDEWALK STANDS

§ 20-241 Licenses; number of licenses.

No person may hold more than two licenses required under section 20-228 and/or section 20-234 of this subchapter.

**HISTORICAL NOTE**

Section amended L.L. 41/1998 § 1, eff. Sept. 28, 1998, which repealed

L.L. 29/1997

Section amended L.L. 29/1997 § 6, eff. May 16, 1997

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-75.0 added chap 929/1937 § 1

Renumbered and amended LL 33/1968 § 8

(formerly § B32-74.0)

Sub a repealed LL 74/1977 § 3

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***** Current through December 2009 ****

*NYC Administrative Code 20-241.1*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 7 SIDEWALK STANDS

§ 20-241.1 a.* Newsstands99 installed and maintained pursuant to a franchise.

a. Construction. Upon the grant of a franchise, no person shall construct or install a newsstand other than a franchisee granted such a franchise. Newsstands installed and maintained pursuant to such a franchise shall comply with all applicable law, rules and regulations.

b. Transition. Upon the grant of a franchise, each licensee operating or maintaining a newsstand licensed pursuant to this subchapter shall be provided with reasonable notice when such newsstand structure is to be replaced by a newsstand installed and maintained pursuant to such franchise at a location approved by the department of transportation and instructions for applying for a replacement newsstand within the catchment area of such newsstand. Such replacement shall be subject to contractual incentives and/or penalties, if any, to ensure timely replacement of the newsstand pursuant to such franchise. The licensee shall have the option of removing the existing structure or such structure shall be removed by the franchisee granted such franchise. Operation of the newsstand licensed pursuant to this subchapter shall cease during such time as the newsstand is replaced. Upon being notified of the completion of the replacement of the newsstand, the licensee may resume operation pursuant to the terms of his or her license and the provisions of this subchapter.

c. Costs. 1. The cost of constructing and installing a replacement newsstand by the franchisee pursuant to such franchise shall be borne by the franchisee in accordance with such franchise. The cost of constructing and installing a newsstand by the franchisee pursuant to such franchise, which newsstand is not a replacement newsstand, shall be borne

by the licensee of such newsstand in accordance with paragraph two of this subdivision.

2. A licensee who maintains or operates a newsstand that is not a replacement newsstand and that has been constructed and installed by the franchisee pursuant to such franchise shall reimburse the franchisee for the cost of such construction and installation, which cost shall include costs associated with any interior electric and/or telephone hook-ups to the newsstand structure. The department shall determine the applicable construction and installation costs for purposes of this paragraph, which costs shall be limited to the costs incurred by the franchisee and certified by the franchisee to the department.

d. Fees. A licensee licensed to maintain or operate a newsstand constructed and installed by the franchisee pursuant to such franchise shall be liable for the payment to the department of the biennial fee for a license to operate a newsstand payable in accordance with subdivision b of section 20-230 of the code.

e. Enforcement. Notwithstanding any other provision of law to the contrary, the commissioner shall be authorized, after notice and an opportunity to be heard, to order any person who is unlawfully operating a newsstand that has been constructed or installed by a person other than the franchisee in violation of subdivision a of this section to remove such newsstand within seven days of the issuance of such order. Such order shall be posted at the premises of such newsstand. If such person does not remove such newsstand within seven days of the issuance of such order, an authorized officer or employee of any city agency or a police officer is authorized to provide for the removal of such person's newsstand and the contents thereof to a place of safety. If such newsstand or the contents thereof are not claimed within thirty days after their removal, they shall be deemed to be abandoned and may be either sold at a public auction after having been advertised in the City Record, the proceeds thereof being paid into the general fund, used or converted for use by the department or another city agency, or otherwise disposed of. Newsstands and the contents thereof that are removed pursuant to this subdivision shall be released to the owner or other person lawfully entitled to possession upon payment of the costs for removal and storage and any civil penalty imposed for the violation or, if an action or proceeding for the violation is pending, upon the posting of a bond or other form of security acceptable to the department in an amount which will secure the payment of such costs and any penalty which may be imposed for the violation. In the event that any removal made pursuant to this subdivision shall include any perishable items, goods, or food products which cannot be retained in custody without such items, goods, or food products becoming unwholesome, putrid, decomposed or unfit in any way, they may be delivered to the commissioner of health and mental hygiene for disposition pursuant to the provisions of section 17-323 of this code.

**HISTORICAL NOTE**

Section added L.L. 64/2003 § 10, eff. Oct. 29, 2003. [See Note 1]

**NOTE**

1. Provisions of L.L. 64/2003:

Section 1. Declaration of intent. In the interests of better serving the public, improving the appearance of street furniture, including newsstands, located on the sidewalks throughout the City, and to enhance the revenues available to the City, the Council adopted Resolution No. 1004 authorizing the Department of Transportation to grant nonexclusive franchises for the installation, operation, and maintenance of coordinated franchise structures. It is anticipated that compliance with legally applicable requirements for the reconstruction of newsstands pursuant to such a franchise or franchises may result in the enlargement of the footprints of the existing stands as well as other changes in their design. As a result of these changes, the existing locations of licensed newsstands may intrude into buffer zones defined under existing rules of the Department of Consumer Affairs and cease to be eligible for the placement by a franchisee of a larger or redesigned newsstand.

The presence of newsstands on the streets of the City is an important amenity that provides pedestrians with convenient access to a variety of items, particularly newspapers and magazines. The Council recognizes that the

placement of newsstands must be regulated so that the public is protected from unsafe conditions, including pedestrian traffic congestion, obstructions of important sight lines by which drivers see pedestrians and pedestrians are aware of vehicles, and obstacles at entrances to buildings or in bus stops and pedestrian crosswalks. The Council also recognizes that it is essential to ensure that the newsstand structures do not interfere with the provision of essential City services, such as the City's fire-fighting services, that depend, for example, on unobstructed access to fire hydrants. Accordingly, the Council seeks to minimize the disruption of the licensees of newsstands and the convenience of pedestrians who purchase items from newsstands by reducing the siting criteria that would be applicable to newsstands installed by a franchisee to those that are essential to the protection of the health, safety and welfare of the public.

. . . . . .

§ 11. This local law shall take effect on the later of the date on which it is enacted into law or the date upon which a resolution authorizing the department of transportation to grant nonexclusive franchises for the installation, operation and maintenance of coordinated franchise structures is passed by the city council, provided that the department of consumer affairs and the department of transportation may take any actions necessary to effectuate the provisions of this local law prior to its effective date, including the promulgation of new rules and the modification of existing rules prior to such date.

**FOOTNOTES**

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[Footnote 99]: * Editor's note: a. designation erroneously placed before section heading.



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***** Current through December 2009 ****

*NYC Administrative Code 20-242*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 8 SIGHTSEEING GUIDES

§ 20-242 Definition.

Whenever used in this subchapter the term "guide" shall mean and include any person who engages in the business of guiding or directing people to any place or point of public interest or who, in connection with any sightseeing trip or tour, describes, explains or lectures concerning any place or point of public interest to any person within the city or obtains the patronage of any person for such trip. Nothing herein contained shall be construed to include any person or persons who describes, explains or lectures concerning any place or point of public interest while aboard a sightseeing boat or vessel regularly engaged in scheduled trips around Manhattan island on navigable waters.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-75.0 added chap 929/1937 § 1

Amended LL 28/1979 § 1

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-243*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 8 SIGHTSEEING GUIDES

§ 20-243 License required.

It shall be unlawful for any person to act as a guide without a license therefor from the commissioner.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-76.0 added chap 929/1937 § 1

Amended LL 23/1963 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. The provisions for licensing sightseeing guides have no application to hotel runners.-Dayline Sightseeing, Inc. v. O'Connell, 136 (79) N.Y.L.J. (10-23-56) 7, Col. 3 F.

¶ 2. Employees of a foreign corporation conducting round-trip tours from out-of-state points with stop-overs in New York City, pointing out places of interest therein to their passengers and providing them with tickets for local boat

rides, are not protected by the interstate commerce doctrine as regards the necessity for obtaining licenses as sightseeing guides.-People v. Bowen, 11 Misc. 2d 462, 175 N.Y.S. 2d 125 [1958].

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***** Current through December 2009 ****

*NYC Administrative Code 20-244*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 8 SIGHTSEEING GUIDES

§ 20-244 Applications.

a. Each applicant for such license shall be at least eighteen years of age; and

b. Each such applicant shall be required to pass an examination satisfactorily. Such examination shall be under the supervision of the commissioner and shall test the knowledge of the applicant concerning places or points of historic or public interest in and about the city. Any person who can present satisfactory proof to the commissioner that he or she has been engaged as a sightseeing guide in the city for a period of at least two years prior to August second, nineteen hundred thirty-seven shall be exempt from such examination.

**HISTORICAL NOTE**

Section amended L.L. 39/2006 § 3, eff. Dec. 16, 2006. [See § 17-315 Note 1]

Section added chap 907/1985 § 1

Subd. c amended L.L. 22/2002 § 41, eff. July 29, 2002 and deemed in effect as of July 1, 2002. Note: This Subd. c was bracketed out of law

in L.L. 39/2006 amendment.

**DERIVATION**

Formerly § B32-77.0 added chap 929/1937 § 1

Sub a amended LL 10/1942 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Under Code of Ordinances, ch. 14, § 235, subd. 5, it would seem that Commissioner of Licenses may not require those engaged at vocation of sightseeing guide for a period of at least two years before date of the ordinance, to take an examination.-Rose v. Moss, 98 (134) N.Y.L.J. (12-10-37) 2098, Col. 6 M.

¶ 2. In view of criminal record of petitioner for license to act as a guide, refusal of Police Department to approve the grant of a license to petitioner **held** not to have been arbitrary.-Goldfarb v. Moss, 100 (98) N.Y.L.J. (11-26-38) 1309, Col. 1 T.

¶ 3. The two-year residence requirement is unreasonable and invalid as regards nonresidents employed by a foreign corporation conducting interstate tours with stop-overs in New York City.-People v. Bowen, 11 Misc. 2d 462, 175 N.Y.S. 2d 125 [1958].



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-245*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 8 SIGHTSEEING GUIDES

§ 20-245 License fee; display.

a. The annual fee for such license shall be twenty-five dollars.

b. Each such license shall be displayed in a conspicuous place in the office or place of business of the licensee, or if a vehicle is used, in such vehicle, or if a guide has no office or uses no vehicle, he or she shall carry such license on his or her person at all times.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-78.0 added chap 929/1937 § 1

Sub a amended LL 44/1970 § 2

Sub b repealed LL 74/1977 § 3

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***** Current through December 2009 ****

*NYC Administrative Code 20-246*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 8 SIGHTSEEING GUIDES

§ 20-246 Fees charged.

a. In each bus or vehicle used for sightseeing purposes a schedule shall be permanently displayed showing the full cost per passenger for the trip to be taken.

b. It shall be unlawful for any licensed guide to charge a fee in excess of one dollar per hour per person.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-79.0 added chap 929/1937 § 1

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***** Current through December 2009 ****

*NYC Administrative Code 20-247*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 8 SIGHTSEEING GUIDES

§ 20-247 Regulations.

a. The commissioner may prescribe such rules and regulations as he or she deems necessary to protect persons and property in the enforcement of this subchapter.

b. It shall be unlawful for the driver of any vehicle to explain, describe, or lecture while such vehicle is in motion, unless the seating capacity of such vehicle is seven passengers or fewer. Each such driver who talks or lectures must be a licensed guide.

c. It shall be unlawful for any licensee to obstruct any street or public space, or to touch any person or to interfere with the free passage of the public along any street or public space for the purpose of soliciting employment as a guide.

d. It shall be unlawful for any such guide to wear a uniform or any part thereof and hold himself or herself forth as a guide unless such uniform or part thereof shall be approved by the commis- sioner.

e. Each licensee shall wear on the left breast of his or her outer garment a badge, while engaged in his or her occupation as a guide, bearing his or her number and the date of expiration of his or her license. Such badge shall be furnished by the commissioner. The color of such badge shall be changed each year.

f. It shall be unlawful for any licensee to guide or direct any person to a place of ill repute, house of ill fame or assignation, or to any house or place of amusement kept for immoral purposes, or to any place resorted to for the purpose of prostitution or gambling. It shall be unlawful for any such licensee to impart any information as to the location or address of any such houses or places, or to solicit the patronage of any person or persons for any hotel, lodging house or boarding house or place of temporary or permanent abode, or for any place where refreshments are served or amusement of any type provided.

g. It shall be unlawful for any licensee to engage in business or do business with any unlicensed guide.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-80.0 added chap 929/1937 § 1

Sub g amended chap 100/1963 § 579

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***** Current through December 2009 ****

*NYC Administrative Code 20-248*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 9 PEDICABS*100

§ 20-248 Legislative findings.

It is the purpose of this subchapter to regulate and control pedicab businesses to protect consumers and to ensure the safety of the public, including passengers and drivers operating pedicabs. It is also the purpose of this subchapter to minimize the effect of pedicabs on traffic and congestion by establishing a maximum number of pedicabs that can be authorized to operate in the city. It is the purpose of this subchapter to require the inspection of pedicabs to ensure that pedicabs are safely operated in the streets of the city, and to provide a process for their removal if they have not been inspected as required.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9 footnote]

**FOOTNOTES**

100

[Footnote 100]: * Subchapter 9 added L.L. 19/2007 § 1, eff. Sept. 20, 2007. Note provisions of L.L. 19/2007:

§ 4. Severability clause.

If any clause, sentence, paragraph, subdivision, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remaining portions of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 5. This local law shall take effect 150 days after it shall have become a law [Sept. 20, 2007], except that prior to such date, the Commissioner may take such actions, including the promulgating of rules and the processing of applications as provided in subchapter 9 of chapter 2 of title 20 of the administrative code of the city of New York and in such rules, as necessary to implement this local law, and except that section three of this local law shall take effect immediately and except that section 20-251 of the administrative code of the city of New York, as added by section one of this local law, shall be deemed repealed two years after it shall have become a law.



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***** Current through December 2009 ****

*NYC Administrative Code 20-249*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 9 PEDICABS*100

§ 20-249 Definitions.

Whenever used in this subchapter:

a. "Family member" shall mean a member of the immediate family, including, but not limited to, a spouse, domestic partner, sibling, child, grandchild, parent or grandparent.

b. "Owned" or "owns" shall mean possession with good legal title, or possession under a lease, reserve title contract, conditional sales agreement or vendor's agreement or similar agreement.

c. "Pedicab" shall mean a bicycle as defined in the vehicle and traffic law or other device that is designed and constructed to transport or carry passengers, that is solely propelled by human power, and that is operated to transport passengers for hire.

d. "Pedicab owner" or "owner" shall mean any person who owns one or more pedicabs in the city of New York.

e. "Pedicab business" or "business" shall mean a pedicab owner who operates or authorizes the operation of one or more pedicabs in the city of New York.

f. "Pedicab business license" shall mean a license issued by the commissioner pursuant to section 20-250.

g. "Pedicab driver" shall mean any natural person who propels and operates a pedicab in the city of New York.

h. "Pedicab driver license" shall mean a license issued by the commissioner to a pedicab driver to operate a pedicab.

i. "Person" shall mean any natural person, firm, partnership, joint venture, corporation or association.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9

footnote]

**CASE NOTES**

¶ 1. See Application of NYC Pedicab Owner's Assoc. d/b/a Manhattan Rickshaw Co. v. NYC Dept. of Consumer Affairs 2008 NY Slip Op. 28014, 19 Misc.3d 170, 855 NYS2d 831, 2008 NY Misc. Lexis 127 (Sup. Ct. NY county), discussed in note 1 of Admin. Code. § 20-251.

¶ 2. The pedicab licensing scheme provides that a pedicab must be actually owned by the applicant at the time of the application for a pedicab license. Therefore, the Department of Consumer Affairs, in enacting 6 RCNY 2-416[b][2], exceeded its legislative authority when it permitted applications for more licenses and registrations than the number of pedicabs actually owned by the applicant. In re: NYC Pedicab Owners' Assoc. et al. v. NYC Dept. of Consumer Affairs, 877 NYS2d 283 (1st Dept. 2009).

**FOOTNOTES**

100

[Footnote 100]: * Subchapter 9 added L.L. 19/2007 § 1, eff. Sept. 20, 2007. Note provisions of L.L. 19/2007:

§ 4. Severability clause.

If any clause, sentence, paragraph, subdivision, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remaining portions of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 5. This local law shall take effect 150 days after it shall have become a law [Sept. 20, 2007], except that prior to such date, the Commissioner may take such actions, including the promulgating of rules and the processing of applications as provided in subchapter 9 of chapter 2 of title 20 of the administrative code of the city of New York and in such rules, as necessary to implement this local law, and except that section three of this local law shall take effect immediately and except that section 20-251 of the administrative code of the city of New York, as added by section one of this local law, shall be deemed repealed two years after it shall have become a law.



Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-250*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 9 PEDICABS*100

§ 20-250 Pedicab business license.

a. It shall be unlawful for a pedicab owner to conduct a pedicab business unless such pedicab owner shall have first obtained from the commissioner a pedicab business license.

b. In order to obtain, amend or renew a pedicab business license, a pedicab owner must provide the commissioner with the following:

1. A list of all pedicabs owned, leased or controlled by such pedicab owner for which such owner seeks registration pursuant to section 20-255. Each such pedicab shall be uniquely identified on such list;

2. Proof that there is in force for the full license term a policy of public liability and property damage insurance that meets the requirements of section 20-253 of this subchapter for each pedicab listed pursuant to paragraph one of this subdivision; and

3. Such other information as the commissioner may require to establish the pedicab owner's eligibility for a pedicab business license under this subchapter.

c. A pedicab business license shall be valid for a term of one year. There shall be an annual fee of one hundred and ten dollars for such license that shall include the fee for registration, required by section 20-255, of one pedicab.

The registration fee for each additional pedicab shall be sixty dollars.

d. Notwithstanding subdivision a of this section, a person holding a pedicab driver license shall not be required to obtain a pedicab business license to drive a pedicab that is owned by a pedicab business licensed under this subchapter.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9

footnote]

**CASE NOTES**

¶ 1. See Application of NYC Pedicab Owner's Assoc. d/b/a Manhattan Rickshaw Co. v. NYC Dept. of Consumer Affairs 2008 NY Slip Op. 28014, 19 Misc.3d 170, 855 NYS2d 831, 2008 NY Misc. Lexis 127 (Sup. Ct. NY county), discussed in note 1 of Admin. Code § 20-251.

¶ 2. See In re: NYC Pedicab Owners' Assoc. et al v. NYC Dept. of Consumer Affairs, 877 NYS2d 283 (1st Dept. 2009), note 1 in 20-249.

**FOOTNOTES**

100

[Footnote 100]: * Subchapter 9 added L.L. 19/2007 § 1, eff. Sept. 20, 2007. Note provisions of L.L. 19/2007:

§ 4. Severability clause.

If any clause, sentence, paragraph, subdivision, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remaining portions of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

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***** Current through December 2009 ****

*NYC Administrative Code 20-251*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 9 PEDICABS*100

§ 20-251 Cap on101 pedicabs.

a. The commissioner shall not issue registration plates or replaceable registration tags or decals, pursuant to section 20-255, to more than three hundred and twenty-five pedicabs at any one time.

b. The commissioner shall not issue registration plates or replaceable registration tags or decals to more than thirty pedicabs for any pedicab business at any one time. A pedicab business shall be deemed to have more than thirty pedicab registrations if:

(1) an owner of such pedicab business has a direct or indirect beneficial interest in one or more other pedicab businesses and the businesses together have more than thirty pedicab registrations;

(2) a family member of the owner of such business has a direct or indirect beneficial interest in one or more other pedicab businesses and the businesses together have more than thirty pedicab registrations;

(3) a person who has a direct or indirect beneficial interest in such pedicab business has a direct or indirect beneficial interest in one or more other pedicab businesses and the businesses together have more than thirty pedicab registrations; or

(4) a family member of a person who has a direct or indirect beneficial interest in such pedicab business has a

direct or indirect beneficial interest in one or more other pedicab businesses and the businesses together have more than thirty pedicab registrations.

c. The commissioner may prescribe by rule the process by which the number of pedicabs that each pedicab business can register is determined, consistent with the caps specified in subdivisions a and b of this section, including but not limited to, the procedures for the initial application and issuance of pedicab business licenses. Such selection process may consider whether the applicant has, prior to the enactment of this subchapter, owned or operated a pedicab and give priority to applicants who can provide proof of such previous ownership or operation of a pedicab.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007 and repealed Sept.

20, 2009 per L.L. 19/2007 § 5. [See Subchapter 9 footnote]

**CASE NOTES**

¶ 1. Local Law 19 (Chapter 2 of Title 20 of the Admin. Code) which became effective on April 23, 2007, sought to regulate the pedicab business by requiring all pedicabs to display a registration plate, but limits the number of plates that may be issued by the Department of Consumer Affairs (DCA) at any one time to 325, and provided that no more than 30 plates could be issued for any pedicab business at any one time (Admin. Code Sec. 20-251). In an Article 78 proceeding, petitioners challenged Section 2-416 of the DCA regulations, which permitted applications for pedicab licenses by persons who did not currently own pedicabs. The court held that the regulation conflicted with § 20-251c. Thus, to the extent that the regulation permits a non-owner to apply for one of the 325 available registration plates and permit an owner to apply for more plates than the number of pedicabs owned, the regulations conflicted with the statute and were therefore invalid. The court granted the petition to the extent that the DCA was directed to revise the list of persons eligible to be included in the "established business pool" to include only persons who owned pedicabs at the time of application for the registration plate and to limit the number of licenses that may be issued to any applicant to the number of pedicabs owned (as defined in Sec. 20-249) at the time of the application. Matter of New York City Pedicab Owners Association v. New York City Dept. of Consumer Affairs, 19 Misc.3d 170, 855 N.Y.S.2d 831 (Sup.Ct. New York Co. 2008).

¶ 2. See In re: NYC Pedicab Owners' Assoc. et al v. NYC Dept. of Consumer Affairs, 877 NYS2d 283 (1st Dept. 2009), note 1 in 20-249.

**FOOTNOTES**

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[Footnote 100]: * Subchapter 9 added L.L. 19/2007 § 1, eff. Sept. 20, 2007. Note provisions of L.L. 19/2007:

§ 4. Severability clause.

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[Footnote 101]: * § 20-251 repealed Sept. 20, 2009 per L.L. 19/2007 § 5.

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*NYC Administrative Code 20-252*

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Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 9 PEDICABS*100

§ 20-252 Issuance of pedicab business license.

a. A pedicab business license shall be issued only to a person who meets all the requirements of this subchapter and any rules promulgated by the commissioner to effectuate the purposes of this subchapter.

b. A pedicab business license shall be valid only for the person in whose name it is issued.

c. The commissioner may refuse to issue to a pedicab owner a pedicab business license or to renew a pedicab business license to a pedicab owner based upon a determination that such applicant has engaged in conduct that would constitute a basis for license suspension or revocation as set forth in subdivision a of section 20-261 of this subchapter.

d. A pedicab business license cannot be transferred or sold. The commissioner shall promulgate rules as to whether, and the extent to which, a pedicab business license remains valid after any change in the beneficial ownership of a pedicab business, including, without limitation, any such change resulting from a direct or indirect, voluntary or involuntary, sale or transfer of a beneficial ownership interest.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9 footnote]

**FOOTNOTES**

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[Footnote 100]: * Subchapter 9 added L.L. 19/2007 § 1, eff. Sept. 20, 2007. Note provisions of L.L. 19/2007:

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*NYC Administrative Code 20-253*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 9 PEDICABS*100

§ 20-253 Insurance.

a. It shall be unlawful for any pedicab business to operate or authorize the operation of a pedicab within the city unless there is in force for such pedicab a policy of insurance that meets the requirements of this section.

b. Such policy of liability insurance shall insure such pedicab business and all pedicab drivers of the pedicabs of such business, whether such pedicab drivers are employees of the pedicab business or operate such pedicabs otherwise by agreement with the pedicab business. Such insurance policy must provide, at minimum, the following protection:

1. The pedicab business carries a policy providing liability coverage for injury or death of any person or persons, and damage to or destruction of any property in a combined single limit amount of two million dollars, or such higher amount as the commissioner may determine pursuant to rule, with a maximum of one million dollars for each accident, where liability for such injury or death of a person or persons, or damage to or destruction of property shall arise out of the operation of the pedicab business's pedicabs; or

2. Each pedicab is insured in at least the following amounts, unless the commissioner establishes higher amounts pursuant to rule, where liability for such injury or death of a person or persons, or damage to or destruction of property shall arise out of the operation of the pedicab:

(i) for personal injury or death to one person, one hundred thousand dollars;

(ii) for personal injury or death to all persons in one accident, three hundred thousand dollars, with a maximum of one hundred thousand dollars for each person; and

(iii) for property damage, fifty thousand dollars.

c. Such policy of liability insurance shall name the city of New York as an insured party.

d. The pedicab business shall notify the commissioner of any modification, amendment, cancellation or substitution of any insurance policy required under subdivision b of this section within fourteen days of the date of the notice to the pedicab business of such modification, amendment, cancellation or substitution.

e. If the policy of insurance required by this section lapses for any reason, the license issued pursuant to section 20-250 shall become void for such pedicab business.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9

footnote]

**FOOTNOTES**

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***** Current through December 2009 ****

*NYC Administrative Code 20-254*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 9 PEDICABS*100

§ 20-254 Required equipment of pedicabs.

a. Each pedicab operated in the city shall be equipped with the following features:

1. three or more wheels;
2. a unibody frame for the entire vehicle;
3. seating for no more than three passengers;
4. hydraulic or mechanical disc or drum brakes, which are unaffected by rain or wet conditions;
5. a secondary or emergency brake system;
6. battery-operated headlights capable of projecting a beam of light for a distance of 300 feet;
7. battery-operated taillights which are visible from 500 feet;
8. turn lights;
9. passenger seat belts;

10. an audible signaling device;

11. reflectors on the spokes of the wheels of the pedicab;

12. a timer, of a type approved by the commissioner, affixed within clear view of passengers, if the rate charged is based on period of use;

13. a sign attached to the interior of the pedicab within view of passengers indicating the name and telephone number of the pedicab business, the pedicab's registration number and a telephone number that can be used to direct consumer complaints about such pedicab to the department; and

14. a sign conspicuously posted on the exterior of the pedicab indicating the amount to be charged for the use of the pedicab or the basis for calculating such amount.

b. The maximum width of a pedicab shall be fifty-five inches and the maximum length of a pedicab shall be ten feet.

c. It shall be unlawful for a pedicab business to operate or authorize the operation of, or for a pedicab driver to operate, a pedicab that does not comply with the requirements of this section.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9

footnote]

**FOOTNOTES**

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Administrative Code of the City of New York



***** Current through December 2009 ****

*NYC Administrative Code 20-255*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 9 PEDICABS*100

§ 20-255 Inspection; pedicab registration plate.

a. It shall be unlawful for a pedicab business to operate or authorize the operation of, or for a pedicab driver to operate, a pedicab unless:

1. it has been inspected by the department;

2. it has been issued a registration plate that indicates on such plate, or by a replaceable registration tag or decal, the expiration date of the current registration; and

3. such registration is in effect.

b. The registration shall be valid for a period no longer than one year and the expiration date of such registration plate or replaceable registration tag or decal shall be a date specified by the commissioner by rule.

c. If the commissioner determines after such inspection that a pedicab is equipped with the features set forth in subdivision a of section 20-254, upon payment of the registration fee provided by section 20-250 of this subchapter, the department shall issue a registration plate or replaceable registration tag or decal to the pedicab business that leased or otherwise authorized the operation of such pedicab.

d. Such registration plate shall be securely affixed by the department to a conspicuous and indispensable part of

each pedicab.

e. The registration plate may, in the discretion of the commissioner, be of a permanent nature with a replaceable registration tag or decal attached thereto, indicating the expiration date of the current registration tag or decal.

f. The registration plate and the replaceable registration tag or decal shall be of such material, form, design and dimension and set forth such distinguishing number or other identification marks as the commissioner shall prescribe.

g. A pedicab business shall pay an additional fifty-five dollars as the re-inspection fee for any pedicab that is determined upon inspection not to meet the requirements of this section and such business re-applies for a registration plate or replaceable registration tag or decal.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9

footnote]

**FOOTNOTES**

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*NYC Administrative Code 20-256*

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CHAPTER 2 LICENSES

SUBCHAPTER 9 PEDICABS*100

§ 20-256 Records.

Every pedicab business shall maintain such records related to the ownership and operation of its pedicabs as the commissioner may prescribe by rule. Such records shall be made available for inspection by the commissioner at his or her request at either the offices of the pedicab business or at the offices of the department.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9 footnote]

**FOOTNOTES**

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***** Current through December 2009 ****

*NYC Administrative Code 20-257*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 9 PEDICABS*100

§ 20-257 Pedicab driver license.

a. It shall be unlawful for a pedicab driver to operate a pedicab unless the pedicab driver shall have first obtained a pedicab driver license from the commissioner.

b. It shall be unlawful for a pedicab business to permit the operation of any pedicabs owned by it by a person who does not have a pedicab driver license and a motor vehicle driver's license in full force and effect.

c. In order to obtain or renew a pedicab driver license, a pedicab driver shall file an application with the commissioner for such pedicab driver license. Such application shall be made upon such form as prescribed by the commissioner and shall contain such information as the commissioner may require to establish the applicant's eligibility for a pedicab driver license under this subchapter.

d. To be eligible for a pedicab driver license, an applicant shall:

1. be at least eighteen years of age;

2. possess a currently valid motor vehicle driver's license;

3. not have his or her New York State motor vehicle driver's license suspended or revoked; and

4. meet such fitness requirements as the commissioner may determine by rule.

e. A pedicab driver license shall be valid for a term of one year. There shall be a fee of thirty-five dollars for such license. The commissioner shall establish the expiration date for such license by rule.

f. The commissioner may refuse to issue a pedicab driver license or to renew such a license based upon a determination that such pedicab driver has engaged in conduct which would constitute a basis for the suspension or revocation of a pedicab driver license as set forth in subdivision c of section 20-261 of this subchapter.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9

footnote]

**FOOTNOTES**

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***** Current through December 2009 ****

*NYC Administrative Code 20-258*

Administrative Code of the City of New York

Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 9 PEDICABS*100

§ 20-258 Display of pedicab driver's identification.

a. The commissioner shall provide a photo identification card to each pedicab driver who has obtained a pedicab driver license. Such photo identification card shall include the license number of such pedicab driver license and the motor vehicle driver's license number of such pedicab driver, as well as the issuing state of such motor vehicle driver's license.

b. The pedicab driver shall wear such photo identification card so that it is visible to passengers and enforcement officers when such pedicab driver is operating a pedicab. A copy of such photo identification card shall also be displayed inside any pedicab under the control of such driver in a manner clearly visible to the passengers of such pedicab.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9 footnote]

**FOOTNOTES**

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*NYC Administrative Code 20-259*

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Title 20 Consumer Affairs

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SUBCHAPTER 9 PEDICABS*100

§ 20-259 Restrictions on the operation of pedicabs.

a. A pedicab driver shall be subject to all provisions of state and local law governing the operation of a bicycle, which include, but are not limited to, provisions of the vehicle and traffic law, the New York city administrative code, and rules of the city of New York promulgated by the department of transportation and the department of parks and recreation.

b. A pedicab driver shall not:

1. operate a pedicab to transport more than three passengers.

2. operate a pedicab in motion while a passenger is standing in such pedicab.

3. operate a pedicab on any bridge or in any tunnel or in any bicycle lane.

4. permit a pedicab to be operated simultaneously by anyone in addition to him or herself.

5. operate a pedicab that is designed or constructed to permit propulsion by more than one individual at any one time.

6. operate a pedicab while such pedicab driver's ability to operate such pedicab is impaired by the consumption

of alcohol, the use of any drug or by any other means or while such pedicab driver is in an intoxicated condition. A pedicab driver operating a pedicab which has been involved in an accident or has been operated in violation of subdivision a of this section shall be deemed to have given consent to a breath test and shall, at the request of a police officer, submit to a breath test to be administered by the police officer. Failure to submit to such breath test shall serve as the basis for an immediate suspension of the pedicab driver's license, subject to a prompt post-suspension hearing.

7. operate a pedicab without a currently valid motor vehicle driver's license or while such pedicab driver's New York State motor vehicle driver's license is suspended or revoked.

c. Pedicabs can be operated within any public park or any property under the charge or control of the department of parks and recreation pursuant to the rules of the department of parks and recreation and in accordance with the rules of the department of transportation.

d. A pedicab business shall submit to the department, upon such form prescribed by the commissioner, a written report of every accident relating to a pedicab by such pedicab business within twenty-four hours after the occurrence of such accident. Such form shall be signed by a principal or officer of such pedicab business as well as by the pedicab driver involved in such accident with an affirmation of the truth of the contents of the form.

e. If there are exigent circumstances and a police officer or other authorized officer or employee of any city agency directs a pedicab driver to move his or her pedicab from any street, avenue or other location, such pedicab driver shall not operate his or her pedicab at such street, avenue or location for the duration of such exigent circumstances.

1. For the purposes of this subdivision, exigent circumstances shall include, but not be limited to, unusually heavy pedestrian or vehicular traffic, existence of any obstructions in the public space, an accident, fire or other emergency, a parade, demonstration or other such event at or near such location.

f. If there are exceptional circumstances, the police commissioner, in consultation with the commissioners of the departments of consumer affairs and transportation, shall be authorized, upon notice, to restrict or prohibit any pedicab driver from operating his or her pedicab on any street, avenue or other location for a specified period of time. Such specified period of time shall not exceed fourteen days except, during the period that commences November 12 and concludes January 7 of the following year, in and around the area of Manhattan bound on the north by Fifty-ninth Street, on the south by Thirty-ninth Street, on the east by Lexington Avenue and on the west by Eighth Avenue, the fourteen day time limit shall not be in effect.

1. For the purposes of this subdivision, exceptional circumstances shall include, but not be limited to, unusually heavy pedestrian or vehicular traffic, existence of any obstructions in the public space, a parade, demonstration or other such event or occurrence at or near such location.

g. Every affected community board may, at any time subsequent to enactment of this local law, conduct public hearings hereon and submit written recommendations to the department of consumer affairs, the department of transportation, the police department and the council. Such recommendations may include, but not be limited to, methods to address any impact this law may have on such community with respect to pedestrian and vehicle traffic flow.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9

footnote]

**FOOTNOTES**

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§ 4. Severability clause.

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§ 5. This local law shall take effect 150 days after it shall have become a law [Sept. 20, 2007], except that prior to such date, the Commissioner may take such actions, including the promulgating of rules and the processing of applications as provided in subchapter 9 of chapter 2 of title 20 of the administrative code of the city of New York and in such rules, as necessary to implement this local law, and except that section three of this local law shall take effect immediately and except that section 20-251 of the administrative code of the city of New York, as added by section one of this local law, shall be deemed repealed two years after it shall have become a law.

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§ 20-260 Rates of pedicabs.

a. The basis for calculating the amount of the charge for the use of a pedicab shall be displayed on the pedicab at all times.

b. It shall be unlawful for a pedicab driver to charge a passenger more than the amount or rate displayed on the pedicab.

c. The pedicab driver shall provide passengers with a receipt listing the amount of the charge for the use of the pedicab, the license number of the pedicab business and a telephone number of such business to which complaints by consumers shall be directed, the pedicab driver's license number and the telephone number at the department where complaints by consumers can be reported.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9 footnote]

**FOOTNOTES**

100

[Footnote 100]: * Subchapter 9 added L.L. 19/2007 § 1, eff. Sept. 20, 2007. Note provisions of L.L. 19/2007:

§ 4. Severability clause.

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§ 20-261 Denial of license or renewal, suspension and revocation.

a. In addition to any of the powers that may be exercised by the commissioner pursuant to this subchapter or chapter one of this title, the commissioner, after due notice and an opportunity to be heard, may suspend or revoke a pedicab business license upon the occurrence of any one or more of the following conditions:

1. the occurrence of fraud, misrepresentation, or false statements contained in the application for such license;

2. the operation of a pedicab, owned by the pedicab business, by a pedicab driver who does not have in full force and effect a pedicab driver license and a motor vehicle driver's license;

3. the operation of a pedicab, owned by the pedicab business, that has not been inspected or that does not have affixed to it a registration plate or replaceable registration tag or decal as required by section 20-255 of this subchapter; or

4. violation by a pedicab business of any of the provisions of chapter one of this title, provisions of this subchapter, rules promulgated pursuant to this subchapter, or any other law applicable to the operation of a pedicab business.

b. Notwithstanding subdivision a of this section, upon the occurrence of any of the conditions set forth in

subdivision a, if the commissioner determines that continued possession by a pedicab owner of a pedicab business license would pose an exigent danger to the public, the commissioner may suspend such pedicab business license, subject to a prompt post-suspension hearing.

c. In addition to any of the powers that may be exercised by the commissioner pursuant to this subchapter or chapter one of this title, the commissioner, after due notice and an opportunity to be heard, may suspend or revoke a pedicab driver license upon the occurrence of any one or more of the following conditions:

1. the occurrence of fraud, misrepresentation, or false statements contained in the application for such license;

2. the operation of a pedicab that has not been inspected or that does not have affixed to it a registration plate or replaceable registration tag or decal as required by section 20-255 of this subchapter; or

3. the violation by a pedicab driver of any of the provisions of chapter one of this title, provisions of this subchapter, rules promulgated pursuant to this subchapter, or of any other law applicable to the operation of a pedicab by such pedicab driver.

d. Notwithstanding subdivision c of this section, upon the occurrence of any of the provisions set forth in subdivision c of this section, if the commissioner determines that continued possession by a pedicab driver of a pedicab driver license would pose an exigent danger to the public, the commissioner may suspend such pedicab driver license, subject to a prompt post-suspension hearing.

e. Any pedicab business that has been found, or pedicab driver who has been found, to have committed at least three violations of this subchapter within any twelve-month period shall have its, his or her license suspended by the commissioner for a period of not less than three months. For purposes of this subdivision only, all violations committed on any one day shall constitute a single violation.

f. Notwithstanding the provisions of subdivision e of this section, any pedicab business that has been found, or pedicab driver who has been found, to have committed at least five violations of this subchapter within any twelve month period shall have its, his or her license revoked by the commissioner. For purposes of this subdivision only, all violations committed on any one day shall constitute a single violation.

g. A pedicab business that, or pedicab driver who, has had its, his or her license revoked, in accordance with this section may not apply for a new license for three years from the date of revocation.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9

footnote]

**FOOTNOTES**

100

[Footnote 100]: * Subchapter 9 added L.L. 19/2007 § 1, eff. Sept. 20, 2007. Note provisions of L.L. 19/2007:

§ 4. Severability clause.

If any clause, sentence, paragraph, subdivision, section or part of this local law shall be adjudged by any

court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remaining portions of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 5. This local law shall take effect 150 days after it shall have become a law [Sept. 20, 2007], except that prior to such date, the Commissioner may take such actions, including the promulgating of rules and the processing of applications as provided in subchapter 9 of chapter 2 of title 20 of the administrative code of the city of New York and in such rules, as necessary to implement this local law, and except that section three of this local law shall take effect immediately and except that section 20-251 of the administrative code of the city of New York, as added by section one of this local law, shall be deemed repealed two years after it shall have become a law.



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§ 20-262 Failure to display pedicab registration or pedicab driver's license.

a. In any civil, criminal or administrative action or proceeding, the failure to display the registration tag or decal on the pedicab on which it is required to be displayed as provided in section 20-255 of this subchapter shall be presumptive evidence that such pedicab has not been inspected and is not duly registered as required by this subchapter.

b. In any civil, criminal or administrative action or proceeding, the failure by a pedicab driver who is required to be licensed pursuant to the provisions of this subchapter to display or to exhibit on demand such pedicab driver's license in accordance with the provisions of this subchapter to any officer or employee authorized to enforce the provisions of this subchapter, shall be presumptive evidence that such pedicab driver is not duly licensed.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9 footnote]

**FOOTNOTES**

100

[Footnote 100]: * Subchapter 9 added L.L. 19/2007 § 1, eff. Sept. 20, 2007. Note provisions of L.L. 19/2007:

§ 4. Severability clause.

If any clause, sentence, paragraph, subdivision, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remaining portions of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 5. This local law shall take effect 150 days after it shall have become a law [Sept. 20, 2007], except that prior to such date, the Commissioner may take such actions, including the promulgating of rules and the processing of applications as provided in subchapter 9 of chapter 2 of title 20 of the administrative code of the city of New York and in such rules, as necessary to implement this local law, and except that section three of this local law shall take effect immediately and except that section 20-251 of the administrative code of the city of New York, as added by section one of this local law, shall be deemed repealed two years after it shall have become a law.

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§ 20-263 Penalties.

a. It is a traffic infraction to violate any provision of this subchapter and such traffic infractions shall be punishable in accordance with section eighteen hundred of the New York state vehicle and traffic law.

b. Any person who violates any provision of this subchapter or any rules promulgated pursuant to this subchapter shall be subject to a civil penalty that shall not be: (1) less than two hundred nor more than five hundred dollars for the first violation and for each additional violation committed on the same day; (2) less than five hundred nor more than one thousand dollars for the second violation committed, and each additional violation committed on the same day, within a one year period; (3) less than one thousand nor more than four thousand dollars for the third violation committed, and each additional violation committed on the same day, within a one year period. The pedicab business that authorizes the operation of such pedicab shall be jointly and severally liable with the pedicab driver thereof, for the penalties imposed by this section.

c. A violation of section 20-250 or 20-257 or paragraph 6 of subdivision b of section 20-259 of this subchapter or any rules promulgated thereunder shall constitute a violation punishable by a fine of not more than five hundred dollars or imprisonment of up to fifteen days, or by both such fine and imprisonment.

d. Any police or peace officer or authorized officer or employee of the department, upon service on the pedicab business or pedicab driver of a notice of violation for the failure of the pedicab business to obtain the required

inspection of a pedicab pursuant to subdivision a of section 20-255 or for the failure of a pedicab driver to be licensed pursuant to section 20-257, may seize such pedicab. Any pedicab seized pursuant to this subdivision shall be delivered into the custody of the department or other appropriate agency. The commissioner shall hold a hearing to adjudicate the violation of subdivision a of section 20-255 or section 20-257 within two business days after the date of the seizure and shall render his or her determination within two business days after the conclusion of the hearing.

e. A pedicab business shall be eligible to obtain release of a pedicab seized pursuant to subdivision d of this section prior to the hearing provided for in such subdivision, if such business has not been found liable for a violation of subdivision a of section 20-255 or section 20-257 within a five-year period prior to the violation resulting in seizure. The pedicab shall be released to such business upon the posting of an all cash bond in a form satisfactory to the commissioner in an amount sufficient to cover the maximum civil penalties which may be imposed for a violation of subdivision a of section 20-255 or section 20-257 and all reasonable costs for removal and storage of such vehicle.

f. Where the commissioner, after adjudication of the violation of subdivision a of section 20-255 or section 20-257, finds that the pedicab business has not violated such subdivision, the department shall promptly release such pedicab upon written demand of the pedicab business.

g. Where the commissioner, after adjudication of the violation of subdivision a of section 20-255 or section 20-257, finds a violation of such subdivision or such section, then (i) if the pedicab is not subject to forfeiture pursuant to paragraph one of subdivision i of this section, the department shall release such pedicab to the pedicab business upon payment of all applicable civil penalties and all reasonable costs of removal and storage; or (ii) if the pedicab is subject to forfeiture pursuant to paragraph one of subdivision i of this section, the department may release such pedicab to the pedicab business upon payment of all civil penalties and all reasonable costs of removal and storage, or may commence a forfeiture action within ten days after the written demand by such business for such pedicab.

h. The department shall establish by rule the time within which pedicabs that are not redeemed may be deemed abandoned and the procedures for disposal.

i. 1. In addition to any other penalty or sanction provided for in section 20-261 or in this section, a pedicab seized pursuant to subdivision d of this section, and all rights, title and interest therein shall be subject to forfeiture to the city upon notice and judicial determination thereof if the pedicab business that owns such pedicab has been found liable at least two times within a five-year period for failing to have such pedicab inspected as required by subdivision a of section 20-255 or for permitting operation by an unlicensed pedicab driver in violation of section 20-257.

2. A forfeiture action pursuant to this subdivision shall be commenced by the filing of a summons with a notice or a summons and complaint in accordance with the civil practice law and rules. Such summons with notice or a summons and complaint shall be served in accordance with the civil practice law and rules on the pedicab business that owns such pedicab, and on any person listed on an application or other record of the department as an owner of such pedicab. A pedicab which is the subject of such action shall remain in the custody of the department or other appropriate agency pending the final determination of the forfeiture action.

3. Any person who receives notice of the institution of a forfeiture action who claims an interest in the pedicab subject to forfeiture may assert a claim in such action for the recovery of the pedicab or satisfaction of such owner's interest in such pedicab.

4. Forfeiture pursuant to this subdivision shall be made subject to the interest of a person who claims an interest in such pedicab pursuant to subdivision three of this subdivision, where such person establishes that: (i) such pedicab was operated without having been inspected as required by subdivision a of section 20-255 or operated in violation of section 20-257 without the knowledge of such person, or if such person had knowledge of such operation, that such person did not consent to such operation by doing all that could reasonably have been done to prevent such operation, or (ii) that the operation of such pedicab without having been inspected as required by subdivision a of section 20-255 or

operated in violation of section 20-257 was conducted by any person other than such person claiming an interest in the pedicab, while such pedicab was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state.

5. The department or agency having custody of the pedicab, after judicial determination of forfeiture, shall, by public notice of at least five days, sell such forfeited pedicab at public sale. The net proceeds of any such sale shall be paid into the general fund of the city.

6. In any forfeiture action commenced pursuant to this subdivision, where the court awards a sum of money to one or more persons in satisfaction of such person's interest in the forfeited pedicab, the total amount awarded to satisfy such interest or interests shall not exceed the amount of the net proceeds of the sale of the forfeited vehicle after deduction of the lawful expenses incurred by the city, including reasonable costs of removal and storage of the pedicab between the time of the seizure and the date of sale.

j. The penalties provided by subdivisions a, b, c, d and i of this section shall be in addition to any other penalty imposed by any other provision of law or rule promulgated thereunder.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9

footnote]

**FOOTNOTES**

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[Footnote 100]: * Subchapter 9 added L.L. 19/2007 § 1, eff. Sept. 20, 2007. Note provisions of L.L. 19/2007:

§ 4. Severability clause.

If any clause, sentence, paragraph, subdivision, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remaining portions of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 5. This local law shall take effect 150 days after it shall have become a law [Sept. 20, 2007], except that prior to such date, the Commissioner may take such actions, including the promulgating of rules and the processing of applications as provided in subchapter 9 of chapter 2 of title 20 of the administrative code of the city of New York and in such rules, as necessary to implement this local law, and except that section three of this local law shall take effect immediately and except that section 20-251 of the administrative code of the city of New York, as added by section one of this local law, shall be deemed repealed two years after it shall have become a law.

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§ 20-264 Enforcement.

Authorized officers and employees of the department, the police department and any department designated by the commissioner, and any police or peace officer shall have the power to enforce any provision of this subchapter or any rule or regulation promulgated pursuant to this subchapter.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9 footnote]

**FOOTNOTES**

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§ 20-265 Rules.

a. The commissioner may make and promulgate such rules and prescribe such forms as are necessary to carry out the provisions of this subchapter. The commissioners of the department of transportation and the department of parks and recreation may also make and promulgate such rules as are necessary to carry out the provisions of this subchapter.

b. The commissioner may authorize pedicabs to display advertising to the extent permitted by rules promulgated pursuant to this section.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9 footnote]

**FOOTNOTES**

100

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§ 20-266 Reporting.

Eighteen months after the local law that added this section, the commissioner, in consultation with the commissioners of the departments of transportation and the police department, shall submit a report to the mayor and the speaker of the council regarding the effectiveness of these regulations at ensuring the safety of pedicab consumers and minimizing the effects of pedicabs on traffic and congestion. Such report shall include, among other things, the number of pedicab business licenses issued, the number of pedicabs that have registered, the number of pedicab driver licenses issued, the number of pedicab business and pedicab driver applications received by the department, the number of pedicab business and pedicab driver applicants on a waiting list, if any, and the number of traffic accidents involving pedicabs.

**HISTORICAL NOTE**

Section added L.L. 19/2007 § 1, eff. Sept. 20, 2007. [See Subchapter 9 footnote]

**FOOTNOTES**

100

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SUBCHAPTER 11 DEALERS IN SECOND-HAND ARTICLES

§ 20-264 Definitions.

a. Whenever used in this subchapter, the words "dealer in second-hand articles" shall mean any person who, in any way or as a principal broker or agent:

1. Deals in the purchase or sale of second-hand articles of whatever nature, or

2. Accepts or receives second-hand articles as returns of merchandise or in exchange for or for credits on any other articles or merchandise, or

3. Deals in the purchase or sale of any second-hand manufactured article composed wholly or in part of gold, silver, platinum or other metals, or

4. Deals in the purchase or sale of old gold, silver, platinum or other precious metals, or

5. Deals in the purchase of articles or things comprised of gold, silver, platinum or other precious metals for the purpose of melting or refining, or

6. Engages in melting previous metals for the purpose of selling, or

7. Deals in the purchase or sale of pawnbroker tickets or other evidence of pledged articles, or

8. Not being a pawnbroker deals in the redemption or sale of pledged articles, or

9. Deals in the purchase or sale of any used electrical appliance, electronic equipment or component parts.

b. Nothing contained in this subchapter shall be construed to apply to:

1. Pianos, books, magazines, rugs, tapestries, artists' burlaps, painting, sculpture, drawings, etchings and engravings;

2. The first purchase or sale in the city of any imported second-hand article;

3. The acceptance or receipt of merchandise which is not second-hand as a return, exchange, or for credit or refund if such merchandise was originally purchased as new merchandise from the person accepting or receiving the same, nor to the resale of such merchandise;

4. The acceptance or receipt of second-hand merchandise as a return, trade-in, exchange, or for credit or refund if such merchandise was originally purchased as new merchandise from the person accepting or receiving the same, nor to the first subsequent sale or exchange of such merchandise to any person other than an ultimate consumer;

5. The first sale, at retail of merchandise which has been rebuilt by the manufacturer or vendor originally manufacturing it, or the licensed agents thereof, and sold as factory rebuilt merchandise.

c. The burden of proof that an article was originally purchased from the person accepting or receiving it, that it was the first subsequent sale or exchange thereof to a person other than an ultimate consumer or that it was a first sale at retail of such factory rebuilt merchandise shall be upon the person asserting the same. Evidence of an existing trade-practice in the city, if any, shall be admissible for the purpose of determining whether or not merchandise is second-hand.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-126.0 added chap 929/1937 § 1

Sub h added LL 46/1939 § 1

Amended LL 62/1941 § 1

Sub h moved to § B32-130.0, LL 50/1942 § 141

Sub a amended LL 80/1959 § 1

Sub b amended LL 50/1962 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. Administrative Code § B32-127.0, making it unlawful for any person to act as a dealer in second-hand articles without a license therefor, and defining (§ B32-126.0) the words "dealer in second-hand articles" as a person "dealing in the purchase or sale of second-hand articles", but excepting from the application of the law credits on merchandise accepted in full or part payment for new merchandise, **held** not intended to apply to the resale of used articles taken in trade as part payment. The statute, being penal in character, was to be construed strictly, and the exception relating to credits on merchandise taken in part payment for new merchandise would be of little value if the

used merchandise could not be resold.-People v. Rudolph Wurlitzer Co., 282 N.Y. 457, 26 N.E. 2d 976 [1940].

¶ 2. Administrative Code § B32-126.0, relating to the licensing of dealers in second-hand articles, was intended to apply to the ordinary dealer in second-hand articles as a business for profit. Hence the Salvation Army, which is a religious and charitable organization, was not required to be licensed in order to conduct various stores in the City of New York where second-hand articles were sold or given away, the stores being maintained in conjunction with the organization's Men's Social Service Department and the articles having been acquired through donation or collection without payment therefor.-People (Mintzes) v. The Salvation Army, 176 Misc. 755, 29 N.Y.S. 2d 70 [1941].

¶ 3. Commissioner of Licenses **held** not to have acted arbitrarily in denying a license to petitioner to act as dealer in second hand articles, where petitioner stated in her application for a license that she had been arrested in 1947 for maintaining a house of prostitution but had failed to reveal that she had been arrested on the same charge in 1936 and again in 1939 and in each instance received a suspended sentence, and that in each instance her record was under a different name.-In re Dorf (Fielding), 120 (7) N.Y.L.J. (7-12-48) 59, Col. 2 M.

¶ 4. Contention of petitioner that the Commissioner had no right to consider her character as the statute imposed only the requirements of citizenship, a bond and payment of a fee, was rejected, as implicit in the fact of requiring a license is a command to the Commissioner to take reasonable steps to see that the applicant is a fit and proper person to engage in the licensed business. By necessary implication there is clear authority to refuse licenses to those who violate the law.-Id.

¶ 5. Refusal of Commissioner of Licenses to issue to petitioners a second-hand dealer's license for an auto wrecking business to be conducted in a commercial and unrestricted zoning area, **held** to have been arbitrary, where no claim was made that petitioners were not proper persons to engage in such a business, under the zoning laws a second-hand auto dealer's business was a permitted use at the location, and the properties surrounding petitioner's premises were used as a fuel depot equipped with silos and loading gear, and a lumber yard, and use of the premises by petitioners would not change the general character of the community.-In re Moehrer (McCaffrey), 127 (5) N.Y.L.J. (1-8-52) 91, Col. 1 T.

¶ 6. Commissioner's suspension of petitioner's license as a second-hand dealer would not be disturbed when on one occasion at least another whose license as a second-hand dealer and auctioneer had been previously suspended was present on petitioner's premises for purpose of negotiating a transaction in second-hand personal property, and it could be reasonably implied from the evidence that such person was conducting business in partnership or association with petitioner without being licensed.-Schepps v. Moss, 115 (62) N.Y.L.J. (3-16-46) 1047, Col. 4 T.

¶ 7. Determination of Commissioner of Licenses suspending petitioner's license as a used car dealer primarily because of two convictions of violating the Administrative Code and two convictions for violation of the State War Emergency Act, would not be disturbed notwithstanding a certificate of reasonable doubt had been granted as to such convictions. The violations were of such a nature as to affect the integrity of the license privilege granted to the petitioner and its conduct with the public, and mere reversal of the convictions would not preclude investigation by the Commissioner or justify interference with the license suspension unless the Commissioner acted arbitrarily.-In re Sel-Zin Auto Sales, Inc. (Fielding), 116 (26) N.Y.L.J. (8-6-46) 215, Col. 5 T.

¶ 8. A second-hand automobile dealer was entitled to a hearing prior to revocation of his license even though the statutes do not so provide. In the instant case, the exercise of the statutory power adversely affected the property rights of petitioner.-In re Brody's Auto Wrecking, Inc., 31 Misc. 2d 466, 220 N.Y.S. 2d 936 [1961].



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*NYC Administrative Code 20-265*

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Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 11 DEALERS IN SECOND-HAND ARTICLES

§ 20-265 License required.*

a. It shall be31 unlawful for any person to act as a dealer in second-hand articles without a license therefor.

b. There shall be the following types of licenses:

A general license which shall authorize the licensee to act as a secondhand dealer with respect to all articles other than secondhand automobiles, within the city during the license period specified in section 20-266 of this subchapter.

A management license which shall authorize the licensee who is not a dealer in antiques to operate and manage an antique exposition where such antiques are sold at any fair, show or exhibit within the city during a period of one month from the date of issuance of such license.

A secondhand automobile dealer's license which shall authorize the licensee to act as a secondhand dealer with respect to secondhand automobiles within the city during the license period specified in section 20-266 of this subchapter.

**HISTORICAL NOTE**

Section amended L.L. 7/1995 § 1, eff. Jan. 10, 1995.

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-127.0 added chap 929/1937 § 1

Amended LL 3/1954 § 1

Sub b amended LL 71/1958 § 1

**CASE NOTES FROM FORMER SECTION**

¶ 1. This section did not apply to defendants, who, as a part of their businesses, sold cancelled postage stamps and old coins.-People v. Blumenthal, 17 Misc. 2d 93, 192 N.Y.S. 2d 284 [1959].

¶ 2. Petitioner, a second-hand dealer, lost his license on the basis of a false application for a motor vehicle license plus several arrests and convictions as a "scofflaw". **Held:** The action of the Commissioner was arbitrary, since the petitioner was not guilty of any fraud in connection with his license as a second-hand dealer. Furthermore, since the petitioner had been in business for 26 years and was the father of 12 children, it would be unfair to deprive him of his license.-Matter of Morales v. O'Connell, 19 Misc. 2d 949, 197 N.Y.S. 2d 245 [1959].

¶ 3. Where petitioner, a 75-year-old man had been engaged in the second-hand business for many years, was arrested in 1929 for receiving stolen goods, and in 1958 for impairing the morals of a minor, had failed to disclose these arrests in previous applications, had received several summonses for operating without a license, and his license was revoked nine months previous for failure to appear before the Commissioner, denial of his application for a license was not arbitrary.-Matter of Bimler (O'Connell), 145 (11) N.Y.L.J. (1-7-61) 12, Col. 3 M.

¶ 4. Defendant who was president of corporation which sold at wholesale remanufactured parts for gas and oil heating equipment and where purchaser would turn in defective or unworkable part which was then sent for remanufacture and sale was conducting the business of second-hand dealer although the purchaser was given no credit or price reduction for the defective part where no purchase could be made without a trade-in.-People v. Bailey, 26 N.Y. 2d 648, 256 N.E. 2d 192, 307 N.Y.S. 2d 885 [1970].

**FOOTNOTES**

31

[Footnote 31]: * Section 20-265 was separately amended by two irreconcilable amendments.

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CHAPTER 2 LICENSES

SUBCHAPTER 11 DEALERS IN SECOND-HAND ARTICLES

§ 20-265 License required.*

a. It shall32 be unlawful for any person to act as a dealer in second-hand articles without a license therefor.

b. There shall be the following types of licenses:

A general license which shall authorize the licensee to act as a secondhand dealer with respect to all articles other than secondhand automobiles, within the city during the license period specified in section 20-266 of this subchapter.

An exposition license which shall authorize a dealer in antiques who maintains no place of business within the city to exhibit and sell such antiques at any fair, show or exposition within the city during a period of one month from the date of issuance of such license.

A secondhand automobile dealer's license which shall authorize the licensee to act as a secondhand dealer with respect to secondhand automobiles within the city during the license period specified in section 20-266 of this subchapter.

**HISTORICAL NOTE**

Section amended L.L. 8/1995 § 1, eff. Jan. 10, 1995.

See previous section 20-265 for Derivation and Case Notes.

**CASE NOTES**

¶ 1. The licensing requirements for dealers in second-hand goods is not an unconstitutional restriction on freedom of speech. Moreover, the statute does not impose an excessive burden on interstate commerce, nor was plaintiff prevented from practicing his chosen profession by virtue of the licensing scheme. Dunk'n Doughnuts Inc. d/b/a/ Schmuck Bros. of Pa v. Dept. of Consumer Affairs of the City of NY 2008 NY Slip Op. 2754, 49 AD3d 464, 855 NYS2d 59, 2008 NY AD Lexis (App. Div. 1st Dept.).

**FOOTNOTES**

32

[Footnote 32]: * Section 20-265 was separately amended by two irreconcilable amendments.



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CHAPTER 2 LICENSES

SUBCHAPTER 11 DEALERS IN SECOND-HAND ARTICLES

§ 20-266 Bonds; fee; term; fingerprinting.

a. Each dealer securing a general license shall furnish a bond to the city, with sufficient surety, to be approved by the commissioner in the penal sum of one thousand dollars conditioned for the due observance of the law relating to such dealers.

b. The fee for licenses shall be as follows: for a general license, a biennial fee of three hundred forty dollars; for a second-hand automobile dealer's license, a biennial fee of six hundred dollars.

c. The commissioner shall require that applicants for licenses issued pursuant to this subchapter be fingerprinted for the purpose of securing criminal history records from the state division of criminal justice services. The applicant shall pay a processing fee as required by the state division of criminal justice services. Fingerprints shall be taken of the individual owner if the applicant is a sole proprietorship; the general partners if the applicant is a partnership; and the officers, principals, directors, and stockholders owning more than ten percent of the outstanding stock of the corporation if the applicant is a corporation. Any person required to be fingerprinted hereunder shall furnish to the department three current passport-size photographs of such person. Notwithstanding the foregoing, the commissioner need not require applicants for licenses required under this subchapter to be fingerprinted if criminal history records concerning such applicants are not available from the state division of criminal justice services.

**HISTORICAL NOTE**

Section amended L.L 66/1989 § 3

Section added chap 907/1985 § 1

Subd. b relettered and amended L.L. 8/1995 § 2, eff. Jan. 10, 1995 (formerly subd. c)

Subd. b amended (as subd. c) L.L. 7/1995 § 2, eff. Jan. 10, 1995.

Subd. b amended (as subd. c) L.L. 51/1991 § 3, eff. July 17, 1991.

Subd. b repealed L.L. 8/1995 § 2 eff. Jan. 10, 1995

Subd. c relettered (formerly subd. d) L.L. 8/1995 § 4 eff. Jan. 10, 1995.

**DERIVATION**

Formerly § B32-128.0 added chap 929/1937 § 1

Sub b amended LL 10/1947 § 1

Amended LL 3/1954 § 2

Amended LL 36/1954 § 1

Sub c amended LL 71/1958 § 2

Sub c amended LL 44/1970 § 5

Sub d repealed LL 74/1977 § 3

Sub c amended LL 30/1983 § 6



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*NYC Administrative Code 20-266.1*

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Title 20 Consumer Affairs

CHAPTER 2 LICENSES

SUBCHAPTER 11 DEALERS IN SECOND-HAND ARTICLES

§ 20-266.1 Refusal to issue or renew, or suspension or revocation based on criminal conviction.

In addition to any of the powers that may be exercised by the commissioner pursuant to this subchaper or chapter one of this title, the commissioner, after notice and an opportunity to be heard, may refuse to issue or renew, or may suspend or revoke, a license required under this subchapter if the applicant or licensee, or any of its principals, officers or directors, or any of its stockholders owning more than ten percent of the outstanding stock of the corporation has been convicted of a crime which, in the judgment of the commissioner, has a direct relationship to such person's fitness or ability to perform any of the activities for which a license is required under this subchapter or has been convicted of any other crime which, in accordance with article twenty-three-a of the correction law, would provide a justification for the commissioner to refuse to issue or renew, or to suspend or revoke, such license.

**HISTORICAL NOTE**

Section added L.L. 66/1989 § 4.



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SUBCHAPTER 11 DEALERS IN SECOND-HAND ARTICLES

§ 20-267 Report to the police commissioner.

Every dealer in second-hand articles, upon being served with a written notice to do so by a member of the police department, shall report to the police commissioner, on blank forms to be furnished by such department, a copy of the records required to be kept under section 20-273 of this subchapter, of all goods or articles or any part thereof, purchased, received or sold in the course of his or her business, during the days specified in such notice.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § B32-129.0 added chap 929/1937 § 1

**CASE NOTES**

¶ 1. The previous owner of a 5.71 carat ring brought a conversion action against Winston. Plaintiff had sold the ring to a person named Flick, who paid for it with a check drawn on a non-existent bank. Winston, allegedly being unaware of the fraud, purchased the ring from Flick. Winston defended the suit on the ground that it was a good faith purchaser of the ring within the meaning of Uniform Commercial Code § 2-403. The court, however, held that where

Winston filed a "Dealer's Report of Pledged or Purchased Property," in compliance with Administrative Code § 20-267, Winston treated the item as second hand goods. The court held that since Winston admittedly did not have a second hand dealer's license at the time of purchase, it could not validly claim that it acted with reasonable commercial standards of fair dealing and trade, and thus could not invoke UCC § 2-403. Siegelson's Diamonds and Jewelry, Inc. v. Harry Winston, Inc., 194 A.D.2d 306, 598 N.Y.S.2d 223

(1st Dept. 1993).

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*NYC Administrative Code 20-268*

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CHAPTER 2 LICENSES

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§ 20-268 Restrictions.

a. It shall be unlawful for any dealer in second-hand articles to carry on his or her business at any place other than the one designated in such license.

b. It shall be unlawful for any such dealer to purchase any second-hand goods, or things from any person whom he or she knows to be or has reason to believe is a minor.

c. It shall be unlawful for any person whose principal business is dealing in second-hand articles to purchase any second-hand goods or articles from any person between the hours of 12:00 A.M. and 6:00 A.M.

d. It shall be unlawful for any such dealer to sell or dispose of any articles or things except household furniture, curtains, carpets, stoves, kitchen utensils, office furniture, automobiles, motor and other vehicles, machinery, belting, building materials and barrels, or other articles or things received from a dealer or pawnbroker, or which have been received from persons known to be jewelers, dealers, banking institutions, executors or administrators, until the expiration of fifteen days after such purchase or redemption.

e. All second-hand articles or things purchased for the purpose of melting or refining by persons principally engaged in such business, from persons who are not jewelers or dealers, shall not be sold, refined or melted or disposed of until the expiration of fifteen days after such purchase.

Such items as described in the preceding paragraph shall be kept on the premises described in the license which is required by section 20-265 of this chapter.

f. It shall be unlawful for any person licensed as a dealer in second-hand articles, to be licensed as a pawnbroker. It shall be unlawful for any such dealer to receive any article by way of pledge or pawn, or employ subterfuge for receiving goods as security for the advancement of money; nor shall any sign, device or subterfuge be displayed, used or employed by any such dealer in or about the premises where such business is conducted, which in any way resembles the emblem or sign commonly used by pawnbrokers, or which is intended to give the appearance that the business conducted on such premises is, or is connected with, the business of a pawnbroker; nor shall there be any sign displayed which is calculated to deceive.

g. (1) All open lots used as places of storage by junk dealers and dealers in second-hand articles, except lots used as places of display by dealers engaged exclusively in the sale of used or second-hand automobiles, shall be enclosed on all sides adjoining any street by a sheet metal or wooden fence which shall be sufficient to obscure such premises from the public view, and at least six feet in height. It shall be unlawful for such dealer to display or exhibit such property or articles on or in front of any such fence. It shall be the duty of such dealer occupying such premises to keep such fence free and clear of all signs, posters, handbills or other forms of advertisement of any sort whatsoever, except that such dealer may display one sign not exceeding twenty-four feet in length by six feet in height on such fence on each street which such premises shall adjoin, such sign to be used for the purpose of advertising the business of such dealer. The same restrictions shall apply to the owner of such premises in the event that such premises are made available for lease by such owner.

(2) It shall be unlawful to stack or to permit the stacking of any motor vehicles of any kind, or any parts thereof, upon any private property within the city unless such vehicles or parts thereof are completely enclosed within a building, or within an area surrounded by a six foot high fence constructed of sheet metal or wood. When stacked in an open lot such motor vehicles or parts thereof shall be on the interior portion of the lot and the base of such stack shall be a distance of not less than twenty feet from such fence, and the height of such stack shall not exceed twenty feet. There shall be no less than a five hundred foot distance between the area so used and any place of worship, school or other public building.

(3) The commissioner shall cause periodic inspection to be made of the area and must be satisfied that such premises comply with all laws and rules and regulations of the department of buildings, the fire department, the department of transportation, the department of health and mental hygiene, and the department of environmental protection insofar as the same are applicable thereto. For purposes of facilitating the inspection prescribed by this section, the commissioner is authorized to call upon the heads of the above named departments and such departments and their employees shall make such inspections as may be required.

(4) The provisions set forth in paragraph (2) hereof relating to the five hundred foot distance from any place of worship, school or public building, shall not apply to any existing licensed premises.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

Subd. a amended L.L. 39/2006 § 4, eff. Dec. 16, 2006. [See § 17-315

Note 1]

Subd. b amended L.L. 39/2006 § 4, eff. Dec. 16, 2006. [See § 17-315

Note 1]

Subd. c amended L.L. 39/2006 § 4, eff. Dec. 16, 2006. [See § 17-315 Note 1]

Subd. f renumbered (former subd. g) L.L. 39/2006 § 5, eff. Dec. 16, 2006. [See § 17-315 Note 1]

Subd. f repealed L.L. 39/2006 § 5, eff. Dec. 16, 2006. [See § 17-315 Note 1]

Subd. g renumbered (former subd. h) L.L. 39/2006 § 5, eff. Dec. 16, 2006. [See § 17-315 Note 1]

Subd. g par (3) amended (as subd. h par (3)) L.L. 22/2002 § 42, eff. July 29, 2002 and deemed in effect as of July 1, 2002.

Subd. g par (3) amended L.L. 59/1996 § 82, eff. Aug. 8, 1996

**DERIVATION**

Formerly § B32-130.0 added chap 929/1937 § 1

Sub c amended LL 62/1941 § 2

Sub h added by renumbering LL 50/1942 § 141

(formerly sub h of § B32-126.0 as added by LL 46/1939 § 1)

Subs f, g amended LL 42/1959 § 2

Sub h amended LL 57/1967 § 1

Sub e amended LL 60/1981 § 2

Sub e amended LL 69/1983 § 2

**CASE NOTES**

¶ 1. See City Line Auto Mall, Inc. v. Mintz, 42 AD3d 407, 840 N.Y.S.2d 783 (1st Dept. 2007), discussed in note 6 of Admin. Code § 20-700.